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**THE IRISH LAW TIMES**

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THE

# IRISH LAW TIMES

AND

## SOLICITORS' JOURNAL:

A WEEKLY GAZETTE OF LEGAL POSTINGS

AND

Miscellaneous Legal News and Information;

TO WHICH ARE ADDED

### THE IRISH LAW TIMES REPORTS,

WITH A

### DIGESTED INDEX

OF ALL DECISIONS REPORTED IN THE IRISH LAW TIMES REPORTS, AND IN CONTEMPORANEOUS  
LEGAL REPORTS OF IRISH CASES, DURING THE YEAR 1882;

AND AN APPENDIX OF

### THE PUBLIC GENERAL STATUTES RELATING TO IRELAND

(45° AND 46° VICTORIA).

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IN

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## THE SERVICE OF WRITS AND NOTICES.

THE new Judicature Rules, published in our last issue (15 Ir. L. T. 655), which came into operation "from and after" Jan. 2, enable personal service of a writ of summons to be dispensed with in all actions commenced in the common law divisions of the Irish High Court of Justice, wherever the usual residence of the defendant in question is situated in a proclaimed district, unless that residence be within a county of a city or county of a town. The rule in question is not limited to cases between landlord and tenant, or to any particular class of actions, and does not—as do the County Court Rules of September last—require, as a condition of its operation, proof of any special circumstances calculated to prevent the service from being effected in the ordinary way, beyond the fact of the defendant being resident in that large portion of Ireland at present proclaimed. Though probably intended chiefly to meet the same class of cases as the new County Court Rules, it will, accordingly, be seen that it has a much wider operation; and, as it embraces all classes of suitors and all classes of actions, it must, so as to prevent abuse, be uniformly and strictly construed. The courts of law of this kingdom have at all times been most vigilant as regards matters relating to the service of originating processes—(where what they call "natural justice" is concerned)—in seeing that every precaution is taken to ensure that a defendant shall have an opportunity of being heard: see the authorities cited in the well-known case of *Maubourquet v. Wyse*, 1 R. I. C. L. 471, where a French judgment, entered up behind the back, and without the knowledge of an Irish subject, was sued upon in this country. We refer to these matters here in order to impress upon our readers the necessity for attending most carefully to all that the new rule requires.

The new rule in effect provides that where a defendant usually resides within any one of the proclaimed districts above referred to, good service upon him of any writ of summons issuing out of the Queen's Bench Division, the Common Pleas Division, or the Exchequer Division, may be effected by posting a copy of the writ at the police barrack nearest to the defendant's said residence, and by sending to him through the post-office by letter both a copy of the writ and a copy of this judicature order—the letter so sent to be addressed to the defendant at his *usual residence*, "provided that the plaintiff, or plaintiffs, named in such writ of summons, or one of them, or his or their *attorney*" (*sic*) "shall make and cause to be filed in the division out of which such writ shall have issued, an affidavit stating the parish and barony in which the defendant resides, and that such place of residence is within a district which has been, and is, prescribed as aforesaid, and that the above particulars as to service have been duly observed and performed." We may observe in passing that there is no time limited within which this affidavit is to be made; and that from the peculiar way in which the clause is framed, specifying, as it does, the making and filing of what will no doubt be familiarly called the "*affidavit of service*," as a necessary condition of "good and sufficient" service under this rule, it is even left a moot point whether or not the twelve days limited for appearance begin to run until after the

affidavit has been filed. In the absence of authority, we would, however, caution those interested on behalf of a defendant against acting upon the assumption that the twelve days for appearance limited by the concluding clause of this rule do not begin to run until this later date. We apprehend that the phrase "*usual residence*" used in this rule, which is one well known to our courts, will be construed similarly to the same phrase occurring in the Common Law Procedure Act, 1856, section 97, and the 40th section of the Civil Bill Act. Thus in *Dawson v. Coleman*, 15 Ir. C. L. Rep. 508, the question arose whether a house in the county Cork where a gentleman connected with the Irish Court of Chancery resided from July to October in each year and kept shut up for the rest of the year, during which he lived at Pembroke-place, Dublin—whether this county Cork residence could be regarded as his "*usual residence*" within the meaning of the said 97th section, so as to deprive him of his right to the costs of a judgment recovered by him against a county Cork defendant resident within the same civil bill jurisdiction as that within which his country house was situated. The matter stood for judgment, and the Court of Common Pleas eventually decided, in effect, that a man cannot have more than one "*usual*" residence, and that his Dublin house was, accordingly, his only *usual residence*. This case places the law upon this point upon a clear and intelligible footing, and shows that the new mode of service can rarely be taken advantage of to snap a judgment against an absent person who happens to have more than one residence.

The affidavit mentioned in the section is to be made by a plaintiff or by his "*attorney*." Whether this latter term is, or is not, intended to include (as may be contended) *all* persons formally authorised by a plaintiff for this purpose, and, if so, whether the affidavit must state his authority, it is, in the absence of decision, impossible to say; but, as regards the contents of the affidavit, it is clear that it must, at least, state for the guidance of the Court, what is the defendant's usual residence; in what parish and barony it is situated; that it is situated in one of the proclaimed (or "prescribed") districts; what the nearest police barrack to that residence is; that a copy of the writ of summons has been posted on that police barrack; and that a letter, properly addressed to defendant at his said usual residence, containing a copy of the writ of summons and of the new order which makes this new mode of service "good and sufficient," has been sent through the Post Office. The rule does not require that the letter sent to defendant should be registered, and there is not—as some imagine there should be—in it, any provision requiring publication in the *Dublin Gazette* and in a local paper, of the issuing of the writ of summons, as is required in the case of service on Railway Companies, Corporations, &c., &c.

Though the Judicature Rules already provide summary means for proceeding to judgment and for the service of any notices on a non-appearing defendant incidental thereto, in all actions where the requirements of the law as regards the service of the originating writ of summons have been complied with, it may not be out of place to point out here that, as regards the procedure from judgment to execution, an important step tending to facilitate the service in pro-

claimed districts of the notices requisite under the new law. preliminary to sales of tenancies under writs of *fiery ficus*, &c., has been made by the Land Commission within the past few days—viz., 2nd January, 1882. It will be recollected that by section 1, sub-section 14, of the Land Act of 1881 it is provided that "where a sale of a tenancy is made under a judgment or other process of law against the tenant, or for the payment of the debts of the deceased tenant, the sale shall be made in the prescribed manner, subject to the conditions of this section, so far as the same are applicable;" and that sub-section 16 provides for the case of a landlord who has received notice of an intended sale, and who "is not desirous of purchasing the tenancy otherwise than as a means of securing the payment of any sums due to him for arrears of rent or other breaches of the contract or conditions of tenancy." The rules of the Land Commission, dated October 1, 1881, prescribe the precise course to be followed in carrying out any such sale. Number 82 of these rules provides that "where a sale of a tenancy is about to take place under a writ of execution by any execution-creditor other than the landlord, such execution-creditor shall, at least one fortnight before the day of sale, give notice both to the landlord and to the tenant of his intention to sell, and when the landlord is himself the execution-creditor he shall within the same period give like notice to the tenant." [Our readers will recollect that this is the rule the validity of which as regards the requirement of notice to the tenant is called in question by Mr. (now Sub-Commissioner) MacDevitt in the passage from his valuable manual of the Irish Land Acts, recently quoted by us. See 15 Ir. L. T. 597-8.] Rule 85 provides for the case where a landlord who is himself the execution-creditor desires to purchase the tenancy otherwise than at the sheriff's sale, and requires service upon the tenant, as well as upon the sheriff, of notice of his application to the Court. Rules 86 and 87 relate to sales by the personal representatives of a deceased tenant, by the assignees in bankruptcy of a tenant, or by a person having the carriage of sale of the tenancy under the order of any court. Now, it is obvious that the same difficulties which were presumed to exist as regards the service of all writs of summons in proclaimed districts prior to the new Judicature Rule above referred to, existed also as regards the service of all notices required by the Rules of the Land Commission to be served upon a tenant—including those we have pointed out; because, by their 27th rule, service of any notice shall be effected either by personal service, or by leaving a copy thereof at the house or place of residence of the person to be served, at his office, warehouse, &c., with the wife, child, father, &c. Hence the necessity for the new rule issued by the Land Commission on Monday last, which, read in the light of the observations we have made as to the previous state of the law and as regards the somewhat similar wording of the corresponding Judicature Rule, will best and most briefly speak for itself, as follows:—"It is this day ordered that, from and after this date, where the holding in respect of which notice of intention to sell the tenancy is by the Rules 82, 85, 86, and 87, required to be given, is situate within any district for the time being prescribed under the Act for the Better Protection of Person and Property in Ireland, service on the tenant of Notices Nos. 13, 14, 15, and 17, or any of them, may be effected on such tenant by sending to him a copy of such notice and a copy of this order by letter through the Post Office addressed to him at his usual residence, and by posting a copy of such notice on the Petty Sessions Court-house of the district in which the holding is situate; and such

service shall be deemed good service of such notice, provided the party on whose behalf such notice is served, or his solicitor, shall make and file in the office of the Irish Land Commission an affidavit stating that the address to which the notice has been posted is the correct address of the party required to be served, and stating the county, barony, poor law union, and electoral division in which such holding is situate, and that such place of residence is within a district which has been and is at the time of such service prescribed as aforesaid, and that the posting of such notice through the post, and posting a copy thereof on such Petty Sessions Court-house as aforesaid have been duly effected on the respective dates mentioned in such affidavit."

We trust that the operation of these useful but somewhat dangerous rules may soon be restricted by the withdrawal of many districts from the long category of those which have been proclaimed; and that in the meantime, they may, without being abused, tend to relieve honest suitors—defendants as well as plaintiffs—from unnecessary expense and loss.

#### THE REMAINING PROVISIONS OF CAIRNS'S CONVEYANCING ACT.

(Continued from 15 Ir. L. T. p. 658.)

Division X. deals with "rent-charges and other annual sums:"—

"Section 44, which is permissive and prospective, sub-sections (5) (6), empowers a person 'entitled to receive out of any "land," or out of the income of any land, any annual sum, payable half-yearly or otherwise, whether charged on the land or on the income of the land and whether by way of rent-charge or otherwise, not being rent incident to a reversion. To have . . . so far as the remedies might have been conferred by the instrument under which the annual sum arises, but not further,' if the annual sum, or any part thereof, is in an arrear, (1) for twenty-one days a remedy by distress, sub-section (2); (2) for forty days a remedy by entry, sub-section (3); and (it would seem in the latter case) 'power to demise, sub-section (4), to a trustee for a term of years, for raising arrears,' thus adopting the suggestion in 3 Davidson 819. The last power seems, notwithstanding the large meaning given to 'land' by section 2 (ii.), inapplicable to copyholds. We presume that in many cases section 42 (management during minority) and section 44 may be useful for settlements; but perhaps it might be convenient that when the framer of a settlement proposes to rely on these provisions he should expressly refer to them.

"Section 45 provides, sub-section (1), that 'where there is a quit-rent, chief-rent, rent-charge, or other annual sum issuing out of land' (in this section referred to as 'the rent'), the copyhold commissioners shall at any time on the requisition [in writing, sub-section (4)] 'of the owner of the land, or of any person interested therein, certify' [in writing and under their seal, sub-section 4], the amount of money in consideration, whereof 'the rent' may be redeemed; [but it does appear that these commissioners are obliged to communicate with the person entitled to the rent]. By sub-section (2), that where the person entitled to 'the rent' is (1) absolutely entitled thereto in fee simple, in possession, or (2) is empowered to dispose thereof absolutely, or (3) to give an absolute discharge for the capital value thereof, the owners of the land, or any person interested therein, may, after serving one month's notice [see section 67] on the person entitled to 'the rent,' pay, or tender, to that person the amount certified by the commissioners, and by sub-section (3), that 'on proof to the commissioners that payment, or tender, has been so made, they shall certify that the rent is redeemed under this Act, and that certificate shall be final and conclusive, and the land shall be thereby absolutely freed and discharged from the rent.' The section applies, sub-section 6, 'to rents payable at or created after (1)

the commencement of this Act; but, [sub-section (5)] does not apply (1) to tithe rent-charge, or (2) to a rent reserved on a sale or lease, or (3) to a rent made payable under a grant or license for 'building purposes,' section 2 (X), or (4) to any sum or payment issuing out of land *not being perpetual*, nor, sub-section (7), does it extend to Ireland. Chief rents appear to be (x) words more appropriate to such quit-rents as are payable by freeholders; but the term 'quit-rent' seems also to include rents payable by copyholders, Shelford, R. C. S. 136. Is it intended that a copyholder should be able to discharge his tenement from a quit rent without enfranchising? As to tithes, it will be remembered that in certain cases power of redemption already exists. See 9 & 10 Vict., c. 73, ss. 1, 2; 23 & 24 Vict., c. 93, ss. 31, 32; 41 & 42 Vict., c. 42.

"It may be thought that, if one of the chief objects of the Act is to facilitate dealings with property, power might have been given (the rent owner or reversioner being properly represented before the commissioners) to commute perpetual rents reserved on grants for building purposes and to convert perpetually renewable leaseholds, into estates in fee; but such a power is wanting. See as to conversion in Ireland of perpetually renewable leaseholds, 12 & 13 Vict., c. 105; 31 & 32 Vict., c. 62."

Division XI. of the Act relates to "powers of attorney:—"

"Section 46 empowers the donee of a power of attorney to 'execute or do any assurance, instrument, or thing, in and with his own name, and signature, and his own seal, where sealing is required instead, in the name and with the seal of the donor.' Section 47, sub-section (1), is an extension of section 26 of 22 & 23 Vict., c. 35, and enacts that 'any person' [section 26 was confined to a trustee, executor, or administrator] 'making or doing any payment or act in good faith in pursuance of a power of attorney is not to be liable in respect of the payment or act, by reason that, before the payment or act, the donor of the power had died, or become lunatic, or of unsound mind, or bankrupt, or had revoked the power; if the fact of death, &c., was not at the time of the payment or act known to the person making or doing the same.' Section 26 of the former Act had the expression, 'was dead at the time of such payment or act, or had done some act to avoid the power.'

"Section 48 provides, sub-section (1), that an instrument creating a power of attorney, its execution being verified by affidavit, statutory declaration, or other sufficient evidence [what will be such other evidence and who is to determine its sufficiency remains to be seen], may, with the affidavit or declaration, if any, be deposited in the central office of the Supreme Court of Judicature. A separate file of such instruments is to be kept, sub-section (2); a copy of instruments so deposited may be presented at the office and stamped or marked as an office copy, sub-section (3); office copies are to be received as evidence, sub-section 41, and general rules may be made regulating the practice of the central office for the purposes of this section.

"Sections 46 and 48 extend to powers of attorney made before or after the commencement of the Act. Section 47 is prospective. Sections 47 and 48 will undoubtedly prove very useful."

Division XII. of the Act relates to "the construction and effect of deeds and other instruments:—"

"We have already adverted to most of the sections in this division, and will shortly refer to the others. Section 52 provides, sub-section (1), that a 'person to whom any power, whether coupled with an interest or not, is given, may by deed release or contract not to exercise the power;' and applies, sub-section (2), to powers created by instruments coming into operation either before or after the commencement of the Act, *Davis v. Huquenin*, 1 H. & M. 730, 32 Law J. Rep. Chanc. 417, and that class of cases are instances of agreements not to exercise a power appendant; and this section will now enable powers simply collateral (as to which see Farwell, p. 10) to be released.

"Section 53 deals with supplemental or annexed deeds. Section 57 provides that 'deeds in the form of and using the expressions in the forms given' in schedule 4 to the Act, 'or in the like form or using expressions to the like effect, shall, as regards form and expression in relation to the provisions of this Act, be sufficient.' This section, coupled with such expressions as 'expressed to convey as beneficial' owner, &c., section 7, sub-section (1); 'by the direction of' as beneficial owner hereby conveys,' section 7, sub-section (2); and form 3 in Schedule IV., shows that when it is intended to employ the machinery of the Act for the purpose of conveyance, careful attention in adopting the language suggested by the Act will be desirable, though possibly not absolutely necessary.

"Section 62, which is prospective, provides that 'a conveyance of freehold land to the use that any person may have for an estate or interest not exceeding in duration the estate conveyed in the land any easement, right, liberty, or privilege in or over or with respect to that land, or any part thereof, shall operate to vest in possession in that person that easement, right, liberty or privilege for the estate or interest expressed to be limited to him, and he and the persons deriving title [query to the easement, &c., or to what?] under him shall have use, and enjoy the same accordingly.

"The form given in 2 Davidson, part 1, p. 265, note, is an illustration of a right of way being created under a power, i.e., by the limitation of a use. The object and effect of the section is not very clear; see as to meaning of right, Co. Litt. 266 (a), 345 (a). Generally the Courts incline to favour such a construction of a grant of way-leave, for instance, as will annex it to land (2 Davidson, part 1, p. 551, note, and see *Thorpe v. Brumfit*, L. R. 8 Chanc. 650. The section seems rather to point to a personal right (see Gale, p. 14, note).

"Division XIII., relating to long terms, introduces a striking innovation in real property law, and enacts, section 65, sub-section (1), 'where a residue unexpired of not less than 200 years of a term which, as originally created, was for not less than 300 years, is subsisting in "land," whether being the whole land originally comprised in the term, or part only thereof, without any trust or right of redemption affecting the term in favour of the freeholder or other person entitled in reversion expectant on the term, and without any rent, or with merely a peppercorn rent, or other rent having no money value incident to the reversion, or having had a rent not being merely a peppercorn rent, or other rent having no money value originally so incident, which subsequently has been released or has become barred by lapse of time' [but see on this point *Archbold v. Scully*, 9 H. L. at pages 381, 385], 'or has in any other way ceased to be payable; then the term may be enlarged into a fee simple in the manner and subject to the restrictions in this section provided.' Sub-section (2) shows what persons may so enlarge it by declaration in a deed; by sub-section (4) 'the estate in fee simple so acquired by enlargement is to be subject to all the same trusts, powers, executory limitations over rights and equities, and to all the same covenants and provisions relating to user and enjoyment and to all the same obligations of every kind as the term would have been subject to if it had not been so enlarged;' and see sub-section (5). By sub-section (6), 'the estate in fee simple so acquired shall, whether the term was originally created without impeachment of waste or not, include the fee simple in all mines and minerals which at the time of enlargement have not been severed in right or in fact, or have not been severed or reserved by an inclosure Act or award; and by sub-section (7) the section applies to every such term as aforesaid subsisting at or after the commencement of the Act. Notwithstanding sub-section (4), the change of tenure, consequent upon such an enlargement, may obviously bring certain consequences—e.g., rights of descent, dower, curtesy; while, on the other hand, the term will no longer be included in a valuation for probate.

"It has been suggested that the section would apply

to an underlease, granted at a peppercorn, in consideration of a fine out of a lease which had reserved a rent; compare the late case of *Ex parte Walton*, 50 Law J. Rep. Chanc. 657; L. R. 17 Chanc. Div. 746, where the rent reserved by the underlease was less than that reserved by the lease, and a fine had been paid. No doubt the expression 'other person entitled in reversion' involves difficulty; but this phrase might apply to a person having a partial interest under a settlement of the reversion. Certainly there is not here any such expression as 'leasehold reversion,' section (3), sub-section (1), section 13, sub-section (1); and note the expressions, section 3, sub-section (5), 'where land sold is held by underlease;' section 11, sub-section (1), 'reversionary estate immediately expectant on the term granted;' section 14, sub-section (3); derivative underlease; but see Division III., and section 26, sub-section (1). If section 65 can apply to an underlease, *Ex parte Walton* seems to show that the Court would find a mode of preventing injustice to a freehold reversioner being caused by the creation of an underlease at a peppercorn out of a lease reserving a substantial rent."

We have already referred to Division XIV., relating to 'The adoption of the Act;' Division XV., section 67, 'Notices'—but which [sub-section (5)] does not apply to notices served in proceedings in the Courts—and section 68, Statutory declarations; Division XVI., section 69, relating to Court Procedure, and which, of course, requires careful attention; to the important section 70, as to conclusiveness of orders of the Court in favour of purchasers; and to Division XVII., as to repeals. The last Division of the Act, XVIII., slightly modifies its application respecting Ireland.

The new year will soon give its experiences of the working of many parts of the Act. Our readers must have already heard of instances in which the immediate adoption of some of its provisions is proposed, and even of cases where it had been suggested that matters should stand over from the recent sittings to those commencing in January, in order that its provisions (e.g. section 41) may be applied.—*Law Journal*.

#### COMPENSATION FOR IMPROVEMENTS.

Compensation for improvements is a phrase which has been very much in people's mouths since the Irish Land Act of 1870; but there are cases to which the phrase is applicable, but which have no connexion with politics. Such a case was brought before Mr. Justice Fry on the 10th December, and the case then presented was one in which, if in any, such compensation was rightly allowed. The action of *Watson v. Gass* was one for partition of certain freehold and leasehold properties which had belonged to two ladies as tenants in common, and had been settled on their respective marriages, of each of which issue had been born. Shortly after the marriages, which took place at the same time, an arrangement was come to between the ladies and their husbands, by which the properties were to be partitioned and held in severalty, a sum being paid for equality of partition. Time went on, fifteen years passed away, and the action was brought for partition on the footing of the arrangement; but, since the date at which that had been come to, the value of the property which was originally the more valuable had greatly increased, while that of the less valuable had also increased, but to a much smaller extent. In each case the increased value was attributable to expenditure, in unequal amounts, on buildings and improvements by the parties for whom the partition arrangement had destined the property. The neat question was thus raised, whether the sum to be paid for equality of partition was to be calculated after deducting for the sums respectively expended in permanent improvements, or whether no such deduction could be made. It is obvious that, if the former course were pursued, the parties would reap the benefit of their own expenditure, whereas, if that course were not adopted, the effect would be that the parties who had expended a small sum, and wrought a small improvement, would

share the benefits attributable to the greater enterprise of the other parties. Much to their credit, the parties who had done but little to improve their property supported the contention in favour of making the deduction, and the learned judge thought himself at liberty to sanction the deduction, notwithstanding the infancy of some of the parties interested, following an unreported decision of Vice-Chancellor Bacon in a case of *Parker v. Trigg*, in 1874. It must always be sound policy, as is now generally admitted, to encourage occupiers to lay out money on the land which they hold; and the general principle applies to the case of tenants in common just as much as to any other.—*Law Times*.

#### THE GUILTEAU TRIAL.

The becoming mode of trying a case like that of Guiteau is a question raising difficulties, some of which are peculiar to the practice of American Courts of law, and others would be shared by English Courts in similar circumstances. In the United States a prisoner may have several counsel, each of whom will sometimes take an independent line of defence, if he think it to the common client's interest; and this laxity of practice is, it seems, extended to the case where the prisoner is partly defended by counsel and partly by himself. In England, if a prisoner defends himself, he can only have counsel to advise him, or perhaps by a survival from the time when prisoners could have no counsel to argue points of law. Although, however, an English Court would be free from the difficulty caused by the prisoner being also his own advocate, there would still be much embarrassment in dealing with a prisoner who is defended by counsel but who is alleged to be insane, and constantly interrupts the proceedings. A prisoner charged with felony cannot be tried in his absence, and physical coercion can only be used to prevent an escape. If the judge fail to impress the prisoner with the necessity of proper behaviour, the only resource would be to commit him for contempt, and adjourn the trial or discharge the jury. The jurisprudence of neither country ought to necessitate so circuitous and perhaps ineffective procedure, but the judge ought to have the power to remove the prisoner and proceed with the trial if he is of opinion that justice cannot be decorously administered in the prisoner's presence. The possession of this power would go far to check extravagances.—*Law Journal*.

#### STATE ASSASSINS AND THE DEFENCE OF INSANITY.

The tragedy of July 2 last suddenly revived public interest in the old topic—the defence of insanity in capital cases. It is a well-worn theme, much discussed, and always with an unsatisfactory result. What is moral insanity? What is legal insanity? Conclusive answers to both these questions have often been attempted, but never given with such definiteness and decisiveness as to shut off debate. Every day the controversy is resumed in our courts, and apparently will go on to the end of time. It is settled one day, and the day after we find it is not settled at all. "What," said the late Dr. Forbes Winslow, "is my test of insanity? I have none. I know of no unerring, infallible, and safe rule or standard applicable to all cases." So, too, the British judges, whose effort to define the undefinable we shall presently examine at length, after all their elaboration of statement touching what does and what does not constitute legal insanity, finally confessed that "the facts of each particular case must of necessity present themselves with endless diversity, and with every shade of difference in each case." But if it be difficult to define what is legal insanity, which is a mere matter of human law, how much more difficult is it to determine and define what is moral insanity? Dr. Sam Johnson declares that "all power of fancy over reason is a degree of insanity," and Montaigne asserts that between genius and madness there is but "a half turn of the toe." M. Taine concurs



in this dictum, and philosophically avers that "insanity is not a distinct and separate empire; our ordinary life borders upon it, and we cross the frontier in some part of our nature." It has been the periodic mission of the assassin to revive this moot question. One day the world stands and shudders with an unanimous horror, and the next divides upon the old issue—Was he insane? It is oppressively monotonous, in looking back over these historical tragedies, to find how invariably the modern imitator of Brutus comes down to the footlights with a pistol in one hand and a plea of insanity in the other. In American history, so far, we have had only two creatures corresponding to what, in the vocabulary of Europe, would be called *regicides*. In the first case there was no opportunity offered to the assassin to plead insanity. A vast amount of legal lore and medical metaphysics was forestalled by the summary shooting of Wilkes Booth in the barn where he was brought to bay. The mother country has had a far greater familiarity with such criminals within the current century, and a glance at her records in this regard would seem to have a timely interest. It is, perhaps, worthy of note that not one of the men who have of late murdered, or attempted to murder, czars or emperors, have offered the plea of insanity. In Great Britain and the United States it seems to be the assassin's invariable defence. And in both countries counsel for the accused start with the advantage of being able to ask the jury, as Mr. Cockburn did in the cases both of Pate and McNaughten—Could they believe that any sane man could have committed such an act? And that is the question which the tragic event that has recently shocked and saddened both hemispheres once more invests with melancholy importance, and presents for decision to an American jury.—*Atlantic Monthly*.

VIOLATION OF TOMBS.

The recent discovery at Duncricht has called public attention to a species of crime which it was hoped had become extinct. Old people can call to mind a dismal period, the horrors of which may be said to have culminated in the tragedy of Burke and Hare. In so far as the science of anatomy is concerned, the occupation of the "body-anatcher" is certainly for ever gone. But apparently it has only passed into the hands of more skilled and more exalted criminals, who hoped to trade upon the outraged feelings of mourning relatives.

Men naturally ask what is the law upon the subject? We noticed an article the other day, in the *Pall Mall Gazette*, in which the writer calmly ignores the fact that the Duncricht criminals must be tried under the law of Scotland. His readers are gravely told that there can be no trial for larceny. He might have added that there could be no grand jury. But practically the law of the two countries is the same upon the point in question. The crime with which we are dealing is not an act of theft, which is the Scottish for larceny. Upon both sides of the Border it is a minor offence involving an arbitrary punishment. There is very little law upon the subject. Hume says, "The raising of a dead body from the grave cannot in any proper sense be regarded as a theft, but may be prosecuted as a great indecency, and a crime of its own sort, the *crimen violati sepulchri*." The cases referred to in the notes upon this passage in the text certainly indicate how arbitrary has been the punishment. Thus in 1808 Archibald Begg was banished from Scotland for fourteen years on his own petition; in 1815 four Aberdeen medical students were fined and imprisoned for fourteen days, although the charge against them was thought of sufficient importance to be tried at circuit. Six months' imprisonment, with or without security for future good conduct, seems to have been the usual sentence for some time after this, but in 1823 a man who had been previously convicted was transported for seven years.

The only authority for holding that the act of taking

an unburied corpse is one of theft is the old case of *Mackenzie*. The relevancy of the charge appears to have been sustained by a single judge upon circuit at Inverness. It is difficult to see what is the distinction which the fact of burial thus appears to make. Alison says, "The *crimen violati sepulchri* is not considered as a branch of theft, for our practice acknowledges no property in the remains of deceased relations after they have been committed to the grave." But is the body while unburied private property? It is in the lawful custody of others certainly, but does it not continue to be in such custody after it has been deposited in the vault or grave. It lies in ground which is private property at all events, and may it not be said to become part of that property?—*Journal of Jurisprudence*.

PAYMENT UNDER PROTEST.

It is always welcome news to the general public when some new method of evading extortion is discovered and enforced in the courts of law. The late decision, therefore, in *Lugard v. Biggs*, by Justices Grove and Lopes, will be hailed with satisfaction, though whether in the future it will be considered as a binding authority must be doubtful. The plaintiff, who was an officer in the army, had been staying at the defendant's hotel for some days at the time of the late Windsor review. When his bill was presented to him for payment prior to his departure he complained of the charges, but the defendant refused to alter them. The plaintiff then paid the bill under protest, and subsequently brought an action to recover the amount of the overcharges. At the trial the County Court judge found as a fact that the charges were excessive; and he also held, as a matter of law, that the plaintiff must be considered to have known that the defendant could, if he wished, have detained his luggage supposing he had refused to pay the bill. No evidence, however, was offered to show that the plaintiff, at the time of the dispute about the amount of the charges in the bill, had any luggage on the defendant's premises, or that the defendant either detained or made any threat to detain the plaintiff's luggage if he refused to pay those charges. On these facts the case came before Justices Grove and Lopes, who held that the plaintiff was entitled to recover the amount of the overcharges sued for by him. This decision we venture to think goes very much further than any decided case has yet gone. As a general rule money paid with a full knowledge of the facts cannot be recovered back. To this rule, however, as might have been expected, numerous exceptions are to be found, and it seems possible to group these exceptions under two heads, namely, where money has been obtained (1) by fraud, (2) by duress, either actual or constructive. A familiar instance of the first class of exceptions is afforded by the case of *Duke of Cadaval v. Collins* (4 A. & E. 858), where it was held that the plaintiff could recover back from the defendant a sum of money paid to him in order to avoid a fraudulent arrest with which the defendant threatened the plaintiff. The cases also with regard to actual duress are clear; Mr. Justice Coleridge in his judgment in *Ashmole v. Wainwright* (2 Q. B. 837) remarking, "I never doubted that an action for money had and received might be maintained to recover money paid on the wrongful detainer of goods." With regard, however, to what constitutes what may be called constructive duress the law is not quite so plain. One class of cases establishes the rule beyond doubt that, where a man is entitled to the exercise of a legal right on payment of a certain sum, if he is obliged to pay a larger sum for the exercise of that right he is entitled to recover the overcharge in an action for money had and received.

The cases of *Barker v. The Great Western Railway* (7 M. & G. 253) and *Steele v. Williams* (8 Ex. 625) are good illustrations of this rule. In the former case the railway company charged the plaintiff more than they were entitled to do for carrying his goods, and in the latter the defendant, *colore officii* as the parish clerk, extorted a larger fee than he was by law entitled to charge for

extracts from the parish register. In both cases the plaintiffs were held to be entitled to recover the amount of the overcharge. Instances of another kind of constructive duress are afforded by the cases of *Fraser v. Pendlebury* (31 L. J. 1, C. P.), *Smith v. Bromley* (2 Dong. 695), and *Smith v. Cuff* (6 M. & Sel. 160). The principle of these cases is, that a person who has paid money in order to induce another not to withhold something which he is not entitled to withhold may recover the money back. Lord Mansfield in one of those cases remarks, "If a man makes use of what is in his own power to extort money from one in distress it is certainly illegal and oppressive;" and Mr. Justice Williams says: "Where a demand is made by a mortgagee who refuses to transfer unless his demand is satisfied, this, though not duress in the strict legal sense of the term, constitutes a state of circumstances under which the money so paid may be recovered back." It must be noticed that in all these cases there was either an actual threat or an actual refusal which the court interpreted as amounting to constructive duress. In the present case under discussion, however, there was nothing of the kind. It was not proved that the defendant either refused to allow the plaintiff to remove his luggage, or that he threatened to do so. In fact it was not actually found, though apparently it was assumed by the learned judges, that the plaintiff had any luggage in the hotel at the time of the dispute about the amount of the charges in the bill, which the defendant could have detained had he wished to do so. The decision, however, at any rate goes the length of saying that it is sufficient to enable any one who pays money under protest to recover it back if the recipient had at the time of payment a power of duress which he might have exercised, even though as a fact he did neither exercise nor threaten to exercise it. This decision we venture to think goes further than any case yet decided; and it will most undoubtedly reduce to an appreciable degree the protection which the power of duress was intended to afford.—*Law Times*.

#### LIABILITY FOR LYING AGENTS.

For a great many years there has been a moot point in the law of principal and agent as to how far the liability of a principal extends when his agent has, with or without authority, told some lie or made some innocent misrepresentation whereby the principal has benefited. Is the principal or the master to be treated as himself making the misrepresentation, or if not, then what is the remedy, if any, against him? It is a case of great nicety, closely bordering on the province of morals, and casuistry may well exercise itself on the situation. The leading case on the subject occurred some 40 years ago, and ever since the courts have been hesitating, doubting and dividing upon the principle which that case was supposed to decide.

That case of *Cornfoot v. Fouke*, 6 M. & W. 358, was one in which the plaintiff sued for non-performance of a contract which the defendant had entered into for the lease of a house, and the defendant set up a defence that he had been induced by the fraud, covin, and misrepresentation of the plaintiff, to enter into the contract. A house was to let and it was next door to a brothel; and the plaintiff, who was the owner, employed an agent to let it. The house was one which no respectable family could inhabit. The defendant had a family growing up of both sons and daughters, and it would have been utterly impossible for him to live in it under the circumstances. The owner was perfectly aware of the brothel, and he employed an agent who was not aware of that circumstance. The defendant, on looking at the house, was struck with the cheapness of it, upon which he was induced to ask the agent whether there was anything objectionable about the house, and that was admitted to amount to asking whether there was any nuisance next door. The agent, who was utterly ignorant of the nature of the occupation of the adjoining house, said that there was not; and when the gentleman retired

from the contract the owner brought an action against him for non-performance. Upon the trial the jury, under the direction of Lord Abinger, C.B., found for the defendant. That was set aside by the Court of Exchequer, and upon this ground, that the allegation was of fraud and covin. There was no evidence of any fraud on the part of the owner of the house, who had made no false representation, but who had not mentioned this fact to his agent. There was no fraud on the part of the agent because he was not aware of the circumstances. One had not got the mutton and the other had not stolen it; and consequently the defendant was fixed with the contract.

That decision has been commented on rather severely by subsequent judges. In the *National Exchange Company v. Drew*, 1 Pat. App. 494, Lord St. Leonards, when dealing with that case, observed that supposing there had been no allegation of fraud, but it had been put simply on the ground of misrepresentation, then it was not denied by the judges that, if a principal, with knowledge of a fact which was material to the value of the property, employed an agent whom he knew to be ignorant of the fact, for the purpose of concealing it, he could not avail himself of that concealment and he would be responsible. But Lord St. Leonards said that he himself would be disposed to go much further. He said that if in that case fraud had not been alleged, but it had been put upon misrepresentation, and the facts were that a man knowing that there is so serious a nuisance affecting a house so as to diminish its value in such a way that no respectable man could live in it, and he takes care himself not to make the contract, but leaves it to an agent who he has no reason to suppose is aware of the fact, and if, in the course of the treaty for the contract, the agent being asked if such a fact existed states positively, no, and the contract is executed in silence upon the point, because the purchaser or the tenant's vigilance has been lulled to sleep upon it, and he believes the representation made to him by the agent, then Lord St. Leonards said, he would be very much shocked if in a case like that the law of England would not reach the case of a person so availing himself of a misrepresentation of his own agent, who might be ignorant of the fact although the principal himself knew it and employed the agent in order to avoid making a direct representation to the contrary. Lord St. Leonards said that he should feel no hesitation in saying that though the representation was not fraudulent, the agent not knowing that it was false, yet that, as in fact it was false, and false to the knowledge of the principal, although the agent did not know it, it ought to bind the principal when, upon a matter so material to the value of the property, he left it to the agent to make the representation without informing himself of so important a fact within his own knowledge; the agent making a false representation of that fact it would bind the principal, and thus impeach the validity of the contract.

The same view as that of Lord St. Leonards was laid down by Willes, J., in a case of *Barwick v. English Joint Stock Bank*, L. R. 2 Ex. 258. There the plaintiff was induced to continue to supply oats to a customer of the bank, a contractor with the Government, on a guarantee from its manager to the effect that the customer's cheque in the plaintiff's favour in payment for the oats supplied should be paid on receipt of the Government money in priority to any other payment "except to this bank." The manager fraudulently concealed from the plaintiff that the customer was indebted to the bank in £12,000; the result was, that the plaintiff was induced to advance money to the customer on a guarantee which turned out to be worthless, and which the manager must have known to have been worthless when he gave it. The declaration contained, amongst other counts, one for deceit, in which the fraud of the manager was laid as the fraud of the bank. Willes, J., said that with respect to the question whether a principal is answerable for the act of his agent in the course of his master's business, and

for his master's benefit, no sensible distinction could be drawn between the case of fraud and the case of any other wrong. The general rule was, that the master is answerable for every such wrong of the servant or agent, as is committed in the course of the service, and for the master's benefit, though no express command or privity of the master could be proved. The principle was acted on every day in running down cases. It had been applied also to direct trespass to goods. In all such cases it might be said that the master had not authorised the act. It was true he had not authorised the particular act, but he had put the agent in his place to do that class of acts, and he must be answerable for the manner in which that agent had conducted himself in doing the business which it was the act of his master to place him in. And if a man is answerable for the wrong of another, whether it be fraud or other wrong, it might be properly described in pleading as the fraud of the person who was sought to be made answerable in the action.

These views of Willes, J., were acted on in the case of *Mackay v. Commercial Bank of New Brunswick*, L. R. 5 Priv. C. 894, where an action for deceit was brought against a bank for a fraud committed by their agent the cashier and manager. The manager had sent a fraudulent answer to a telegram, and thereby induced Mackay to accept certain bills drawn upon him by one Lingley, and indorsed to the bank. The Court held that it was within the scope of the manager's authority to send such a telegram, and that the bank having obtained the benefit of the bills were liable in an action for the false representation.

In the case of *Houldsworth v. City of Glasgow Bank*, L. R. 5 App. C. 517, the nature of the remedy in case of a fraudulent sale was discussed. Lord Cairns, L.C., said there could be no doubt that according to the law of England a person purchasing a chattel or goods concerning which the vendor made a fraudulent misrepresentation, may, on finding out the fraud, retain the chattel or the goods, and have his action to recover any damages he had sustained by reason of the fraud. And Lord Selborne said he agreed with what Willes, J., had said in the case above quoted, that if an agent in the exercise of his authority as agent, defrauded third parties, and the principal received the benefit, such principal was liable to refund to the extent of the benefit, and it made no difference whether the principal was privy to the fraud or not so far as the amount to be refunded was concerned. But it was a totally different thing to say that the principal could in such a case be sued as a wrongdoer in an action of deceit. The only remedy of that kind in such circumstances was an action against the agent personally.

Up to this point there seems some vagueness as to what is the precise remedy against a principal whose agent tells what is either consciously or unconsciously a lie, and thereby effects a sale to the injury of the purchaser. Considerable advance towards a solution seems to be made in the very recent case of *Ludgater v. Lore*, 45 J. P. 600. That was an action by the purchaser of sheep against the vendor, who, through his agent, made a fraudulent misrepresentation that the sheep had not the rot. The purchaser claimed damages. His statement of claim averred, that upon the sale to the plaintiff, the defendant's son acting for the defendant, and with the defendant's authority, represented that the sheep were all right; that the sheep were not all right but were diseased, and affected with rot; that the said statement was fraudulent on the part of the defendant; and that the defendant had purposely concealed and withheld from his son the fact that the sheep had the rot, with intent that the son might sell them in ignorance of the said fact, and make, if necessary, such statement as he did make. The defendant denied the allegation of fraud. The judge, at the trial, put several specific questions to the jury who answered as follows. The defendant's son did represent in fact that the sheep were all right. He had the defendant's authority to say so. It was not clear that the son knew that the sheep had the

rot; but the defendant fraudulently authorised the son to make the false representation. He fraudulently concealed from the son that the sheep had the rot, and fraudulently gave the son authority to sell for the best price and to represent that the sheep were sound. And the plaintiff was materially influenced towards buying the sheep by a representation that the sheep were all right.

On these facts it was contended by the defendant's counsel that there was no evidence of authority from the father to the son to make the false representation; and that where a purchaser has been induced to buy by the fraud of the vendor's agent, he may rescind the contract or he may sue the agent personally, but he could not sue the principal. The Court of Appeal took time to consider the questions involved in this case, and at last gave judgment for the plaintiff. The Court held that some of the propositions raised questions of considerable difficulty, but it was not necessary to determine them. The facts proved were sufficient to justify the leaving to the jury the question whether the father fraudulently concealed from the son the fact of the rot, intending the son to represent that the sheep had not the rot. Brett, L.J., thus reasoned on that point: "The sheep were affected with rot; the symptoms of that disease were such as would not improbably induce questions from an intending buyer as to the condition of the sheep: the defendant knew that the sheep had the disease. It was eminently probable that he would at least suspect that the inquiry as to the condition of the sheep would be made. His answer on cross-examination to the question 'why he did not tell his son?' that 'he was not such a fool,' was an impudent admission. The defendant directed in effect the son to make the false representation. All the judges in prior cases seemed to hold that it was for the jury to say whether the principal authorised the agent to make the false representation, and if so, then the principal might be sued as if he himself made the false representation.

These cases seem at last to have solved the long pending difficulty, and whenever it is proved that an agent makes a false representation knowingly or unknowingly, and the principal himself authorised it then the contract may be treated by the purchaser as void. There is still a doubt as to what class of circumstances amount to an authority to the agent to misrepresent, but probably in practice juries will always be asked to find this specific point, and thus a solution will be easy as to the rest.—*Justice of the Peace.*

#### THE SLANDER OF A PERSON IN HIS CALLING.

[From the *American Law Review.*]

Ordinarily words of reproach spoken by one person of another are not actionable, unless the complainant can show that they actually caused him some specific damage. The law recognises that abusive epithets are more frequently indicative of the temper of the speaker, than of the actual character of him against whom they are aimed. Unwilling to punish an individual for utterances which passion may have prompted at one moment only to be regretted the next, it finds a substantial reason on which to rest its refusal to interfere, in the fact that the community is not likely to alter its conduct towards an individual, on account of the careless or ridiculous waggings of a loose or abusive tongue. To this general principle there are, of course, exceptions, the most important of which are that the words shall not import an indictable offence, or affect the person against whom they are directed in his trade, profession, or occupation. It was long ago observed by Comyns that there was no branch of the law in which the decisions were so contradictory to each other, and the cases so frequently irreconcilable with the principles on which they are founded, as the action on the case for words; and he concluded that "what words are actionable or not will be more satisfactorily determined by an accurate application of the principles on

which such actions depend, than by a reference to adjudged cases, especially those in the more ancient authors.<sup>1</sup> The purpose of this paper is to reduce to a series of rules the decisions which have been made by the courts upon the slander of a person in his profession or occupation. In doing this, no attempt has been made to cite all the cases, or to reconcile many, to be found in the books which are now of no authority, and had better not be disturbed. Only those that, in the opinion of the writer, state the correct rule or follow the true principle have been noticed. It should be observed that the cases are all of oral defamation, i.e., slander, as distinguished from written or printed defamation, i.e., libel, and that in every instance given in the illustrations it is assumed that the charge was false.

**RULE I.**—Words are actionable when spoken of persons touching their respective professions, trades, or business, and do or may probably tend to their damage.

This is about the language used by De Grey, C.J., in stating the rule in *Onslow v. Horne*.<sup>2</sup> It was criticised by Bayley, J., in *Lumby v. Allday*,<sup>3</sup> who considered the word "probably" too indefinite and loose, and suggested the phrase "having a natural tendency to" in its stead, adopting the latter words himself two years later in *Sibley v. Tomlens*.<sup>4</sup> But in *James v. Brook*,<sup>5</sup> Williams, J., pertinently asked, "How is a 'natural' tendency stronger than 'probable'?" and it would seem that the rule, as stated above, is as precise as language can make a general rule. Yet it must be taken subject to the qualifications of the succeeding rules, for, as it stands, it would include many cases that are not actionable at all. For example: A. is an attorney. B. has employed him in certain transactions for him, but over-hearing C. say, "D. is a much better lawyer than A.," he takes away his business from A. and gives it to D. Again, E. is a physician, and F. says of him, "He is nowhere as a doctor compared to G.," whereby H. employs G. instead of E. as he had intended to do. In both cases we have words spoken of persons in their respective professions, which not only tend to their injury, but actually do them damage. But comparisons made between professional men, and opinions publicly expressed of their relative merits, are not *per se* actionable.

The reasons for this rule are two: first, that from the nature of the case damage must necessarily ensue;<sup>6</sup> and, second, that a person might be effectually ruined in his business by the publication of the slander before his proof of special damage could be completed.<sup>7</sup>

**RULE II.**—If he act in the (a) employment and derive emolument therefrom, his calling may be (b) exalted or humble, (c) his only means of livelihood or one of several, provided only that it is (d) a legal one, and this (e) it is presumed to be.

#### ILLUSTRATIONS.

(a) I. A. was a schoolmistress who taught children to read and write for a livelihood. B. said of her: "She was a whore, and J. S. kept her as his whore." It was held that such a profession was not one within the rule.<sup>8</sup> II. C. was a lessee and renter of turnpike tolls at Tewksbury. D. said of him: "He was wanted at Tewksbury; he was a defaulter there." Parke, B., though deciding the case on another ground, thought that the renting of tolls was not a profession or trade within the rule.<sup>9</sup> III. M. was a stock-jobber, and L. said of him: "M. is a lame duck," meaning that he did not carry out his contracts. Lord Eldon held that a jobber or dealer in the public funds or stocks could not

be considered as a trader, and as having a character as such.<sup>1</sup> IV. W. was an innkeeper, and B. having said of him: "He is a bankrupt; he will be in the *Gazette* in twelve months; he is a pauper," it was objected that, as W. was not liable to the bankrupt laws, the words were not actionable. But it was held in the King's Bench that a man might be as much prejudiced by such words as if he were actually subject to the bankrupt laws, if his credit were affected by such an imputation on his solvency.<sup>2</sup>

It is doubtful if cases I., II., and III. are of any authority in this country. As to case I., it is clear that it would not be followed here. In the two hundred years which have elapsed since it was decided, the profession of teaching even the children of the poorer class has become one of the most honourable of employments; and it has been distinctly laid down in Ohio that a schoolmistress is of an occupation within the rule we are considering.<sup>3</sup> So, wherever it exists, the renting of tolls would, in the United States, be recognised as an occupation, as that of stock brokerage certainly is. It is to be noted that all the cases illustrating this part of the rule are English, showing that the distinction has, in this country, been neither recognised, nor even attempted.

#### ILLUSTRATIONS.

(b) I. B. was a letter-carrier employed by a deputy-postmaster to carry letters. T. said of him: "He has broken up letters and taken out bills of exchange." Lord Hale denied a recovery, "principally from the quality of the employment; for he said, a man should not speak disparagingly of a man's cook or groom, but an action would be brought if such actions as these should be maintained."<sup>4</sup> II. S. was a farm-servant and bailiff of J. S. B. said of him: "Thou art a cozening knave, and hast cozened thy master of a bushel of barley." The court held that "true it is generally an action will not lie for calling one 'cozening knave;' yet where the words are spoken of one who is a servant and accountant, and whose credit and maintenance depends upon his faithful dealing," it will.<sup>5</sup> III. T. was a lime-burner, and H. said of him: "He is a cheating knave of a lime-burner." A divided court held that T. could recover, for "an action lies for speak-

(1) *Morris v. Langdale*, 2 Bos. & Pul. 297 (1800). "The objection was taken," said Lord Eldon, C.J., "that the plaintiff had not stated a sufficient cause of action. We are all of the opinion that the innuendo, 'meaning that the said plaintiff was incapable of fulfilling his contracts in respect of the said stock or funds,' does not necessarily import that he was incapable of fulfilling his legal contracts, notwithstanding the argument that the word contract *ex terminis* imports legality. The declaration states that the plaintiff, as a jobber or dealer in the public funds or stocks, had been accustomed lawfully to contract, but it is not averred what kind of a jobber or dealer he was. We do not consider a jobber or dealer in the funds as a known trader, and having a character as such. My brother Heath has indeed removed from my mind the impression which it had at first received—viz., that a jobber or dealer in the funds was always to be considered as a culpable person, by showing the necessity of such persons for the accommodation of the market; yet that circumstance will not obviate the objection that all the Acts of Parliament consider stock-jobbers as of two species—viz., that which is called the infamous practice of stock-jobbing, and that which is honest. The infamous practice is that in which a man enters into those engagements respecting the public funds which are prohibited by the Act of Parliament. The honest practice is that in which a man engages for the purchase or sale of stock whereof the vendor is possessed at the time. In this case no averment has been introduced distinguishing of what species the plaintiff was. It is true that he has averred that, as such jobber or dealer, he was accustomed lawfully to contract; but this amounts to no more than saying that he had entered into some lawful contracts, and *non constat* that he may not, as such jobber and dealer, have entered into some which were unlawful. It was contended that engagements contrary to law are not contracts. I answer, that in the language of the Act of Parliament they are treated as contracts, and the Act points out the distinction between contracts which are lawful and contracts which are unlawful. The innuendo, therefore, which explains the words 'lame duck' to mean that the plaintiff has not fulfilled his contracts, may apply equally to lawful or unlawful contracts; and, consequently, no special damage can be said to have arisen from words which may import an accusation that the plaintiff has not done that which the law prohibits."

(2) *Whittaker v. Bradley*, 7 D. & R. 649 (1836); *Gates v. Bowker*, 18 Vt. 23 (1843).

(3) *Wilson v. Bunyon*, Wright, 65 (1834).

(4) *Bell v. Thatcher*, 1 Vent. 275 (1676).

(5) *Seaman v. Bigg*, Cro. Car. 260 (13 Car. L.).

(1) Comyns Digest, vol. 1. 273.

(2) 3 Wils. 177; 2 W. Bl. 753 (1771).

(3) 1 C. & J. 301 (1831).

(4) 4 Tyrw. 90 (1839).

(5) 9 Q. B. 7.

(6) Tighman, J., in *McMillan v. Birch*, 1 Binney, 178 (1806).

(7) *Starkie on Slander*, p. 110.

(8) *Wharton v. Brook*, 1 Vent. 21 (1689).

(9) *Bellamy v. Burch*, 16 M. & W. 26; *Bellars v. Killew*, 7 D. & R. 121 (1826).

ing scandalous words of a lime-burner, or of any man of any trade or profession, be it ever so base, if they are spoken with reference to his profession."<sup>1</sup> IV. C. was "engaged in the wooden-ware business," and D. said of him: "You are a cheat." It was contended that the general rule was not applicable to such dealers as C. But the court thought otherwise.<sup>2</sup> V. D. was a husbandman. T. said of him: "He owes more money than he is worth; he is run away, and is broke;" and the action was sustained.<sup>3</sup> VI. C. was a carpenter, and words similar to those in case V. were spoken of him, and the action was sustained.<sup>4</sup> VII. B. was a blacksmith, and N. said of him: "He keeps false books." *Held*, actionable.<sup>5</sup>

Lord Hale's opinion (case I.) has not been followed in any English case that we have seen, and would hardly be cited to an American court. Our courts have not one rule for the rich and another for the poor; and the humility of the employment is no objection to the action, either in law or in reason.<sup>6</sup>

ILLUSTRATIONS.

(c) I. B. was an auctioneer, and had been employed by M. to sell his goods. L. retained B. to appraise the same goods for him, and subsequently said of B.: "He is a damned rascal; he has cheated me out of £100 on the valuation."<sup>7</sup> *Held*, actionable. II. D. was a husbandman, and T. said of him: "He owes more money than he is worth; he is run away, and is broke." It was objected that it must appear not only that D. had a trade, but that he got his living by it. But the court held the words actionable.<sup>8</sup>

(To be continued.)

THE LODGERS' GOODS PROTECTION ACT, 1871.

The principal point at issue in the case of *Morton v. Palmer*, which appeared in our Reports last week (p. 426), is one of considerable interest and importance, affecting as it does a large portion of the community, and necessitating some demarcation of the class for whose benefit the somewhat exceptional provisions of the Lodgers' Goods Protection Act, 1871 (34 & 35 Vict., c. 79), were made law.

It is unnecessary for our present purpose to set out the provisions of the statute in detail: it will be sufficient to remind our readers that its object, as stated in the preamble, was to prevent the "great loss and injustice" to which lodgers were subjected by the power possessed by the superior landlord to levy a distress on their goods for rent due to him by his immediate lessee. This being so, no question could have been predicted more certainly than that raised in the case we have mentioned—viz.: Who is a lodger within the Act? No definition of the term, it is to be observed, is supplied by the Act itself; its meaning therefore has to be gathered on ordinary principles of construction from the general scope and purpose of the Act. But, although the words "lodger" and "lodgings" have, as is well known, in consequence of the same want of definition, formed the subject of plentiful discussion under other enactments—as for example the Rating Acts and Parliamentary Registration Acts—yet somewhat curiously considering the time it has been in force, the Act of 1871 has hitherto, so far as we are aware, given rise to but one decision of any importance: *Phillips v. Henson*, 37 L. T. Rep. N. S. 432; L. Rep. 3 C. P. Div. 26. From that decision therefore, and the judgments in *Morton v. Palmer*, we have to collect what crumbs of information we at present can concerning the meaning of the term "lodger" in the Act under consideration.

In *Phillips v. Henson* the plaintiff in the action, which was brought for illegal distress, had, by a written agreement, hired from one F. certain rooms in a house held by her of the defendant. Inasmuch as these rooms constituted in substance nearly the whole house, it was contended that the agreement amounted to a demise or underlease, and negatived the relation of landlady and lodger between the parties. The Court, however, composed of Justices Grove and Lindley, holding the precise relation of the parties to be immaterial, decided that, even supposing the plaintiff were an under-tenant and not a lodger, he was not the less entitled to protection, the object of the Act, according to Mr. Justice Grove, being undoubtedly "to protect the goods of persons between whom and the landlord there is no direct privity."

The arguments urged in *Morton v. Palmer* were based on slightly different facts. Here the plaintiff had, in 1874, hired from B. three floors of a house, and for some years B. had himself resided and slept in the ground floor and basement of the premises. In 1878, however, he left the house, and let to one J. the rooms formerly reserved to himself, the plaintiff nevertheless continuing to pay rent to B. The superior landlord having in 1880 distrained for rent due from B., the question arose whether the plaintiff throughout the period continued to stand in the position of lodger to B., or whether the fact that the latter having left the house had altered the relation of the parties. In these circumstances the case came before the Court of Appeal on an application for a new trial, and the Lords Justices expressed a decided opinion that, to constitute a lodger under the Act, it is necessary that the person under whom the occupant holds should retain some control and dominion over the house. This in fact was described by Lord Justice Brett as "the fundamental proposition" in the definition of a lodger. "The person who is supposed to take another person in as lodger must," he said, "retain such power in or dominion over the house as a master reserves to himself in his family." "It does not follow," added the Lord Justice, "that a person who takes in a lodger must sleep and live in the house . . . but if he has gone away and given up all power to deal with the house, you cannot say that he has taken in a lodger." To the like effect Lord Justice Cotton remarked that, "in order to constitute a lodger, he must be lodging in the house of another, and he must be lodging with that other person." Or, as Lord Justice Lindley put it, in other words, "There is a personal relation; a lodger lodges with somebody who has control over the place where the party lodges."

Such being briefly the judicial observations upon which the interpretation of the Act has to be founded, what are the conclusions they suggest? The view expressed by Mr. Justice Grove in the earlier of the two cases clearly implies that mere absence of privity will of itself constitute a universal qualification for relief. This proposition we hesitate to accept, for, apart from the wide operation such a construction would confer upon the Act, the obvious and apparently unanswerable objection occurs: Why, if this was the intention of the Legislature, was not the more comprehensive and definite term "under-tenant" employed by it? It seems to us more probable that the law was made in order to protect persons who, on account of the temporary nature of their tenancy, are unable to make sufficient inquiries of their landlord's pecuniary circumstances.

On the main difficulty—viz., how far the occupation of a lodger can be exclusive, the judgments in *Morton v. Palmer* will henceforth throw considerable light. It is there, as we have seen, distinctly laid down that the tenancy must not be entirely exclusive, for the landlord must retain some power of controlling the domestic arrangements; he must, in the words of Lord Justice Cotton, possess "a present right of interference as master." He need not actually sleep, or even live, in the house, but he must not, as we apprehend, place himself in such a position that he could not enter it

(1) *Terry v. Hooper*, 1 Lev. 115 (1663).  
 (2) *Carpenter v. Dennis*, 3 Sandf. 305 (1849).  
 (3) *Dobson v. Thornstone*, 3 Mod. 119 (1686).  
 (4) *Chapman v. Lamphire*, 3 Mod. 165.  
 (5) *Burich v. Nickerson*, 17 Johns. 317 (1810).  
 (6) *See Starr v. Gardner*, 6 U. C. Q. B. 515 (1839).  
 (7) *Bryant v. Laxton*, 11 Moore, 344.  
 (8) *Dobson v. Thornstone*, 3 Mod. 112 (1686).

without committing a trespass. If he does so his tenant will be no "lodger," and therefore not entitled to the protection which the Act affords.

But while these dicta, so far as they go, are perfectly lucid and intelligible, it can hardly be expected that they will suffice for the determination of all cases to which the Act may give rise; in some, for example, the actual terms of the hiring agreement must form the most important consideration. On the whole, seeing the infinite variety of circumstances and distinctions which are possible, and the perplexities which must inevitably ensue, it is to be regretted that the Act itself supplies no definition or description of the class it is intended to protect. Had it done so, we cannot help thinking that the question in each case would have been reduced within comparatively narrow limits, there being then some definite lines upon which to base a correct judgment.—*Law Times*.

### THE LAND COMMISSION.

#### NOTICES OF SALE OF FARMS.

##### SERVICE IN PRESCRIBED DISTRICTS.

It is this day ordered that, from and after this date, where the holding in respect of which notice of intention to sell the tenancy is by the rules 82, 85, 86, and 87 required to be given is situate within any district for the time being prescribed under the Act for the Better Protection of Person and Property in Ireland, service on the tenant of Notices Nos. 13, 14, 15, and 17, or any of them, may be effected on such tenant by sending to him a copy of such notice and a copy of this order by letter through the Post Office, addressed to him at his usual residence, and by posting a copy of such notice on the Petty Sessions Court-house of the district in which the holding is situate, and such service shall be deemed good service of such notice, provided the party on whose behalf such notice is served, or his solicitor, shall make and file, in the office of the Irish Land Commission, an affidavit stating that the address to which the notice has been posted is the correct address of the party required to be served, and stating the county, barony, poor-law union, and electoral division in which such holding is situate, and that such place of residence is within a district which has been and is at the time of such service prescribed as aforesaid, and that the posting of such notice through the post, and posting of a copy thereof on such Petty Sessions Court-house, as aforesaid, have been duly effected on the respective dates mentioned in such affidavit.

Dated this 2nd day of January, 1882.

[Seal of the Irish Land Commission.]

### TEXT-BOOK ADDENDA.

[From the *Law Journal*.]

20 & 21 Vict., c. 77, s. 26.

Commission to examine witness in a probate suit issued under 20 & 21 Vict. c. 77, s. 26 (*Banfield v. Pickard*, 50 Law J. Rep. P. D. & A. 72).

#### *Pitt-Lewis on County Courts*, 657.

The bailiff of a County Court is entitled to sell goods taken in execution, but claimed by a third party, without interpleading or notice, unless possession money or the value of the goods is deposited with him (*Davies v. Wise*, 50 Law J. Rep. Q. B. 651).

#### *Bankruptcy Act, 1869*, s. 56.

*Williams on Bankruptcy* (2nd Edition), 212.

An ex-trustee in bankruptcy, who has neglected to file an account, cannot be committed for contempt by the Court on merely failing to attend in answer to a summons (*In re Royle*, 50 Law J. Rep. Q. B. 656).

#### *Parliamentary Elections Act, 1868*, s. 41.

The master, in taxing the costs of a parliamentary election petition, is not bound to allow the costs of witnesses

allowed by the registrar (*M Laren v. Horne*, 50 Law J. Rep. Q. B. 659).

#### *Merchant Shipping Act, 1854*, s. 64.

The shipowner whose ship was to blame in a collision and sunk, and who has paid into Court up to the limit of his liability, is not entitled to recover from a cargo owner a proportion of the cost of raising the ship and cargo (*The Ettrick*, 50 Law J. Rep. P. D. & A. 65).

(To be continued.)

### BOOKS RECEIVED.

*The Nineteenth Century*. A Monthly Review, Edited by JAMES KNOWLES. No. 59. Jan., 1882. London: C. Kegan Paul & Co.

*Contemporary Review*. Jan., 1882. London: Strahan and Co., Limited, Paternoster-row.

*Milton's Paradise Lost*. Illustrated by Gustave Doré. Edited, with Notes and a Life of Milton, by the late ROBERT VAUGHAN, D.D. London: Cassell, Petter, Galpin, & Co.

### LAW STUDENTS' JOURNAL.

#### KING'S INNS.

##### HILARY SESSION, 1882.

#### LEGAL EDUCATION.

CHARLES HENRY TANDY, Esq., Q.C., King's Inns Professor of Constitutional and Criminal Law, and the Law of Torts, will deliver his Course of Lectures in the Lecture Room, at the King's Inns, on Mondays and Thursdays, during the Hilary Session.

Professor TANDY will lecture during the Session on Criminal Law. The books referred to will be "Russell and Roae on Criminal Law" and "Broom's Common Law."

The first Lecture will be delivered on Thursday, the 12th January, at half-past Four o'clock.

GEORGE V. HART, Esq., King's Inns Professor of the Law of Personal Property, Pleading, Practice, and Evidence, will deliver his course of Lectures in the Lecture Room, at the King's Inns, on Tuesdays and Fridays, during the Hilary Session.

Professor HART will lecture during the Session on the Law of Contracts, and the text Book to be read in connexion with the Lectures will be "Sir William Anson's Principles of the English Law of Contract."

The First Lecture will be delivered on Friday, the 13th January, at half-past Four o'clock.

The Lectures of the Professors will be delivered at Five o'clock, P.M., but all Students are to be in attendance in the Lecture Room at half-past Four o'clock, P.M.

Each Course will contain Twelve Lectures, all open to the Public.

The attention of Students is directed to Rule XIII. of the Rules published in Trinity Term, 1879, providing that "Each Student must attend three Terms of the Lectures of each of the two Professors at the King's Inns, and of two of the three Professors in the Law School of Trinity College, Dublin, including at least one complete Course, commencing with Michaelmas Term, with each of two Professors. Attendance at Lectures may be commenced with any Term, but must extend over two years at the least. The Courses to be completed commencing with Michaelmas Term may be selected by the Student, and may be attended "in the same year."

By Order,

JOHN D. O'HANLON,  
Under Treasurer.

King's Inns, 2nd Jan., 1882.

**COURT PAPERS.**

**LAND JUDGES.**

Sittings for next Week so far as same are appointed.

Before the Rt. Hon. JUDGE FLANAGAN.

**WEDNESDAY.**

IN CHAMBER.—J. T. O'Reilly, payment.

IN COURT.—T. E. Hearne, as to sale under Partition Act.—W. Butler, as to title.

Before EXAMINER (Mr. Kennedy).

D. M. Ross, vouch.

**THURSDAY.**

IN CHAMBER.—M. Quane, to confirm sale.—N. Lindsay, as to building leases.—M. Donnelly, allocation.

IN COURT.—P. Daly, injunction.—T. H. Crofts, to set aside absolute order.—H. Bell, to sell discharged of jointure.—R. L. Watson, from 12th Dec.

Before EXAMINER (Mr. Kennedy).

J. A. Ennis, rental.—W. J. Totten, vouch.—Trustees R. D. King, ditto.

**FRIDAY.**

**SALES IN COURT.**

- C. A. ARMSTRONG, . . . . . 1 lot.
- C. C. BOWEN, . . . . . 1 „
- L. H. NUTTALL, . . . . . 2 lots.

Before EXAMINER (Mr. Kennedy).

Assignees W. H. Phelan, rental.—C. Taylor, for deeds.

Before the Rt. Hon. JUDGE ORMSBY.

**THURSDAY.**

IN CHAMBER.—M. Bourke, to confirm sale.—J. Callaghan, ditto.

IN COURT.—Trustee W. Scanlan, final schedule.—J. O'Donnell, do.—S. Henderson, to make order absolute.—Do Montmorency, adjourned motion.

**FRIDAY.**

Before EXAMINER (Mr. M'Donnell).

S. A. Kelly, rental.—J. Russell, ditto.

**COURT OF BANKRUPTCY.**

**ADJUDICATIONS IN BANKRUPTCY.**

The dates of Adjudications are first given, the Sittings follow in Italics.

Reid, Robert Corry, of Tobergill, in the county of Antrim, farmer. December 24, 1881; *Tuesday, January 24, and Friday, February 3. Hyndman and Dickson and Jehu Mathews, solrs.*

Rice, Edward Joseph, of Victoria-street, Belfast, in the county of Antrim, hotel proprietor. December 20, 1881; *Friday, January 20, and Friday, February 3. Coates & Henry, solrs.*

**DUBLIN STOCK AND SHARE LIST**

DESCRIPTION OF STOCK	Dec. JANUARY					
	Sat. 31	Mon. 2	Tues. 3	Wed. 4	Thur. 5	Fri. 6
<b>*Paid Government.</b>						
— 3 p c Consols ..	—	—	99½	99½	99½	100
— 3 p c Reduced ..	—	—	—	—	—	—
— New 3 p c Stock ..	—	—	99½	99½	99½	99½
<b>INDIA STOCK.</b>						
— 4 p c Oct. '88 } Trfble. at	—	—	104½	104	104½	104
} Bk. of Irel.	—	—	—	—	—	—
<b>Banks.</b>						
100 Bank of Ireland ..	—	—	311	311	311	311½
25 <i>Hibernian Banking Co.</i> ..	—	—	—	—	—	—
20 <i>London and County</i> ..	—	—	—	—	—	—
20 <i>London and Westminster</i> ..	—	—	—	—	—	—
10 <i>Do. New</i> ..	—	—	—	—	—	—
3½ <i>Munster Bank (Limited)</i> ..	—	—	7½	7½	7½	7½
30 <i>National Bank</i> ..	—	—	23½	23½	—	—
15 <i>Provincial Bank</i> ..	—	—	—	—	—	—
20 <i>Do. do. New 1867</i> ..	—	—	—	—	—	—
10 <i>Royal Bank</i> ..	—	—	—	—	29½	29½
25 <i>Standard of B. S. A., W'd</i> ..	—	—	—	—	—	—
15½ <i>Union of London</i> ..	—	—	—	—	—	—
<b>Steam.</b>						
50 <i>British &amp; Irish</i> ..	—	—	50	—	—	—
100 <i>City of Dublin</i> ..	—	—	114	—	—	114
50 <i>Dublin &amp; Liverpool Steam Ship Building Co.</i> ..	—	—	—	—	—	—
10 <i>Dundalk (Limited)</i> ..	—	—	5	—	—	—
<b>Miscellaneous.</b>						
10 <i>Alliance &amp; Dub. Cons.' Gas</i> ..	—	—	—	—	—	—
— <i>Do. do.</i> ..	—	—	—	—	—	—
4 <i>Arnott &amp; Co., limited</i> ..	—	—	—	—	—	—
— <i>Hudson's Bay</i> ..	—	—	—	—	—	—
25 <i>Ir. C. S. Building Society</i> ..	—	—	—	—	—	—
10 <i>M'Kenzie &amp; Sons (lit'd.)</i> ..	—	—	—	—	—	—
7½ <i>M'Sweeney &amp; Co., limited</i> ..	—	—	5	—	—	—
25 <i>National Assurance</i> ..	—	—	—	—	—	—
<b>Tramways.</b>						
10 <i>Belfast Trams</i> ..	—	—	—	—	—	—
10 <i>Dublin United Tramways</i> ..	—	—	—	—	10½	—
10 <i>Leeds Trams</i> ..	—	—	—	—	—	—
10 <i>L'pl Un'd Tram &amp; Bus lit'd</i> ..	—	—	—	—	—	—
<b>Railways.</b>						
10 <i>Athenry and Tuam</i> ..	—	—	—	—	—	—
50 <i>Belfast and County Down</i> ..	—	—	—	—	—	—
50 <i>Belfast and Northern Cos.</i> ..	—	—	—	—	—	—
100 <i>Great Northern (Ireland)</i> ..	—	—	—	—	116½	116½
100 <i>Gt. Southern and Western</i> ..	—	—	107	—	107	106½
100 <i>Midland Gt. Western</i> ..	—	—	—	—	79½	—
50 <i>Waterford and Limerick</i> ..	—	—	—	—	—	—
<b>Railway Preference.</b>						
100 <i>Gt. N'th'n (Irind) gt'd 4 p c</i> ..	—	—	—	—	—	—
100 <i>Do., 3½ p c</i> ..	—	—	—	—	—	—
100 <i>Gt. South'n &amp; West'n 4 p c</i> ..	—	—	—	—	—	—
100 <i>Mid. Great Western, 5 p c</i> ..	—	—	—	—	—	—
100 <i>Do., 4 p c</i> ..	—	—	—	—	—	—
<b>Leased at Fixed Rentals</b>						
100 <i>Dublin and Kingstown</i> ..	—	—	—	—	—	—
100 <i>Gt. Northern and Western</i> ..	—	—	—	—	—	—
100 <i>Londonderry &amp; Enniskillen</i> ..	—	—	—	—	—	—
<b>Debenture Stocks.</b>						
— <i>Belfast &amp; Nth'n Cos., 4 p c</i> ..	—	—	—	—	—	105
— <i>Cork and Bandon, 4 p c</i> ..	—	—	—	—	—	—
— <i>Do., 4½ p c</i> ..	—	—	—	—	—	—
— <i>Dublin &amp; Wicklow 4 p c</i> ..	—	—	—	—	—	—
— <i>Do., 4½ p c</i> ..	—	—	—	—	—	—
— <i>Gt. Northern (Ireland) 4 p c</i> ..	—	—	—	—	—	—
— <i>Do., 4½ p c</i> ..	—	—	—	—	—	—
— <i>Gt. North'n &amp; West'n 4½ p c</i> ..	—	—	—	—	—	—
— <i>Gt. South'n &amp; West'n, 4 p c</i> ..	—	—	—	—	—	—
— <i>L'derry &amp; Enniskillen 5 p c</i> ..	—	—	—	—	—	—
— <i>Midland Gt. West'n, 5 p c</i> ..	—	—	—	—	—	—
— <i>Do., 4½ p c</i> ..	—	—	—	—	—	—
<b>Miscellaneous Debit.</b>						
Ballast Office Deb., £92 6s 2d, 4 p c	—	—	—	—	—	—
Dub. Port & Docks, 4½ p c	—	—	—	—	—	—
(1888) Rathm. & Fem. M. Drain, 4 p c	—	—	—	—	—	—
Do. Defd. of £92 6s 2d 4 p c	—	—	—	—	—	—

\* Shares not fully paid up are given in Italics. † x d

Bank Rate—Of Discount—¾ per cent., 6th November, 1879.  
Of Deposit—1 per cent., 10th April, 1879.

Name Days—January 11th and 26th, 1882.  
Account Days—January 12th and 27th, 1882.

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## BIRTHS, MARRIAGES, AND DEATHS.

## BIRTHS.

ORR—January 2, at North Great George's-street, the wife of James Orr, Esq., barrister-at-law, of a daughter.  
 WHELAN—December 31, at Charleville-parade, Tullamore, the wife of William Devereill Whelan, Esq., solicitor, of a son.

## MARRIAGES.

SEEDS and LE MOTTEE—December 20, at the Parish Church, St. Peter Port, Guernsey, Robert Seeds, Esq., LL.D., Q.C., Rutland-square, West, Dublin, to Ada Charlotte, eldest daughter of John Le Motte, Esq., of Le Vanquédor, Guernsey.

## DEATHS.

ARMSTRONG—January 2, at Erskine-terrace, Cavan, Sophie, the eldest daughter of John Armstrong, Esq., solicitor.  
 BEAMISH—December 31, at his residence, Waterloo-place, George Beamish, Esq., solicitor, of Mount Beamish, County Cork.  
 BLAND—January 4, at Charleston-terrace, Charleston-road, Mary, the dearly-beloved wife of Arthur Herbert Bland, Esq., solicitor, aged 23 years.  
 BOURNE—January 2, aged 82 years, Louisa Arabella, widow of Walter Bourne, Esq., formerly Clerk of the Crown for the County Antrim.  
 CARAHER—January 4, at Lower Gardiner-street, Ida Mary, only daughter of Edward Caraher, Esq., solicitor.  
 ORPIN—January 4, Basil Orpin, Esq., solicitor, of Marston Hall, Ballyduff, Lismore, and Wilton-place, Dublin, in his 82nd year.

## FUNERAL REQUISITES OF EVERY DESCRIPTION.

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 DENZILLE-STREET.

3-7

## LEGAL POSTINGS:

In the HIGH COURT of JUSTICE in IRELAND.

CHANCERY DIVISION.—LAND JUDGES.

COUNTY OF MEATH.

SALE

On FRIDAY, the 10th day of FEBRUARY, 1882,

In the Matter of the Estate of

**D A V I D C A R L E T O N**, Owner;

Ex parte—

**JOHN FOX GOODMAN and WALTER JAMES GOODMAN**,  
 Petitioners.

TO BE SOLD,

On FRIDAY, the 10th day of FEBRUARY, 1882,

At the hour of Twelve o'clock,

Before the Right Honourable Judge Flanagan,

At his Court,

Inns-quay, in the City of Dublin.

The Town and Lands of MONKSTOWN, otherwise MOUNTAINS-TOWN, called on the Ordnance Survey MONKTOWN, containing 241a 0r 38p, statute measure; situate in the Barony of Moyferagh, and County of Meath; held under fee-farm grant dated 16th of May, 1854, under the Renewable Leasehold Conversion Act: subject to the perpetual yearly rent of £92 6s 1½d sterling, and now yielding a profit rent of £45 6s.

Dated this 3rd day of December, 1881.

J. M. KENNEDY, Examiner.

N.B.—Proposals for the purchase of this Estate will be received by the Solicitors having carriage of Sale up to the 1st day of February, 1882, and will, if approved of, be submitted to the Court.

## DESCRIPTIVE PARTICULARS.

The entire Lands are in possession of two joint tenants, who hold under a lease dated 2nd of October, 1788, which will expire on the 1st November, 1882, when the letting value will become considerably increased. The present estimated yearly letting value of the Estate is £242 2s 6d, being at the rate of 92s 6d per Irish acre.

The Lands are of good quality, nearly all in tillage, and well watered. They are situate within three miles of Trim, a station on the Dublin and Meath Railway. There is a dwelling-house, with the usual out-offices, and shed accommodation for about 30 head of cattle.

For Rentals and further particulars apply at the Registrar's Office, Land Judges, Four Courts, Inns-quay, Dublin; or to

BARLOW & ORR, Solicitors having carriage of Sale, 14,  
 North Great George's-street, Dublin.

## NOTICE OF REMOVAL:

NOTICE.—MR. VALENTINE DUNN, Solicitor,  
 has removed his Offices to No. 68, MIDDLE ABBEY-STREET.

3

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## LIVERPOOL.

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## PATENT OFFICE, DUBLIN.

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WANTED—Waste Paper, Old Account Books, Old Lead, Zinc, Tailors' Cuttings, Printing Shavings. A quantity of Newspapers and Brown Lapping Paper always in stock, sold by the pound or cwt., at 7, Britain-lane. Address—PATRICK HANKAITTY, 28, FISHER'S-LANE. 978



# THE IRISH LAW TIMES AND SOLICITORS' JOURNAL.

VOL. XVI.

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## GOVERNMENT LOANS TO OCCUPYING TENANTS, FOR AGRICULTURAL IMPROVEMENTS.

To create a peasant proprietary only one degree above pauperism was never the deliberate intention of any Government. But, while rents are reduced, it remains to be seen what will be the ultimate effect on the value of produce, and if the occupiers of the land, being under less actual necessity for exertion, were now to lapse into greater indolence, while the landlords have less direct interest in the improvement of their property, and the capitalists shrink from approach, the country would soon be in a worse state than ever before. Rightly, then, has the legislature consociated in the Land Law Act, 1881, those provisions for enabling the Treasury to authorise the Board of Works to make advances to occupiers of land for the purpose of the reclamation or improvement of waste or uncultivated land or forehores, drainage of land, or for building of labourers' dwellings, or any other works of agricultural improvement; so that not alone may the occupier enjoy the advantage of having his rent reduced, but a new impetus to exertion is afforded, and a new means of acquiring the necessary capital for improvements is supplied. But, what if the very operation of reducing rents were to have the effect of depriving the tenant of the benefit of this provision? What if the benign and salutary intention of the legislature were to be impeded by the administrative regulations of "My Lords" of the Treasury?

Under section 31 (2), "My Lords" may authorise the Board of Works to make the advances to an occupier, "when satisfied that the tenancy or other security which he may have to offer is such as to insure repayment of principal and interest within such number of years as the Treasury may fix, or when the landlord joins the occupier in giving such security." One of the very purposes for which the advances are to be made is for building of labourers' dwellings; and by section 19 it is expressly enacted that "any such loan may be made for a less sum than the sum of one hundred pounds." But, "My Lords" are of opinion that £100 should be the *minimum* amount of any loan made under their Minute of December 21, 1881, "so that the experiment, at least in the first instance, may be tried with the more substantial members of the class." Why? Because, forsooth, under the old Landed Property Improvement Acts no loan was to be made for a less sum. But, those statutes, applicable to owners, are only to become applicable to occupiers, under the Act of 1881, so far as the Treasury itself, in its discretion might determine, while the Act itself expressly repudiates such a narrow limitation in reference to the building of labourers' dwellings. "My Lords," however, are pleased to interpret the Act as an "experiment," nor are they ignorant how experiments may be frustrated. In vain was the legislature enlightened by its own experiences of this kind; and if hereafter the Treasury pursues the same course in reference to the other provisions of the fifth part of the Act, for enabling tenants to purchase their holdings, in vain too will the legislature have thought to profit by their experience of the failure of the "Bright Clauses" of the Act of 1870. As it is, the consequence of the limitation now imposed, taken together

with the other provisions of the Treasury Minute of December 21, 1881, will be to exclude from the benefit of this portion of the Act of 1881 any occupier whose present rent falls below an average of £25 or thereabouts—the average excess of present rents above the Poor Law Valuation; while a tenant who is desirous of improving a labourer's dwelling will not be able to borrow less than £100 for the purpose, nor to borrow at all unless his holding is valued at £20 at least, and therefore probably rented a good deal higher, whereas, if he had applied to have a judicial rent fixed, and had been directed to improve a labourer's dwelling, he will be enabled to borrow less than £100 for the purpose by the Act itself, though not by the present Minute which expressly excludes the 19th section from its operation, while "the erection or improvement of labourers' cottages" is expressly mentioned among the purposes for which loans may be advanced under the present Minute. The other purposes are, thorough drainage; subsoiling and trenching, or otherwise deepening and improving the soil; irrigation or warping; embanking from rivers or tidal waters; formation or improvement of fences, drains, streams, or watercourses; making farm-roads; clearing of rocks and stones; reclamation from waste; planting for shelter; erecting or enlarging farm-houses or offices; and the erection of mill buildings for the scutching of flax, and for the formation of water-courses and dam-weirs for providing water for same.

Taking the scope of sub-section 2, s. 13, to be, to extend, under certain conditions, to occupying tenants the privilege of borrowing from Government, on the same favourable terms as owners are enabled to borrow under the Landed Property Improvement Acts, "My Lords" have retained from 10 & 11 Vict., c. 32, the same rule as to the proportion (one-fifth) of the whole loan which may be advanced at any one time, the same conditions as to proof that the preceding advances have been duly expended, the same rate of interest (3½ per cent.), and the same period of re-payment (22 years) by equal half-yearly instalments, as are prescribed for owners under that statute. But, they have read the direction of the sub-section in reference to making advances only when satisfied with the security, as amounting to more than a caution to look narrowly into the credit of each individual applicant, for, obviously, the central Government could never protect itself in this manner with the same efficacy as a local lender. They came to the conclusion, after long and anxious consideration, that it would not be feasible to give effect to the intention of the legislature by arrangements with the local banks, as the loans must run for longer periods than brought them within the range of banking business. In consideration of the difference in the value of the security offered by a charge on the fee-simple and a charge confined to the tenant's interest in his holding, they have decided that, while in the case of owners under the Landed Property Improvement Acts the *maximum* loan is limited to seven times the Poor Law Valuation, the *maximum* to an occupying tenant shall not exceed five times such valuation. The Minute declares what provisions of the Landed Improvement Acts are to be applicable, *mutatis mutandis*, to advances to occupiers under the Act of 1881, and is accompanied by a schedule giving instructions as to the

purposes for which such advances may be made, the conditions to which they will be subject, and the mode of application and course of proceeding to be adopted. But these are details which, while not calling for criticism, will best be understood by reference to the document itself. Suffice it to say that they are so careful, guarded, and effective as to render it only the more to be regretted that the advantages offered have not been placed, at least experimentally, within the power of the poorer tenantry.

#### THE DECLINE OF CONVEYANCING.

From the preface to Messrs. Wolstenholme and Turner's Book on the Conveyancing Acts it would seem that the conveyancing Bar deem themselves doomed to extinction by the Solicitors' Remuneration Act, and need some *Deus ex machina* to step into the gap to save them. We are rather inclined to disagree with the authors as to the danger of extinction, and also to be a little sceptical as to the desirability of stopping the process of extinction if it really is begun.

The argument is, that under the Remuneration Act, *ad valorem* payments for solicitors will probably be established; that in consequence any payments out of pocket, such as counsel's fees, will be borne by the solicitor and not by the client, and therefore the solicitor will no longer resort to counsel. If it is the fact, as stated, that solicitors will no longer resort to counsel in conveyancing matters when the charge falls on themselves, what is the inference? One of two alternatives: either that they ought never to have resorted to counsel at all, and have therefore wronged their client by putting him to unnecessary expense in the past; or that they ought to resort to counsel, and, if they do not, will wrong their client by not taking the necessary care in the future. We can hardly admit either that conveyancing counsel are so useless, or that solicitors are so careless of their duty as this argument would represent them.

The practice which now prevails of counsel drawing the drafts themselves arose probably from counsel finding it on the whole more satisfactory to frame as well as merely mould and alter the deeds they settled. This practice was a distinct gain to the solicitor who was saved trouble and risk, and probably to the client who gained the benefit of a better drawn deed.

This gain will still remain to the solicitor, though not as heretofore directly at the expense of his client. Indirectly, however, the client will still pay for counsel's fees. Everyone who has any acquaintance with the Incorporated Law Society's scale knows that in simple cases the remuneration is much larger than in the ordinary way of making out bills of costs. We may be pretty confident that, with the contingency of having to pay counsel's fees before their eyes, the Law Society and individual solicitors in bargaining for their remuneration will not omit to get an addition amply sufficient to provide for the contingency. Still no doubt it will be present to the mind of a solicitor that every draft sent to counsel will represent a deduction from his profit. The question will then present itself as a choice between three courses: will it pay best to do conveyancing himself, taking the time spent and risk incurred into account; or to keep a highly skilled and highly paid conveyancing clerk, saving his own time thus, but not the profit or risk; or to send it to counsel and save time and risk, though losing part of the profit? In the great majority of cases we take it that the last alternative will be preferred. To all but solicitors with very little practice time is money; to all but solicitors with very first-rate practice indeed, a conveyancing clerk on whom they could implicitly rely would be a very expensive, because comparatively useless, luxury. The great majority of solicitors lie between the two extremes. The first class do not send conveyancing to counsel now, the second will probably always do so. Any way a large number of cases would still remain in which solicitors would not feel comfortable nor clients

safe without counsel's opinion, and opinions, though often staying, often leading to litigation are the most satisfactory part of conveyancing practice at the Bar.

It is not, therefore, from the Solicitors' Remuneration Act that, in our view, any danger to the conveyancing Bar is to be feared. But we think that the Conveyancing Act does strike at the very root of the profession, and will diminish the conveyancing profits not only of the Bar but of solicitors. The immediate effect of the Act may be small; its indirect and ultimate effect must be great. The clauses relating to mortgages, and especially the statutory forms given in the Act, will be largely and increasingly made use of. The "expanding clauses" will shorten mortgage deeds, and with them abstracts of title and recitals in conveyance. The statutory form will probably be used, not only, as Mr. Wolstenholme suggests, on small properties, but on large properties and in large transactions where there is no complication of title. The result in the long run must tend not only to prevent mortgages coming to conveyancing counsel, but also to prevent clients, such of them at least as are in business, from going to lawyers at all. Wills and settlements and conveyances, however, will still remain. But they also to a great extent are doomed. If registration is carried out, as it soon will be; if titles are simplified and shortened, as they will inevitably be by the abolition of entails and restriction of power of settlement; then there will no longer be any need of a large, learned, and laborious body of men devoted solely to the acquirement and practice of a branch of law which ought never to have existed. The conveyancing Bar is doomed to a glorious extinction by suffocation under a mountain of abstracts of title for compulsory registration. Its last expiring effort will probably be a brilliant attempt to evade the abolition of power of entail in a series of last wills. The result may be delayed one year, or five years, or ten years, but it must come, and settlements and conveyances will follow mortgages into the limbo of an archæological chamber of horrors. The mass of intellect, the energy of labour, the tracts of time now devoted to conveying a piece of land or preventing it from being conveyed at all, will then be more usefully employed in the true work of the Bar—counsel and advocacy in disputed cases of right.

Both to solicitors and barristers we cannot help thinking that every simplification of the law, every diminution of the mass of papers to be read, everything that tends to make law less repulsive, less doubtful, and cheaper to the clients, is a distinct advantage, and will lead to an increase of profits. Smaller but quicker returns are the golden rule in the sale of legal skill and forensic ability as of other commodities. We hail the Conveyancing Act as a slight and halting step nearer to that desirable result.—*Law Times*.

#### THE LATE MR. JUSTICE O'BRIEN.

On Wednesday (Jan. 11th), the Lord Chief Justice and Mr. Justice Barry having taken their seats in the Queen's Bench Division,

The LORD CHIEF JUSTICE said—Before we proceed with the business of the day it is only due to the late Judge O'Brien that we should say a few words expressive of our opinion of the mode in which he discharged his duties as a judge. Judge O'Brien took his seat here, I think, in the year 1858, and therefore he acted as judge for some three and twenty years; and I think it must be admitted by all who had opportunities of witnessing the mode in which he discharged the important functions committed to him that he earned the confidence of the public and the regard of the Crown. Judge O'Brien was possessed of very considerable intellectual endowments, and not only were his mental powers remarkable, but he had moral qualities which conciliated the affections of every person who came into close contact with him. He devoted his natural talents to the acquisition of the learning of his profession, and his memory, which was a very tenacious one, was amply stored with learning and information derived from ex-

perience. In the death of this very eminent judge the public have sustained a very serious loss. For myself, having come into this court much more recently, I found the greatest assistance and comfort from having him beside me, and I must be allowed to say that my intercourse with him was such that I always revered him as a judge and loved him as a man. He reached a very considerable age, and down to the very last retained his intellectual faculties I may say almost entirely unimpaired. It was only during the last term that I thought I did see some slight indication that physical weakness was beginning to extend itself to his mental faculties; but these symptoms were extremely slight, and we had no reason at all to suppose that he was so soon to be removed from amongst us. However, he is gone; and I can say that I feel with all sincerity that he has left behind him a memory to be cherished and an example to be followed. He exercised his functions as a judge with great ability, and he always appeared to have present in his mind the feeling that justice was best tempered with mercy. On every occasion on which he acted there emanated from him indications of the benevolence of feeling and the kindness of heart by which he was so eminently characterized. He has left behind him a memory which we shall cherish, and cherish with regret; and all I can say is that personally I feel his loss very sincerely and very deeply. However, it is not what I feel but what the public feel that is of importance, and I am quite sure that every member of the public feels that in him has been lost an eminent public servant.

Mr. JUSTICE BARRY.—I am sure I shall not be understood as intending, or thinking it necessary, to supplement in any way the apt and eloquent language in which my Lord Chief Justice has referred to the death of our late lamented colleague, Mr. Justice O'Brien. My lord has, however, necessarily dealt rather with those considerations of public and general character which the occasion suggests, and I only desire for myself—and if I am out of order, I am certain, under the circumstances, I shall be excused—to add, in this court where I have sat with Judge O'Brien for ten years, a word or two expressive of my profound sorrow at the loss which I have personally sustained by the death of so old and so valued a friend. For very many years I enjoyed the friendship of Judge O'Brien. At a very early and critical period of my career at the Bar I was advised by his wisdom, I was sustained by his approval, and I was cheered by his friendship; and when the vicissitudes of professional life placed me, though many years his junior, on the same bench on which he occupied a seat, our junction as colleagues only served to draw closer the ties of friendship which had previously subsisted between us, and, by giving me the opportunity of a closer and more continuous observation of his qualities, to increase the respect and reverence which I entertained for him. I shall say no more than repeat the remark which I made on the late occasion of our attending his mortal remains to their resting place—he has not left behind him on this earth a kinder man, a truer friend, or a purer Christian.

Mr. LANE, Q.C.—I do not know, my lords, whether it will be considered out of place for me, as the senior member of the Bar present, and as one of Judge O'Brien's oldest friends, to express, on the part of the Bar, what I knew they feel, and on behalf of myself, the deep feeling of regret I have at the departure of Judge O'Brien from amongst us. Since he was called to the Bar he was my companion on circuit, and I had an opportunity of knowing his great legal talents and his great general ability. I had an opportunity also of knowing his kindly feelings, and the way in which he supported those who were juniors to him. And I can say with the utmost sincerity as a very old friend of his, that I deeply feel the loss that I have sustained, and that the Bar have sustained by his death, both as a lawyer on the bench and in society as a friend. It may be wrong of me to make these observations, but I could scarcely help it, knowing him so long as I did.

## LIABILITY FOR DOGS.

(Continued from 15 Ir. L. T. page 564.)

In the preceding portion of this article we have supported the view of Lord Cookburn in *Fleeming v. Orr*, that the owner of a dog ought to be liable for injuries inflicted by the animal, even although he was not aware of its vicious propensities. It is, however, settled law in England, at least, that in order to fix liability on the owner there must be evidence that he had previous knowledge of the animal's propensities. There are a number of cases on the question when the owner is to be assumed to have this knowledge—when there is evidence of *scienter*.

The first question to be considered under this head is, What is evidence of the dangerous disposition of the animal? "The nature of the evidence to be adduced in proof of an animal's vicious inclinations, and of the owner's notice, must of course vary greatly according to circumstances" (Shearman on Negligence, sec. 191). It is not necessary to prove that the animal had actually bitten any person before, it is sufficient that it had attacked with the intention of doing injury (*Worth v. Gilling*, L. R. 2 C. P. 1). Mere playful attacks—"a mere habit of bounding upon and seizing persons, not so as to hurt or injure them, although causing some annoyance and trivial accidental damage to the clothes"—it has been held, would not sustain an action for injuries caused by a bite (*Line v. Foster*, 3 F. & F. 781). In this case it was held that the dog might be produced in Court and shown to the jury to assist them in judging of his temper and disposition.

There are different kinds of ferocity, and in considering whether a dog is ferocious, attention must be given to the kind of attack which has caused the injury, redress for which is sought in the action. A dog which has a trick of worrying sheep is not necessarily an animal dangerous to human beings. But it is not necessary that the acts of aggression brought to the notice of the owner should be precisely similar to that upon which the action against him is founded. It is sufficient if, and it is necessary that, the facts brought to the owner's knowledge should indicate a disposition to commit injuries substantially like those which form the basis of the claim. See American cases cited in Shearman, sec. 190.

The next question is, What is evidence of the owner's knowledge? It is not necessary that the owner of an animal should have any formal notice or positive knowledge of its vicious habits or disposition in order to make him liable for its acts. It is sufficient that he has seen or heard of things which would suffice to convince a man of ordinary prudence that the animal was so disposed (Shearman, sec. 189).

In *Judge v. Cox* (1 Stark, 285) Chief Justice Abbott held that proof that the defendant had warned a person to beware of the dog lest he should be bitten was evidence to go to the jury that the dog was accustomed to bite mankind. This evidence of *scienter* was surely of the most shadowy kind. It is reasonable to think that the warning was inspired by the knowledge, not that the animal was accustomed to bite mankind, but that a dog was an animal which was apt to do injury. If an owner were to be made liable whenever he had given warning to beware of the dog, a cautious and well-intentioned owner would suffer and a reckless owner who did not care whether people were injured or not would escape.

It has been said that the fact of the dog's being kept on the chain in the daytime was strong evidence that the owner knew him to be dangerous (Shearman, sec. 191). In *Jones v. Perry* (2 Esp. 48) Lord Kenyon attached much weight to similar evidence. (In this case a report that the dog had before been bitten by a mad dog was admitted as evidence that the defendant knew him to be mischievous, which was surely spreading the net of evidence very wide indeed). But in *Beck v. Dyson* (4 Camp. 198) Lord Ellenborough held such evidence insufficient. In the latter case, it has been remarked, the allegation was that the dog had

previously attempted to bite, and this allegation would not be supported by the above evidence (Shearman, *supra*). Why not? If the above evidence were evidence of the dog's ferocious disposition, it would be evidence in support of an allegation that it had attempted to bite. Anything that is evidence of a ferocious disposition is good evidence in support of an allegation that the animal had attempted to bite. A dog that is ferocious is very likely to bite, and that is the way in which it shows its ferocity. The truth is Lord Ellenborough rejected the evidence of the dog's being kept on the chain as evidence of the owner's knowledge that the dog was ferocious simply because it is not evidence of that.

Knowledge of the servant is sometimes knowledge of the master. If, for example, the owner of a dog appoints a servant to keep it, the servant's knowledge of the dog's ferocious disposition is the knowledge of the master, and fixes liability upon him (*Baldwin v. Casella*, 1872, L. R. 7 Ex. 325). In this case the animal was kept in the defendant's stable, and the defendant's coachman was appointed to keep it. The coachman knew that the dog was mischievous. It was held immaterial whether the coachman communicated the fact to his master or not; his knowledge was the knowledge of his master. "It appears to be the rule of law," said Baron Bramwell, "that the possibility of loss or injury arising to others from things which are likely to be dangerous, raises on the part of those who have them under their control a duty to inform themselves about them. . . . So all dogs may be mischievous; and therefore a man who keeps a dog is bound either to have it under his own observation and inspection, or, if not, to appoint some one under whose observation and inspection it may be. The defendant has appointed his coachman to that duty; the coachman knew of the mischievous propensities of the dog; and his knowledge is the knowledge of his master." It will be remarked that these observations extend the liability far beyond what is embraced in the ordinary doctrine on the subject. They imply not merely that the owner is liable *et cetera* he knows that the dog is dangerous, but that he is bound to know whether it is dangerous or not.

It is not sufficient, however, that the ferocious disposition of the animal should be known to any servant of the owner; it must be a servant having some charge or control over the dog or of the place where the dog is kept, or of the master's business or affairs; and either whose duty it is to inform the master, or whose authority is such as to empower him to put the dog away. In *Stiles v. Cardiff Steam Navigation Company* (83 L. J. R. (Q. B.), 310) the plaintiff was bitten by a dog belonging to the defendants, a corporation, which was chained in the defendants' yard, in a place in which he could not be seen by the plaintiff, a passer-by. The dog had previously bitten a person, and this was known to some of the servants of the defendants; but those servants had no control over the affairs of the corporation, or control over the dog. It was contended that the defendants being a corporation, it was impossible that they could have knowledge in such a matter. Of course this contention failed. But the defendants succeeded on the ground that there was no evidence that they had knowledge of the dog's previous attack. "It would have been sufficient to show knowledge of the manager or of some person having control of the yard. I had some doubt whether the knowledge must not be brought home to some person who kept and had control of the dog, and had power to put an end to his keeping, but perhaps it would be enough if he had the care of the dog. Here the persons rather had care of the horses" (*per Gompston, J.*). "The real difficulty still remains," the difficulty about the defendants being a corporation having been disposed of, "whether these were persons who had the control of the yard, or of the dog, or of the business, so as to be proper persons to receive notice for the company" (*per Blackburn, J.*). Notice of the mischievous propensity of the dog given to the wife of

the owner, who occasionally attended to his business, which was carried on upon the premises where the dog was kept, was held to be some evidence of *scienter*, although the wife had not communicated the notice to the husband (*Gladman v. Johnson*, 36 L. J. (C. P.), 153). "I am not prepared to assent to the proposition that notice to an ordinary servant, or even to a wife, would in all cases be sufficient to fix the husband in such an action as this with knowledge of the mischievous propensity of the dog; but here it appears that the wife attended to the business, which was carried on upon the premises where the dog was kept, and that a formal complaint as to that dog was made to the wife when on the premises for the purpose of being communicated to her husband. It may be that this is but slight evidence of *scienter*, but the only question is whether it is evidence of it. I think it is" (*per Bovill, C.J.*). We do not think the evidence here was some evidence or slight evidence of *scienter*. It was complete and conclusive evidence or it was nothing. The circumstance that notice was given to the wife might have been some slight evidence of actual knowledge of the husband, seeing that the wife would be likely to communicate such a notice to her husband. But it was proved that she did not. Consequently if knowledge was to be fixed on the husband at all, it was by holding that, considering the position the wife held in regard to the management of the business, the knowledge of the wife was the knowledge of the husband; and the knowledge of the wife was admitted. Where a dog in a public-house had bitten persons to the knowledge of two persons behind the bar serving customers, to whom complaints had been made, but who had not communicated the complaints to the publican, and who were not shown to have the general management of the business, it was held by the Court of Common Pleas (Coleridge, C.J.; Keating, J.; *dis.* Brett, J.) that there was evidence of *scienter* to go to the jury. Mr. Justice Brett in stating his reasons for dissenting said: "A barman or barmaid has no more to do with the general management of the business than a shopman selling goods in any other shop. A manager whose knowledge is to fix the proprietor with knowledge must be one who stands in the place of the master, and to whom the general control of the business is delegated in the master's absence." The circumstances of this case, and cases of this kind are cases of circumstances, are not well brought out. One would like to have known whether there was any person who had the general management, or whether the owner of the establishment took an active part in the business himself; but all we are told is that it was not proved that the barman to whom the complaints had been made had the general management of the business. Surely Mr. Justice Brett's notion is not a reasonable one, that the servant whose knowledge is to fix liability on the master must be one who has the general management of the business. It is the person behind the counter in charge of what is the only part of the business of any importance to the outside public, viz.—the selling of liquor, whom the public naturally take as representing the publican, and to whom they naturally apply if they have any complaint to make. It may be that he has nothing to do with the general management of the concern, buying liquor, paying taxes, and so on, but he has to do with the only part of the business which brings the establishment into relation with the general public. The men whom you find in charge behind the counter, whether they have the general management of the business or not, are the people in charge of the shop, and the men in charge of the shop are the men in charge of the dog in the shop. Of course if a manager over the men engaged in drawing beer were present, the complaint would necessarily require to be made to him. But if not, a complaint is made to the proper person if it is made to the person, whoever he is, who at the time is in charge. A man selling beer behind the counter of a public-house is in a different position from a servant, as in *Stiles*' case, in a large establishment, who has a special duty to attend to and to that

alone, and which duty happens to be one which does not hold him out to the public as representing the master, or one which gives him any charge over or control of the animal.

As regards the ownership of a dog, possession of the dog is presumptive proof of ownership and consequent liability. But a person may be liable for the acts of a dog who is in no sense the legal owner. One who harbours a dangerous animal on his premises is liable for injuries inflicted by it while on or near these premises just as much as if he were its owner. Questions of some intricacy may occur as to liability when the animal at the time of the injury is not in the personal custody of the owner but has been committed by him to the care of another. (Of course we are not speaking of the case where the animal is in the custody and under the control of a servant who has been intrusted with the custody and control. In such a case, as we have seen, it is just the same as if the animal were under the owner's immediate inspection and control. The acts of the servant, the representative of the master, are the acts of the master, and the knowledge of the servant is the knowledge of the master.) In *Cowan v. Dalziel and More* (Nov. 22, 1877, 5 Rottie, 241) a dog while in the custody of two persons, not the owners, attacked and injured a man. Both the owners and the custodiers were aware that the dog had previously injured another man. The custodiers having knowledge of the dog's propensities were clearly liable. It was urged that the owner having like knowledge was liable as well. The court held that he was not. The decision by no means bears out the idea that as soon as an owner gives the custody of the animal to another, the custodian is liable and the owner is free, and this will appear very plain when the circumstances of the case, which as regards the custody were special, are explained. More, who is styled the owner, was foreman to the other defenders, the Dalziels. He bargained for a retriever to act as watch-dog. The price had not been paid, but More admitted that if it were demanded he was bound to pay it. The dog was chained in the woodyard. At the time of the accident the dog had been away from the woodyard for six weeks, and More had left his employers' service. In these circumstances it is clear that the foreman was not liable. The animal had been procured for the purposes of the other defenders and had passed entirely out of his custody. In this case the Lord Justice-Clark (Moncreiff) observed: "I am not prepared to lay down as a general proposition that the owner of a dog is not to be held liable unless the dog is in his personal custody. On the contrary, I think that as long as the owner retains the substantial control over its custody, it is of no consequence whether he exercises that control by himself or by another. He is responsible for its safe keeping to the public. . . . I am therefore not prepared to hold that if a man keeps a dog which he knows ought not to go at large, he may not be responsible. But this must not be stretched to an unreasonable extent. If one commits the care of such an animal to another for a length of time, and for his own behoof, and the custodian is trustworthy and fully aware of the precautions necessary, I think that the owner is not liable." It seems to us that the liability of the original owner depends upon whether the animal has passed beyond his control or not, and that is a question of fact. If it has passed beyond his control, it does not matter whether the custodian is trustworthy or not; and if it has not, the trustworthiness of the custodian, on the principle of *Burton v. Moorhead*, is not a defence. The owner must take the responsibility of the custody and precautions being effectual. "It is a nice question," says Mr. Shearman (sec. 197), "to determine how far the notice which the legal owner of an animal has of its habits is to be imputed to other persons having it in charge and standing in the position of the owner in respect to third persons. Against one who unlawfully takes an animal the case is clear. Having unlawfully assumed the position of an owner under circumstances which by his own fault prevented him

from knowing the nature of the animal, he should bear all the burdens and be charged with the knowledge or notice chargeable to the real owner." This last case is clear enough; but as regards the case of a borrower, it is only his own actual knowledge that should make him liable. On the principle that knowledge is required to make one liable for the acts of the animal, how can it be contended that he is liable when in point of fact he had not such knowledge? But if the owner transfers the custody of an animal which he knows to be dangerous without communicating his knowledge, and mischief ensues, it is he who, being in fault, ought to be responsible. Mr. Shearman draws a distinction between a gratuitous borrower and a borrower for hire. The latter has a right to have information of the quality of the article let on hire, and a claim against the owner if any damage results from that information not being communicated. The borrower for hire, says Mr. Shearman, has a claim over the lender, "which affords some ground for holding him responsible for the possession of the information to which he has thus a right." But if the borrower has not the knowledge, he is not responsible to third persons. If he suffered damage himself, he would have a claim against the lender. And surely the borrower's claim against the lender affords no ground of liability in a question with third persons. The claim possibly might not be effectual. The lender may be a man of straw from whom nothing could be obtained. In a question with third persons, the relations between the lender and the borrower do not seem of any importance.

We presume, just because the propensity of dogs to worry sheep was so often displayed, and the common law, choosing to recognise a dog as an animal of an entirely peaceful species, was powerless to give redress to the owner of sheep injured by a dog unless he was able to prove that the owner of the dog was aware of vicious propensities of the particular animal, it was found necessary, so far, to regulate the matter by statute. By 25 & 26 Vict., c. 69, sec. 1, in Ireland the owner or harbourer of a dog is made liable in damages for injury done to sheep by his dog, and it is not necessary for the person claiming damages to show a previous mischievous propensity in the animal or the owner's knowledge of it, or to prove any neglect on the part of the owner. The Act 23 & 29 Vict., c. 80, makes a similar regulation for England, extending the liability, however, to injuries to sheep and cattle. A similar Act, the 26 & 27 Vict., c. 100, was passed for Scotland. It provides that in an action of damages against the owner of a dog for injury done by it to sheep or cattle, it shall not be necessary to prove a previous propensity in such dog to injure sheep or cattle. (The occupier of any premises where the dog was usually kept or permitted to live or remain at the time of such injury, is made liable as the owner, unless he proves he was not the owner, and that the dog was kept in his premises without his knowledge or assent.) It will be observed that the terms of this Scottish Act are different from those of the other Acts. It does not say it shall not be necessary to prove any neglect on the owner's part. In *M'Intyre v. Scott* (February 18, 1870, 8 Macph. 570) the question was raised whether the statute changed the rule that fault must be proved against the owner of the dog in order to infer his liability for damages. It was not necessary to decide the question, it being proved that intimation had been made to the effect that the dog had previously worried sheep, after which intimation the dog had been allowed to go about loose. But the Lord President made the following observations on the meaning and intent of the statute: "The next question is whether the Act 26 & 27 Vict., cap. 100, introduced any change in the common law with regard to the liability of the owner of a dog in a case of this kind. I must say that I do not think the statute deals very intelligibly with the matter. I have no doubt that the intention of the Legislature was to abrogate the law laid down by the House of Lords in *Fleming v. Orr* (2 Macq. 14), and to make the owner of the dog liable on proof of its being the cause

of the mischief, whether there be proof of fault on his part or not, but certainly that is not very satisfactorily declared by the statute." We should say now, taking the statute and the case of *Burton v. Moorhead* together, the owner of a dog would be liable for injury caused by its worrying sheep simply upon proof that it was the cause of the mischief. Burton's case is to the effect that if the owner has knowledge of the vicious propensity of the animal he is liable for any damage it may afterwards cause. The statute makes it unnecessary to prove any previous vicious propensity, and of course any knowledge of vicious propensity. It is not necessary to prove knowledge of a propensity which may be non-existent, and yet its non-existence would not free the owner from liability.

"The Dogs Act, 1871," makes for the protection of the public certain regulations as to stray and dangerous dogs. Any police officer or constable may take possession of any dog he has reason to suppose to be savage or dangerous straying on any highway, and not under the control of any person and may detain it until the owner has claimed it and paid all expenses incurred by reason of such detention. When any such dog has been detained for three days where the owner is not known, or five where he is known, without claiming it, and paying all expenses incurred by its detention, the chief officer of police of the district where the dog was found may cause the dog to be sold or destroyed (sec. 1). Any court of summary jurisdiction may take cognizance of a complaint that a dog is dangerous and not kept under proper control, and if it appears to the Court that such dog is dangerous, the Court may make a summary order directing the dog to be kept by the owner under proper control or destroyed. Any person failing to comply with such order is liable in a penalty of £1 for every day during which he fails to comply with such order (sec. 2).

The General Turnpike Act (1 & 2 Will. IV., c. 45) provides (sec. 97) a penalty not exceeding £5 if the driver of any cart, waggon, or other such carriage on a turnpike road allows to go at large any dog that may be attending him or his waggon, cart, or other such carriage, or shall not chain or fasten the same to such waggon, cart, or carriage.—*Journal of Jurisprudence.*

#### THE CONTRACT OF SALE BY A MAKER.

It is seldom that a question of general application in mercantile law, but little involved in special facts, and remarkable for a divergence of judicial opinion in England and Scotland, awaits the decision of the House of Lords, as in the case of *Johnson v. Raylton*, reported in the December number of the *Law Journal Reports*. The general question is, whether a manufacturer of goods, not, on the one hand, of well-known reputation in their manufacture, but, on the other, not being a dealer in the goods, who enters into a contract for the sale of such goods, is bound to supply goods of his own manufacture. On this question Courts are divided against Courts, and judges against their fellows. The decision of the Court of Appeal in England is that there is an implied contract by the manufacturer to supply his own goods; the decision of the Court of Session in Scotland is recorded to the contrary. Among the judges of the English Court, Lord Justice Bramwell agrees with the decision of the Scotch Court, but is overruled by his colleagues. Among the judges of the Court of Session, Lord Young agrees with the decision of the English Court; but his view is in its turn overruled by that of the majority. So that we have the English Court and the Scotch Court opposed to one another, but each with a dissentient judge upholding the view respectively held across the Border. Add to this, we have Mr. Justice Manisty, from whom the appeal came, of the same opinion as the dissentient minority of the Court that overrules him.

It is necessary, for the full understanding of the case, that the special facts in *Johnson v. Raylton* should be given, although but little, in the opinion of the judges holding opposite views, turns on the facts. The

plaintiffs, as must be carefully borne in mind all through, were the vendors of the goods suing for damages for non-acceptance, and the defendants were the purchasers who declined to accept. Messrs. Johnson, the plaintiffs, were a firm of iron manufacturers of Stockton-on-Tees, who were not dealers except that they sold their own manufactures; and Messrs. Raylton, the defendants, were ship-builders at Middlesborough. The contract, which was on a printed form furnished by the plaintiffs and signed by both parties, provided that the plaintiffs should supply the defendants, and the defendants take 2,000 tons of iron ship-plates of "Crown" quality to pass Lloyd's survey at so much a ton to be delivered by instalments within a certain time. The contract was headed the "Moor Iron Works," and had the plaintiffs' trade-mark on the margin, and there was a clause providing that "in case of strikes or combination of workmen, or accidents causing a stoppage of the works, the supplies of iron now contracted for may be suspended during their continuance; this clause applies to buyers and sellers." Premising that the plaintiffs, after supplying certain of the plates, closed their works and proposed to complete the contract by supplying plates of other manufacturers equal to contract, but that the defendants declined to accept them, we propose to deal first with the special terms in the contract. None of the three judges in the Court of Appeal lay very great stress on any of these terms. Lord Justice Bramwell claims the strike clause as "strongly showing that it was not necessary that the articles to be supplied should be of the plaintiffs' make." "If," he argues, "the manufacturer is stopped by strikes, the delivery by the plaintiffs may be suspended; this seems to contemplate that it will not necessarily be so, which can only be if the articles might be made by some other maker." Lord Justice Cotton makes the clause harmonise with his view that the plates were to be of the plaintiffs' make by pointing out "that, notwithstanding the stoppage of the works, the manufacturers might have plates of their own make which they could supply." Lord Justice Brett, again, who, in taking the same view of the case made with Lord Justice Cotton, the majority of the Court says, that "upon a strike at the plaintiffs' works they might exercise their discretion whether they would procure other workmen and continue the work under the contract, or stop." No doubt a manufacturer, whose workmen strike, is not invariably obliged to suspend his works; and, because a contract contemplates the supply of plates notwithstanding strikes, it does not necessarily follow that plates made by some one else are contemplated. But that is not this contract. The strike clause in this case only applies to combinations or accidents causing a stoppage of the works; and it is very remarkable that, even when the works are closed, the contract still reserves an option to the seller to continue the supply. With regard to the other special matters in the contract the view taken by the learned judges seems to be that they tell neither one way nor the other. Lords Justices Bramwell and Cotton consider it unnecessary to refer to any other special matter in the contract; and Lord Justice Brett only does so to show that they have no material bearing. He is of opinion that "the heading of the order is a part of the contract, and imports an obligation on the plaintiffs that the iron plates should bear their mark or brand." This declaration is, of course, merely *arguendo*; but it will strike the reader as a somewhat extreme inference from the mere appearance of a trade-mark on the paper containing a contract that the goods bought must be so stamped. But Lord Justice Brett, no doubt, saw the original, and drew the inference on the view that the trade-mark was not there as a mere ornament or advertisement, but for a distinct purpose. The trade-mark evidently made considerable impression on his mind, because he explains away its bearing on the case elaborately, and, in order to do so, departs from the main issue to almost a risky extent. He says that he knows no law which prohibits a manufacturer from effacing another manufacturer's mark and sub-

stituting his own or adding his own. This question would seem to depend largely upon the character of the mark. The Lord Justice's observation cannot have been meant to apply to a mark well known as showing that the goods were made by a certain firm. For instance, if Bass & Co., agreed to sell beer, they would hardly be justified in taking Ind & Coope's beer and putting their label on it. If the mark is a trade-mark in the strictest sense, meaning merely that the goods have passed through the hands of a particular dealer, probably the law would be as stated. The appearance of the trade-mark cannot, however, have borne a very deep significance, or Lord Justice Bramwell would have referred to it, and it may be dismissed notwithstanding some doubtful points in Lord Justice Brett's reasoning upon it. The learned Lord Justice dismisses the clause as to satisfying Lloyd's survey as equally neutral in its bearing on the question, and proceeds to develop his own view on the main question.

Before considering the opinions of the judges on the points of difference between them, it will be as well to state the points on which they agree both as being valuable for instruction on these points, and as tending to make the others intelligible. Lord Justice Bramwell admits that the manufacturer whose goods have a special repute in the market, and who sells goods of that class, is bound to supply goods of his own make. He instances Erard's or Collard's pianos, and adds, "so, perhaps of clothes from a renowned tailor." If a man orders a suit of clothes at Poole's, he expects to have them of Poole's cut and make, and Poole knows that such is his expectation—an *aggregatio mentium* probably sufficient to constitute an agreement. The "probably" might with a good conscience, be omitted if the illustration passed from tailors to hatters; as a man who orders a hat from Lincoln & Bennett would clearly be entitled to the workmanship of the firm with its name inside. Lord Justice Colton traces the same principle in the rule that a picture ordered of an artist must be the artist's own work; and no doubt the principles are analogous. Lord Justice Brett, with some impatience of distinctions, uses the admission of Lord Justice Bramwell as a lever for his own argument. He says: "If the manufacturer does not propose different prices for goods manufactured by himself, as distinguished from goods not so manufactured, I can see no reason why, unless the implication is to be made in all cases, it is to be made in the given cases." But the strong argument put forward by Lord Justice Brett is *ad inconvenientiam*. He says, in effect, that the buyer relies on the reputation of the manufacturer for the quality of the goods; and, unless there is implied a stipulation that the goods are manufactured or to be manufactured by the seller, the buyer has no protection but that the goods shall be merchantable, and that they shall be reasonably fit for the required purpose. "If," continues the Lord Justice, pursuing the same argument, "there is no such contract as is suggested, a manufacturer, under the stated circumstances, may supply goods not manufactured by himself—inferior to his own usual manufacture, inferior to the usual manufacture of the person from whom he has purchased, inferior to the usual standard of manufacture by other manufacturers of similar goods." To this Lord Justice Bramwell would reply in the words of his judgment, "We must look at what the parties have said, add nothing to and take nothing from it, without necessity." The answer of all who disagree with Lord Justice Brett will be that he is arranging the matter very conveniently for all parties; but still he is doing it for them, and not interpreting them. The learned Lord Justice further relies, as the basis of the implication which he suggests, on the fact that the plaintiff holds himself out as a selling manufacturer of goods, and not otherwise a dealer in the goods. "Such a holding out and such a reliance," he sums up, "make a contract, or a term in a contract that the goods supplied shall be of the manufacture of the manufacturer." The only holding out of which there appears to have been evidence was contained within the four corners of the contract.

The argument of Lord Justice Bramwell may be very briefly stated. He asks, is the proposition with reference to goods of a peculiar make applicable to goods of which one maker's make is as good as another's? and he declines to introduce so large an implication into the law of contracts. The proposition certainly seems a very extensive one. Because the seller is known to the buyer only as a manufacturer, he is entitled to reject goods made by any other manufacturer. The proposition would be true of all producers as well as manufacturers. The farmer in the country finds his cows run dry; and although he buys of his neighbour, and sends forward milk equal to the quality stipulated for, the milkman in London may reject it. Terms in contracts may well be implied when there is an absolute necessity for them, such as that goods shall be merchantable, and fit for the purpose in question. But to imply them without absolute necessity seems bad legal policy, and tends to an artificial state of law. The question which the House of Lords will have to decide is, whether a plain man, reading through the contract in question, and knowing as much as the purchasers did, would assume that both vendors and purchasers intended that the plates should be made by the vendors. We are inclined to think, on the whole, that the implication is not so natural or inevitable but that the House of Lords will be disinclined to draw it.—*Law Journal*.

#### THE GUTEAU TRIAL.

Some of the papers that have commented upon Mr. Scoville and his conduct in the Guiteau case, have altogether misrepresented him as a man and the motives which induced him to appear in the case. Mr. Scoville has been a member of the Chicago Bar for nearly thirty years, and although not an eloquent advocate or criminal lawyer, he has been regarded as a lawyer of marked ability, excellent judgment, sound integrity, and untiring industry. The members of the Bar have always considered him an able associate and a dangerous opponent in a case. He has had a long and varied experience at our Bar. Heavy and important interests have been submitted to his care. Mr. Scoville has been wealthy, but, like many others in our city, became involved in real estate transactions and lost his property at the time of the panic, and but a few years ago had to pass through the Bankruptcy Court. He has now, outside of his practice, but very limited means. Word came to Mr. Scoville that our lamented President Garfield, without cause or provocation, had been shot down by Guiteau, the brother of his own wife. He tells a few confidential friends that from the conduct of Guiteau for years he is sure that he was insane, and that he feels it to be his duty, if no one else will undertake the task, to see that the defence of insanity is interposed, and to assist any eminent criminal lawyer that may be obtained to defend Guiteau. With this end in view he hastens to Washington, and after repeated appeals he fails to obtain the aid of a single member of the American Bar. In a strange city, with no fortune at his command, single handed and alone, he undertakes the defence, laying aside technicalities, and placing it on the ground of insanity. The members of the Bar who have watched the course of Mr. Scoville cannot but admire the ability he has displayed in conducting the defence thus far, under the most trying circumstances. He has controlled himself, avoided any exhibition of temper, or doing anything that should injure the prisoner or his cause. His candour has impressed the jury that he himself is honest in urging the plea of insanity. Whatever may be the result of this trial—whether Guiteau shall be hung or found insane—the members of the Bar will commend the self-sacrifice of Mr. Scoville, and his manly independence in standing up and insisting, against the united cry of an injured nation, that the slayer of its beloved President shall have a fair trial.—*Chicago Legal News*.

We have watched with interest the course of Mr.

Spoville. He has exhibited such fearlessness in the discharge of a disagreeable duty, a duty devolved upon him, both as a lawyer and a man, that we are glad to have the opportunity of encouraging him in his thankless labours, and of tendering to him the acknowledgment due him from the profession to which he belongs. The enormity of Guiteau's crime does not excuse the members of the Bar for their cowardice in refusing the assistance Spoville requested.—*Pacific Coast Law Journal*.

#### ILLEGAL LOTTERIES.

The case of *Christison v. M'Brice* (Oct. 25, 19 S. L. R. 19) has raised the question, if question it can now be called, of the legality of lotteries. It is one of considerable public interest in connexion with the ever-increasing number of bazaar and charity fairs which are held. Lord Young referred to the instructions which Crown authorities receive to put a stop to lotteries. They feel no little difficulty in doing this, and at the same time countenancing, or at all events tolerating, bazaars. A legal official is sometimes invited to open such a bazaar by a speech in which he must express every wish for the success of the proceedings to follow, while his wife or sister is perhaps busily engaged in scouring tickets for a raffle, and he himself in all probability will proceed to afford active assistance. And yet upon the following day the fiscal may report that a serious breach of the law has been committed by means of some lottery.

It seems on all hands agreed that the holders of lotteries and raffles shall not in the ordinary case be punished for their offence. They are, in fact, winked at, except in some glaring case which it is feared may lead to a corruption of the public morals. Raffles for religious and charitable purposes are certainly looked upon very favourably by officers of the law. Indeed, except where there is some outbreak of sectarian spite, no objection is ever raised against them. Such outbreaks, however, occasionally take place. The Roman Catholics are peculiarly fond of lotteries. They are for ever attracting Protestants with the chance of winning a pony carriage and pair of ponies, offered in the interests of some "Little Sisters," or some other order of devotees. Then the keen scent of the Scottish Reformation Society is roused, and a letter from their secretary reaches the Lord Advocate, who politely answers to the effect that lotteries are distinctly illegal. But the ponies continue to be raffled for all the same. The machinery of the law seems to get out of working order when it is used for the suppression of lotteries.

The lottery in *M'Brice's* case was one of a kind well-known amongst the lower orders. A trotting pony was to be sold in the interests apparently not of any saintly community, but of Charles M'Brice, residing in Edinburgh. The mode adopted was by a subscription sale on the Art Union principle, or in other words, by a lottery. William Christison purchased a ticket, which proved to be the winning one, but upon application M'Brice refused to deliver up the pony. Hence an action in the Sheriff Court of Edinburgh, when the defender took the plea that as lotteries were illegal, the petition ought to be dismissed. After a proof (why evidence should have been led does not appear) the Sheriff-Substitute sustained this plea. In his interlocutor he found "(1) that lotteries are illegal and *pacta illicita*, except when expressly declared legal by statute; (2) that the transaction on which the pursuer's claim is founded is not within any such statutory exception." Upon appeal this judgment was affirmed, although Lord Young remarked, "I do not entertain any opinion on the question whether a lottery for pictures or a pony is illegal in the sense of punishable, or that it is competent to put a stop to such by interdict as *contra bonos mores*. I know that there are various opinions on this question, and therefore in giving my opinion here against this lottery I merely give it to this extent, that an action founded on it as *medium concludendi* cannot be sustained here or in the Sheriff Court."

Lord Young does not say that such a contract is

illegal under any statute, he seems to have rather gone upon the principle that the Courts of law are not intended for the disposal of disputes of such a character, but at the same time he expresses his approval of the Sheriff-Substitute's judgment. The latter founded upon 42 Geo. III., c. 119. It seems doubtful, however, whether this statute applies to Scotland. But the later Acts (6 & 7 Will. IV., c. 66, 8 & 9 Vict., c. 74) do, and would appear to render all such lotteries illegal.

The pursuer founded upon the cases of *Graham* (Feb. 5, 1848, 10 D. 646) and *Caldar* (July 20, 1871, 9 Macph. 1074). The first of these cases related to a coursing match, the second to a horse race, and they raise a nice distinction between deciding which dog or horse has won, and settling disputes concerning the prizes after the events have come off. Thus in *Graham's* case the learned judges seem clearly of opinion that they could not have decided upon Violet's claims as the winner, but she having admittedly won, they were warranted in determining who was to benefit by her success. But, as is pointed out by the Sheriff-Substitute, Christison could not set up these cases as authorities in his favour, because of the element of illegality which distinguishes a lottery from a coursing match or race. Even if the fact of his being the holder of the winning number had been admitted, the *pactum illicitum* out of which his claim arose acted as a bar to the success of his petition.

The law upon this subject of lotteries is evidently in a most unsatisfactory condition. It is doubtful whether all the benevolent ladies and gentlemen who take part in raffles are not liable to be dealt with as vagabonds. A special Act of Parliament has exempted those who take part in Art Unions from the pains and penalties to which they may have rendered themselves liable as persons "concerned in lotteries, little goes, and unlawful games." Why not exempt the promoters of charity fairs, who at present violate the law right and left, with impunity to themselves, doubtless, in so far as penalties go, but at the risk of a serious injury to their morals?—*Journal of Jurisprudence*.

#### THE SLANDER OF A PERSON IN HIS CALLING.

(Continued from page 9, ante.)

Any other rule would be likely to work hardship in individual cases, as it would take away a person's remedy for a false accusation as his branches of business multiplied.

#### ILLUSTRATIONS.

(2) I. H. was the proprietor of a building in which pugilistic exhibitions were conducted—such exhibitions being illegal. He brought an action against B. for libelling him in his vocation. *Held*, that he could not recover.<sup>1</sup> II. D. was a "canasser doctor," but was neither a regular physician or surgeon, nor licensed to practise as required by the laws of the State. M. charged him with having killed a woman, and with malpractice. *Held*, that D. could not maintain an action unless the words charged him with having committed an offence involving moral turpitude or subjecting him to an infamous punishment.<sup>2</sup> III. In an action by M., a manufacturer of bitters, against C., for charging that his bitters were made to adulterate porter, C. offered to prove that M.'s trade was illegal, and that his bitters had been condemned in the Court of Exchequer. *Held*, admissible.<sup>3</sup> C. said of D. that he was a quack, an impostor, and an unqualified person. D. was at the time unlawfully carrying on the practice of medicine. *Held*, not actionable.<sup>4</sup>

This branch of the rule rests upon the ground of other actions which are barred on account of the illegality, sometimes of the object, sometimes of the transactions out of which they grow—viz., that of

(1) *Hunt v. Bell*, 1 Bing. 1 (1822).

(2) *March v. Davidson*, 9 Palg. 581 (1842).

(3) *Maanning v. Clement*, 7 Bing. 362.

(4) *Collins v. Cornwallis*, 1 A. & E. 695 (1834).



discouraging illegal occupations by refusing the aid of the courts when invoked, even remotely, in their behalf.

ILLUSTRATIONS.

(e) I. H. said of C.: "He is a runagate rogue, and worse than a rogue." H. alleged that he used the art of buying and selling, and gained great profit thereby. The words were adjudged not actionable, for "the plaintiff does not show what was the trade he used. It might be a tinker or a pedlar, who travel up and down the country, and are rogues by the statute of Elizabeth."<sup>1</sup> II. M. was a stock-jobber, and L. said of him: "M. is a lame duck." Lord Eldon sustained a demurrer to the declaration, because it did not show to which of the two species of stock-jobbers M. belonged—that prohibited by the statutes or that allowed by law.<sup>2</sup> III. F. was the manager of an Italian opera company which gave performances at the Astor Opera House in New York during the season of 1858. He sued B., the proprietor of the *New York Herald*, for a criticism on the performances which amounted to a libel. It was held not necessary that F. should aver and prove that he was duly licensed to give operatic representations as required by statute.<sup>3</sup>

This is but a branch of the more general axiom that fraud or crime will not be presumed in the absence of any facts or circumstances to support such a presumption. Cases I. and II. are irreconcilable with this principle, and are overruled by the later American adjudications of which case III. is an example.

**RULE III.**—*Though a party engaged in an illegal occupation cannot maintain any action for slanderous words directed against him in that occupation, yet if the words concern him as an individual, or in another and legal occupation, an action will lie.*

ILLUSTRATIONS.

I. Y. was appointed by the members of a revolutionary government in Chili to negotiate a loan for it. C. charged him with saddling the government of Chili with a large debt for his own benefit. An action by Y. against C. was sustained.<sup>4</sup> II. A. was the owner of race-horses which he ran on the turf. He had entered a horse for the Derby stakes, but before the race, on account of his lameness, he was withdrawn. B. charged A. with entering the horse, and afterwards withdrawing him for the purpose of getting an unfair advantage over parties with whom he had heavy wagers on the result of the race. *Held*, that A. could recover.<sup>5</sup> III. C. was a merchant, and having entered a cargo of rum at the custom-house, delivered it to the storekeeper the next day for warehousing; paid the duties on it the following day, taking it on an order two days later. By mistake, a wrong receipt was given to him, which, on his subsequently applying to withdraw the goods, called for double duties. He thereupon presented the true facts to the storekeeper, who corrected the receipt, when he paid the ordinary duties on the goods, and was given a permit to withdraw them. This was subsequently revoked by the collector, and C. paid double

duties under protest. G., referring to the transaction, charged that C. had fraudulently induced the storekeeper to alter the receipt, and that he was devoid of commercial honour. *Held*, that an action would lie.<sup>6</sup>

**RULE IV.**—*The complainant must have carried on the occupation concerning which the slanderous words were spoken (a) at the time they were spoken; but (b) a person once shown to have followed a certain calling is presumed to continue therein until the contrary is shown, (c) provided it be a trade or calling within the meaning of Rule II.*

ILLUSTRATIONS.

(a) I. A. had been treasurer of a Masonic lodge. H. said of him, that he had robbed the lodge; but at the time of the slander the lodge had ceased to exist. *Held*, not actionable.<sup>7</sup> II. W. and J. were partners in a mercantile business. In August, 1837, they sold out to O., intending thereafter to go into business again, but did not do so. In January, 1868, O. said of them: "They have sold out; they are not worth fifty cents no the dollar." *Held*, not actionable.<sup>8</sup> III. H. was a co-partner in trade of C. After the partnership had come to an end, and H. had gone out of business, B. said of him: "He has got money out of C." *Held*, not actionable.<sup>9</sup>

(b) I. T. was a linen-draper, and M. said of him: "You are bankrupt, and not worth a groat." T. alleged in his declaration that he had exercised the art of a

(1) "If the conduct of the plaintiff," said Bigelow, C.J., "in connection with the transaction to which the publication relates was open to comment and criticism, for the reason that he participated in acts which were contrary to law, and in consequence thereof no action can be maintained for a libellous publication which relates solely to the plaintiff's connexion with such unlawful acts; nevertheless, there is a limit beyond which such immunity from liability for defamatory words cannot be carried. Unless the matters set forth in a declaration are of a nature which indicates that the plaintiff's acts and conduct in connexion therewith necessarily involved moral turpitude, or might fairly be held to affect his general character in any particular, a publication which held a party up to contempt and reproach as wanting in integrity, or as otherwise culpable in his general conduct or character, would be actionable, although it might also relate to the plaintiff's participation in an illegal transaction. A person does not necessarily forfeit all legal claim to protection against defamatory matter affecting his character, because he has been guilty of a single illegal act. Now, although the plaintiff acting on certain facts, and in conformity to what he supposed to be the law and usage in similar cases, may have committed a violation of law, or participated in the illegal act of another, it by no means follows that his general character for commercial integrity and fair dealing was thereby forfeited, or so far affected, that he could not maintain an action for a publication which held him up to the public as wanting in the qualities and characteristics of a merchant of integrity and honour. Such, we think, was the fair import of a portion of the written words which are set forth in the declaration. For the publication of these, this action can be maintained, although it may be also true that it appears from the declaration that the publication referred to the Plaintiff's conduct in a transaction which was unlawful." *Chesney v. Goodrich*, 98 Mass. 224 (1867).

(2) *Allen v. Hoffman*, 12 Pick. 100 (1837).

(3) *Windsor v. Osner*, 41 Gr. 565 (1873). There must therefore be an allegation that the plaintiff was, at the time of the slander, exercising such calling: *Dicken v. Shepherd*, 399 (1864); or something from which this presumption will arise. See post.

The old case of *Gardner v. Rapwood*, Yelv. 159 (1608), is cited by Mr. Townshend to sustain the proposition that a person who has once been a merchant, and goes out of business, still remains a merchant; and as he may at any time resume his business at his pleasure, to slander him in that business, even during that interim, is actionable per se Townshend on Slander and Libel, 291. But this plainly conflicts with all the cases under this rule, and is not the law. See especially *Harris v. Burley*, 3 N. H. 216 (1856).

(4) "In this case," said Richardson, C.J., "the words laid in the declaration are not actionable in themselves, unless the plaintiff was a trader at the time of speaking the words. In order to maintain the action, then it was necessary to prove that the plaintiff was a trader. And the question is, whether it was sufficient to prove that trading had been the business of the plaintiff previously, although he was not actually in trade at the time. In the case of *Walden v. Mitchell*, 2 Ventril, 265, the Chief Justice said that where a man had been in an office of trust, to say that he had behaved himself corruptly in it, as it imported great scandal, so it might prevent his coming into that or the like office again, and therefore was actionable. But this is denied to be law by Lord Chief Justice De Gray in *Onslow v. Horns*, 3 Wils. 188, who says that he knows of no case, wherever an action for words was grounded upon eventual damages, which may possibly happen to a man in a future situation. . . . And from the very nature of the case, what possible damage could the words laid in this action do the plaintiff as a trader, when at the time they were spoken he was not in trade? The reason why words imputing fraud in his dealings to a trader are actionable in themselves is because, from the nature of the case, the imputation must have a tendency to affect his business as a trader. But here the plaintiff had no business as a trader to be affected." *Harris v. Burley*, 3 N. H. 216 (1856).

(1) *Cochran v. Hopkins*, 2 Lev. 214 (1677).

(2) *Morris v. Langdale*, 2 Bea. & Pal. 287 (1800).

(3) *Fry v. Bennett*, 38 N. Y. 394.

(4) "I have no hesitation," said Best, C.J., "in acceding to the proposition that the transaction was illegal. No foreigner has a right to do as this plaintiff has acted without the permission of our Government, because such a transaction might have involved us in a war with Spain. . . . If that which is charged as being a libel had consisted merely of observations as to the extreme absurdity and illegality of such transactions, though such observations had been couched in the strongest terms, yet if they were expressed honestly, I should have no hesitation in saying that the action could not be maintained; but it goes beyond that, and imputes to the plaintiff the commission of a moral fraud; and for such an imputation I am of opinion that he is entitled to recover." *Yvesani v. Clement*, 9 C. & P. 223 (1828).

(5) "The objection to his right of suing from being engaged in horse-racing," said Lord Denman, C.J., "appears on the record; but in truth it is wholly groundless. For even if running a race without fraud were altogether prohibited by the law, still the party infringing its provisions would not thereby be deprived of all protection to his character in other matters connected with the transaction; but, moreover, the fact of engaging in a horse-race is not in itself an illegal act." *Groville v. Chapman*, 1 D. & M. 338 (1844).

linen-draper in the city for five years past. *Held*, sufficient.<sup>1</sup> II. M. was an attorney. S. said of him: "He took corruptly five marks of B. T., being against his own client, for putting off and delaying an assize against him;" and after a verdict "exception was taken against the declaration, for that the plaintiff did not expressly allege that at the time of speaking the words he was an attorney, but laid it that he had been an attorney. The Court held that the words would bear action."<sup>2</sup> III. C. alleged that he had used "*per magnum tempus*" the trade of buying and selling cattle, and that M. said of him: "Thou art a bankrupt." But "because he did not say that he used the trade at the time of speaking the words, but *per magnum tempus usus fuit*, which may be divers years before, and the action lies not, unless at the time of speaking the words he used the trade of buying and selling of cattle, and, therefore, it was adjudged for the defendant."<sup>3</sup> IV. J. brought an action for false charges made against him in his occupation of an attorney. A statute required that a certificate should be annually taken out by every attorney, without which they were unable to recover fees, and rendered themselves liable to a penalty if they attempted to practice. J. had not taken out his annual certificate. *Held*, that this did not affect his right to sue for a libel.<sup>4</sup>

(c) B. spoke of C. certain words imputing that on a former occasion, while the lessee of certain tolls, he had been a defaulter. At the time of the speaking he was not a lessee of tolls, but was about to again become so. *Held*, that the action would not lie.<sup>5</sup>

(To be continued.)

#### LAND COMMISSION VALUATORS.

The following letter has been published in the *Times*:—

"SIR,—Your readers are already aware of the appointment of Mr. Grey as Chief Valuator to the Court of the Land Commission, with a salary of £1,000 per annum and one guinea per diem for expenses, his appointment being made for a certain number of years—I believe seven certain. But people in England are not acquainted with a fact which is notorious, though not officially published in this country, that during the last few days overtures have been made on the part of the Government to some of the best known and most efficient valuers in Ireland for the purpose of securing their services as assistants to Mr. Grey. These gentlemen were willing, I understand, to accept those appoint-

(1) "The second error on which they insisted was that the declaration is not good, because it is not laid precisely that at the time of speaking the words the plaintiff was a linen-draper, but only for the space of five years past. To which Velvinton answered, that there is a difference between slanders of one in respect of an office and in respect of a trade or profession. For if a man says of a justice of the peace that he is a briber, &c., he must show, in an action for these words, expressly in his declaration, that he was a justice of the peace at the time of the words spoke, because they sound in slander of his person in respect of his office only, which office continues during the king's pleasure only, being by commission. But where a man is slandered in his profession or trade, there it need not precisely be alleged that at the time of the words spoken he was a lawyer, physician, merchant, or linen-draper; but it is sufficient to show that he is of such a trade, and has exercised it for several years past, without saying *ultimo* or *jam elapsi*; for a man shall not be intended to alter his trade or profession, but by presumption he continues it during his life. *Quod nulli etiam concessum per curiam. Quod nota* and the judgment was affirmed." *Tutill v. Milton*, Yelv. 159 (1610); *Garryner v. Hopwood*, id. 159 (1596); *Jordan v. Lyster*, Cro. Eliz. 275 (1592). In *Dotter v. Ford*, Cro. Eliz. 794 (1610), the question was whether, by alleging that he used the trade of a merchant *per multos annos jam retroactos*, it could be presumed that the plaintiff was a merchant at the time the words were spoken. "And the court seemed to doubt thereof, because it is not precisely alleged; for it may be he used that trade for a long time, and left it afterwards. Wherefore they would advise thereof."

(2) *Smayles v. Smith*, Brownl. 1 (1817).

(3) *Collis v. Main*, Cro. Car. 282 (1632).

(4) *Jones v. Stevens*, 11 Price, 236 (1822).

(5) Parke, B. "How does it appear that the plaintiff was going to become a renter of other tolls. *Tutill v. Milton*, Yelv. 159, goes on the presumption of the plaintiff's continuing in trade as a linen-draper. A presumption is a continuing thing but contracting to become a lessee of tolls is not a profession, and the habit of taking tolls is nothing. Nor is a taking of tolls as lessee an office." Alderson, B. "The effect of slanderous words spoken of a man in his trade is to render him less able to carry on that trade; but words spoken of a man's conduct as to a past contract do not affect or injure his future conduct of another." *Bellamy v. Burch*, 16 M. & W. 590 (1847).

ments, and their employment would have been some guarantee of a desire on the part of the Government to amend the effects of that unforeseen administration of the Land Act, which must have taken even its promoters by surprise.

"It is perfectly clear that if fair and equal justice is to be done, the highest talents in the several branches of knowledge required and the most irreproachable reputations for probity and impartiality must be secured. But talent in a valuator or lawyer means experience; experience, a practice; and no man who enjoys the last can, in his own interest, desert it unless an adequate inducement is held out to him to do so. It is because this axiom has been or is likely, according to rumour, to be disregarded that the Irish public is to be deprived of the services of these gentlemen. The terms stated to have been offered them were absolutely inadequate—the salary paltry enough, the tenure for nothing more than one year. It is absurd to imagine that any competent man will give up a position in which he is earning a steady and substantial income to serve the Government at a loss, and that for just so long a time as it will take for his practice to leave him and be permanently secured by others in his profession. The consequence will be, if Her Majesty's Government still persists in attempting to deal with the enormous interests at stake "on the cheap," that these appointments will be deliberately allowed to fall into the hands of second or third rate men, and the senior Commissioners will be deprived of that highly qualified assistance which they appear to have sought, and which the litigants in their courts have a clear right to expect.

"I therefore venture to address you, before it is too late, so as to impress upon yourself and the English public, in the name of that fair and impartial justice which has been so often invoked by the Prime Minister, the absolute necessity, too long overlooked, of endowing those appointments with no niggardly hand. The securing of the most competent experts, in the case of valuers and any other appointments under the Act, may ultimately lead in some measure to the realization of the expectations of its promoters, and so tend to the benefit of all parties concerned. Surely, if money is the sole difficulty, the present absurdly low scale of stamps on suitors in the Land Court could be readily increased.

"I am, sir, your obedient servant,

"DONOUGHMORE.

"Lincoln-place, Dublin."

#### NEW BARRISTERS.

The following gentlemen will be called to the Bar on Wednesday next:—

Michael Feely M'Grenahan, Esq., youngest son of William M'Grenahan, of Barr, Omagh, in the county of Tyrone, Esq.

Edward O'Farrell, Esq., B.A., University of Dublin, third son of Michael Richard O'Farrell, of Pembroke-road, in the County of Dublin, Esq., Barrister-at-Law.

William Charles Hennessy, Esq., only son of William M. Hennessy, of Pembroke-road, in the County of Dublin, Esq. Certificate signed by Henry Brougham Leach, Esq.

Henry Evans Austin, Esq., B.A., LL.B., University of Dublin, eldest son of Thomas Kingston Austin, of Talbot Lodge, Stillorgan, in the County of Dublin, Esq., J.P.

#### TEXT-BOOK ADDENDA.

(Continued from page 10, ante.)

*The Friendly Societies Act, 1875, s. 16, sub-s. e.*

Where the trustees of a friendly society advanced money to non-members on personal security, contrary to section 16, sub-section e of the Act, held that no claim could be enforced against the borrower in respect thereof (*In re Colman, Colman v. Colman*, 50 Law J. Rep. Chanc. 721).

*Robson on Bankruptcy (4th Edition), 555.*

Sections 6 and 11 of the Bankruptcy Act, 1869, are distinct: and an adjudication, founded on an act of bankruptcy committed within six months of the presentation of the petition, will be upheld, though the act of bankruptcy was committed more than twelve months before the adjudication (*In re Grepe, ex parte Grepe*, 50 Law J. Rep. Chanc. 723).

(To be continued.)

**APPOINTMENTS AND PROMOTIONS.**

NOTE BENE.—Information intended for publication under the above heading should reach us not later than Friday morning in each week, as publication is otherwise delayed.

Bergeant Hemphill, Q.C., has been elected a Bencher of the Hon. Society of the King's Inns.

Mr. John Given, M.P., solicitor, has been appointed to the Commission of the Peace for the county Tyrone.

Mr. Virgil Power, Barrister-at-Law, has been appointed Crown Prosecutor, Northern Supreme Court, Queensland.

**BOOKS RECEIVED.**

*Hints on Advocacy. Conduct of Cases, Civil and Criminal; Classes of Witnesses, and Suggestions for Cross-Examining them, &c., &c.* By RICHARD HARRIS, Barrister-at-Law, of the Middle Temple and Midland Circuit. Sixth Edition (further revised and enlarged). London: Stevens & Sons, 119, Chancery-lane, Law Publishers and Booksellers. 1882.

*A Concise Exposition of the New Conveyancing Act: with Practical Hints.* By ARTHUR UNDERHILL, LL.D., of Lincoln's Inn, Barrister-at-Law, author of "A Concise Treatise on the Law of Trusts and Trustees," &c. London: Richard Amer, Law Publisher, Bookseller and Binder, Lincoln's Inn-gate, Carey-street, W.C. 1882.

**LAW STUDENT'S JOURNAL.**

THE INCORPORATED LAW SOCIETY OF IRELAND.

PRELIMINARY EXAMINATION FOR APPRENTICES TO SOLICITORS,

Pursuant to the Attorneys and Solicitors Act (Ireland), 1866.

DUBLIN, HILARY SITTINGS, 1882.

[Every answer is to be accompanied by reasons concisely stated.]

**ENGLISH HISTORY.**

1. What was the occasion and what the history of the impost called "Danegelt"?
2. From what does Bury St. Edmund's derive its name?
3. Who was heir to the throne on the death of William II., and how did William's successor seek to establish his authority?
4. Give some account of the English Conquest of Wales.
5. The House of Stuart is said to have been peculiarly unfortunate. Mention some of the circumstances which justify this statement.
6. Name some of the great men who flourished in the reign of Queen Anne.
7. Give some account of the struggle in which the battle of Sherriemuir took place.
8. State what you know respecting the Drapiers letters.
9. Give some account of the campaign which resulted in the conquest of Canada.
10. What were the principal provisions of the treaty which ended the seven years war?

11. Mention some of the battles, with their results, which took place in the American war of independence.
12. For what events in the history of Ireland was the year 1782 remarkable.

**GEOGRAPHY.**

1. In what direction and in what proportion do the degrees of longitude become shorter? How is longitude found at sea?
2. What are the the "trade winds"? Explain how they are caused, and where and in what direction they blow.
3. Give a description of the most remarkable desert in the world. Where is the great Salt Desert? Why so called?
4. Describe the great Equatorial Current. Why do the Polar Currents, as they approach the Equatorial parts of the earth, take a westerly direction?
5. What are the chief towns of the following counties—Warwickshire, Suffolk, Hampshire, Essex, Devonshire?
6. Name in order the principal headlands between Belfast Lough and Waterford Harbour.
7. Over what countries and islands does the equator pass?
8. What are the great rivers of Asia and North America which discharge their waters into the Arctic Ocean?
9. What are the boundaries and the principal lakes of Switzerland?
10. Where are Cape Finisterre, Grahamstown, Canton, the Nahe, Gulf of Lepante, Harleur, Medina, Quito?

**ARITHMETIC.**

1. What is the price of 277 cwt. 2 qrs. 25 lbs. at £3 8s. 3d. per cwt.?
2. Reduce 7s. 9d. to the decimal of a pound.
3. If 3½ shares in a mine cost £11 5s. what will 26½ shares cost?
4. If the price of stock be 90 per cent. how much can be purchased for £3,112 10s.
5. A bankrupt owes £1,078—his assets are £370 18s. 5½d., what will be the dividend on £78 10s.
6. What is the interest of £1,928 15s. for two years and eight months at 3½ per cent. per annum?

**BOOKKEEPING.**

1. What are the general rules for balancing the ledger? Illustrate by an example how a ledger is posted and how balanced?
2. What are "real" accounts?
3. What is a "trial balance"?
4. What entry is made in the journal in the following cases:—
  - a. When cash is received in payment of a personal account?
  - b. When a bill of exchange is paid?
5. Open a cash account, enter the following transactions, and balance the account:

	£	s.	d.
Jan. 2nd, Cash in hand, . . .	254	8	7
" 3rd, Paid H. Brown's account, . . .	27	6	5
" " Paid for goods, . . .	45	4	8
" " Received of John Brown, . . .	18	6	5
" 4th, Paid my acceptance of H. Smith's draft, . . .	78	9	2
" " R. Jones paid to my account at bank, . . .	59	18	11
" " Paid Thomas Smith, . . .	48	8	9
" " John White paid me, . . .	35	4	8

The Council of Legal Education of the Inns of Court, London, have awarded a studentship of 200 guineas to Mr. W. Baxter, of the Inner Temple, and of King's Inns, Dublin, in Jurisprudence, Roman Law, and International Law.

COURT PAPERS.  
HIGH COURT OF JUSTICE.  
CHANCERY DIVISION.—LAND JUDGES.

*List of Petitions presented to the Land Judges in the month of December, 1881.*

DATE	TITLE OF MATTER	OBJECT OF PETITION	COUNTY	PROFIT RENT	SOLICITOR
Dec. 1	Henry George Henderson, owner; <i>National Assurance Company of Ireland,</i> <i>petitioners</i>	Sale	Co. Dublin	£ s. d. In owner's possession	<i>H. S. Watson</i>
" "	William Thompson and others, owners and <i>petitioners</i>	Sale	Town of Belfast	592 10 0	<i>Charles Higginson</i>
" "	Charles B. Jennings, owner; <i>John E. Chapman, petitioner</i>	Sale	Mayo	Not stated	<i>Meade and Colles</i>
" "	James Neylan, owner; <i>Sylvester Neylan and another, petitioners</i>	Receiver and sale	Co. Clare	Not stated	<i>O'Callaghan Mullins</i>
" 5	James Martin, owner; <i>Bank of Ireland, petitioners</i>	Sale	City and Co. Dublin	Not stated	<i>E. H. DeMoleyns</i>
" "	James W. B. Murray and others, owners; <i>Thomas Carey, petitioner</i>	Sale	Longford and Donegal	92 11 7 58 14 6	<i>Thomas McClelland</i>
" "	Frederick R. M. Reade, owner and peti- <i>tioner</i>	Receiver and sale	Co. Kilkenny	1,250 16 0	<i>James and P. Roe</i>
" 6	Assignees Rev. Joseph Bradshaw, owners; <i>Isaac Andrews, petitioner</i>	Sale and receiver	Down	Not stated	<i>O. C. Nelson</i>
" "	John A. Browne, owner; <i>Ellen Watson, petitioner</i>	Sale and receiver	Galway	807 15 0	<i>G. D. Fottrell and Son</i>
" 7	Margaret H. H. Bride, owner; <i>Annie P. Carr, petitioner</i>	Sale	King's Co.	758 15 8	<i>Meade and Colles</i>
" "	James O'Donnell, owner; <i>Andrew Jameson, petitioner</i>	Sale	Mayo	5 5 0 Valuation	<i>Hamilton and Craig</i>
" 8	Robert L. Hunt, owner; <i>Edward J. Hawker and another, petitioner</i>	Receiver and sale	Co. Tipperary	458 18 8	<i>Whitney and Armstrong</i>
" "	Administratrix of Edward Wyles, owner; <i>Royal Bank of Ireland, petitioners</i>	Sale	City Dublin	282 8 0	<i>Orpen, Sons, and Sweeney</i>
" 13	George C. Deane, owner; <i>Thomas Curtis and others, petitioners</i>	Receiver and sale	City Dublin	49 0 0 Griffith's Valuation	<i>William Neilson and Son</i>
" 16	Nathaniel Maguire, owner; <i>Eldred T. Pottinger and another, petitioners</i>	Receiver and sale	Co. Cavan	232 10 7	<i>William Roche and Sons</i>
" "	James Lancaster Bell, owner and petitioner	Sale	Armagh	150 10 8	<i>Robert Macredy</i>
" 19	Ellen Mary Daroy, owner; <i>Patriotic Assurance Company of Ireland,</i> <i>petitioners</i>	Receiver and sale	County Roscommon	65 15 0 Griffith's Valuation	<i>Cathcart and Hemphill</i>
" "	Alfred Beamiah and others, owners and <i>petitioners</i>	Sale	Cork	Not stated	<i>Babington and Babington</i>
" "	John C. Graham and others, owners; <i>Robert M'Mullin, petitioner</i>	Sale	Town of Belfast	Not stated	<i>Alexander M'Mullen</i>
" "	Alfred Beamiah and others, owners and <i>petitioners</i>	Sale	Co. Cork	1,496 1 9	<i>Babington and Babington</i>
" "	Trustee of Anne Levinge, owner and peti- <i>tioner</i>	Sale	Meath	865 12 6	<i>Arthur Ellis</i>
" "	William Crosbie Harvey, owner and peti- <i>tioner</i>	Sale	Wexford	777 0 0	<i>Samuel Boswell</i>
" 20	Trustee of Robert M'Quiston, owner and <i>petitioner</i>	Sale	Belfast	187 10 0	<i>Henry Milford</i>
" "	J. W. Rexworthy Brooks, owner; <i>Frederick Twining, petitioner</i>	Sale	Mayo	8,000 0 0 Estimated value	<i>Thomas Crozier and Son</i>
" "	John Toole, owner; <i>Frederick A. Barlow and another, petitioners</i>	Sale	Dublin	Not stated	<i>Barlow and Orr</i>
" 22	Henry Arthur Bell, owner; <i>Maria Bell, petitioner</i>	Sale	Antrim	Not stated	<i>H. and W. Seeds</i>
" "	Assignees of Charles Hodson, owners; <i>Edward Roper and others, petitioners</i>	Receiver and sale	County Roscommon & City Dublin	460 5 6	<i>Alexander D. Kennedy</i>
" 28	Robert Alison Tennent and another, owners; <i>John M'Canoe, petitioner</i>	Sale	County Tyrone	316 15 8	<i>Henry Milford</i>
" "	Henry James MacFarlane, owner; <i>George H. Lyster, petitioner</i>	Receiver and sale	Co. Monaghan	Not stated	<i>George H. Lyster</i>
" 24	Richard Hart, owner; <i>John Mulholland and others, petitioners</i>	Sale and receiver	Limerick	1,087 5 5	<i>S. S. and E. Reeves</i>

LAND JUDGES.

Sittings for next Week so far as same are appointed.  
Before the Rt. Hon. JUDGE FLANAGAN.

MONDAY.

IN CHAMBER.—W. J. Totten, allocata.—Trustees R. D. King, do.—M. Donnelly, ditto.  
IN COURT.—M. Horgan, objection.—C. H. Morton, receiver.—G. A. Nicolla, do.—T. H. Crofts, as to absolute order.

Before EXAMINER (Mr. Kennedy).

C. Mc'Gowan, vouch.

TUESDAY.

IN COURT.—J. Robinson, final schedule.—W. O'Brien, do.—M. J. Weld, do.—W. Mathers, do.—P. Callan, do.—D. Craig, do.—A. H. Goff, do.—R. L. Watson, discharge receiver.

WEDNESDAY.

IN COURT.—W. Butler, as to title.—E. G. Holt, payment.

FRIDAY.

SALES IN COURT.

R. KAMES, . . . . 1 lot.  
Trustees J. M. WILLIAMS, . . . . 8 lots.

Before EXAMINER (Mr. Kennedy).

J. Elliott, rental.

Before the Rt. Hon. JUDGE ORMSBY.

MONDAY.

IN CHAMBER.—W. Hackett, explain delay.  
IN COURT.—J. Murphy, carriage.—L. O. Weir, receiver.—W. Petrie, to amend order.—F. O'Neill, final schedule.—J. Morgan, adjourned motion.

Before EXAMINER (Mr. M'Donnell).

M. R. Dalway, rental.

TUESDAY.

SALES IN COURT.

T. R. . . . . 1 lot.  
Trustees Reilly, judgment.—E. Davis, ditto.

WEDNESDAY.

Before EXAMINER (Mr. M'Donnell).

A. Carolin, rental.—A. Mulholland, vouch.—M. Hall, rental.—J. O'Donnell, vouch.—C. Taylor, for deeds.

THURSDAY.

IN COURT.—Rev. W. Delany, judgment.—De Montmorency, adjourned motion.—T. J. Nolan, ditto.

FRIDAY.

Before EXAMINER (Mr. M'Donnell).

D. P. M'Carthy, rental.

COURT OF BANKRUPTCY.

ADJUDICATIONS IN BANKRUPTCY.

The dates of Adjudications are first given, the Sittings follow in Italics.  
Cooper, Elizabeth, of Nos. 40 and 41, Kildare-street, in the city Dublin, manufacturer of and dealer in bog oak ornaments, widow. December 28, 1881; *Friday, January 27, and Tuesday, February 14.* John L. and W. Scallan, solrs.  
Connor, James, of Maghera, in the county of Londonderry, flax dealer. January 8; *Friday, January 27, and Tuesday, February 14.* John L. and W. Scallan, solrs.  
Goodman, John, of Warrenpoint, in the county of Down, draper. December 23, 1881; *Friday, January 27, and Tuesday, February 14.* Armstrong & Johnston, solrs.  
Hardie, David, of Laraghbeg, Ballyglunin, in the county of Galway, farmer. January 8; *Friday, January 27, and Tuesday, February 14.* Richard Davoren, solr.  
O'Donnell, James, of Ballaghaderen, in the county of Mayo, shopkeeper. January 8; *Friday, January 2., and Tuesday, February 14.* John Mathews, solr.  
Taylor, Andrew, of Craigaodes and Tyroneil, St. Johnstown, in the county of Donegal, farmer. December 24, 1881; *Friday, January 27, and Tuesday, February 14.* John L. and W. Scallan, solrs.

DUBLIN STOCK AND SHARE LIST.

DESCRIPTION OF STOCK	JANUARY						
	Sat. 7	Mon. 9	Tues. 10	Wed. 11	Thur. 12	Fri. 13	
*Paid Government.							
— 3 p c Consols ..	100½	—	—	99½	100½	—	
— 3 p c Reduced ..	—	—	—	—	—	—	
— New 3 p c Stock ..	99½	99½	99½	99½	99½	99½	
INDIA STOCK.							
— 4 p c Oct. '88 } Trouble at } Bk. of Irel	—	104	104½	—	103½	—	
BANKS.							
100 Bank of Ireland ..	311½	311½	—	311½	311½	—	
25 Hibernian Banking Co. ..	41½	—	—	—	—	—	
20 London and County ..	—	—	—	—	—	—	
20 London and Westminster ..	—	—	—	—	—	—	
10 Do. New ..	—	—	—	—	—	—	
31 Munster Bank (Limited) ..	7½	7½	—	7½	—	7½	
30 National Bank ..	—	—	23½	23½	23½	—	
25 Provincial Bank ..	—	—	—	—	56	—	
20 Do. do. New 1867 ..	—	—	—	—	—	—	
10 Royal Bank ..	—	—	—	—	—	—	
25 Standard of B. & A., Ltd ..	—	—	—	—	—	—	
15½ Union of London ..	—	—	—	—	—	—	
Steam.							
50 British & Irish ..	—	—	—	—	—	—	
100 City of Dublin ..	—	—	—	—	—	—	
50 Dublin & Liverpool Steam Ship Building Co.	—	—	—	—	—	—	
10 Dundalk (Limited) ..	—	—	—	—	—	—	
Miscellaneous.							
10 Alliance & Dub. Cons.' Gas Do.	—	—	—	—	—	—	
4 Arnott & Co., Limited ..	—	—	—	6½	—	—	
6 Dub. (8th) City Market Co.	—	—	—	5½	—	—	
8 Goulding & Co., Limited ..	—	—	—	—	—	8½	
4 National Discount, Ire., Ltd ..	—	—	—	—	1½	4½	
Tramways.							
10 Belfast Trams ..	—	—	—	—	—	—	
10 Dublin United Tramways ..	—	—	—	11½	11	11	
10 Leeds Trams ..	—	—	—	—	—	—	
10 L'pl Un'd'd Tram & Bus Ltd ..	—	—	—	—	11½	—	
Railways.							
10 Athlery and Tuam ..	—	—	—	—	—	—	
50 Belfast and County Down ..	—	—	—	—	—	—	
50 Belfast and Northern Cos.	—	—	—	—	—	—	
100 Great Northern (Ireland) ..	—	—	—	—	—	—	
100 Gt. Southern and Western ..	—	—	—	—	107½	—	
100 Midland Gt. Western ..	—	—	—	—	81½	81	
50 Waterford and Limerick ..	—	—	—	—	—	—	
Railway Preference.							
100 Belfast & Nth'n Cos., 4 p c Do., 4½ p c ..	—	—	109½	—	—	—	
100 Gt. Nth'n (Ireland) g'd 4 p c Do., 3½ p c ..	—	—	—	—	—	—	
100 Gt. South'n & West'n 4 p c Mid. Great Western, 4 p c ..	—	—	—	—	102½	—	
100 Do., 4 p c ..	—	—	—	—	—	—	
100 Watfd. & Limerick, 4 p c Do., 4½ p c ..	—	—	102	—	—	—	
Debenture Stocks.							
— Belfast & Co. Down, 4 p c ..	—	—	102½	—	—	—	
— Belfast & Nth'n Cos., 4 p c ..	—	—	—	—	—	—	
— Cork and Bandon, 4 p c ..	—	—	—	—	—	—	
— Do., 4½ p c ..	—	—	—	—	—	—	
— Dublin & Wicklow 4 p c ..	—	—	—	—	—	—	
— Do., 4½ p c ..	—	—	—	—	—	—	
— Gt. Northern (Ireland) 4 p c Do., 4½ p c ..	—	109	109	—	—	—	
— Gt. North'n & West'n 4½ p c — Gt. South'n & West'n, 4 p c ..	—	—	—	—	109	—	
— L'derry & Enniskillen 5 p c — Midland Gt. West'n, 4 p c ..	—	—	106½	—	—	—	
— Do., 4½ p c ..	—	108½	—	—	—	—	
Miscellaneous Debent.							
Belfast Office Deb., £97 6s 2d, 4 p c 94	—	—	—	—	—	—	
City Deb. of £97 6s 2d, 4 p c ..	—	—	—	—	92½	—	
Dub. Port & Docks, 4½ p c ..	—	—	—	—	—	—	
(1888) Rathm. & Pem.M. Drain, 4 p c Do. Defd. of £97 6s 2d 4 p c ..	—	—	—	—	—	100½	

\* Shares not fully paid up are given in Italics. † x d  
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## BIRTHS, MARRIAGES. AND DEATHS.

## MARRIAGES.

**O'MEARA and PURCELL**—December 8, 1881, at the Jesuits' Church, Calcutta, Thomas Francis O'Meara, Esq., C.E., Resident Engineer, Oude and Bohilcond Railway, Chandoud, North West Provinces, to Katie, youngest daughter of the late Bryan Purcell, Esq., solicitor, Kilrush, County Clara.

**PARKER and HARRICKS**—January 5, at Trinity Church, Rathmines, by the Rev. J. G. Darleton, Alexander Montgomery, fifth son of the late John Parker, Esq., solicitor, of Fitzwilliam-street, to Henrietta, fifth daughter of the late William Brabazon Harricks, Esq., of Onagh, Powerscourt, County Wicklow.

## DEATHS.

**BEATTY**—January 10, at Herbert-place, after a long illness, Edward Frederick son of the late Frederick Beatty, Esq., barrister-at-law, formerly of Lake Park, County Wicklow, aged 37 years.

**BRADSHAW**—January 6, at Morehampton-road, Donnybrook, John Bradshaw, Esq., solicitor, aged 85 years.

**TOBIAS**—January 8, at Strand-road, Sandymount, after a very brief illness, James eldest son of Matthew Tobias, Esq., solicitor, and grandson of Rev. James Tobias, aged 74 years.

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# THE IRISH LAW TIMES AND SOLICITORS' JOURNAL.

VOL. XVI.

SATURDAY, JANUARY 21, 1882.

No. 782

## REPORTS OF DECISIONS UNDER LAND LAW ACT, 1881.

WHILE there are no "official" reports of the decisions of the Land Commission, it must be acknowledged that no detriment has been suffered in consequence. The public have been exceptionally well catered for by the press, and the legal profession has found the IRISH LAW TIMES, as usual, adequate to the emergency. In the last two months of the old year alone, no less than half a hundred decisions under the Land Law Act, 1881, appeared in our pages; and the IRISH LAW TIMES REPORTS for the present year, of which the first issue appears to-day, will be found to supply additional exemplification of the abundant energy devoted by private enterprise to the undertaking of placing permanent and authentic records of those decisions within the command of all.

In the preface to his able work on the Irish Land Acts, Mr. Assistant Commissioner MacDevitt observes: "As he proceeded with his task, the author felt how much the profession and the people of Ireland generally owe the IRISH LAW TIMES for the reports of the decisions on the Land Act of 1870." And writing to us in 1876, Mr. Assistant Commissioner MacCarthy remarked: "Your Journal is the best thing we support, and its learning, spirit, and refinement are creditable to us all." How many such generous and spontaneous testimonies, including that of Mr. Justice O'Hagan, in *Spaight v. Ir. Ch. Temp. Com.*, might we not accumulate if needs were (see note to page 1 of the Reports in present issue).

But, it is more to our present purpose to state that, while thus encouraged by such high approbation, new and yet more strenuous efforts shall be made to merit it still more in the current year, and in particular the decisions under the recent Land Law Act shall command our unceasing vigilance. For the privilege of having our reports of such cases judicially authenticated and revised, we can, indeed, render no better return than a grateful and diligent attention to the exigencies of the Bench and the profession. By issuing a larger number of reports when necessary from week to week, and producing them with the greatest possible promptitude, combined with fulness and accuracy, those exigencies can alone be supplied; and we trust that our efforts in this direction will meet with encouragement from those who were present to Miss Fanny Parnell's poetic imagination, when she described the Act of 1881 as passed

"To gorge the suckers of the lawyer swarm."

With respect to the land cases in our present issue, it is hardly necessary to point out the grave practical

importance of *Adams v. Dunseath*. *Smith v. Colley* decides a question on which the Sub-Commissions are already at variance—a question affecting the rights of many thousand tenants to avail themselves of the beneficial operation of the Act, without first evicting many thousands of sub-tenants; while the decision on another question would go to show that in a large number of cases, where the Sub-Commissioners have themselves made independent valuations, they have acted *ultra vires*. And we should think that the cases on town-parks will be studied with interest, in connexion with the three papers we recently published on the subject; while, in seeking to reconcile *McGowan v. Clements* especially with *Dunne v. Clarke* (15 Ir. L. T. Rep. 123), some difficulty will doubtless be experienced, which will hardly be much alleviated by construing the very words of the judgments delivered as if they were statutes of the realm—a process to which the learned and acute Assistant-Commissioners seem to have been driven in applying or differentiating the previous adjudications.

## RETENTION OF JUDGMENT-DEBTS BY TOWN AGENT FOR DEBTS DUE FROM COUNTRY SOLICITORS.

WE had recently occasion (15 Ir. L. T. 465, 474) to discuss the nature and effect of the solicitor's right to a charging lien on moneys of his client, and it was not without a feeling of satisfaction, very far removed from mere idle vanity, that we subsequently found our commentary reproduced in several legal serials, even in Australia and America. A different question now presents itself as to the nature of the lien of a country solicitor's town agent, and his powers as to retaining judgment-debts and costs, recovered and coming into their hands—a question which has just been the subject of appeal in England, in the case of *Ex parte Edwards*, reported in the *Law Times* of the 14th inst.

The facts were as follows:—A country solicitor having instructed his town agent to sue for a debt, a writ was issued by the town agent, and judgment was recovered; the country solicitor then instructed his agent to issue a writ of *fi. fa.* for the amount of the judgment-debt and costs, which he did, and subsequently received same, from the sheriff, as being the solicitor on the record. At the time of his receiving the money, the country solicitor was indebted to him for costs incurred as his town agent (including the sum of £8.10s. 9d., the amount of agency charges in the action), in a sum equal to or exceeding the amount so received. The country solicitor had no lien on the money recovered as against his client, who owed him nothing. But the town agent claimed to retain the whole amount received, as against the debt due to him from the country solicitor. The plaintiff, accordingly, applied to the Queen's Bench Division for an order directing him to pay over the money to her.

On the question coming before Field and Manisty, J.J. (7 Q. B. D. 155, 45 L. T. N. S. 211, 50 L. J. Q. B. 541) the matter was referred to the Master, who

reported, *inter alia*, as follows:—"I find the general practice between country solicitors and their town agents to be that when the writ of execution is issued by the town agent the town agent receives the proceeds of such execution on behalf of the country solicitor; that the town agent is not entitled to retain any debt or any part of a debt so recovered; that he has a lien upon and is entitled to retain the costs so recovered for any costs that may be owing to him by the country solicitor on his general agency account; that the London agent is entitled to the same lien as and no greater lien than the country solicitor, and therefore if the country solicitor could not retain the debt recovered as aforesaid against his client, so neither can the London agent retain it." But, even supposing this to be indisputably the practice, there remained the further question, whether or not the Court, in the exercise of its summary jurisdiction over its own officers, could make an order to compel the town agent of the country solicitor to pay over the money to the plaintiff, with whom, it was contended, he was in no privity. There being no privity of contract between them, an action would not lie: *Robbins v. Fennell*, 11 Q. B. 248, 17 L. J. Q. B. 17; *Robbins v. Heath*, 11 Q. B. 257; and neither, it was contended, should summary jurisdiction be exercised in the absence of fraud: see *Re Lord*, 2 Scott, 131. But, if this were the state of the law, certainly it is not too much to say that the most disastrous consequences to suitors might result, as, for instance, where a country solicitor was hopelessly insolvent, and a debt of large amount due to his client had been reserved by his town agent. But, fortunately, in *Robbins v. Heath* (*ubi supra*) the application, which had been made to the summary jurisdiction of the Court, was granted, on the ground that the retention of the money by the town agents, for the purpose of paying a debt due to themselves by the country solicitor, was an improper application of it; and a like application was found to have been granted in *Hanley v. Cassam*, 10 L. T. Rep. O. S. 189, 11 Jur. 1088, where there was no suggestion of fraud. Both in reason and according to precedent, therefore, there was abundant ground for declining to be hampered by the rule as to privity that would have been fatal to an action at law; and, as Lord Tenterden said in *Ex parte Bayley*, *Re Harper*, 9 B. & C. 691, the jurisdiction of the Court over solicitors "ought to be exercised according to law and conscience, and not by any technical rules." "Of course," said Manisty, J., "if the country solicitor had any claim upon the debt, by way of lien or otherwise, it would be protected; but, in the absence of any such claim, it seems to us that it would be contrary to equity and conscience to permit the London agent to pay himself out of the client's money any amount of debt which may be due to him by the country solicitor."

The application having been granted, accordingly, might well have been treated as finally disposed of; but, especially considering that *Re Lord* (*ubi supra*), which had not been cited, might still have been cited hereafter as against the authority of the present case, it is satisfactory that it was taken to the Court of Appeal (45 L. T. N. S. 578). "The town agent cannot keep the money which belongs to the plaintiff, unless the country solicitor has a lien as against the plaintiff to a greater amount than the sum which the town agent has received, but when there is no such claim the town agent is bound to hand over the money he has received," said Jessel, M.R.; and he added, "where the jurisdiction is to be exercised it must be a case in which the solicitor has acted as such, and must raise a question with regard to his professional conduct, but there need not be any fraud or misconduct." "The case of *Re Lord*," said Brett, L.J., "was relied

upon in support of the appellant's contention. There the Court said, 'Unless a case of gross fraud be made out, and it is made to appear that some precise and beneficial object is attainable by a motion like the present, it will not be entertained.' The whole meaning of that is that where the jurisdiction is prayed on the ground of alleged fraud, the Court will not act unless the fraud is clearly made out"—an ingenious gloss. "But in a case like this," he added, "*where the solicitor clearly has notice because he brings the action for Miss Edwards*, I think it is clear that he ought to be ordered to pay it over." Cotton, L.J., said, "I agree with Brett, L.J., that there is no imputation of fraud, but I think we have jurisdiction to interfere though no fraud is shown. *Here the writ in the action was issued by Mr. Johnson* (the town agent), as appears from the endorsement, so he must have known that the money when recovered belonged to Miss Edwards, and under such circumstances it is the duty of the Court to interfere against its own officer. If the country solicitor had a lien as against the client, that would make a difference, but this is not the case here."

The passages we have italicised appear to qualify the decision as to the power of applying to the summary jurisdiction of the court in an important respect, and we have thought it right to give them the greater emphasis as no allusion, whether as to the special facts in point or their consequence, appears in the headnote; while, as to the question with respect to the town agent's right of lien and its extent, the practice found to have existed must more or less specialise the case, and should be taken into consideration when collating the ordinary statements made in the books: see *Marshall on Costs*, 460; *Stokes on Liens of Attorneys*, 179, *et seq.*; and as to a town agent's lien as against his principal, see the recent Canadian case of *Re A. B. & C.*, 14 Can. L. J. N. S. 142, and cases there cited.

#### THE HOUSEHOLDER'S FRANCHISE—I.

BARON FITZGERALD has long enjoyed the reputation amongst the *élite* of the Irish Bar of being the most logical of our Judges. In those degenerate and shallow times, if a cynic were asked what was the mental quality most conspicuous for its absence, we think he would unhesitatingly reply, the *vis logica*. Indeed to the lazy or ignorant close reasoning would sometimes appear, forsooth, mere pedantry. To entertain such an opinion, however, is merely to confound casuistry with logic in its high and true sense. Logic, in its high and true sense, is not only in accordance with common sense—the *sensus communis* of mankind—but is at one with those immutable principles and unerring lines which have guided and led the human mind to truth. Not for the first time has Baron Fitzgerald been the sole dissident from many judicial voices, and not for the first time has that single voice pronounced what has been subsequently proved by the highest tribunals to be the absolute law of the land.

It is, therefore, with extreme pleasure that we now place on record our belief that the arguments and the reasoning on which Baron Fitzgerald's judgment was based as to the meaning of the term "lodger," as used in the Representation of the People (Ireland) Act, 1868, arising in the well-known Irish case of *Edwards v. Lang*, 3 Ir. L. T. 740, 1 R. & L. A. Ap. 34, although differing from the opinions of the other four Judges sitting, was entirely correct, and in harmony with the unanimous judgment of the Court of Appeal in England, presided over by Sir George Jessel, in the three important cases of *Bradly v. Baylis*, *Morfee v. Norris*, and *Kirby v. Biffen*, decided on appeal on the 21st of

December last, and fully reported in the *Times* of the 22nd of the same month.

For the sake of clearness, we think it advisable to place before our readers forthwith the principal questions of fact and of law involved in the decisions, and also to point out the difference existing at present in the language of the English and Irish Statutes

And, first, as to the questions of fact and of law: Take the case of a house, the apartments in which are not structurally severed—that is, are not separated by any outer doors, such as in the Inns of Court, the Commercial Buildings, Trinity College, and the like, but are merely entered by ordinary doors, such as exist in any ordinary house.

Taking such an ordinary house, let us deal with it under the following conditions:—

Firstly, view a case where the landlord of such a house resides in part of it, and lets the rest of it to various persons—letting each person a separate room, but not letting the passages or staircases, through and over which he merely gives them the right of ingress and egress. Is the person living in a separate room in such a house, under such conditions, a lodger or the occupier of a house? It may now be considered as law that he is a lodger. Nor would it seem that the possession of a latch-key would make any difference; nor the absence of the landlord, if his servants remained in the house; nor the execution of repairs by the landlord.

Secondly, view a case where the landlord does not reside, nor do any of his servants reside in such a house, but where the landlord has let all the rooms in the house to different persons, not, however, expressly demising the staircases and passages, but merely leaving to the tenants the right of ingress and egress by implication. In such a case what would be the legal status of each separate occupier of a room? The law is now finally settled that such a person, living under such conditions, is the occupier of a house and not a lodger, and, as such occupier, would be entitled to be separately rated (in Ireland) and thus acquire the franchise as a householder. We shall see that, by force of recent statutes in England, a separate rating would be unnecessary, and also that by virtue of section 5 of Dilke's Act—41 & 42 Vict., c. 26—"Dwelling-house" is specially defined to "include any part of a house, where that part is separately occupied as a dwelling."

In our next article, in continuation of this subject, we shall attempt to show that by implication "dwelling-house" in Ireland may mean part of a house, although of course the occupier of such part must get rated in order to acquire the franchise.

#### THE KING'S INNS LIBRARIANSHIP.

THE office of Librarian to the Hon. Society of the King's Inns having become vacant, it is stated that no less than 114 candidates presented themselves for the post. For our own part, we do not know the name of a single one of the applicants except the gentleman who has been appointed, but we presume it may be taken as correct that there was such a considerable competition. Notwithstanding such an amount of rivalry, Mr. James MacIvor has succeeded in outstripping all his opponents; and, in our opinion, no better selection could possibly be made. Unquestionably, he was a highly distinguished student of the University of Dublin. On entering, from Portora Royal School, in 1862, he took the second place, the first having been taken by Mr. Thomas H. Carson, of the English Bar, the learned editor of the last edition of Shelford's Real Property Statutes. And during his course, we find that he obtained quite a profusion of collegiate honours—amongst others, First Royal Scholarship (1862); Classical Scholarship (1864);

First Rank Honors in Classics; a Senior Moderatorship and Gold Medal in Logics and Ethics (1866); besides prizes in Arabic (1865), and Civil Law (1866), &c. He possesses a knowledge of six languages besides his own; and though not pretending to be a second Magliabechi, his qualifications for the position of Librarian, even in a repository of such extensive resources as the King's Inns, seem to be exceptionally excellent, while his refined literary tastes will make his task a "labour of love." Mr. MacIvor was called to the bar in Hilary Term, 1871, and joined the North-West Circuit. And we need hardly say that it gives us extreme satisfaction to find that the Benchers have not found it necessary to advance any but a member of the profession to the post of Librarian. It is no sinecure, but doubtless some leisure hours its present able occupant will enjoy, and we trust that he may be yet induced to occupy them by some literary undertaking; for as Isaac D'Israeli has it, "To pass much of our time amid such vast resources, that man must indeed be not more animated than a leaden Mercury, who does not aspire to make some small addition to his library, were it only by a critical catalogue."

#### THE CONVEYANCING AND LAW OF PROPERTY ACT, 1881. WHERE IT SHOULD BE ADOPTED, AND WHERE EXCLUDED.—I.

(From the *Law Times*.)

In one sense there is no risk in adopting this Act in its entirety, and in excluding none of its provisions, for, by sect. 68 of this Act, a solicitor is expressly freed from any responsibility for taking this course. But although the Act may remove the pecuniary risk, it will not absolve him from the moral responsibility to the client which every upright lawyer will feel. We propose to offer some suggestions as to where the Act may already safely be adopted. In a few years, or even months, when the Act has been tried, and experience has shown the extent of its operations, practitioners will be justified in relying on its provisions more fully. Our remarks, therefore, are limited to the present time and present circumstances. Before using the Act, sect. 2 must be carefully read, as a large number of words are employed in an extended sense. The next section (sect. 3) relates to the first subject with which we propose to deal.

#### Conditions of Sale.

This section applies in part to all kinds of property (sect. 2, i.), but we propose to discuss now its effect on sales of land (sect. 2, ii.). As conditions of sale are generally drawn by vendors, and as this section is strongly in their favour, they will of course not exclude the Act, but, at the same time, they cannot safely rely on it so as to offer land for sale by open contract without any previous investigation or preparation; though often the investigation may show that special conditions as to title and evidence of title will not now be required, and in most cases the Act will materially reduce their length. In many instances it will be found that conditions which are necessary are not provided by the Act. It should be noticed also that, in many cases, the conditions implied by the Act only take effect "unless the contrary appears," so that, if it is desired absolutely to exclude evidence conflicting with the presumption in favour of the vendor, a special condition must be framed. Thus, the production of the receipt for the last rent due is, by sect. 8 (4), *prima facie* evidence, on sale of a leasehold, that the covenants of the lease have been performed. If it is intended that the receipt should be "conclusive" evidence, a suitable condition must be inserted.

A number of important matters are not fully provided by the Act or the general law:—(1.) In auction sales, as to highest bidder, reserve price, and advance on, and retraction of, biddings. For form, see Davidson, vol. i. 4th edit. 607; Wolstenholme & Turner, 110. (2.) As to payment of deposit: (David. i. 607; Wolst. & T. 110.)

(3.) Time for delivery of abstract, and for completion. (4.) As to possession, apportionment of rents, and outgoing, payment of interest until completion, and protecting vendor from payment of compensation during delay: (David. i. 613; Wolst. & T. 111.) (5.) As to time for delivery of requisitions, and waiver if not duly delivered: (David. i. 614; Wolst. & T. 111.) (6.) Power to vendor to retire from sale if objection is insisted upon: (David. i. 614; Wolst. & T. 111.) (7.) In case of default on part of purchaser, forfeiture of deposit, power to vendor to resell, and charge defaulting purchaser with loss: (David. i. 615; Wolst. & T. 115.) (8.) Preparation of conveyance at purchaser's expense: (David. i. 612; Wolst. & T. 112.) (9.) In case of sale by trustees, or mortgages, that they will only covenant that they respectively have not incumbered, and as to non-concurrence of beneficiaries: (David. i. 612, 650; Wolst. & T. 123; see Dart, 545.) (10.) As to payment for timber. (David. i. 612; Wolst. & T. 113.) (11.) As to identity of parcels to be sold with those comprised in the deeds, and as to statutory declaration at purchaser's expense being conclusive evidence: (David. i. 610, 625, 678-683; Wolst. & T. 120.) (12.) As to errors not vacating sale, and as to compensation or (as the case may be) non-compensation for errors: (David. i. 611; Wolst. & T. 121.) (13.) In leaseholds, where necessary, making sale subject to landlord's consent, and as to payment of consent fee: (David. i. 626; Wolst. & T. 119.) (14.) That sale is subject to all easements and chief rents affecting the property: (David. i. 611; 646; Wolst. & T. 118.) (15.) As to delivery, or retention, of title deeds, and as to production: (David. i. 618, 621, 718; Wolst. & T. 122.) See, however, Vendor and Purchaser Act, 1874, and compare remarks in David, vol. i. 589.

It will be found also that not unfrequently conditions, more expressly referring to title and evidence of title, should be made. And (1) as to the commencement of title. In most cases forty years' title will be sufficient (V. & P. Act, 1874, s. 1), though not always—*e.g.*, in the case of an advowson (Dart, 293). When the title commences with a will, a condition may be required to relieve the vendor from proving the seisin of the testator. See Dart, 89 n. 296; Wolst. & T. 2; and for forms, see David. i. 667; Wolst. & T. 115. (2) As to dower and free bench: (David. i. 609; Wolst. & T. 118.) (3) Throwing expense of stamping unstamped or insufficiently stamped documents more than twenty years old on the purchaser: (Wolst. & T. 118.) (4) So also, in Middlesex and Yorkshire, as to unregistered documents twenty years old; and providing that non-registration shall not be an objection to the title: (Wolst. & T. 118; see also V. & P. Act, 1874.) (5) As to property allotted under Inclosure Acts: (David. i. 675, 676; Wolst. & T. 117.) (6) As to getting in outstanding terms: (David. i. 717; Wolst. & T. 116.)

Of course, in this article, we have not attempted to give a complete list of all the conditions which it may be necessary to make, but we give the above as suggesting the more obvious points where the Act may need supplementing. Our view is, that law societies and firms should not throw away their "common form" conditions, and depend solely on the Act; but on the other hand, they should shorten their conditions by omitting those portions for which legislation provides satisfactorily, and that, until this reformation is effected, they should, as vendors, use their old conditions, just as usual, without attempting to exclude the Act.

#### Conveyances.

By sect. 53 of the Act a considerable saving in length may often be obtained by describing a deed as supplemental to a previous one, instead of reciting the previous one. But it must be remembered that the later deed will give the reader "notice" of the earlier one, without necessarily affording any information as to its contents, which circumstances may, when the earlier one cannot be found or produced, lead to great inconvenience. It may, however, be conveniently adopted in such cases as a further charge to the same mortgagee, and then the supplemental deed may be annexed to the

previous mortgage: (Wolst. & T. 76; see for form Ib. 168). It may also be conveniently used for appointments of new trustees: (for form see Wolst. & T. 199). There is evidently a difficulty in using it where the deeds cannot be kept together.

There seems no object in avoiding the use of the word "grant," which is declared unnecessary by sect. 49, but it is not impossible that this section may revive the old prejudices of mortgagees and incumbrancers against that word: (Davidson, i. 74). It is of no consequence except where it implies covenants as in bargains and sales of hereditaments in Yorkshire enrolled, and conveyances under the Lands Clauses Consolidation Act, 1845, by the promoters of the undertaking: (Dart, 568).

By sect. 51 the words "in fee simple," "in tail," &c., may be used instead of the usual words of limitation. These new technical words will sometimes be found more convenient in lengthy settlements than the old. When they are used they should be used in the grant as well as in the habendum. The example of omission from the grant, set by the forms in the schedule, should not be followed. Probably in all ordinary cases, except in the statutory forms, the old technical words will continue in use.

As a rule the "general words" may now safely be omitted (sect. 6). It should be noticed that "mines and minerals" are not mentioned in the general words implied by sect. 6. They should therefore be inserted in those cases where they would have been mentioned before this Act. And any other easement which would have had special mention before the Act, and not have been left to the general words, should still be especially mentioned. This section applies to leases and all kinds of conveyances (sect. 2 v.). It will sometimes be needful expressly to exclude it. See s. 6 (5).

The "all estate" clause (sect. 63) may also safely be omitted. In cases where formerly there would have been express mention of all other the part, share, or estate of a conveying party, such express mention should still be made.

With regard to covenants (sect. 7), it should be carefully noticed that the Act will not imply covenants unless the phraseology required by the Act is used. The party must not only convey as beneficial owner, &c., but he must be expressed to convey as such. In drawing an ordinary conveyance on sale of freeholds, from one person to another person, there is no reason why the purchaser should not use the short expressions required by the statute, and then the covenants for title can be safely omitted. In voluntary conveyances, and in settlements, whatever covenants are desired should be inserted, except in the case of settlements where the limited covenant of Form (E.) meets the objects of the parties. A voluntary settlor, desiring to give vendor's covenants, should not convey as beneficial owner, and thus attempt to incorporate Form (A.), though probably a settlor with a marriage consideration might do so (sect. 2, v.). From (sect. 2, v.) it seems that these covenants will be implied in conveyances under powers, if the appointor is expressed to appoint as beneficial owner (Wolst. & T. 23); but, as doubts have been raised as to this (Clerke & Brett, 46), it will be well at present to insert usual covenants. In the case of conveyances by joint tenants, either the usual covenants should be inserted (for form, see David., vol. ii. part. 1, 4th edit., 359; Dart, 552), or some adaptation will be required (for form, see Wolst. & T. 157). So also, in conveyance by tenant for life and remainderman (see Wolst. & T. 157, and compare David. ii., 317), Messrs. Clerke and Brett think that the implied covenants cannot, in the case of conveyance in fee simple by tenant for life and remainderman in tail, extend to the fee simple (page 46). See David. ii. 253.

In case of conveyance of wife's estate, the usual covenants should be expressed, as the Act does not seem clear: (see Clerke & Brett, 47, and compare Dart, 548, and David. ii. 243, 459). For forms employing the Act, see Wolst. & T. 156. In conveyance by trustees under power of sale, with consent or by direction of tenant for life, either usual covenants should be ex-

pressed, or if the Act is relied on, and the trustees are expressed to convey by direction of tenant for life, the latter's covenant should be limited. For forms see *Wolst. & T.* 156, and compare *Dart*, 548, and *David* ii. 262. In a conveyance by tenants in common the statutory covenants may safely be used, if the operative part is properly framed, so that each only conveys his own share: (see *David*, ii. 260). So, in conveyances to joint tenants, and tenants in common, the statutory covenants may be used: (see *David*, vol. 1, 117, 118; vol. ii. 421, note).

So far we have considered rather whether a purchaser should employ the covenants of sect. 7. It is a different question whether the vendor should accept them. They slightly enlarge his liability, by precluding all question as to what covenants run with the land, and as to his direct liability to all persons in whom the estate or interest of the implied covenantee is, for the whole or any part thereof, from time to time vested: (sect. 7 (6), and see *Wolst. & T.* 81). The implied covenant creates a liability in respect of "omissions" of the vendor, his ancestors, and testators, a form which, though not unusual, is not universally adopted. Still, the risk of accepting the covenants is very small, and if the vendor refuses them it is not unlikely he will, if the matter is pressed, be made to pay costs (see sect. 66), so that, in an ordinary case, a refusal cannot be advised. In the above remarks on covenants, we have dealt chiefly with conveyances on sale of freeholds. We propose to discuss mortgages, and settlements, and assurances of leaseholds and copyholds, subsequently.

(To be continued.)

#### LARCENY OF DEAD GAME AND THE DOCTRINE OF "POSSESSION."

If a man standing on his own land shoots a pheasant which falls dead upon such land, and some other person thereupon picks it up, and dishonestly appropriates it, has that other person committed larceny? One would imagine that the question might be answered without much difficulty, having regard to all the discussion which has been devoted to the subject of property in animals *feræ naturæ*. On consideration, however, it would appear that the point is not altogether free from doubt. In *Reg. v. Roe*, 11 Cox C. C. 554, the facts were as follows:—A party was shooting on the lands of A. One of the party wounded a partridge, which, after flying some distance, tumbled and fell in a field also belonging to A. This field adjoined a canal, and a boatman who was standing on the canal bank went on to the field, picked up the bird and appropriated it to his own use. He was tried on a charge of stealing a dead partridge of the goods and chattels of A., but acquitted upon the finding of the jury that the bird was not dead, though in a dying state, when it was picked up. The importance of the case, however, arises from a *dictum* by Willes, J., who, in the course of the argument, asked of the counsel for the prosecution, "Suppose the bird had been shot by a third person, and the keeper picked it up and appropriated it to his own use, would that have been larceny or embezzlement?" and intimated that he thought the right view was that it would be embezzlement, and "if so, the bird had not been reduced into possession by the master." In his judgment the same learned judge said, "I wish to state for myself that I am not satisfied that if the partridge had been dead when picked up by the prisoner it would have been sufficiently reduced into possession so as to sustain the charge of larceny." It seems, therefore, that if we are to rely upon this *dictum* we must answer our question in the negative, on the ground that the pheasant though falling dead upon the sportsman's own land would not be *ipso facto* "reduced into possession."

Now we venture to think, in spite of the renowned learning of the late Willes, J., that he was here, for once, at fault, and that if such a case should ever come before the court for argument, it will be so decided, and we have come to that opinion with the less diffidence because it is a mere *dictum*, which we dispute, and one

upon which the decision of the judges in *Reg. v. Roe*, was in no wise founded.

Now let us examine the position. According to Willes, J., if the keeper had picked up the bird and appropriated it to his own use, he would have been guilty of embezzlement. The meaning of this is clear, viz., that the partridge when it fell dead would have been in nobody's possession, but that the keeper on picking it up, would have taken possession of it for and on account of his master, and thus by converting it to his own use would have been guilty of embezzlement. Had the bird been already in the possession of the master then it is plain that the keeper would only have had the custody of it, and would by appropriating it have been guilty of common larceny.

It appears then that the keeper would, under the circumstances of the case, have been guilty of that species of larceny called embezzlement. But why should not a stranger who picked up and dishonestly appropriated the bird be held guilty of simple larceny? The answer is that the bird, although *ex hypothesi* dead, and upon the shooter's own land, has not been reduced (we may surely omit the superfluous adverb "sufficiently"! ) into the possession of the landowner. But "theft may be committed by taking and carrying away without the consent of the owner, anything which is not in the possession of the thief at the time when the offence is committed, whether it is in the possession of any other person or not." *Stephen's Digest of the Criminal Law*, Article 296. It is true that (as the same learned author remarks) "property in no one's possession is said to be constructively in the possession of its owner," the object of this fiction being "to satisfy a supposed necessity for showing that the taking in theft must be a taking out of some one's possession (*Digest C. L. note* (1) p. 208), but as he goes on to show in his admirable note on the confused and highly technical doctrine of "possession in relation to law of larceny" (*Digest C. L. note* xvii. to article 281), "this way of stating the matter makes the assertion that the taking in larceny must be a taking out of the owner's possession insignificant;" for, "if from the nature of the case, every taking must be a taking out of the possession of the owner, it is impossible to see how the takings which do, differ from those which do not, constitute larceny. All men being mortal, it is useless to define an Englishman as a mortal man living in England." Now here is the case of a partridge which, being dead, is capable of being stolen, and how can it be maintained that it is not in the possession, if not "actual" at any rate "constructive," (to make use of the old legal jargon) of the owner of the land upon which it lies? The example given by Stephen, J., in illustration of his proposition is as follows:—"A trespasser, finds a dead rabbit lying in a wood, of which he is not the owner, and converts it. This is theft," the reference being to the celebrated case of *Blades v. Higgs*, 11 H. L. C. 621; 34 L. J. C. L. 286, of which we shall have more to say presently. Further, in the note to article xvii., which we have already quoted, allusion is made to the fact that in order not to violate the supposed rule that the taking in larceny must be a taking out of the possession of the owner, a man is said to be "in possession of a watch which he has dropped into the Thames, of sheep which have been stolen from his field and driven to a distance by the thief, of a dead grouse which, having been wounded at a distance from his moor, has managed to reach it and die there without his knowledge or that of any other person." *Digest C. L. p.* 879.

Now in what way does the dead partridge in the case supposed differ from the dead rabbit and the dead grouse cited in the above examples? If these are in the possession of the owner and capable of being stolen, although he may have no knowledge that they lie dead upon his land, then *à fortiori* should we say that a partridge killed by the landowner or one of his friends shooting on his land, and lying upon that land, is in his possession, and capable of being stolen by anyone who should pick it up and dishonestly appropriate it. It is true of course that game is subject to the exception

which says that "if the thing taken and carried away is for the first time rendered capable of being stolen by the act of taking and carrying away, and if the taking and carrying away is one continuous act, such taking and carrying away is not theft," so that the poacher or other wrongdoer who kills game and carries it away, or who returns after an interval to carry it away, never having abandoned the intention of so doing, is not guilty of larceny (see especially *R v. Townley*, L. R. 1 C. C. R. 315, on this doctrine), but it is quite obvious that this exception does not apply to the case under consideration, where the landowner himself, or his friend acting by his authority, kills the game, which somebody else thereupon picks up and misappropriates. In this latter case, according to the *dictum* in *Reg. v. Roe*, the game is not in the possession of the owner so as to support a charge of larceny. What more then is necessary? Must it first be picked up by the owner, or his friend, or his servant; or peradventure, would it be held "sufficiently" reduced into possession if kicked by one of them in passing?

Let us examine the matter in the light of *Blades v. Higgs*. In that case it was decided that game found, killed, and taken upon the land of A. by a trespasser becomes the property of A. as much as if it had been killed and taken by A. himself, or by his servant acting by his authority, so that A. would be entitled to bring an action against the trespasser for the conversion of his property. In his judgment the then Lord Chancellor thus laid down the law:—"When it is said by writers on the common law of England that there is a qualified or special right of property in game, that is in animals *feræ naturæ* which are fit for the food of man, whilst they continue in their wild state, I apprehend that the word "property" can mean no more than the exclusive right to catch, kill, and appropriate such animals, which is sometimes called by the law a *reduction into possession*. . . . Property *ratione soli* is the common law right which every owner of land has to kill and take all such animals *feræ naturæ* as may from time to time be found on his land, and as soon as this right is exercised, the animal so killed or caught becomes the absolute property of the owner of the soil."

Adverting to the case of *Londale v. Rigg*, 26 L. J. Ex. 196, his lordship remarked "the case when condensed amounts to this, that grouse were shot and taken away by a trespasser upon and from the land of the plaintiff, who brought trover for the dead grouse; and it was clearly held by the judges of the Court of Exchequer, and afterwards by all the judges in the Court of Error, that the grouse, as soon as they were killed and fell upon the land of the plaintiff, became and were his absolute property, in respect of his ownership of the soil. This conclusion would not be affected, even though it be true that an indictment at common law will not lie against the trespasser for killing and carrying away of game, if it be one continuous act, inasmuch as the ownership of the game is considered as incident to the property in the land. But this consequence is the result of the peculiarity in the law of larceny, which holds that the act of severing and taking away things attached to the freehold is not a felonious taking—a result which does not affect the existence of the rights of the property."

On the authority of this case, therefore, and of the view taken by Stephen, J., in his *Digest* (a work for which those students of the criminal law who are attached to clear a logical statement cannot be too grateful), we venture to lay down the following propositions:—(1) When game is killed and falls upon the land of A. it becomes at once his absolute property. (2) This is so, whether A. has himself killed the game, or whether it has been killed by others, trespassers or otherwise. (3) This is so, whether the fact that the game is dead and lying upon his land is or is not within A.'s knowledge. (4) Under such circumstances the game is at "once reduced into the possession" of A., and he may bring an action against anyone who converts it. (5) Under such circumstances any person who picks up and dishonestly appropriates the game is guilty of

larceny, except in cases where the killing and carrying away are one continuous act, as defined in *Reg. v. Townley*. We may add that this exception applies, of course, not only to trespassers in pursuit of game, but to other wrongdoers, as, for instance, a gamekeeper having authority to be on the land, and possibly to kill game, but not for his own use, who dishonestly converts game so killed by him (*Reg. v. Read*, L. R. 3 Q. B. D. 131; *Reg. v. Petoh*, 14 Cox C. C. 116), or (a stronger case) the servant of the receiver, a dealer in game, who, with knowledge of the circumstances, comes and takes away game killed by poachers and designedly left for him upon the land (per Blackburn, J., in *Reg. v. Townley*). In the case of the gamekeeper it is clear (since the taking and carrying away are *ex hypothesi* one continuous act), that he has neither been guilty of larceny, nor of embezzlement, which is only a species of larceny (*Reg. v. Read*). If, however, the game had been killed by his master or any other person not acting in concert with the keeper, then, since the game becomes the absolute property of the landowner, and "in his possession" so soon as it falls dead upon his land, the keeper, if he dishonestly appropriated it, would, we apprehend, be guilty of larceny.

We submit, therefore, that the *dictum* in *Reg. v. Roe* does not correctly state the law on the subject, but we must mention that it appears to have been acted upon by Lord Coleridge upon the trial of two prisoners at the Leicester assizes in January, 1879. The newspaper report, however, of that case which we noticed at the time, see *Justice of the Peace*, February 22nd, 1879, is not altogether satisfactory, neither does the law appear to have been argued in the light of the cases so admirably expounded by Stephen, J. Moreover, the *dictum* of Willes, J., seems to have been cited as though it had been a judgment, which we have shown it was not, and in any case we venture to think, for the reasons above stated, that it ought no longer to be quoted with approval.—*Justice of the Peace*.

#### TESTAMENTARY DIRECTIONS TO EMPLOY CERTAIN SOLICITORS.

It sometimes happens that a clause directing the employment of a certain solicitor, usually the one who drew the will, by the trustees in their management of the trust property, is inserted in a will, and attempts have from time to time been made to interpret such a direction as establishing a valid trust in the solicitor's favour. The most recent case of this sort was *Foster v. Ealey*, before Mr. Justice Chitty, where the plaintiff, a solicitor, had been named by a testator in his will as the person who should have the management and carrying out of the provisions of the will. The trustees, however, had become dissatisfied with him, and demanded that he should deliver up all documents in his possession relating to the estate, and he thereupon moved for an injunction to restrain them from employing any other solicitor than himself, on the ground that this would be directly opposed to the testator's intention. A clause of a similar nature had been discussed in the previous cases of *Shaw v. Lawless* (5 Cl. & F. 129), where the House of Lords reversed the decision of Sir Edward Sugden, who had held that a valid trust was constituted by such a direction, and *Finden v. Stephens* (2 Ph. 142), where the language employed was very similar to that in the present case. In *Finden v. Stephens* Lord Chancellor Cottenham points out that, "if the nomination of the plaintiff amounted to a trust, it gave to him the character of a *cestui que trust* to the amount of the percentage on the receipts in respect of which he would be entitled to those rights of interference and control which belong to all *cestui que trust*," and in such a case he would, of course, have a right even to commence an action for administration as a beneficiary under the will. Besides this, one of the essential characteristics of a trust is that its subject must be certain, and it would be difficult to show that the employment of a solicitor could be of this nature. On these grounds Mr. Justice Chitty had no difficulty

in coming to the conclusion that no trust had been constituted, and that therefore no ground of action had been shown.—*Law Times*.

LORD O'HAGAN.

On the 17th inst. the Right Hon. Lord O'Hagan was installed a Knight Companion of the most illustrious Order of St. Patrick, and was invested with the insignia of the Order.

THE INCORPORATED LAW SOCIETY.

At the first meeting of the Council of the Incorporated Law Society of Solicitors after the death of the late George Beamish, held at the Solicitors' Buildings, Four Courts, on the 11th instant, the following resolution was passed unanimously:—"That this Council desire to place upon their minutes an expression of the deep regret which they feel at the death of the late George Beamish, for many years a member of the Council, and held so highly in esteem and regard by every member of it."

SOLICITORS' FEES.

A meeting of a committee of judges was held on Saturday last for the purpose of considering the scale of solicitors' fees under the Judicature Act, as to which representations had been made by the Incorporated Law Society. Their lordships were engaged for a considerable time deliberating on the subject, and it is understood that some alterations have been made in favour of the solicitors, while effecting what is considered a fair and reasonable arrangement. The recommendations will be submitted for the approval of the judges of the several divisions at an early date.

CALLS TO THE OUTER BAR.

On the 18th inst. the following gentlemen were called to the Bar:—

Michael Feely M'Grenehan, Esq., youngest son of William M'Grenehan, of Barr, Omagh, in the county of Tyrone, Esq.

Edward O'Farrell, Esq., B.A., University of Dublin, third son of Michael Richard O'Farrell, of Pembroke-road, in the County of Dublin, Esq., Barrister-at-law.

William Charles Hennessy, Esq., only son of William M. Hennessy, of Pembroke-road, in the County of Dublin, Esq.

Henry Evans Austin, Esq., B.A., LL.B., University of Dublin, eldest son of Thomas Kingston Austin, of Talbot Lodge, Stillorgan, in the County of Dublin, Esq., J.P.

TEXT-BOOK ADDENDA.

(Continued from page 23, ante.)

*Jarman on Wills*, 11.

*In re Brown's Settlement* affirmed (*ante* p. 385); *In re Brown's Settlement*; *In re Brown's Will* (50 Law J. Rep. Chanc. 725)—C. A.

*Seton on Decrees* (4th Edition), 1,578.

Order made on Summons in an administration action, directing payment to sequestrators, appointed by the Probate and Divorce Division, of income of a beneficiary under the trust being administered (*In re Slade, Slade v. Hulme*, 50 Law J. Rep. Chanc. 729).

*Davidsons' Precedents in Conveyancing*, vol. v. part ii. 20.

General words in a deed of partition carry a right of way over one part of the property which is necessary to the enjoyment of another (*Barkshire v. Grubb*, 50 Law J. Rep. Chanc. 731).

*Seton on Decrees* (4th Edition), 490.

The testator directed £15,000 to be raised out of his estate, and held for the benefit of A. for life with remainder over, and, until investment, interest at 4½ per cent. was to be paid to her. The trustees placed the money on deposit, and at the end of three months purchased debenture stocks, on which five months' interest had already accrued. Held, that A. was entitled to the entire half-yearly dividend, and that the Apportionment Act, 1870, had no application (*In re Clarke, Barker v. Perowne*, 50 Law J. Rep. 733).

*Order XIX., Rule 23.*

*Wilson on the Judicature Acts* (2nd Edition), 201.

*Lely and Foulkes on the Judicature Acts* (3rd Edition), 170.

The defence of the Statute of Frauds cannot be raised by demurrer (*Fletcher v. Fletcher*, 50 Law J. Rep. Chanc. 735).

*Buckley on the Companies Acts* (3rd Edition), 185.

An application in a winding-up under supervision by mortgagees for leave to distrain, under a power in their mortgage, for interest due before the winding-up was refused (*In re Brown, Bailey & Dixon* (Limited), *ex parte Roberts & Wright*, 50 Law J. Rep. Chanc. 738; *Eames v. Hacon*, 50 Law J. Rep. Chanc. 740).

*Williams on Bankruptcy*, 340.

*Robson on Bankruptcy* (4th Edition), 779.

A registrar, upon an application to register resolutions, is not bound, even in the absence of all opposition to register them, when he sees that they must have been passed in the interest of the debtor (*In re Williams, ex parte Williams*, 50 Law J. Rep. Chanc. 741).

(To be continued.)

REVIEWS.

*Hints on Advocacy. Conduct of Cases, Civil and Criminal; Classes of Witnesses, and Suggestions for Cross-Examining them, &c., &c.* By RICHARD HARRIS, Barrister-at-Law, of the Middle Temple and Midland Circuit. Sixth Edition (further revised and enlarged). London: Stevens & Sons, 119, Chancery-lane, Law Publishers and Booksellers. 1882.

"The following observations, which I think well worthy the student's perusal, are from the IRISH LAW TIMES AND SOLICITORS' JOURNAL, of Saturday, January 10th, 1880, in its review of the second edition of this work." So writes Mr. Richard Harris in the 6th edition of his work, now before us; and thereupon he proceeds to publish, as a "Postscript," the review in question, which occupies nearly seven pages of close print in his volume. We cannot but appreciate such a compliment; nor is it for us to question the discernment of Mr. Harris, but certainly it seems to be corroborated by the circumstance that in *Quillets of the Law* (Boston, Mass., March, 1881) we also find the entire review extracted, in order "to show how interesting a book notice may be made." Though so flattered, we are at the same time somewhat intimidated by honors so exceptional; and on the present occasion we shall endeavour to make our remarks as brief and uninteresting as possible, lest Mr. Harris in some subsequent edition should, like the author of *Sartor Resartus*, be tempted to include the testimonies of his critics in an appendix.

Indeed, for all practical purposes, after having already on former occasions so fully explained the nature of this book, and so carefully estimated its merits, it ought to suffice to say that in little over two years it has run to a sixth edition. We notice, however, various alterations of a decidedly advantageous character, and in particular a considerable addition made to the important part of the work in which cross-examination is treated. The work really deserves a still larger measure of success, nor do we think that any reader will be disappointed in it.

## CORRESPONDENCE.

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

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

## VALUATION OF LANDS.

TO THE EDITOR OF THE IRISH LAW TIMES.

SIR,—It occurs to me to suggest that in most of the cases before the Sub-Commissioners it would be highly useful and expedient to take the evidence of the Valuers on the *locus in quo* itself, "weather permitting." It seems to me that the advantages of such a course are too obvious to need particularising. But I should be glad to elicit the opinions of others on the subject, and also as to whether it could be legally done in the absence of consent.

Yours truly,

LEX.

## BOOKS RECEIVED.

*The Incorporated Law Society Calendar for the year 1882.*  
London: Published by Authority of the Council of the Incorporated Law Society. 1882.

## APPOINTMENTS AND PROMOTIONS.

**NOTA BENE.**—Information intended for publication under the above heading should reach us not later than Friday morning in each week, as publication is otherwise delayed.

Mr. James MacIvor, A.B., Barrister-at-law, has been appointed Librarian to the Hon. Society of King's Inns.

Mr. Michael Leahy, Solicitor, has been appointed to the Commission of the Peace for the County Limerick.

Mr. James J. Connolly of Dunshaughlin has been elected Clerk of Petty Sessions for Dunshaughlin and Dunboyne.

## LAW STUDENT'S JOURNAL.

## KING'S INNS.

HILARY TERM, 1882.

On the 19th inst. the Benchers of the Honourable Society of King's Inns admitted the following Gentlemen as Students of Law:—

Walter Joseph Synnott, Student, T.C.D., fourth son of Thomas Synnott, of Inismore, Glenageary, in the County of Dublin, Esq., J.P.

Fred Henry Houston, Student, T.C.D., second son of Thomas Houston, of Belfast in the County of Antrim, Esq.

Joseph M'Grath, B.A., University of London, eldest son of Pierce M'Grath, of Bagnalstown, in the County of Carlow, Merchant.

Richard Donovan, LL.B., University of Cambridge, eldest son of Richard Donovan, of Ballymore, in the County of Wexford, Esq., J.P., D.L.

George Reade MacMullen, B.A., LL.B., University of Dublin, third son of John Franklin MacMullen, of Melbourne, Australia, Esq.

Arthur Southwell Fitzgerald, Student, T.C.D., fourth son of the Right Hon. John David Fitzgerald, of Merrion Square, in the City of Dublin.

Goodwin Young, LL.B., University of Cambridge, eldest son of Henry L. Young, of Lee Mount, in the County of Cork, Esq., J.P.

## COURT PAPERS.

## LAND JUDGES.

Sittings for next Week so far as same are appointed.  
Before the Rt. Hon. JUDGE FLANAGAN.

## MONDAY.

IN CHAMBER.—W. J. Totten, payment.  
IN COURT.—E. Walsh, examine witness.

## TUESDAY.

IN COURT.—A. G. Bagot, final schedule.  
Before EXAMINER (Mr. Kennedy).  
M. Horgan, rental.

## WEDNESDAY.

IN COURT.—E. M. Darcy, receiver.

## THURSDAY.

IN COURT.—T. Murphy, as to title.  
Before EXAMINER (Mr. Kennedy).  
H. W. Faussett, reference.

## FRIDAY.

## SALES IN COURT.

TRUSTEES COBBETT, - - - 6 lots.  
County Court Appeals.—Christie v. Farr—Harty v. Corridan—Mangan v. Joy.—Murdock v. Murdock.

Before the Rt. Hon. JUDGE ORMSBY.

## MONDAY.

IN COURT.—R. T. Lahey, to transfer funds.—R. J. O'Sullivan, objection.—W. Petrie, adjourned motion.—L. O. Weir, do.—J. Murphy, do.—De Montmorency, do.

## WEDNESDAY.

Before EXAMINER (Mr. M'Donnell).  
A. Mulholland, vouch.

## THURSDAY.

IN CHAMBER.—E. Dease, to explain delay.

## COURT OF BANKRUPTCY.

## ADJUDICATIONS IN BANKRUPTCY.

*The dates of Adjudications are first given, the Sittings follow in Italics.*  
Atkinson, John, of 192, Great Britain-street, in the city of Dublin, house painter and decorator. January 10; *Tuesday, January 31, and Friday, February 17. C. J. Fay and Co., solrs.*  
Christian, James R., of 12, Donegall-square, South, Belfast, in the county of Antrim, linen merchant, trading as "J. R. Christian and Company." January 10; *Tuesday, January 31, and Friday, February 17. M'Lean, Boyle, and M'Lean, and Bennett Thompson, solrs.*  
Johnston, James, of Market-street, in the city of Armagh, grocer and spirit merchant. January 11; *Friday, February 3, and Friday, February 17. J. E. Peel and H. F. Leachman, solrs.*

Du-VAL, that atrociously amusing delineator of Sergeant Bazza, is again among us. He has been to the wars, like the Minstrel Roy, but has returned unscathed by the perils of the Transvaal, though he was for five months beleaguered in Pretoria. Whether he made its inhabitants merry with his "Odds and Ends" we know not, but well might he succeed in doing so even if the bullets were whistling—at a little distance. From the *Cape Times* we learn that he "turned the occasion to material advantage as editor of *The News of the Camp*, a tri-weekly little journal, published under canvas in the military lines defending Pretoria. Mr. Du-Val appears also to have seen some active service in the fighting around the town, and has been several times honourably mentioned in official despatches of Lieut.-Col. Gildea, the Commandant of the garrison, for special services in these various actions, having his horse shot under him on the 12th February at the Red House Kraal."



**DUBLIN STOCK AND SHARE LIST.**

DESCRIPTION OF STOCK	JANUARY					
	Sat. 14	Mon. 16	Tues. 17	Wed. 18	Thur. 19	Fri. 20
<b>Government.</b>						
3 p c Consols ..	100½	100	—	—	—	100½
— 3 p c Reduced ..	—	—	—	—	—	—
— New 3 p c Stock ..	—	99½	99½	99½	99½	99½
<b>INDIA STOCK.</b>						
4 p c Oct. 1888 } Trs'ble. at ..	104	103½	—	103½	104	104
3½ p c Jan. 1881 } Bk. of Irel. ..	—	—	101½	101½	—	—
<b>Banks.</b>						
100 Bank of Ireland ..	—	311	311½	311½	311½	311½
25 <i>Hibernian Banking Co.</i> ..	—	—	41½	—	—	—
20 <i>London and County</i> ..	—	—	—	—	—	—
20 <i>London and Westminster</i> ..	—	72½	—	72½	—	—
10 <i>Do. New</i> ..	—	—	—	—	—	—
3½ <i>Manchester Bank (Limited)</i> ..	—	7½	7½	7½	—	7½
30 <i>National Bank</i> ..	—	—	—	23½	—	—
— <i>Nat. Prov. of England, lim.</i> ..	—	40½	—	—	—	—
25 <i>Provincial Bank</i> ..	56	55½	—	—	—	—
20 <i>Do. do. New 1867</i> ..	—	—	—	24	—	—
10 <i>Royal Bank</i> ..	—	—	—	—	—	30
25 <i>Standard of B. S. A., W'd</i> ..	—	—	—	—	—	—
15½ <i>Union of London</i> ..	—	—	—	—	—	—
<b>Steam.</b>						
50 <i>British &amp; Irish</i> ..	—	—	—	—	—	—
100 <i>City of Dublin</i> ..	114	—	—	—	—	—
50 <i>Dublin &amp; Liverpool Steam</i> ..	—	—	—	—	—	—
<i>Ship Buiding Co.</i> ..	59	—	—	—	—	—
10 <i>Dundalk (Limited)</i> ..	—	—	—	—	—	—
<b>Miscellaneous.</b>						
10 <i>Alliance &amp; Dub. Cons.' Gas</i> ..	—	15½	—	—	—	—
— <i>Do. do.</i> ..	—	—	—	—	—	—
4 <i>Arnott &amp; Co., Limited</i> ..	—	—	—	—	—	—
6 <i>Dub. (8th) City Market Co.</i> ..	—	—	—	—	—	—
8 <i>Goulding &amp; Co., Limited</i> ..	—	—	—	—	—	—
4 <i>National Discount, Irc., Ltd</i> ..	—	—	—	—	—	—
9-4-7 <i>Patriotic Assurance</i> ..	—	—	—	10½	10½	—
<b>Tramways.</b>						
10 <i>Belfast Trams</i> ..	—	—	—	—	—	—
10 <i>Dublin United Tramways</i> ..	—	11	—	—	—	11
10 <i>Leeds Trams</i> ..	—	—	—	—	—	—
10 <i>L'pl Un'rd Tram &amp; Bus l'pl</i> ..	—	—	—	—	—	—
10 <i>Nth Metr. Tramway, Lond.</i> ..	—	—	16½	16½	—	—
<b>Railways.</b>						
10 <i>Athens and Tunis</i> ..	—	—	—	—	—	—
50 <i>Belfast and County Down</i> ..	—	—	—	39	—	—
50 <i>Belfast and Northern Co.</i> ..	—	—	—	—	—	—
100 <i>Great Northern (Ireland)</i> ..	—	—	—	—	—	—
100 <i>Gt. Southern and Western</i> ..	—	108½	—	—	—	109½
100 <i>Midland Gt. Western</i> ..	80	80½	—	—	—	—
50 <i>Waterford and Limerick</i> ..	—	—	—	—	—	—
<b>Railway Preference.</b>						
100 <i>Belfast &amp; Nth'n Cos., 4 p c</i> ..	—	—	—	—	—	—
100 <i>Do., 4½ p c</i> ..	—	—	—	—	—	—
100 <i>Gt. Nth'n (Ireland) g't'd 4 p c</i> ..	—	—	—	—	—	—
100 <i>Do., 3½ p c</i> ..	—	—	—	—	—	—
100 <i>Gt. South'n &amp; West'n 4 p c</i> ..	—	—	—	—	—	—
<b>Debenture Stocks.</b>						
— <i>Belfast &amp; Co. Down, 4 p c</i> ..	—	—	—	—	102½	—
— <i>Belfast &amp; Nth'n Cos., 4 p c</i> ..	—	—	105	—	—	—
— <i>Cork and Bandon, 4 p c</i> ..	—	—	—	—	—	—
— <i>Do., 4½ p c</i> ..	—	—	—	—	—	—
— <i>Dublin &amp; Wicklow 4 p c</i> ..	—	—	—	—	—	—
— <i>Do., 4½ p c</i> ..	—	—	—	—	—	—
— <i>Gt. Northern (Ireland) 4 p c</i> ..	—	—	—	—	—	109
— <i>Do., 4½ p c</i> ..	—	—	—	—	—	—
— <i>Gt. North'n &amp; West'n 4½ p c</i> ..	—	—	—	—	—	—
— <i>Gt. South'n &amp; West'n, 4 p c</i> ..	—	—	—	—	—	—
— <i>L'derry &amp; Enniskillen 5 p c</i> ..	—	—	109	—	—	—
— <i>Midland &amp; West'n, 4 p c</i> ..	—	—	—	—	—	—
— <i>Do., 4½ p c</i> ..	—	—	—	—	—	—
— <i>Waterfd &amp; Limerick 4 p c</i> ..	—	—	—	—	—	—
<b>Miscellaneous Debent.</b>						
<i>Belfast Office Deb., £92 6s 2d, 4 p c</i> ..	—	—	—	—	—	—
<i>City Deb. of £92 6s 2d, 4 p c</i> ..	—	92½	92½	—	—	—
<i>Dub. Port &amp; Docks, 4½ p c</i> ..	—	—	—	—	—	—
<i>(1938) Rathm. &amp; Fem. M. Drain, 4 p c</i> ..	—	—	—	—	—	—
<i>Do. Dehd. of £92 6s 2d 4 p c</i> ..	—	—	—	—	—	—

\* Shares not fully paid up are given in Italics. † x d

**Bank Rate**—(Of Discount—3½ per cent., 6th November, 1879.  
Of Deposit—1 per cent., 10th April, 1879.

**Name Days**—January 26th, and February 14th, 1882.  
**Account Days**—January 27th, and February 15th, 1882.

**Business commences** at 1 30 p.m.

*Holloway's Ointment and Pills.*—Few persons are so favoured by circumstances, or so fortified by nature, as to enable them to pass unscathed the sore trials of an inclement season. With catarrhs, coughs, and influenza everywhere abounding, it should be universally known that Holloway's Ointment, diligently rubbed upon the chest, checks the worst assaults of these maladies, and securely wards off more grave and dangerous diseases of the throat and lungs. The truth of this assertion must remain unquestioned in the face of thousands of unimpeachable living witnesses, who have personally derived the utmost possible benefits from this treatment when their present sufferings were appalling, and their future prospects most disheartening. Both remedies set admirably together.

**BIRTHS, MARRIAGES, AND DEATHS.**

**MARRIAGES.**

**ACTON and MAY**—January 19, at St. Stephen's Church, by the Provost of Trinity College, assisted by the Dean of Kilmacodagh and the Rev. L. B. Weldon, T. H. E. Acton (Royal Artillery), eldest son of William Acton, of Brookville, County Dublin, to Olivia C. J., eldest daughter of the Right Hon. G. A. C. May, Chief Justice of Ireland.

**HANRAHAN and QUIN**—January 17, at the Cathedral, Marlborough-street, by the Most Rev. Dr. Donnelly, Bishop of Clogher, James William Hanrahan, Esq., Clerk of the Crown and Peace, County Fermanagh, to Agnes, daughter of John Quin, Esq., D.L., Limerick.

**DEATHS.**

**FITZGERALD**—January 17, at her residence, Eccles-street, of acute bronchitis, Anne Elizabeth, relict of the late John Fitzgerald, Esq., barrister-at-law, of Castleblayney, County Monaghan, and Desmond Villa, Kilkree, County Clare.

**M'GOVERN**—January 8, at the Adelaide Hospital, Fanny, daughter of Thomas M'Govern, Esq., solicitor, College Green, and Ivy Lodge, Ballybrack, granddaughter of the late George Vernon, Esq., solicitor, of this city, in her 39th year.

**O'GRADY**—January 18, at his residence, Whitworth-place, Drumcondra, Thomas F. O'Grady, Esq., late Captain 61st Regiment, son of the late John O'Grady, Esq., barrister-at-law, Tippetstown House, County Cork.

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# THE IRISH LAW TIMES AND SOLICITORS' JOURNAL.

VOL. XVI.

SATURDAY, JANUARY 28, 1882.

No. 783

## CONTRACTS BETWEEN VENDORS AND PURCHASERS WITHIN THE STATUTE OF FRAUDS.

"I REGARD this case as one of considerable importance, and I think that it has properly been considered with great care, because many former decisions both on the 4th and the 17th section (of the Statute of Frauds) betray great confusion of thought on the part of learned judges." So remarked the late Lord Justice Lush in *Shardlow v. Cotterill*, on appeal, which we find reported in the *Law Times* of the 14th inst.; and in the same reports we find another recent decision on the statute (*Donnison v. The People's Café Co.*), to which it will be useful to refer on the same general subject, at the same time noting some previous English and Irish decisions in point other than those cited in the cases mentioned.

In *Shardlow's* case (45 L. T. N. S. 572) it appeared that the plaintiff was declared the purchaser at a sale by auction, and the following memorandum was added to the conditions of sale, and handed to him:—"The property duly sold to Mr. S., butcher, Pinxton, and deposit paid at the close of sale.—H. M., auctioneer." At the same time, the auctioneer gave the plaintiff the following receipt:—"Received of Mr. S., the sum of £21 as deposit on property purchased at £420, at Sun Inn, Pinxton, on the above date. Mr. C., Pinxton, owner. Received by H. M., 29th March, 1880.—H. M." What was the subject matter of this contract—was there a sufficient description of what was sold, within the statute? Could the two documents be read together as connected? Was parol evidence admissible to explain exactly what it was that was sold; and for this purpose could the conditions of sale be looked to, and if so what was their effect? Such were the questions presented; and it only needs to be added that the conditions of sale not merely spoke of the "property," but referred to the expenses of a "transfer," and mentioned that "possession" was to be delivered at a future day. Now, in the court below, Kay, J., held that the two documents might be taken together, as having regard to the word "purchased" there was sufficient connexion between them; and this ruling was affirmed by the Court of Appeal. So, *cf. Haughton v. Morton*, 5 Ir. C. L. R. 329; *Ruxton v. Rust*, L. R. 7 Ex. 179; *M'Mullen v. Helberg*, 13 Ir. L. T. Dig. 27, 14 *ib.* 26; *Peirce v. Corff*, L. R. 9 Q. B. 210; *Leather Cloth Co. v. Hieronimus*, *ib.* 10 Q. B. 140. "But still," said Kay, J., "I have no description, I do not know, on the face of the contract, or from anything I am entitled to look at, whether it was real or personal property;" "on these two documents taken together there is not a sufficient description of the property sold and purchased to enable me to receive parol evidence of what the objects of that sale and purchase were." But, see *Waldron v. Jacob* (Ir. R. 5 Eq. 131), where a letter, written by the vendor of leasehold premises to her solicitor, stating, "I have closed with Mr. W. for this place," was held a sufficient memorandum within the statute, and it was further held that parol evidence was admissible to show what "this place" was: *et cf. Jeffcott v. North Brit. Oil Co.*, 8 Ir. L. T. 565, Ir. R. 8 C. L. 17; *Baumann v. James*, L. R. 3 Ch. App. 508. In the present case the Court of Appeal were of opinion that parol evidence was admissible, and that

the terms used in the conditions of sale were sufficient to admit of the inference that the subject matter was real property. "The error made," said Jessel, M.R., was in "taking the word 'property' alone. In this case it is 'property duly sold to Mr. Arthur Shardlow,' and 'property purchased at £420 at Sun Inn,' on a certain date, belonging to a person named." "There is a maxim, *Id certum est quod certum reddi potest*," added Lush, L.J.: "The nature of the property sold was here sufficiently shown. To point out the property, you must have recourse to parol evidence." And this, as pointed out by Baggallay, L.J., is in conformity with the rule recognised by the text-writers (see Dart, V. & P., 5th ed., 219, Sugden, V. & P., 14th ed., 134), and fully supported by *Ogilvie v. Foljambe*, 3 Mer. 53, and *Bleakley v. Smith*, 11 Sim. 150. Nay, in his opinion, the receipt alone, without anything else, would have sufficed to satisfy the statute; and the Master of the Rolls seems to have shared that opinion. "What is a sufficient description?" said the latter learned judge: "I consider that any two specific terms will be enough to make a description sufficient to satisfy the Statute of Frauds;" and he laid it down that the description need not be an inseparable incident of the subject matter contracted to be sold, but may be a temporary incident only, and that what would be sufficient, under section 5, in the case of a devise, is equally sufficient, under section 4, in the case of a contract for sale of land.

While the decision of Kay, J., was reversed in *Shardlow's* case, that of the late Vice-Chancellor Malins was reversed in *Donnison's* case (45 L. T. N. S. 187). Before entering on this case, we may premise (1) that a memorandum, in order to come within the statute, must contain in substance the complete agreement between the parties in terms sufficiently plain to be understood, and it will not suffice if the offer contemplate a subsequent arrangement of terms: *Horsey v. Graham*, L. R. 5 C. P. 9; *Sale v. Lambert*, *ib.* 18 Eq. 1; *Potter v. Duffield*, *ib.* 18 Eq. 4; *Commins v. Scott*, *ib.* 20 Eq. 11; *Ogilvie v. Foljambe*, 3 Mer. 53; *Manley v. Dowdeswell*, L. R. 10 C. P. 102; *Mahallen v. Dublin, &c., Distillery Co.*, 11 Ir. L. T. Dig. 21; *M'Mullen v. Helberg*, 14 *ib.* 26; and see American cases collected in Bishop on Cont. s. 513; and as to specific performance, see *Howe v. Hall*, 4 Ir. L. T. 382, Ir. R. 4 Eq. 242 (affirmed on app.), and *Harvey v. Principal of Bernard's Inn*, 50 L. J. Ch. 750. And (2) it may be predicated that the names of the contracting parties must be contained in the agreement, or there must be such a description of them that there cannot be any fair dispute as to their identity: *Sale v. Lambert*, L. R. 18 Eq. 1; *Potter v. Duffield*, *ib.* 4; *Commins v. Scott*, *ib.* 20 Eq. 11; *Callin v. King*, 1 Ch. Div. 660; *Vanderberg v. Spooner*, L. R. 1 Ex. 316; *Newell v. Radford*, *ib.* 3 C. P. 52; and see Fry, *Specific Perf.*, 2nd ed., ss. 330-334. Now, in *Donnison's* case it appeared that the plaintiff was the lessee of vaults in the City of London under a lease granted by the Mayor and Corporation of London and the Mercers' Company. The defendant company entered into a negotiation for the purchase of the lease. The secretary of the company wrote to the house agents acting for the plaintiff a letter, in which he said that the directors thereby offered to purchase the vaults for £2,500 cash, and to take over a mortgage for £3,500

on the lease, these terms to include the lease, goodwill, fixtures, &c. The house agents answered as follows: "In reply to your letter of the 7th instant, we are now instructed to accept the offer therein contained, and will forward contract as soon as we can obtain it from the solicitors." Differences subsequently arose respecting the time when possession should be given, and eventually the plaintiff brought an action against the defendants claiming damages for breach of contract. Malins, V.C., held that the letters contained a binding contract between the parties. But, on appeal it was held (reversing this decision) that no binding contract had been entered into—first, because the name of the vendor had not been disclosed or a sufficient description given, so as to satisfy the statute; and, second, because the letters mentioned only what was the property to be purchased and the price to be given for it, but left the other necessary terms of the agreement, such as the time when possession was to be given, to be settled by a formal contract to be prepared by a solicitor in the ordinary way. "The cases have laid down this distinction," said Jessel, M.R., in reference to the first point, "that, where all the terms of the contract are defined and settled, then the merely saying there shall be a formal contract does not prevent specific performance. It is mere form. But where it is intended that all the terms of the contract shall not be treated as settled, but other terms are intended to be inserted in what is called the formal contract, then of course there is no contract until what is called the formal contract is signed." As regards the other point, he observed that what the house agent stated did not show that the person who was selling was the owner, or proprietor which is the same thing; "the mere word 'vendor' will not do, because that is somebody who sells; when you come to 'proprietor' there is something to show it, and I do not know why 'proprietor,' in many cases, is not as good and better than the name of the person." "The Vice-Chancellor," said Baggallay, L.J., "seemed to consider a contract entered into, whether on behalf of a proprietor or on behalf of a vendor, was the same thing. The decided cases show it is not the same thing. Although a contract entered into on behalf of a proprietor of an estate may be a sufficient description to enable the contract to be enforced, such is not the case as regards the description of the vendor."

#### PRISONERS AND COUNSEL.

In the course of the trial of a man named John Jones for a highway robbery accompanied with violence, at the Worcestershire Assizes last week, before Mr. Justice Lopes, Mr. Radcliffe Cooke, addressing the jury for the defence, said he approached the defence of the case with more embarrassment than he had ever felt since he had been called to the Bar. An accused person, they knew, was by statute entitled to employ counsel to speak for him, and by long established usage counsel had come to be regarded as the mouthpiece of the prisoner, at liberty to offer, from the instructions with which he might be furnished, such an explanation of any doubtful point as the prisoner himself might give if his mouth were not closed. The liberty of the Bar in this respect had been enlarged rather than diminished, not merely with the sanction, but even with the approbation, of the brightest ornaments of the judicial Bench. Of late, however, it had been hinted that some restriction of the ancient liberties of the Bar was contemplated, in consequence, he could only suppose, of some abuse of privilege whereby liberty had been turned into licence. If this were so he could but wish that before the freedom and franchise of the Bar of England had been impaired or diminished there had been some public investigation of the causes of error,

and some public and authoritative proclamation of the remedies by means of which it was proposed to correct such error.

Mr. Justice Lopes said the observations of the learned counsel merited at once a reply from him. It was true that some Judges, or, perhaps, he should say one Judge of great eminence, had been inclined to favour the laxity which the learned counsel had spoken of, but his views were not generally shared by the Bench. In former days, when he himself practised at the Bar, no Judge—and Judges were much severer then than he hoped they ever would be now—would have allowed counsel to act as the mouthpiece of a prisoner in the way suggested by Mr. Cooke. He could assure the learned counsel that there was no intention of infringing the rights of the Bar, but a short time ago all the Judges had met and had agreed that counsel when defending prisoners could no longer be permitted to make statements from instructions they had received which were not supported by facts adduced in evidence. The proper course for them to pursue was that which up to recent times had been invariably adopted—namely, to give an explanation that might be suggested to them by way of hypothesis.

Mr. Radcliffe Cooke said he could not regret that his remarks had drawn an authoritative statement on this important subject from the Bench. That statement had in a measure allayed his apprehensions, and it was some satisfaction to find that they could still resort by way of explanation to what, nevertheless, he could not help considering to be the childishly, transparent subterfuge of a hypothetical case. It was, indeed, a relief to learn that there was no intention to infringe the ancient rights they had so long enjoyed, for if the shadow of the gag were to enshroud the forum, as it threatened to obscure the Senate, he should tremble for the liberties of his country.

#### THE STAFFORDSHIRE CASE—THE RULE *UNUS NULLUS.*

Sir George Bowyer writes as follows to the *Times*:—  
"This case, if it does not point to an alteration of the law of evidence, gives a most serious lesson in criminal law to judges and juries.

"The Civil law, the Canon law, and the Scotch law hold the rule *unus nullus*, rejecting the evidence of a single witness unless materially corroborated.

"The principles obtain in the law of England only in three cases—perjury, affiliation, and the evidence of accomplices.

"There is much to be said in favour of the adoption of the rule in all cases.

"Error, delusion, and wickedness are to be feared in a single witness. I remember a case in which a woman had a mania of making false charges against priests, and another where an hysterical girl made a most clear and specific charge, but utterly false, against a dignified clergyman. And we have the present case, which probably arose from insanity. But it is remarkable that not only there was no corroboration, but there was contrary evidence—that of Sherratt and his son, who swore that they were with the prisoners all that evening, and that nothing occurred of a criminal nature. Thus there was the assertion or accusation by Brooks, and the fact of his mutilation, which was only the *corpus delicti*, and a charge of that nature was improbable. Let us observe that if Brooks had died the men would have been hanged. There are so many cases which may induce or cause a single witness who knows that he cannot be contradicted to swear falsely, that it seems that the judge or jury were not as prudent as they would have been if they had possessed a better knowledge of criminal jurisprudence.

"There is something analogous where an accusation rests on one single piece of circumstantial evidence. For it may be caused by error, or delusion, or fabricated by wickedness. And especially where it rests on a single witness a prudent judge will reject it. There are many instances of this nature, and some very sad ones.

"On the whole, the rule *unus nullus* ought to be generally followed, though there may be exceptional cases. As the law now stands, it is dangerous to be alone with anyone who happens not to be trustworthy—as, for instance, in a railway carriage.

"The treatises of Menochius and Mascardus de Presumptionibus et Probationibus, and the Commentaries on the Pandects, as well as the works of Farinacius, Carpegovius, and the other criminalists show to what an excess the scientific rules of evidence have been carried by the civilians.

"And Bentham and Dupin have said that trial by jury caused a progress in jurisprudence, by introducing the principle which refers proof to the conscience of impartial and common-sense men. But rules as to the reception of evidence are still necessary, and the more so because juries are more liable to be misled than judges, who are presumed to be learned and scientific."

#### PROBATE DUTY.

A discussion has been going on in the *Times* as to the merits or demerits of the new method of paying probate duties adopted by Mr. Gladstone in the Customs and Inland Revenue Act, 1881. Under the old Act of 1815 the duty was paid as a stamp duty, and no grant of probate or letters of administration was made except after payment of duty. The duty was assessed according to a fixed scale, at irregular intervals, upon the value of the estate as stated in an affidavit made by the executor or administrator that the gross value of the estate was, in the belief of the applicant, under so many hundreds or thousands of pounds. The intervals were so large that plenty of scope was left in them for discovering more assets, or for discovering that the assets were less than was supposed at the time of applying for probate, without the necessity of altering the affidavit and making up a deficiency, or getting back an excess, of duty. This was a great benefit, as the payment of higher duty, and still more, the getting a return on too high a duty, was, like most communications with the Inland Revenue, especially when it is a question of their disgorging their prey, a matter of great trouble, delay, expense, and vexation. The most vexatious part of the old system, however, was the requirement that the duty should be paid in the first instance on the gross and not on the net value of the estate, no deduction being allowed for debts due from the deceased. The consequence was that very often, in dealing with the estates of those engaged in business, large sums were paid for duty and then after all it was discovered that the liabilities swallowed up the estate or nearly so; in other words that, though the estate was nearly or quite insolvent and could spare nothing, a considerable percentage averaging about three per cent. had been alienated to the Revenue, and could only be recovered by a long and tedious process, and even when recovered no interest on the amount paid was allowed. It thus often happened that an executor might be considerably out of pocket by having to pay interest on money borrowed to pay the duty, and finding after he had parted with the assets that he could not recover his advances. At the same time the rate of the duty was greater on letters of administration than on probates, and on small than on large estates, thus pressing very hardly on the poor, and leading to evasion of the duty altogether by dividing the property without going to the Probate Court at all.

In 1880 Sir Stafford Northcote proposed to assimilate the duties on wills and letters of administration by raising the rates of duty on the former to those charged on the latter. Eventually however, under pressure from Mr. Gladstone, he assimilated them by the opposite process, and also lowered slightly the duties on estates under £1,000, while raising them slightly on estates over £2,000. Sir Stafford Northcote's bill also directed that with the affidavit of value a detailed account of the estate should be sent in to the commissioner. Mr. Gladstone's budget of 1881 adopted this latter provision and provided that the stamp duty was to be paid, not

on the probate or letters of administration, but on the affidavit of value, and the stamp should be affixed to it, and a mere certificate of payment of duty written on the probate or letters of administration. He also altered the rates of duty. He gave a great boon to small estates between £100 and £300 by imposing on them a fixed duty of 30s., which was to be taken in satisfaction of legacy as well as probate duty. He substituted a fixed percentage of £1 for every £50, or 2 per cent. on estates under £500, 25s. for every £50, or 2½ per cent. on estates between £500 and £1,000, and 3 per cent. on estates above £1,000. The new Act (Customs and Inland Revenue Act 1881) also contained beneficial provisions for compounding for legacy duty, and abolished both legacy and succession duty on personality on which probate duty had been paid, where it was at the rate of 1 per cent.; that is in the cases of bequest or succession in the direct line, from parent to children, or *vice versa*.

It is evident that these provisions are extremely beneficial particularly to small estates. They have, however, been attacked by Mr. Arnold, in the *Times*, who says that the cardinal objects of speed in granting probate and final discharge of the executors have been sacrificed to revenue considerations. He brings forward two charges in support of the statement: first, that, under the old law, the exact reckoning of the estate was postponed to the rendering of the residuary account, whereas now the new law requires an exact statement upon oath of every penny of property for which probate is asked, necessitating precise and detailed knowledge by the executor which is not to be acquired in a hurry; secondly, that, while after presentation of a residuary account under the old law, the executor was discharged, now he remains liable, and therefore cannot part with the assets for three years. These objections were refuted by Mr. Hamilton, in the *Times* of the 6th Jan., who pointed out that, under the new as under the old law, the executor only swears to his own knowledge and belief, and therefore is in no different position as to exactness of account, while the executor was no more free of liability for after-discovered assets under the old law than under the new, and that the liability after presenting the account for any mistakes therein is no greater than before.

But though Mr. Arnold's objections as he stated them are thus effectually disposed of, we think there is something in his allegation as to the delay in getting probate. The executor's account must be more detailed now than formerly, not because it is sworn to, but because the duty is assessed on smaller amounts. As we have pointed out, the unit on which duty is now assessed is, in estates over £1,000 in value, a hundred pounds instead of a thousand or two or ten thousand as formerly. Hence, an error of £50 or £100 in the account now will render it necessary to go through the laborious process of paying more duty or recovering overpaid duty. A far more accurate account is therefore required, and that no doubt causes delay in obtaining probate; a delay which in many cases, as for instance stocks and shares which require immediate sale, may cause risk or loss. The remedy, however, is to advance in the path of the new law, not to return to the old—to free the probate from Inland Revenue clutches altogether, and let the executor prove the will without any statement of value and obtain immediate command over the assets. The probate officer can forward a notification to the Inland Revenue of the grant of administration, and the Inland Revenue can then demand an account to be delivered within a specified, and not too short a time, and then get payment in one lump, of legacy and probate duty on the ascertained net value of the estate. Some such scheme would be a great convenience to the public, without sacrificing, but rather saving, the revenue.—*Law Times*.

VERY LIKELY!—The Irish Land Act will probably be known as the 44th and 45th of Evictoria, cap. 49.

## PARDONED CONVICTS.

The following is quoted in the *Times*:—"The promptitude of the Home Office in releasing Johnson and Clowes is much to be commended, but it is plain that the question of granting them some pecuniary compensation will also have to be considered. The cases of Barber, Habron, and Galley show that there is sufficient precedent for such a grant, which will have to appear on the votes as a special item. But even if compensation is granted, the results of the sentence will not be wholly removed. A pardon is a mere act of grace, which leaves the judgment unreversed. There should be some proceeding whereby this record of guilt is done away with. It is stated (see "Wharton's Lexicon," tit. Pardon) that Sir Frederick Pollock, when Attorney-General, proposed that when the Crown pardons anyone adjudged guilty, on the ground that the evidence, rightly viewed, does not warrant the judgment, the convict should assign, and the Attorney-General should confess, error on the record, whereby the judgment would be reversed, and there would remain no record of guilt. Some formal evidence of the pardon seems necessary, for the purpose of reinstating the pardoned convict in the enjoyment of the franchises of which his conviction deprives him; for by 33 & 34 Vict., cap. 23, sec. 2, the convicted felon "shall become, and until he shall have suffered the punishment to which he had been sentenced, or shall receive a free pardon from Her Majesty, shall continue thenceforth incapable of holding any military or naval office, or any civil office under the Crown, or other public employment, or any ecclesiastical benefice, or of being elected or sitting or voting as a member of either House of Parliament, or of exercising any right of suffrage, or other Parliamentary or municipal franchise whatever within England, Wales, or Ireland." The same statute provides for the complete determination, unless the convict shall receive a free pardon within two months after conviction, or before the filling up of the office, of all emoluments whether derived from any public office; but not a word is said as to compensation in case of pardon after the filling up of the office; for such compensation is entirely outside the law, which refuses to admit the possibility of a mistaken conviction. Even the case of an innocent convict being condemned to pay the costs of the prosecution is left unprovided for. As the law now stands such costs are wholly irrecoverable, unless there be a private prosecutor, and the prosecution be malicious."

## IMPLIED CONTRACT THAT GOODS SOLD BY A MANUFACTURER ARE OF HIS OWN MAKE.

In the recent case of the *West Stockton Iron Co. v. Nielson & Maxwell* (July 8, 1880, 7 Ret. 1055) a point of considerable importance was decided by the Second Division of the Court of Session. It was there held that when a manufacturer tenders goods of equal value with those manufactured by himself, in implement of a contract for the sale of such goods, the purchaser is not entitled to refuse them. In other words, that there is no implied stipulation on the part of the manufacturer that the goods shall be of his own manufacture. In little more than six months the same question, under almost exactly the same circumstances, again came before the Court in *Johnson & Reay v. Nichol & Son* (Jan. 25, 1881, 8 Ret. 487), and the Second Division confirmed the principle previously laid down. This adjustment of the rights of manufacturers, however, did not apparently prove acceptable to the parties interested in England, and accordingly the English Courts were called upon to give a decision upon the question in *Johnson & Reay v. Raylton, Dixon & Co.* (June 26, 1881, 7 Law Rep. Q. B. D. 438). The facts were precisely the same as in the second case decided by the Court of Session, but the English Court of Appeal, by a majority (Bramwell, L.J., dissenting), arrived at an opposite result, holding that on the sale of goods by a manufacturer of such goods there is an implied contract

that they shall be of his own manufacture. The law can hardly be considered as settled, for the House of Lords will soon be called upon to decide the question. As it stands at present, however, we have this curious and somewhat inconvenient result, that north of the Tweed manufacturers have rights and advantages which are denied them the moment they cross the Border. This in itself makes these decisions interesting, apart from the importance of the legal principle involved to the manufacturing community, and the fact that the question is entirely new, there being absolutely no previous authority either in England or Scotland for it.

The facts were in every case almost precisely the same. In the *West Stockton* case, the defendants, who were iron and metal merchants in Glasgow, entered into a contract with the pursuers through their brokers for the purchase and sale of 200 tons of Iron ship-plates, to be delivered during the first six months of the year 1878. The contract was contained in a bought and sold note, signed by both parties, and which specified the amount, quality, and price of the article sold, and regulated the mode and terms of delivery. The only stipulation as to quality was that it should be such as "to pass Lloyd's surveyor;" nothing was said about its being of the pursuers' own manufacture. Iron ship-plates are not kept in stock by manufacturers, but are only supplied according to specifications; and as the defenders failed to furnish specifications, as they were bound to do, delivery was not completed at the expiry of the time agreed on. It was then, of course, open to the pursuers to have cancelled the contract and sued the defenders for damages for its breach. They, however, did not see fit to do this, for the obvious reason, apparently, that with a falling market their contract was becoming more valuable; but instead they granted an extension of time with this result, that owing to things in Glasgow being "about at a standstill," specifications were still not forthcoming, and in consequence they had at length to close their works and arrange with other manufacturers to supply the plates still undelivered under the contract. They intimated this to the defenders, who, after sending specifications for a small quantity of iron, finally took up the position that they were not bound to receive any plates except those of the pursuers' own manufacture, thus raising the question which has caused such a difference of opinion. The pursuers, on receiving this intimation, raised an action for damages for breach of contract in respect that Nielson and Maxwell were bound to take delivery of the ship-plates undelivered under the contract, although not manufactured by the pursuers, and that they had failed and refused to do so. It was admitted that the iron offered was equally good, and of equal marketable value, with that of the West Stockton Co.'s own manufacture, and a proof was allowed of an alleged custom in the iron trade, whereby a manufacturer who is from any cause unable to deliver iron of his own manufacture, may deliver iron of equal value manufactured by another. The evidence, however, was unsatisfactory and conflicting, and the Lord Ordinary (Young), holding that no such custom had been established, and that the contract was for plates of the West Stockton Co.'s own manufacture, "from the very fact of its being made with them," assailed the defenders. The West Stockton Co. reclaimed, and the Second Division, by a majority, reversed this judgment. Lord Young, who in the interval had taken his seat in the Inner House, dissented, and defended his decision in the Outer House; and the late Lord Ormisdale, having been present at the hearing, declined to give an opinion; so that only three judges heard the case during its whole passage through the Court of Session, instead of the usual number of five. This circumstance is mentioned because Lord Justice Brett seems to derive comfort from the reflection that his opinion is shared by two of the judges in Scotland. He says, "I notice, however, that the Lord Ordinary and Lord Young agree with the view which I, in the end, think right." Such an oversight is no doubt highly excusable, but surely it is worth the while of



those who are responsible for the correctness of the English Law Reports to have them accurate even in so trifling a manner as the names of the judges of the "Court of Sessions."

The question was not allowed to rest here, for a short time afterwards the case of *Johnson & Reay v. Nicholl & Son* came up before the same Division and the doctrine laid down in the *West Stockton* case received what may be called its finishing touches. The facts were indeed slightly different, and relying on this difference, the defenders endeavoured to show that the rule formerly laid down should not be applied here. They were unsuccessful, however, the Court again holding that they must accept the iron offered. Though expressly recognising the case to be governed by the previous decision, Lord Craighill, who had taken the place of Lord Gifford, delivered an opinion in support of the judgment, which must be held to express his independent view. Its reasoning is characterised by Lord Justice Bramwell as "unanswerable."

So stood the law in Scotland. The "Court of Sessions" had trampled on the rights of the unhappy purchasers when they bethought themselves of appealing for justice to the Courts across the Border. Accordingly Messrs. Rayton, Dixon, & Co., a firm of ship-builders in Middlesborough, who had a contract with Johnson & Reay, *mutatis mutandis*, in precisely the same terms as that of Nicholl & Son, invited the manufacturers to make good their claim according to the law of England. Johnson & Reay accepted the invitation and the case was tried at the last Spring York Assizes before Mr. Justice Manisty. The defendants admitted that the plates would be substantially as good as if manufactured by the plaintiffs, but they insisted that they had a right to plates of the plaintiffs' own manufacture, and offered to prove that in the iron trade there is a custom, that under a contract between a manufacturer of iron plates and a customer for the supply of plates, the seller must, in the absence of stipulation to the contrary, supply plates of his own make. This was refused, as contradicting the terms of the written contract, and the learned judge being of opinion that the contract did not import that the iron plates should be of the plaintiffs' own manufacture, gave judgment in their favour. The defendants appealed, and the Court of Appeal reversed this judgment, holding unanimously that the evidence as to a custom of the iron trade had been improperly rejected, and that the defendants were at least entitled to a new trial. It was farther held, by a majority (Bramwell, L.J., dissenting), that even without such evidence the defendants were entitled to succeed, as the contract implied that the plates to be supplied should be of the manufacture of the plaintiffs.

The facts being practically the same so far as the general principle of law is concerned, the three cases may be discussed together. It will be convenient at the outset to dismiss the question as to the existence of any custom in the iron trade, whether in favour of one side or the other. In the *West Stockton* case it can hardly be said to have been established that it is customary for one manufacturer to supply the plates of another, while in *Johnson v. Rayton*, although the evidence of a custom of an opposite kind was refused, the idea of leading it at all was clearly an afterthought; and Lord Justice Bramwell probably gauged its effect correctly, had it being allowed, when he said, "I have a strong opinion that any evidence that may be given in support of this alleged custom would be evidence to show that whenever anyone orders goods of a maker he expects that maker's make. That of course would not be enough." Taking it then, that no custom exists the only other questions which arose were these—viz., first, the question of fact, whether or not the terms of the contract contained the stipulation that the goods sold should be of the seller's own manufacture; and secondly, the question of law, whether, assuming the contract to be absolutely silent on the point, such a stipulation should be implied from the nature of the contract. In regard to the first question, the judges in

both Courts may be said to have held unanimously that the purchasers were not entitled to refuse the plates tendered from any construction to be put on the terms of the contract, and it was only as to the second and more important question that any difference of opinion arose. It seems extraordinary that so important, and one would imagine so elementary, a question in mercantile law had never been decided before, yet, as Lord Justice Cotton observed, there was no authority either in the decided cases or the text-books on the subject. The question was therefore discussed on principle, and we have seen that the result was a serious conflict of judicial opinion, the decision of the Court of Session being directly opposed to that of the English Court of Appeal, though neither Court was unanimous. Up to a certain point, however, notwithstanding the great difference in the result, not only both Courts but all the judges agreed. They all agree that where the manufacturer has a peculiar make, a brand known in the market, even if he has a known name, or if it can be supposed that there is any *pretium affectionis*, he is bound to supply goods of his own make, even if there be no stipulation to that effect in the contract. Where the conflict of opinion commences is when none of these elements are present, where the article sold has no special repute, or name, or other distinction, but is such that one maker's make is as good as another's. The majority of the English judges, and Lord Young, held that the rule is absolute, and subject to no exception, that every manufacturer, dealing as such, is, in the absence of stipulation or custom to the contrary, bound to supply goods of his own manufacture. The majority of the Scottish judges, and Lord Justice Bramwell, held that in certain circumstances an exception should be recognised, and that if there is no peculiarity in the make or quality of the goods the manufacturer may tender those of another maker.

The difference of opinion on the Bench is the best proof that much may be said on both sides, and that it is hazardous to express any preference. On the whole, however, we venture to think that the view taken by the majority of the Scottish judges, and Bramwell, L.J., is the correct one. When parties have reduced a contract to writing, thus showing that it was entered into with a certain amount of deliberation, the law has always been slow to insert a term which the parties might have put in for themselves, and, as Lord Justice Bramwell remarks, this "ought never to be done without some most cogent consideration." Now, is there any such "cogent consideration" in this case? One can easily understand why an order for a piano-forte from Erard or Collard implies, though the condition be not expressed, that the article is to be of the manufacturer's own make. The make is different from that of other manufacturers, and the maker's name gives the article a certain value in the market. That is the reason, and apparently the sole reason, for importing any unexpressed stipulation into the contract. But in the present case this reason is entirely absent. The goods sold were admitted to be in no way peculiar either in make or as to the manufacturer's name. On the contrary, the contract stipulated for a certain standard quality, and the purchasers admitted that though they get iron of another manufacturer, they would get, so far as quality and value was concerned, exactly what was contracted for. The addition of an implied term to the contract, that the goods shall be of the manufacturer's own manufacture, can only be justified on the ground that the purchaser cannot reasonably be supposed to have gone to the manufacturer on any other footing. But is it not rather unreasonable to hold that without any rational or definite motive the purchaser should invariably select a manufacturer because he relies on getting the manufacturer's own goods? *Ex hypothesi* there is no peculiarity either in the make or quality, and the purchaser must be assumed to know this when he enters into the contract. What reason, then, has he for relying on getting the manufacturer's goods only?

The meaning of the decision of the English Court of Appeal is simply this, that whether rationally or irrationally, he always has such a reliance. We think this is going too far, and that a purchaser is not always impelled to buy from a manufacturer because he relies on getting his make only. If a number of business men were asked the question, they would say that they go to a particular manufacturer in many cases without a thought as to whose goods they were to be supplied with, and without any reliance whatever upon getting the manufacturer's own make. Lord Justice Brett seems to have been conscious of this difficulty, for he says, "if there be no such contract as is suggested, a manufacturer under the stated circumstances may supply goods not manufactured by himself, inferior to his own usual manufacture." He then attempts to justify the reasonableness of assuming that the purchaser always has this reliance by holding out this alternative consequence. With all respect, we think his Lordship's observations on this matter are somewhat unfounded, for it is difficult to see how a purchaser could be prejudiced in the way suggested. His interests seem sufficiently guarded by this condition, that the goods tendered, by whomsoever manufactured, must be of the quality stipulated for by the contract; and if he can show that there is any peculiarity about the goods which gives him a real interest in refusing them when not of the seller's own manufacture, the Court will not oblige him to accept them. Moreover, if he does not rely on getting the manufacturer's own goods, whether with or without reason, he can always insert a stipulation to that effect by the use of a single word, and it seems more equitable and also more convenient to lay this burden on him than to compel the seller to introduce a contract reserving the right to tender the goods of other manufacturers. There are undoubtedly very many manufacturers who turn out articles which from their nature do not and cannot possess any peculiarity or any superiority over similar articles manufactured by other makers, and it does seem a somewhat arbitrary proposition to hold that the Court will not inquire into the nature or quality of the articles at all, but will in all cases compel the manufacturer to supply those of his own make. The nature and quality, we think, are in some respects the most important feature of the contract. Anyone who contracts with a manufacturer as such knows or ought to know, what sort of goods he manufactures, and if he knows that they differ in no respect from the goods of other manufacturers, there is no hardship in making him accept another manufacturer's goods, provided they satisfy the contract as to quality. To hold otherwise would be to lay down a hard and fast rule, which undoubtedly would work unjustly in many cases, and which would be in practice very inconvenient.—*Journal of Jurisprudence.*

#### ACTING FOR MORTGAGOR AND MORTGAGEE.

The case of *Cockburn v. Edwards*, reported in the January number of the *Law Journal Reports*, is of interest primarily as showing the duties of solicitors in lending money on mortgage security to their clients. Secondly, it is of general interest as dealing with the usual form of the power of sale in a second mortgage; the question whether the difference between solicitor and client costs and party costs incurred in the very action under consideration can be allowed as a head of damage; and, finally, the treatment by the Court of Appeal of points of fact decided by the judge below. With regard to the question whether costs as between solicitor and client can be indirectly given in the nature of damages in the action, the opinions of the learned judges are very clear. The Master of the Rolls says: "All that the law gives a successful litigant is the costs between party and party. Those are all which he is entitled to receive." Lord Justice Brett relies partly on the fact that the plaintiff framed his action in *tori*, and lays down that "when you ask for damages, they must have been incurred and ascertained at the time

of the action being brought, except in some cases when they include everything up to the time of trial; and they cannot include anything incurred in the action itself. The law disregards, and will not look at, the extra costs as between solicitor and client, because they are a mere matter of luxury and whim between a particular client and his own solicitor." Without accepting, even on so high an authority, the luxurious and whimsical character of costs as between solicitor and client, the exclusion of these costs from the damages given in the same action, endorsed also by Lord Justice Cotton must be accepted. If costs as between solicitor and client are given at all, they should be given *ex nomine*, and not as damages. At the same time, the eyes cannot be closed to the fact that juries constantly, in assessing damages in actions of tort, and sometimes in actions of contract, take into consideration the additional expense to which the party, in whose favour they are, will be put by having to pay a portion of his own costs. The Master of the Rolls, we think, would look with forbearance even on a judge who transgressed technicalities to this extent, as he complains of Mr. Justice Fry having embarrassed the Court of Appeal by being too conscientious in separating the items of damage which he had allowed. When judges and juries are at large in assessing general damages, the fact that extra costs will have been incurred need not be absent from their minds, although such costs cannot be specifically included among the legal heads of damage.

In the result, the damage assessed by Mr. Justice Fry at £80 were cut down to £10, and the costs as between solicitor and client given to the plaintiff by Mr. Justice Fry were disallowed. As to the costs of the action, the costs of one of the issues were given to the defendant, and the general costs to the plaintiff. No costs of the appeal were given. Probably neither party cared to disturb this position of things; but it is odd that no one seemed to remember the existence of the County Court sections as to costs. These sections, although unfamiliar in the Chancery Division, apply without distinction of Divisions, and require a certificate that the action was fit to be tried in a Superior Court when no more than £10 is recovered. No such certificate was given; although, if asked for, it would probably not have been refused considering the nature of the action. The plaintiff was a client of the defendant, who was a solicitor, and had undertaken to raise £500 for him on a mortgage of the plaintiff's house. Of this sum £450 was found by another client of Mr. Edwards, which client took a first mortgage on the house; and the remaining £50 by Mr. Edwards himself, who took a second mortgage. Next year, a further sum of £300 was advanced by the defendant, who took a third mortgage as well as a bill of sale of furniture. Both the first and the second mortgages contained an unqualified power of sale, not subject to interest being in arrear for three months, or six months' notice being given to the mortgagor. Mr. Justice Fry found, as a fact, that Mr. Edwards did not explain to Mr. Cockburn that this form of power of sale was exceptional. The Court of Appeal did not overrule this finding, but they cannot be said to have endorsed it. The Master of the Rolls went so far as to say that "if he had heard the case, sitting as a judge of first instance, he should have found that the defendant was under no liability whatever;" but "he did not think it proper to interfere with the opinion of the judge below, who had all the witnesses before him, unless he found that there had been some gross miscarriage." Lord Justice Brett says little on this head, except that the *onus* lay on the defendant; and Lord Justice Cotton says that "they cannot overrule the conclusion of the judge on this matter of fact." Mr. Justice Fry also came to the conclusion that an unqualified power of sale in a second mortgage was unusual. The Court of Appeal take very much the same view of this finding as of the other. The Master of the Rolls even says that "there is reason to believe that it is a common practice to insert a more stringent power of sale in subsequent mortgages than

in the first mortgage; but, in the absence of any evidence that it was a settled practice, they could not hold it was right in this case without an explanation to the client." From the views thus expressed, it would seem that the Court of Appeal treated the decision of Mr. Justice Fry very much as they would treat the decision of a jury—a result to which the assimilation of practice and the use of oral evidence in Courts of first instance almost necessarily lead. The Court of Appeal, therefore, had to deal with the case on the footing that the unqualified power was unusual, and that it had not been explained to the client; and they all agreed that under these circumstances the solicitor who lends money to a client without an independent adviser being employed, is guilty of breach of duty. Lord Justice Brett is uncompromising on this as on other points of the case. He says that, "in his opinion, a solicitor would not more wisely if he did not lend money at all to his clients, it not being any part of a solicitor's business to lend money; but if he does, then, as a matter of fairness, he should not conduct the conveyancing connected with the mortgage in his own office." This is sound theory, but not to be lived up to in practice. It is difficult to know how solicitors could conduct their business unless they found investments for one set of clients and capital for another, nor how they could arrange matters between these two interests unless they sometimes made up a difference by advancing money of their own. If a second solicitor is always to be employed, not only are the costs increased, but clients are lost. A mortgage is not so very complicated a transaction but that a solicitor can be trusted to arrange its terms so as to be fair to all parties, even though he himself is one. For the future, he must consider that an absolute power of sale, even in a second mortgage, cannot be inserted without special explanation to his client the mortgagor.

Much of the time of the Court of Appeal was occupied in considering whether the plaintiff would have been better off if the power of sale had been subject to the usual qualification. The defendant contended that three months' interest was, in fact, in arrear at the date of the sale. The plaintiff replied to this that the defendant entered into possession, and that the rent received by him must be taken to be applied to the interest, relying on an opinion of Vice-Chancellor Shadwell, in *Brocklehurst v. Jessopp*, 7 Sim. 438. In that case the Vice-Chancellor considered that the receipt of rents by a mortgagee in possession was a payment by the mortgagor so as to revive the Statute of Limitations in respect of the debt. The opinion expressed in this case must now be considered overruled by the present, as well as by *Chimney v. Evans*, 9 H. L. Cas. 115, where a payment by a receiver to a mortgagee was held insufficient to take the case out of the statute. As the Master of the Rolls points out, the mortgagee in possession takes for himself what he can get, and there is no payment to him. Mr. Edwards so far succeeded on this point; but, unluckily, he had sent in an account to Mr. Cockburn, in which he set off the rent as against the interest. The consequence was that at the time of sale there was not three months' interest in arrear, and, as no notice was given before the sale, the plaintiff would have been better off under a qualified power of sale. When the heads of damage come to be examined by the Court of Appeal, they one by one dwindled away. The only one which stood the test of the criticism of the Master of the Rolls had nothing to do with the defendant's breach of duty. He had charged £10 for the cost of preparing abstract and conveyance, which was the sum agreed on with the purchaser; and the plaintiff was, of course, only bound to pay a portion of this sum. The Court, however, assessed general damages to the extent of £10—mainly, it would seem, on the ground given by Lord Justice Brett, that they ought to set their face against transactions in which a solicitor acts for both parties. The learned Lord Justice seemed also to be of opinion that there was some evidence that the value of property had risen in Ranngate. Lord Justice Cotton said that if he had tried the case "he should have

thought that a very small coin was enough for the plaintiff to recover." This will probably be the prevailing opinion. The case is a hard one for Mr. Edwards; and both parties are now, no doubt, sincerely of opinion that the action ought never to have been brought.—*Law Journal*.

#### SOLICITORS' BENEVOLENT ASSOCIATION.

The seventeenth annual meeting of the Solicitors' Benevolent Association was held on the 25th inst.,

Mr. ROBERT C. LAM, Vice-President, occupied the chair.

A letter of apology, expressing regret at his inability to be present, was read from Mr. Roche, President of the Association.

Mr. ARTHUR LEW BARLES, hon. secretary, read the report of the committee, in which it was stated:—There are no new life, and only six new annual members, who joined the society last year, and during the same period an unusually large number—viz, two life and ten annual members—have died, in addition to twelve annual members who have ceased to subscribe. The society now consists of 847, as against 865 members last year, of which 55 are life and 292 annual subscribers. The sum of £400 was expended in relieving 46 cases, some of which were of a very distressing character, and necessarily, from the small means at their disposal, the committee could, in all cases, only afford temporary relief, the total amount given not averaging £10 for each recipient. The capital of the Association now consists of £3,000 Great Northern Railway Company of Ireland Four per Cent. Debenture Stock, and £442 12s. 9d. Government New Three per Cent. Stock. Efforts have for some years past been made by members of your committee to obtain the Chancery Box Fund for the society; and a sum of £85 7s. 5d., being the residue of the above-mentioned fund, was handed over to the Association. The total funds received during the past year, including the sum of £85 7s. 5d., Chancery Box money, and dividends on capital, amounted to £552 9s. 4d.

The CHAIRMAN, in moving the adoption of the report, said they must all regret very much the absence of their esteemed friend and president, Mr. William Roche. The report referred to the loss they had sustained by the death of Mr. George Beamish. A more kindly and attentive member of the committee, and a more anxious man to forward the interests of the profession and the objects of the Association never joined them. The society was now falling off in numbers, and he was sorry to say, also in subscriptions; but he hoped the hard times they had been experiencing in the country would shortly pass away, and that they would go on more prosperously than before. They had inquired into every case that came before them, and they had at all times relieved to the utmost that their funds permitted them to do. There were, however, many cases continually coming before them where the trifling sum they could contribute afforded very small relief indeed. He hoped, therefore, that gentlemen who felt an interest in their profession would come forward, and, by enrolling themselves members of this Association, enable it to meet in a hearty substantial way the claims of those who stood so much in need of its assistance.

Mr. WILLIAM J. COOPER, in seconding the resolution, observed that out of the 46 cases in which relief had been afforded during the year, only four of the applicants were the widows or families of deceased members of this Association. He thought much evil had arisen from the course that had been adopted of giving a very large amount of their funds to the families of those who were not members of the Association. It was quite right that this should be done where gentlemen had not an opportunity of becoming members of the Association, which was formed in 1863 or 1864, but it was a different thing where gentlemen had had an ample opportunity of subscribing to it and had not done so. A great deal of their money had gone to the relief of

the families of such men, and he thought it operated badly. As a matter of fact, only £65, out of the £400 given during the year, was appropriated strictly, according to the rules of the trust confided to them, in the relief of the families of members of the Association. They had paid away £935 to those who in reality had no claim on the fund, except under a clause in their rules. If gentlemen did not come forward and become members they could not expect this assistance to last, and he hoped sincerely they would not be under the necessity of curtailing the relief they had afforded in order to meet the more legitimate claims made on the Association.

Mr. HENRY T. DIX, as a member of the committee, dissented from the principle laid down by Mr. Cooper. He really did not see where the benevolence lay in a number of people subscribing to a society in order that they might derive benefit themselves from it. They must be very thankful that there were not very many families of members applying. Of course the families of members had the preference, but when these had been served he thought the children of those who were not members were entitled, under the principles of the Association, to the residue. He approved of the action of the committee in giving preference to the families of members.

Mr. COOPER explained that what he meant to convey was that where gentlemen had no opportunity of becoming members of the Association their families should be freely relieved, but that at the same time they would be doing a good act in letting some of the profession know that in holding aloof they were not acting rightly, and that it would be better to subscribe to the funds of this society.

The report was then adopted.

Mr. CHARLES G. STANWELL moved the re-election of the committee for the ensuing year. They were, he said, gentlemen of high standing in their profession; they devoted much of their time and attention to the work of the Association, and he thought they were entitled to their thanks for it.

Mr. ALEXANDER D. KENNEDY seconded the motion. As auditor of the society he had had means of knowing how the affairs of the Association were managed by the committee, and he had the greatest pleasure in testifying to the admirable way in which they had been conducted. Although there was a good deal of truth in Mr. Cooper's observations, he thought the committee, so far as he could judge, had exercised very great wisdom in the way they had administered the funds. Mr. Cooper had mentioned that there were only four cases of members' families being relieved, but it should be borne in mind that that was because only four had applied, and he scarcely thought that Mr. Cooper would wish the whole £400 to be divided amongst these four. He was aware the committee had given preference to the families of members, and he thought the fact that so few of the families of members had had occasion to apply for the relief was an additional reason for their joining the society.

The resolution was adopted.

Mr. HENRY S. MCREEDY moved that only one general meeting of the association be held in future in each year—namely, in the month of January, and that the necessary alterations be made in Rules 8 and 16 to carry out this resolution. At the meeting in July he said, when men were out of town there was practically no business done, and he did not see the benefit of holding a meeting in July for purely formal matters at an expense of five guineas to the society.

Mr. ARTHUR L. BARLEE seconded the motion, and hoped that when they did meet in January next they would have a more favourable report to present.

The resolution was adopted.

Mr. H. J. P. WEST, President of the Incorporated Law Society, having been called to the second chair, a vote of thanks was passed to Mr. Lee, and the proceedings terminated.

## THE SLANDER OF A PERSON IN HIS CALLING.

(Continued from page 37, ante.)

RULE V.—*The language, to be actionable, must (a) affect him in his particular calling; it is not enough that (b) his general reputation is affected thereby.*

### ILLUSTRATIONS.

(a) I. R. was an auctioneer. G. said of him: "You are a deceitful rascal, a villain, and a liar. I would not trust you with an auctioneer's license. You robbed a man you called your friend; and not satisfied with £10, you robbed him of £20 a fortnight ago." *Held*, actionable.<sup>1</sup> II. R. was a laceman. H. said of him: "You are a rascal; you are a pitiful, sorry rascal; you are next door to breaking." *Held*, actionable.<sup>2</sup> III. R. was a husbandman, and T. said of him: "He owes more money than he is worth; he is run away, and broke." *Held*, actionable.<sup>3</sup> IV. R. was a banker, and M. said of him: "R. has had his cheques returned back unpaid." *Held*, actionable.<sup>4</sup> V. C. was a carpenter, and L. said of him: "He is broken and run away, and will never return again." *Held*, actionable.<sup>5</sup> VI. B. was a tradesman, and W. said: "He has nothing but rotten goods in his shop." *Held*, actionable.<sup>6</sup> VII. C. charged an attorney who collected claims against the government that he "did a good thing in his sober moments in the way of collecting soldiers' claims against the government for a fearful percentage." *Held*, actionable.<sup>7</sup>

In case I. the words italicised were clearly a charge of unfitness in his occupation. Cases II., III., and IV. illustrate the principle that, in occupations in which credit is essential to their prosecution, an imputation of insolvency is actionable *per se*.<sup>8</sup> In case V. it was argued on behalf of L. that the words were not actionable, because they did not tend to his disparagement; for he might be broken, and yet be as good a carpenter as before; that a carpenter builds upon the credit of other men; and so long as the words did not touch him in his skill and knowledge of his profession, they could not injure him. *Sed per curiam*. "The credit which the defendant hath in the world may be a means to support his skill; for he may not have an opportunity to show his workmanship without those materials for which he is intrusted."<sup>9</sup> As to the charge in case VI., the injury is obvious, but it is curious to note the very different result which the general rule would have brought about had the words been simply, "He has rotten goods in his shop." There are probably few storekeepers who have not among their stock some damaged or rotten goods which they either do not offer at all, or offer only at a sacrifice; but a tradesman whose whole stock was alleged to be rotten, would certainly be avoided by the public. The charge in case VII. was a direct imputation upon the attorney's honesty in his calling.

### ILLUSTRATIONS.

(b) I. A. was a physician, and C. said of him: "Have you heard that it is out who are the parties in the *crim. con.* affair that has been so long talked about, Dr. A.?" *Held*, not actionable.<sup>10</sup> II. D. was an attorney who had become involved in transactions on the turf, and R. said of him: "He has defrauded his creditors, and has been horsewhipped off the course at Doncaster." *Held*, not

(1) *Ramsdale v. Greenacre*, 1 F. & F. 61 (1856).

(2) *Read v. Hudson*, Ld. Ray. 610 (1701).

(3) *Dobson v. Thornistone*, 3 Mod. 113 (1696).

(4) *Robinson v. Marchant*, 7 Q. B. 918 (1846).

(5) *Chapman v. Lamphere*, 3 Mod. 155 (1687).

(6) *Burnet v. Wells*, 12 Mod. 420 (1700).

(7) *Sanderson v. Caldwell*, 45 N. Y. 398 (1871). The case was for a printed libel, but the court said that the result would not have been different if the slander had been verbal.

(8) The cases in which language imputing to persons in trades or professions, where credit is essential to their prosecution, a want of credit, responsibility or solvency, past or present, are very numerous. Most of them are collected in the third edition of Mr. Townshend's work, *Slander and Libel*, s. 191 and notes.

(9) *Chapman v. Lamphere*, 3 Mod. 155 (1687).

(10) *Ayre v. Craven*, 3 A. & E. 2 (1834).

actionable.<sup>1</sup> III. S. was a pork-butcher. T. said of him: "You are a bloody thief. Who stole Fraser's pigs? You did, you bloody thief, and I can prove it; you poisoned them with mustard and brimstone." *Held*, not actionable.<sup>2</sup> IV. B. was a stay-maker, having in his employ a female assistant. O. said of him: "The business of a stay-maker does not keep him, but the prostitution of the person in the shop; after it is shut it as bad as any bawdy-house in the town." *Held*, not actionable.<sup>3</sup> V. L. was a clerk of a gas company, and A. said of him: "You are a fellow, a disgrace to the town, unfit to hold your situation for your conduct with whores." *Held*, not actionable.<sup>4</sup> VI. F. was a dealer and speculator in land, and H. said of him: "He cheated me out of a hundred acres of land." *Held*, not actionable.<sup>5</sup> VII. I. was the proprietor of a public-house and garden, and M. said of him: "He is a dangerous man; he is a desperate man. I am afraid to go to his house alone. I am afraid of my life." *Held*, not actionable.<sup>6</sup> VIII. W. was a dancing-mistress for girls. A. said of her: "She is as much a man as I am; she got J. S. with child. She is a hermaphrodite." *Held*, not actionable.<sup>7</sup> IX. A. was a livery-stable keeper, and B. said of him: "You are a regular prover under bankruptcy; you are a regular bankrupt-maker." *Held*, not actionable.<sup>8</sup> X. F. was a physician, and S. said of him: "He is a twopenny bleeder." *Held*, not actionable.<sup>9</sup> XI. P. was an attorney, and J. said of him: "I have taken out a summons to tax his bill; I shall bring him to book, and have him struck off the roll." *Held*, not actionable.<sup>10</sup> XII. P. was an innkeeper; C. said of him: "You have stolen goods in your house, and you know it." *Held*, not actionable.<sup>11</sup> XIII. C. was a cooper, and K. said of him: "He is a very varlet, and a knave." *Held*, not actionable.<sup>12</sup>

As to case I., abstaining from acts of incontinence is no part of the profession of a physician, and the committing or not committing adultery has nothing to do with the exercise of his profession; the latter is no more his duty than the duty of every other man. If his professional skill was great, his practice would hardly suffer from such a charge. "A merchant might be under the necessity of frequenting a house in the exercise of his trade; but it would not be sufficient, without special damage, to aver that, in doing so, he had obtained access to a female living in the house, and had been criminally connected with her."<sup>13</sup> Had the words in this case been shown to have referred to the physician's taking advantage of his professional relation to commit adultery with a female patient, the result,

under Rule V. would have been different.<sup>1</sup> In case II., the creditors the attorney was charged with having defrauded were those he had made in his transactions on the turf, not in his profession of an attorney. If his clients were satisfied with his skill and attention to his affairs, it would not follow that they would withdraw their business, simply because he did not pay his gambling debts. If R., instead of saying "He has defrauded his creditors," had said: "He has defrauded his clients," he might have been held. In a case in the time of Charles I., it was ruled that a man was not liable for saying of a lawyer: "Thou hast no more wit than a jackanapes." But he would substitute "law" for "wit" at his peril.<sup>2</sup> In case III. the words did not show that S. was any more an improper person to carry on the business of a pork-butcher than any other business. No improper act in his trade was charged, as would have been had the words been, "You poisoned Fraser's pigs and sold them," or "You sell tainted meat." In case IV. the words were clearly only a general imputation on his moral conduct. "After the shop was shut" was the time when his immorality was charged to be practised. Most people trouble themselves little about the morality of tradesmen, provided they are punctual, skillful, and honest in their dealings. So, in case V., the words spoken of L. did not impute to him the want of any qualification which a clerk should have, or any misconduct which would make him unfit to discharge faithfully and correctly all the duties of a clerk. In case VI., the transaction to which H. referred might have been a private dealing between the parties, and the evidence in the case showed that it was so. Case VII. presents an excellent illustration of the rule that imputations on a man's morality, temper, or general conduct, which would be injurious to him, whatever was his occupation, are not actionable. That I. was a dangerous and a desperate man might injure him; but it would no more effect his business as keeper of a house of entertainment than it would had he been a merchant, a baker, or a blacksmith. In case VIII., it was obvious to the court that the scandal was not peculiarly injurious to her profession. If, to teach dancing to girls, females were always required, and none other would be employed, the language would have been actionable; but the court took notice of the fact that men were, even more frequently than women, engaged in teaching dancing to both sexes.<sup>3</sup> The words in case IX. would not necessarily affect the plaintiff in his particular business. The words in case X. were words of mere contempt, implying, not professional ignorance, but a want of professional dignity, manifested by a petty attention to small and simple cases. In case XI., Lord Kenyon remarked that, if the words had been, "He deserves to be struck off the roll," they would have been actionable. As it was, they were spoken only with reference to an overcharge in a single bill—something not likely to seriously injure the reputation of a professional man. In case XII. it was no more dischargeable to the innkeeper than to any other person to have stolen goods in his house and to know it. On the same principle rests case XIII.

**RULE VI.**—Where the words have such a relation to the party's occupation that they directly tend to injure him in respect to it, they are actionable, (a) although not applied by the speaker to that occupation; but when they convey only a general imputation upon his character, equally injurious to anyone, (b) they are not actionable unless such application be made.

(1) *Doyley v. Roberts*, 3 Bing. N. C. 685 (1837). "These words," said Tindal, C.J., "though spoken of an attorney, do not touch him in his profession any more than they would touch a person in any other trade or profession. It is found, indeed, that the words have a tendency to injure him morally and professionally, and that is true; but it applies equally to all other professions, for a person cannot say anything disparaging of another that has not that tendency." "When the jury," said Vaughan, J., "found that these words were not spoken of the plaintiff in his character of attorney, they took the sting out of the imputation." And see *Van Epps v. Jones*, 50 Ga. 238 (1873).

(2) *Bibley v. Twinnis*, 4 Tyrw. 90 (1838).  
 (3) *Brayne v. Cooper*, 5 M. & W. 249 (1829).  
 (4) *Lumby v. Allday*, 1 Cr. & J. 301 (1831).  
 (5) *Follows v. Hunter*, 20 U. C. Q. B. 322 (1861).  
 (6) *Ireland v. McGarrah*, 1 Sandl. 155 (1847).  
 (7) *Weatherhead v. Armitage*, 2 Lev. 233 (1879).  
 (8) *Alexander v. Angle*, 1 Cr. & J. 143 (1830); s. c. *Angle v. Alexander*, 7 Bing. 122 (1830). "This does not seem to me," said Tindal, C.J., "to fall within that class of cases which relates to imputations upon a person with reference to his trade. To say of a carpenter that he is a bungler is actionable, for it imputes to him a want of skill; to say of a vendor that his goods are rotten, or that he keeps false books, which is an imputation of dishonesty in his trade, is also actionable; so likewise it is actionable to impute insolvency in a trader, which affects his credit; but the words in this case are applicable as well to a man not in trade as to a trader, and are not, therefore, actionable as referable to the plaintiff's trade."

(9) *Paster v. Small*, 3 Whart. 139 (1837). "He is so steady drunk he cannot get business any more." Not actionable. *Anonymous*, 1 Ham. 53. "He gave my child too much mercury;" "He made up the medicines wrong through jealousy, because I would not allow him to use his own judgment." Not actionable. *Edsall v. Russell*, 4 M. & G. 1090 (1842).

(10) *Phillips v. Janson*, 2 Esp. 624 (1798).  
 (11) *Paterson v. Collins*, 11 U. C. Q. B. 63 (1853).  
 (12) *Oliver v. Kettle*, Cro. Jac. 204 (1608).  
 (13) See argument for defendant in *Ayre v. Craven*, *supra*.

(1) See *Martin v. Strong*, 5 A. & E. 535 (1836).  
 (2) *Palmer's Case*, Godb. 441 (1633).  
 (3) In *Malone v. Stewart* 15 Ohio, 319 (1846), the Supreme Court of Ohio held that to call any woman a hermaphrodite was actionable *per se*, replying, in answer to the objection that such a conclusion was in the teeth of all the precedents, "It is sufficient that this court will not permit so gross a wrong to pass without a remedy." In New York, on the other hand, it was held by the Court of Appeals, in 1870, that to charge a young woman with self-pollution was not actionable without proof of damage. *Anonymous*, 36 N. Y. 221. So far as the grossness of the charge was concerned, the cases were nearly alike; but the New York Court was content to apply the law, while the Ohio court, in an excess of chivalric indignation, was determined to vindicate the fair sufferer at any cost.

## ILLUSTRATIONS.

(a) I. A. was a brewer. B. said of him: "He is a sorry, pitiful fellow, and a rogue; he compounded his debts at five shillings in the pound." It was not shown that the words were spoken of him in his business. *Held*, actionable.<sup>1</sup> II. J. was a brewer, and L. said: "I will bet £5 to £1 that J. was in a sponging-house for debt within the last fortnight, and I can produce the man who locked him up; the man told me so himself." Admitting that the words were spoken of him in his private character, they were *held* actionable.<sup>2</sup> III. D. was a merchant, and R. said of him: "He was broke." The declaration charged that the words were spoken of and concerning him, without adding "as a merchant." *Held*, sufficient.<sup>3</sup> IV. F. had been employed as clerk by the firm of B. & M. On leaving them, he was employed by O. Subsequently B. said to O. that F. had become such a notorious liar that he could place no confidence in him; that he had strong cause to doubt his honesty. *Held*, actionable.<sup>4</sup>

(To be continued.)

## COUNTY COURT ADMINISTRATION OF THE LAND LAW ACT, 1881.

In charging the Grand Jury, at the opening of the Kerry Quarter Sessions, on the 23rd inst., the County Court Judge (Mr. W. O'C. Morris), after observing that the County Court was one of concurrent jurisdiction with the Land Commissioners, proceeded to say that the County Court was an independent court of long established reputation, and therefore he thought it right to say a few words upon what he believed to be the jurisdiction of his court with regard to the Administration of the Land Act. He referred first to the jurisdiction of the court under the 21st section, which gave the power to break leases made since 1870. In order to break a lease under the section it should be established before the judge that the tenancy was one from year to year, and to this rule there was no exception. So that if a tenant were a lessee and took a new lease he was not within the section. Again, a lease made since 1870 should contain terms which in the opinion of the court were at the time of the making of the lease unreasonable or unfair, having regard to the Act of 1870. There was an idea among the profession that although the rents were unreasonable and unfair within the meaning of the Act of 1870 that that question could not be considered under this section. But the Court of Appeal have decided—and in fact the law now is—that if either the rent or conditions in the lease were unreasonable or unfair, having regard to the Act of 1870, the lease may be broken. But observe that the rent must be unreasonable or unfair at the time of the making of the lease. So though it might be unreasonable or unfair in these bad times, the court had no jurisdiction. Again, even supposing the tenant was a yearly tenant when the lease was made, and even supposing the lease was a most exorbitant document there must be a third element in the case, because the Legislature said wisely that a lease was a solemn document that was not easily to be set aside. There must be either a threat of eviction or undue influence used at the time of making the lease, and this must be proved to be connected with, as lawyers say, the *factum* of the lease. Referring to the question of a fair rent he would tell them, at some length, what his views were. Under the 8th section of the Act, the Court, in fixing a fair rent, must have regard to the "interests" of landlord and tenant respectively. The interest of the landlord was what lawyers called the reversion, and the rent and other

incidents belonging to it, and the interest of the tenant, was popularly speaking the Tenant Right. That right was made up of the right of occupancy, the value of which in Ulster was to be measured by the custom of the Province, and in other parts of Ireland by the compensation for disturbance clauses in the Acts of 1870 and 1871, with the addition, in both cases of the tenant's improvements; and the tenant was to have that right assured to him. With reference then to the rent, if, in any given case, it had been proved, or if it could be proved, that the tenant had, or could have, the full measure of his right, then the rent would be a fair rent; but if it had been proved, or could be proved, that the defendant could not get the full interest in his right—the market price being the standard in both cases—then the rent would be an unfair or excessive rent. In other words, if the rent did not encroach on the Tenant Right, as defined, and valued as stated, it would be a fair rent; but if it did encroach on it, then it would be an illegitimate rent, and should be reduced. This seemed to him the true criterion to adopt; and he confessed he entertained a strong opinion that this was the proper construction of the statute. He would now refer, in connexion with this subject, to a clause which had been much debated, the clause known by the name of Mr. Healy. That clause enacted that no rent should "be paid or allowed" in any proceedings under this "Act, in respect of improvements made by the tenant or his predecessors in title;" and it should receive a fair, nay a liberal, interpretation. As we had seen, however, "improvements" formed a part of the Tenant Right, and no rent was to be charged on the Tenant Right, for no rent was to be charged on the improvements; and the clause, therefore, in his opinion, was merely an explanation or amplification of the cardinal idea of the Act, that the tenant's "interest" was to be kept intact and secure. Moreover, this exemption of improvements from a surcharge of rent, are subjected by the clause to three important qualifications. In the first place, the improvements must be improvements, within the meaning of the Act—that is, they must be suitable to the holding, and must add to its letting value, and furthermore they must be distinct and specific works, capable of ascertainment. From this, therefore, it followed that improvements, arising from the mere ordinary progress of good husbandry, were not within the clause, and rent, in his opinion, might very properly be surcharged in respect of these. In the second place, the improvements must have been made by the tenant "or his predecessors in title;" and, therefore, if a break in a tenancy took place, by the interposition of the landlord's estate, as upon a surrender of a lease, then the tenant could not ascend beyond that, in claiming improvements or an exemption in respect of them. This had been decided with respect to the Act of 1870, and the Act of 1881 confirmed the conclusion for the single exception it made to this doctrine—that in the 7th section—did not apply to cases within Healy's Clause. Lastly, the improvements might be "paid or compensated for otherwise;" that is, an equivalent in money or in money's worth might be given for them; and, in his opinion, the concession of a lease, or of a yearly tenancy, at a rent under the letting value, would be compensation. Finally, before leaving this question of rent, he would wish to make these general remarks. It was, he thought, a mistake that the Act did not give the Court a power to make temporary reductions of rent, for these were greatly needed in almost all cases. But there is no provision of this kind; and the Court should now measure rent with reference to the standard of ordinary years, not those of extreme adversity, nor those of extreme prosperity. Again, rent, in his judgment, should be considered with reference to the circumstances of the holding, not to those of the tenant, and whether a man has many children or not, or could live in abundance or not, seemed to him beside the question. Lastly, the rent must be measured on the assumption that the

(1) *Per curiam*.—"But we were all of opinion that such words, spoken of a tradesman, must greatly lessen the credit of a tradesman, and be very prejudicial to him, and therefore that they were actionable." *Stanton v. Smith*, 3 Ld. Ray. 1480 (1773).

(2) *Jones v. Little*, 7 M. & W. 428 (1841);

(3) *Davis v. Buff*, Cheves 17 (1859).

(4) *Fowles v. Bowen*, 30 N. Y. 20 (1864).

farmer was a man of average skill and intelligence, and above all if a farm had been run out by the sloth, the incapacity, or the neglect of the tenant, the landlord was not to be mulcted for this deterioration. Such were his views on the whole subject; they had not been formed without some thought and some knowledge; and they were the views of one who, as a judge, had the inestimable advantage of independence—who had nothing to fear and very little to hope—and who stood indifferent between the Crown and the people.

TEXT-BOOK ADDENDA.

(Continued from page 35, ante.)

*Wilson on the Judicature Acts (2nd Edition).*

*Lely and Foulkes on the Judicature Acts (3rd Edition), 9.*

An order may now be made on summons in the Chancery Division, under 3 & 4 Wm. IV. c. 42, s. 40, requiring the attendance of a witness before an arbitrator (*Clarborough v. Toothill*, 50 Law J. Rep. Chanc. 743).

*Order XLVII.*

*Wilson on the Judicature Acts (2nd Edition), 296.*

*Lely and Foulkes on the Judicature Acts (3rd Edition), 236.*

Where plaintiff had been ordered to pay costs, a four-day order was made, and leave given to the defendant, at the same time, to issue sequestration in case of non-payment on the day named (*Snow v. Bolton*, 50 Law J. Rep. Chanc. 743).

*Judicature Act, 1873, s. 56.*

*Lely and Foulkes on the Judicature Acts (3rd Edition) 46.*

*Wilson on the Judicature Acts (2nd Edition), 57.*

Objection to part of a referee's report may be taken on the report coming before the Court for adoption. But notice of objection should be given (*In re Brook, Sykes v. Brook*, 50 Law J. Rep. Chanc. 744).

*Coots on Mortgage (4th Edition), 912.*

A foreclosure action is not within 37 & 38 Vict., c. 57, s. 3, but is within section 1 of that Act (*Harlock v. Ashberry*, 50 Law J. Rep. Chanc. 745).

*Coots on Mortgage (4th Edition), 919.*

Payment of rent by a tenant of a mortgagor to the mortgagor on his demand, but without the authority of the mortgagor, is sufficient to keep alive the rights of the mortgagor to foreclose (*Harlock v. Ashberry*, 50 Law J. Rep. Chanc. 745).

*Williams on Executors, 1,327.*

A trustee, who had neglected to get in trust property, was held liable to replace shares in a company allotted in respect of other shares subject to the trust, and which had been taken up (*Briggs v. Massey*, 50 Law J. Rep. Chanc. 747).

(To be continued.)

APPOINTMENTS AND PROMOTIONS.

NOTE BENE.—Information intended for publication under the above heading should reach us not later than Friday morning in each week, as publication is otherwise delayed.

Mr. Joseph N. Lentaigue, Barrister-at-Law, has been appointed Secretary to the Right Hon. the Lord High Chancellor of Ireland.

Mr. David Fitzgerald, Barrister-at-Law, has been appointed Standing Counsel to the Loan Fund Board of Ireland.

CANDID.—Counsel: Why are you so very precise in your statement? Are you afraid of telling an untruth?—Witness (promptly): No, sir!—*Punch*.

REVIEWS.

*Eason's Almanac for Ireland for 1882. Ninth Year.* Dublin: W. H. Smith and Son.

*The Incorporated Law Society Calendar for the year 1882.* London: Published by Authority of the Council of the Incorporated Law Society. 1882.

*The Lawyer's Companion and Diary, and London and Provincial Law Directory for 1882, &c.* Edited by JOHN THOMPSON, Esq., of the Inner Temple, Barrister-at-Law. Thirty-sixth Annual Issue. London: Stevens and Sons, 119, Chancery-lane; Shaw & Sons, Fetter-lane.

*The Solicitors' Diary, Almanac and Legal Directory, 1882, &c.* Edited by CHARLES FORD, Esq., F.R.S.L., of the "Law Times," &c. Thirty-eighth Year of Publication. London: Published by the Proprietors, Waterlow & Sons, Limited, 95 & 96, London-wall.

ANNUAL works of reference more useful and necessary than those now before us, it would be impossible to name. They are perfectly replete with valuable information of various kinds, and in them the practical man will find facts enough and nothing but facts. First in order, we have Eason's Almanac for Ireland, which, in addition to its ordinary annual budget of topics, has this year included a Table of Judicial Fixed Rents; Thirty Year's Prices of Agricultural Produce in Ireland; a Short Account of the Census of 1881; National Revenue and Expenditure, 1861-1881, with notes on each year's Budget; the Explanatory Statement of the Land Law Act, 1881, issued by the Land Commission; and a Directory of the principal officials in Government Offices, the Law Courts, Railways, Banks, Learned Societies, Universities, &c., in Ireland. The Table of Judicial Rents, in particular, presents a most laudable attempt to supply statistics that ought long since to have been officially furnished to the public. It cannot fail to prove both useful and interesting in the highest degree; but in the absence of official information it would be impossible to prevent some errors. In details of this kind we have found the newspapers, also, not altogether reliable, and in the preparation of our own Reports we have had a good deal of trouble in correcting statements of such facts that had been previously published. We may mention, for instance, the items given by Mr. Eason at Nos. 188, 189, which will be found at variance with our Report of those cases (15 Ir. L. T. Rep. 123), but we can only say that we took special care to have our version authenticated and revised in reference to those very facts. Nowhere else than in Eason's Almanac, however, is it possible to obtain information of the kind so abundant and accurate; and, indeed, the same observation might be added in reference to most of the other matters included in the work.

The publication of the Incorporated Law Society Calendar is an enterprise which we would gladly see imitated in this country. In all things relating to solicitors, it constitutes a complete and valuable work of reference; nor, indeed, would it be easy to point out anything that could be added with advantage, either, to the Lawyer's Companion and Diary, and the Solicitor's Diary, Almanac and Directory. Those admirable works, one and all, are already well known to the profession, who will appreciate the labour devoted to improvements in this year's issue.

BOOKS RECEIVED.

*Report of the Fourth Annual Meeting of the American Bar Association, held at Saratoga Springs, New York, August 17th, 18th, and 19th, 1881.* Philadelphia: E. C. Markley & Son, Printers, No. 422, Library-street. 1881.

## LAW STUDENTS' JOURNAL.

## THE INCORPORATED LAW SOCIETY OF IRELAND.

FINAL EXAMINATION FOR APPRENTICES TO SOLICITORS,  
Pursuant to the Attorneys and Solicitors Act (Ireland), 1866.

## HILARY SITTINGS EXAMINATION, 1882.

[Every answer is to be accompanied by reasons concisely stated.]

## CHANCERY DIVISION.

Mr. DIX, *Examiner.*

1. State some of the causes and matters which are by the Judicature Act assigned to the Chancery Division?
2. State in their order, the proceedings in an Action in the Chancery Division for the administration of personal estate, up to Final Judgment?
3. What are the chief statements in a Petition to make a Minor a Ward of Court, and what is the course of proceeding upon such Petition?
4. How do you apply to appoint a Receiver, and in your answer distinguish between the different kind of Cause or matter in which such application is made?
5. When an Administrator desires to be fully discharged from all liability in respect to such Administration, what course would you advise him to take?
6. What step can be taken by a person interested in a Sum of Government Stock to prevent its being dealt with without their knowledge?

## CHANCERY DIVISION, LAND JUDGES.

Mr. FRANKS, *Examiner.*

1. At what stage should Draft Rental be lodged, and what should it contain?
2. State shortly the mode of procedure as to settlement of the Rental, and documents required to be produced?
3. When and on whom should the Consolidated notice to Tenants and Occupiers be served, and what should it contain?
4. In case any person interested objects to making a Conditional Order for Sale Absolute, what must be done?
5. If amount of Tithe Rent-charge to which Lands are liable be mis-stated or omitted altogether from Rental what is the result?
6. Can any one lot be sold subject to the whole of a jointure, and how could the Habendum run in such a Case?

## PROBATE AND MATRIMONIAL DIVISION PRACTICE.

Mr. MAXWELL, *Examiner.*

1. State the practice for obtaining a Grant of Administration by a Creditor?
2. State the practice for obtaining a Grant of Administration during minority—at what age is a Minor capable of electing a Guardian to obtain such Grant?
3. When does the Grant terminate if there are several minors?
4. If a Legatee seeking Administration with the Will annexed be described in the Will as insane, what will the Court require before making a Grant to him or her.
5. If one of several Administrators become insane what is the course to be pursued in that Case?
6. Under what circumstances is an Administration "pendente lite" required, and what is the practice for obtaining such Grant?

## COMMON LAW DIVISIONS PRACTICE.

Mr. BARLEN, *Examiner.*

1. What is the procedure necessary to compel a Plaintiff residing out of the jurisdiction to give Security for costs?

2. When a Plaintiff is directed to give Security for Costs, how does he proceed to perfect it?

3. What time has a Defendant to appear after Service of a Writ of Summons upon him—

(a.) In Actions for Debt.

(b.) In Ejectments for non-payment of Rent.

(c.) In Actions under the Summary Bills of Exchange Act.

4. Within what time must a Plaintiff deliver his Statement of Claim after he receives notice of Appearance?

5. Can a Defendant obtain an Order to remit an Action to the Quarter Sessions? and what steps (if any) taken by him in the Action preclude him from obtaining such Order?

6. What length of Notice of Trial must be given by Plaintiff to Defendant; and within what period must a Plaintiff proceed to Trial after issue joined?

## THE INCORPORATED LAW SOCIETY OF IRELAND.

## HILARY SITTINGS, 1882.

At the Examination of Applicants seeking to become Apprentices to Solicitors, held on Thursday and Friday, the 5th and 6th of January, 1882, the undernamed candidates were adjudged by the Court of Examiners to have passed said Examination. The first five were classed, and their names were arranged in order of merit, viz. :—

- |                        |                      |
|------------------------|----------------------|
| 1. William A. Lamphier | 4. Samuel M'Cartney  |
| 2. James Duff          | 5. William H. Hudson |
| 3. Gerald S. Fayle     |                      |

The following "unclassed" candidates were allowed the Examination, and their names were arranged in alphabetical order, as follows :—

- |                      |                     |
|----------------------|---------------------|
| Philip Dunlea        | William T. Molloy   |
| John P. Flynn        | Eugene V. Mulvihill |
| Patrick J. Leahy     | William J. Roberts  |
| Francis M'Breen      | Samuel R. Roe       |
| Patrick M'Ivor       | James W. P. White   |
| Michael D. Maonamara |                     |

John J. Knowles was also allowed the Special Examination for which he had liberty to present himself.

The other candidates on the list were postponed.

## HILARY SITTINGS, 1882.

At the Examination of Applicants seeking admission as Solicitors, held on Monday, the 9th, and Tuesday, the 10th of January, 1882, the Court of Examiners decided that the under named candidates should be allowed the Examination, and their names were arranged in the following order, viz. :—

- |                           |                           |
|---------------------------|---------------------------|
| 1. Edwd. H. Macardle, Jr. | 9. James R. Barklie       |
| 2. William Ford, Junr.    | 10. John Torrens          |
| 3. Thomas M'Minn          | 11. Montgomery Archdall   |
| 4. James Mulcair          | 12. David Adams           |
| 5. Charles Rouleston      | 13. Francis J. M'Cormack  |
| 6. Chris. O'C. Fitzsimon  | 14. William J. Marshall   |
| 7. George Tiernan         | 15. Charles H. Monsarratt |
| 8. John M. Whelan         | 16. Thomas J. Dunne       |

The Court of Examiners awarded a silver medal to Mr. Edward H. Macardle, Junr.; and special certificates to Messrs. William Ford, Junr., Thomas M'Minn, and James Mulcair.

## FINDLATER SCHOLARSHIP.

The President and Council have awarded this Scholarship to Mr. Henry Mahaffy, Solicitor.

HENRY J. P. WEST, Esq. (President), then distributed the following prizes awarded to candidates at last Michaelmas Sittings (1881) Final and Competitive Examinations, viz. :—A silver medal to Mr. David F. Moore; and special certificates to Messrs. Michael Buggy, John S. MacNeece, Alfred F. M. Bernard, John W. F. Garvey, and Robert Scholefield; and a silver medal and £5 to Mr. Frederick George Kean.



**COURT PAPERS.**

**LAND JUDGES.**

Sittings for next Week so far as same are appointed.

Before the Rt. Hon. JUDGE FLANAGAN.

**MONDAY.**

IN CHAMBER.—E. C. P. Pigott, allocate.

IN COURT.—W. C. Joseph, as to partition.—R. Bradshaw, as to receiver.—Trustee Webb, objection.—E. Le Hunte, to dismiss petition.—W. B. Armstrong, receiver.

Before EXAMINER (Mr. Kennedy).

E. S. Graves, rental.—Assignees J. Hazelton, vouch.

**TUESDAY.**

Before EXAMINER (Mr. Kennedy).

J. Power, rental.—W. Mathers, vouch.—M. Murphy, ditto.

**WEDNESDAY.**

IN COURT.—M. Horgan, objection.—T. Dowling, receiver.—H. T. Rathborne, from 25th January.

**THURSDAY.**

IN COURT.—Rev. J. Bradshaw, receiver.—R. Eanes, final schedule.—J. Morgan, receiver.

**FRIDAY.**

Before EXAMINER (Mr. Kennedy).

J. O'Shea, rental.—E. P. Armstrong, do.—A. G. Bagot, vouch.

Before the Rt. Hon. JUDGE ORMSBY.

**MONDAY.**

IN COURT.—L. O. Weir, receiver.—E. Hogan, adjourned motion.—P. Kenny, do.

**WEDNESDAY.**

Before EXAMINER (Mr. M'Donnell).

P. H. Hare, rental.—W. Coleman, do.—Assignees M. M'Grath, vouch.—H. Geale, rental.

**THURSDAY.**

IN COURT.—R. Kellett, examine witness.

**FRIDAY.**

Before EXAMINER (Mr. M'Donnell).

L. E. Goodwin, rental.

**COURT OF BANKRUPTCY.**

**ADJUDICATIONS IN BANKRUPTCY.**

*The dates of Adjudications are first given, the Sittings follow in Italics.*

Dunne, Catherine, of Cloyne, in the county of Cork, widow, hotel keeper, and publican. January 18; *Friday, February 8, and Friday, February 17.* Wm. J. and A. L. Ryan, solrs.

Fox, Edward, of Dungannon, in the county of Tyrone, baker. January 18; *Friday, February 8, and Friday, February 17.* Edwin Best and H. F. Leachman, solrs.

O'Shea, Nicholas, of Cloran, Fethard, in the county of Tipperary, farmer. January 18; *Tuesday, February 7, and Tuesday, February 21.* Frederick Croskerry and Kenny and Fitzgerald, solrs.

Shannon, Patrick, of Bridge-street, Boyle, in the county of Roscommon, grocer and provision dealer. January 10; *Tuesday, January 31, and Friday, February 17.* Casey and Clay, solrs.

**DUBLIN STOCK AND SHARE LIST.**

DESCRIPTION OF STOCK	JANUARY						
	Sat. 21	Mon. 22	Tues. 23	Wed. 24	Thur. 25	Fri. 26	Fri. 27
*Paid Government.							
— 3 p c Onnols ..	100-4	—	—	99-4	99-4	—	—
— 3 p c Reduced ..	—	—	—	—	—	—	—
— New 3 p c Stock ..	99-4	99-4	99-4	99-4	99-4	99-4	99-4
INDIA STOCK.							
4 p c Oct. 1858 ) Traffic at ..	—	104	104	104	103-4	103-4	—
3-4 p c Jan. 1831 ) Bk. of Irel. ..	—	—	—	—	—	—	—
BANKS.							
100 Bank of Ireland ..	—	—	—	—	31-4	31-4	—
25 <i>Hibernian Banking Co.</i> ..	—	—	—	—	—	40-4	—
20 <i>London and County</i> ..	—	—	—	—	—	—	—
20 <i>London and Westminster</i> ..	—	—	—	—	—	—	—
10 <i>Do. New</i> ..	—	—	—	—	—	—	—
34 <i>Minster Bank (Limited)</i> ..	—	—	7-4	7-4	x d	6-4	—
30 <i>National Bank</i> ..	—	—	—	43-4	x d	22-4	—
10 <i>National of Ivey's (Ltd)</i> ..	—	—	—	—	13-4	13-4	—
— <i>Nat. Prov. of England, Lim.</i> ..	—	—	—	—	—	—	—
25 <i>Provincial Bank</i> ..	—	—	—	54	—	—	—
20 <i>Do. do. New 1867</i> ..	—	—	—	—	—	—	—
10 <i>Royal Bank</i> ..	—	—	—	30	—	—	—
25 <i>Standard of B. &amp; A., N'd</i> ..	—	—	—	—	—	—	—
15-4 <i>Union of London</i> ..	—	—	—	—	—	—	—
MINES.							
2-4 <i>Wicklow Copper</i> ..	—	—	—	—	14-4	—	—
MISCELLANEOUS.							
10 <i>Alliance &amp; Dub. Cons. Gas</i> ..	—	—	—	—	—	—	—
— <i>Do. do.</i> ..	—	—	—	—	—	—	—
4 <i>Arnott &amp; Co., Limited</i> ..	—	—	—	—	6	—	—
6 <i>Dub. (St) City Market Co.</i> ..	—	—	—	—	—	—	—
7 <i>Dub. &amp; Wick. Man. Co., Ltd</i> ..	—	—	—	—	5-4	5-4	—
TRAMWAYS.							
10 <i>Belfast Trams</i> ..	—	—	—	—	—	—	—
10 <i>Dublin United Tramways</i> ..	11	—	—	—	11	—	—
10 <i>Leeds Trams</i> ..	—	—	—	—	—	—	—
10 <i>L'pl Un'd Tram &amp; Bus Ltd</i> ..	—	—	—	—	—	—	—
10 <i>N'th Metr. Tramway, Lond.</i> ..	16-4	—	—	—	—	—	—
RAILWAYS.							
10 <i>Athenry and Tuam</i> ..	—	—	—	—	—	—	—
50 <i>Belfast and County Down</i> ..	—	—	—	—	—	—	—
50 <i>Belfast and Northern Cos.</i> ..	—	—	—	—	—	—	—
100 <i>Dublin, Wicklow, &amp; W'ford</i> ..	—	—	—	—	—	77	—
100 <i>Great Northern (Ireland)</i> ..	—	—	—	—	112-4	—	—
100 <i>Gt. Southern and Western</i> ..	—	—	—	—	—	100-4	—
100 <i>Midland Gt. Western</i> ..	—	—	—	—	—	—	—
50 <i>Waterford and Limerick</i> ..	—	—	—	—	—	—	—
RAILWAY PREFERENCE.							
100 <i>Belfast &amp; N'th'n Cos., 4 p c</i> ..	—	—	—	—	—	—	—
100 <i>Do., 4-1/2 p c</i> ..	—	—	—	—	—	—	—
100 <i>D., W., &amp; W., 5 per cent</i> ..	—	—	—	—	—	143	—
100 <i>Gt. N'th'n (Ireland) gt'd 4 p c</i> ..	—	—	—	—	—	—	—
100 <i>Do., 3-1/2 p c</i> ..	—	—	—	—	—	—	—
100 <i>Gt. South'n &amp; West'n 4 p c</i> ..	—	—	—	—	—	—	—
100 <i>Mid. Great Western, 4 p c</i> ..	—	—	102	—	—	—	—
DEBENTURE STOCKS.							
— <i>Belfast &amp; Co. Down, 4 p c</i> ..	—	—	—	—	—	104-4	104-4
— <i>Belfast &amp; N'th'n Cos., 4 p c</i> ..	—	—	—	—	105	105	—
— <i>Cork and Bandon, 4 p c</i> ..	—	—	—	—	—	—	—
— <i>Do., 4-1/2 p c</i> ..	—	—	—	—	—	—	—
— <i>Dublin &amp; Wicklow 4 p c</i> ..	—	—	—	106	—	—	—
— <i>Do., 4-1/2 p c</i> ..	—	—	108	—	—	—	—
— <i>Gt. Northern (Ireland) 5 p c</i> ..	—	—	—	—	—	—	129
— <i>Do., 4-1/2 p c</i> ..	—	—	—	—	—	—	—
— <i>Do., 4 p c</i> ..	—	—	—	109	—	—	—
— <i>Gt. North'n &amp; West'n 4-1/2 p c</i> ..	—	—	—	—	—	—	—
— <i>Gt. South'n &amp; West'n, 4 p c</i> ..	109	—	—	—	—	—	—
— <i>L'derry &amp; Enniskillen 5 p c</i> ..	—	—	—	—	—	—	—
— <i>Midland Gt. West'n, 4 p c</i> ..	—	—	—	—	106	—	—
— <i>Do., 4-1/2 p c</i> ..	—	—	—	—	—	—	—
— <i>Waterf'd &amp; Limerick 4 p c</i> ..	—	—	—	—	103-4	—	—
MISCELLANEOUS DEBENT.							
— <i>Alliance &amp; Cons. Gas, 4 p c</i> ..	—	—	—	—	—	—	—
— <i>Belfast Office Deb., £22 6s 2d, 4 p c</i> ..	—	—	—	—	—	—	—
— <i>City Deb. of £22 6s 2d, 4 p c</i> ..	—	—	—	—	—	—	—
— <i>Dub. Port &amp; Docks, 4 p c</i> ..	—	—	—	—	—	—	—
— <i>(1938) Rathm. &amp; Pem. M. Drain, 4 p c</i> ..	—	—	—	—	—	101-4	—
— <i>Do. Defd. of £22 6s 2d 4 p c</i> ..	—	—	—	—	—	—	—

\* Shares not fully paid up are given in *Italics.* † x d

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**BIRTHS.**

**KENNY**—January 24, at Fitzwilliam-place, the wife of William Kenny, Esq., barrister-at-law, of a son.  
**M'MASTER**—January 26, at Northumberland-road, the wife of J. Boyle M'Master, Esq., barrister-at-law, of a daughter.  
**PICKERING**—At Summer-hill, Dublin, the wife of A. C. Pickering, Esq., late 9th Regiment, Esq., solicitor, of a daughter.

**DEATHS.**

**COCHRANE**—January 21, at his residence, Charlemont-place, Armagh, George C. Cochrane, Esq., solicitor.  
**MURPHY**—January 24, at his brother's residence, Marcus-square, Newry, James Murphy, Esq., solicitor.

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# THE IRISH LAW TIMES AND SOLICITORS' JOURNAL.

VOL. XVI.

SATURDAY, FEBRUARY 4, 1882.

No. 784

## LOSS OF GOODS BY CARRIERS.

In the case of *Eyre v. Midland Great Western (of Ir.) Ry. Co.*, recently decided by Harrison, J., on appeal, it appeared that a railway passenger, in consequence of the non-arrival of his luggage, had been obliged to purchase various personal necessaries in substitution for those which were detained; but, in the award of damages nothing was included for this consequential loss. This rather surprised us at the time, but, on inquiry we ascertained that no claim in respect of those articles had been pressed for. We made some researches for authorities on the subject, but could find none directly in point—the nearest, which, however, are distinguishable, being *British Columbia Saw Mill Co. v. Nettleship*, L. R. 3 C. P. 499, 37 L. J. C. P. 235, and *Walton v. Fothergill*, 7 C. & P. 394; and to those cases we referred accordingly: see 15 Ir. L. T. 291. It is satisfactory that at last a decision rather more in point has been reported, which we find in last Saturday's *Law Times: Millen v. Brash & Co.*, 45 L. T. N. S. 653. And not only may that case be collated with those already collected in our papers on remoteness of consequential damage, but on several special points in the law of carriers, to which we have previously adverted, it will be found of importance, as, indeed, Lopes, J., indicated.

The defendants were carriers from London to Rome; and on Nov. 13th, 1879, the plaintiff's agent delivered to them a trunk to be sent by rail from London to Liverpool, and then shipped in one of Bibbey's steamers for Italy. It happened that the defendants had in their possession a case of paper goods (Christmas cards) consigned to Mr. Hamburger, of New York; and by the carelessness of the defendants' servants, the trunk belonging to the plaintiff was taken to the Victoria Docks, and shipped as and for Hamburger's case to New York. The defendants did not become aware of this mistake till about the 15th of December following, on which day they wrote to Hamburger, and on the 19th the trunk arrived in New York. On the 11th of March, 1880, the miscarried trunk arrived at the defendants' offices, and, at the plaintiff's request, was retained there till June, and then delivered to the plaintiff. The plaintiff afterwards brought an action for £210 damages for the loss of the trunk and injury to its contents. The miscarriage and loss for the time were admitted, as also that some of its contents had been injured in New York, owing to the Custom House officer unpacking the trunk, and negligently and unskilfully re-packing it. It was further admitted that certain silk dresses and a sealskin jacket which it contained were articles within the Carriers Act, that their value exceeded £10, and that no declaration had been made. The jury were discharged by consent, and all questions of law and fact were left to the decision of Lopes, J., who presided at the trial, the amount of damages, in case the plaintiff was entitled to a verdict, being agreed upon, including a sum of £10 for the repurchase by the plaintiff of certain other articles of clothing in Rome at enhanced prices, to replace those contained in the trunk.

The defence resting on the Carriers Act, it was, in the first place, contended on behalf of the plaintiff that the Act did not apply, because the loss was

temporary and not permanent. Lopes, J., however, observed that there was nothing in the Act or in the authorities to justify the placing of so narrow a construction on the word "loss," and, in his opinion, it was immaterial whether the loss was temporary or absolute, and, not being delivered within a reasonable time, the trunk and its contents were lost to the owner within the meaning of the Act. He cited no decisions on the subject, but the reader will do well to refer to *Hearn v. London & South Western Ry. Co.* (10 Ex. 793, 24 L. J. Ex. 180), holding that "loss" within the Act means total loss, and does not apply to protect the company from liability for consequential loss by reason of delay in delivery; while in *Wallace v. Dublin and Belfast Junct. Ry. Co.* (8 Ir. L. T. Rep. 163), a plea excusing delay in delivery upon the ground of a temporary loss of the goods, while in charge of the defendants, was held a good answer to an action for not delivering within a reasonable time. In the next place, the plaintiff contended that the Act did not apply because the defendants were not carriers of the trunk by land, the trunk having been accepted to be carried partly by land and partly by sea. But, Lopes, J., rightly held that the contract was divisible, and that the trunk was lost, within the meaning of the Act, directly it was on the road to the Victoria Docks instead of to Liverpool. As an authority for this position he referred to *Le Conteur v. The London and South Western Ry. Co.* (L. R. 1 Q. B. 54); to which we may add references to *Pianciani v. L. & N. W. Ry. Co.*, 18 C. B. 225; *Baxendale v. Great Eastern Ry. Co.*, L. R. 4 Q. B. 244; *Moore v. Midland Ry. Co.*, 8 Ir. L. T. Rep. 165; *Doolan v. Midland Ry. Co.*, L. R. 2 H. L. 792; *London & South Western Ry. Co. v. James*, L. R. 8 Ch. App. 241. Again, it was contended by the plaintiff that the defendants were not entitled to the protection of the Act because they were wrongdoers—wrongdoers in that they sent the trunk on the wrong road and not on the journey contracted for. But, *Morritt v. North Eastern Ry. Co.* (1 Q. B. D. 302) affords an answer to that objection; Blackburn, J., saying, "Unless it is proved the misdelivery was intentional the case is within the Act;" and Mellish, L.J., saying, "If goods by the negligence of the carrier are carried beyond the point of destination and injured, this is within the Carriers Act."

But, lastly, remained the question whether the plaintiff was entitled to recover the £10 for repurchase of other articles in Rome at enhanced prices, irrespective of the Carriers Act—the plaintiff contending that the Act did not apply to that part of his claim. "I think the plaintiff is right," said Lopes, J., "for this is not a loss by the carrier of the trunk, nor an injury to its contents, but damages sustained by the owner in consequence of the non-delivery within due time; it is something consequential to its loss. I do not think this £10 is within the protection of the Carriers Act. But the defendants say, if it is not within the protection of the Carriers Act, this portion of the claim is too remote. Much depends on whether it was a reasonable and necessary act of the plaintiff to buy these articles in Rome. This is a question of fact which I have to decide, and I think it was both the reasonable and necessary consequence of defendants' failure to deliver that the plaintiff should purchase what he did in

Rome—a necessity arising from the non-delivery of a trunk which the defendants might fairly assume contained wearing apparel. The observations of Mellish, L.J., in the case of *Le Blanch v. London and North-Western Ry. Co.* (1 C. P. D. 286) are not inapplicable here. That was a case where a passenger, delayed in his journey by the want of punctuality in the arrival of the defendants' train, sought to recover the costs of a special train which he had engaged. Mellish, L.J., said: 'Now one mode of determining what, under the circumstances, was reasonable is to consider whether the expenditure was one which any person in the position of the plaintiff would have been likely to incur if he had missed the train through his own fault, and not through the fault of the railway company.' I think the plaintiff would have gone to the same expense and bought the same articles for the use of his wife if there had been no railway company to look to, and if the trunk had been lost by his own fault. There was nothing extravagant or unreasonable in his so doing. I do not think these damages too remote." This conclusion seems to us to be fortified by the cases of *Walton v. Fothergill and British Columbia Saw Mill Co. v. Nettleship*, to which we referred at the outset; the former case seeming to hold that, if the plaintiff, in order to perform a contract, was forced to buy other goods at an increased price, in consequence of the non-arrival of those which the defendant had contracted to carry, this would be such a natural result of the defendants' neglect as to entitle him to recover his loss; while in the latter case the court considered the plaintiffs entitled to recover the sum necessarily expended in replacing the lost box of machinery there in question. Nor can we any longer deem it doubtful that in *Eyre v. Midland Great Western Ry. Co.* (15 Ir. L. T. 291) the plaintiff would have been entitled to recover for the loss incurred by having to replace the personal necessaries contained in his trunk.

#### THE CONVEYANCING AND LAW OF PROPERTY ACT, 1881. WHERE IT SHOULD BE ADOPTED, AND WHERE EXCLUDED.—II.

(Continued from page 33, ante.)

##### *Receipt for Consideration.*

In our last article we dealt with conditions of sale, and some points relating to conveyances in general, and finally with regard to covenants for title in conveyances on sale. Next in order comes the receipt: this should be indorsed on the deed, as usual, notwithstanding sects. 54, 55; and when it is absent the deed should be inspected, to see whether any form of receipt has been indorsed, and inquiry should be made as to why it has not been signed.

These remarks do not apply to the statutory mortgages and transfers, given in the third schedule to the Act, nor to conveyances which previously to the Act, had often no indorsed receipt; such as those by railway companies, and registered building societies. Probably the statement, in the body of the deed, that no receipt was intended to be indorsed, which was sometimes inserted in conveyances by companies (Davidson, vol. ii. Part I., 4th edit. 595), will now be omitted in such cases, while it is not unlikely that it will be inserted in ordinary conveyances where it is desired to take advantage of the new enactment, and yet avoid all cause for suspicion.

##### *Completion of Purchase.*

By sect. 56 it will not, in future, be necessary on completion of a purchase, whether the contract was made before or after the 1st Jan., 1882, for the purchaser's solicitor to produce any authority to receive the purchase money, if he produces the purchase deed executed, and the indorsed receipt signed, by

the person entitled to give a receipt for the purchase money.

The Act seems to make execution of the deed, if it contains a receipt, sufficient without signature of indorsed receipt, but whether this is accepted will depend on circumstances.

It should be observed that this section will not protect payments to an accountant or other agent not being a solicitor, nor apparently to a solicitor's clerk; so caution will be necessary in dealing with strangers. Also the money should not be paid until the deed is executed by all necessary parties.

A purchaser can protect himself in some cases against paying on a forged receipt by appointing at his own expense a person to attest the execution (sect. 8).

##### *Mortgages.*

The provisions of the Act, obliging a mortgagee to transfer his mortgage if required by his mortgagor (sect. 15), and to produce his deeds at the mortgagor's cost (sect. 16), take effect notwithstanding stipulation to the contrary; so they are beyond the range of practical conveyancing.

##### *Mortgages—Consolidation.*

But by sect. 17 (2) a stipulation will prevent the Act from abolishing the right to consolidate, if it is inserted in one of the deeds. Probably in a first mortgage no stipulation will be inserted, but in the next mortgage between the same parties on another property, a provision in favour of consolidation or a further charge on the property previously mortgaged will be introduced.

##### *Mortgages—Leasing Powers.*

The next section (s. 18) of the Act contains provisions relating to mortgages of land (see s. 2, ii.), which ought in most cases to be carefully excluded; and this must be done by express words, sect. 18, sub-sects. (13) (14). We hope the Legislature will soon see fit to materially alter this section.

It empowers a mortgagor in possession to lease for twenty-one years; and, if the lessee agrees to erect, improve, or repair buildings within five years, the lease may be for ninety-nine years. The evident object of the Act is to facilitate leases, and to secure that, as far as possible, no land should be without some person who can freely lease as owner. Compare sect. 41 as to infants, and the Settled Estates Act, 1877.

The Act, it is true, requires that the lease shall take effect in possession within twelve months, that the best rent shall be reserved, that there shall be a condition for re-entry on nonpayment of rent, and that a counterpart shall be executed by the lessee and delivered to the mortgagor, who is bound within a month to hand it to the first mortgagee. In a building lease a peppercorn rent may be reserved for five years, sect. 18, sub-sect. (5) to (11).

But in most mortgages, and especially in small ones, it would be dangerous to mortgagees to leave such wide powers in the hands of mortgagors. It would open a door to fraud and collusion, and endanger both principal and interest. The provision of sub-sect. (17) applying this section "as far as circumstances admit" to any letting, and to an agreement, whether in writing or not, for leasing or letting, seems dangerous as well as vague. It makes it difficult for any mortgagee attempting to foreclose, or to use his power of sale, to tell what difficulties he might meet with from persons declaring that they were entitled to some kind of tenancy under the mortgagor. The omission by the mortgagor to deliver the counterpart of the lease to the mortgagee does not affect the validity of the lease (11).

The Act gives the leasing powers both to the mortgagor in possession, and to all mortgagees while respectively in possession; so that in the mortgage deed not only the leasing powers of the mortgagor, but of all subsequent mortgagees should be excluded. In wording the clause the draftsmen must bear in mind the extended meaning of the word mortgage by sect. 2 (vi.). The mortgagee need not exclude the power of leasing

which the Act gives to himself, but it will sometimes need supplementing.

The powers given by sect. 18 apparently apply to charges, whether made by deed or otherwise. At least the word "mortgage" has this extended meaning by sect. 2 (vi.), and the express mention of the "mortgage deed" in sect. 19 (i) assists this view, but the use of the word "deed" in sub-sects. (13) (14) of sect. 18 throw some doubt upon it. On the whole, it will clearly be prudent for persons taking equitable charges to exclude the leasing powers of the mortgagor and his subsequent mortgagees.

It would certainly not meet the views of many firms or houses, giving temporary accommodation to a client or customer, to find that, shortly after the deposit of deeds, the land was leased at a peppercorn rent for five years for building. Where there is no deed the power can be excluded by any writing signed by the mortgagor and mortgagee, sect. 18 (13). This should be drawn up even in the case of deposits formerly made without any writing. But it must be remembered that, in register counties, the question of registration will have to be considered: see *Dart*, 179; *Credland v. Potter*, L. Rep. 10 Ch. App. 8; 31 L. T. Rep. N. S. 522. Where there is a mortgage or charge by deed it will be best to exclude the leasing powers by a clause inserted in the deed itself. By sect. 18 (13) they may be excluded by a provision "in the mortgage deed or otherwise in writing" but doubts may be raised as to whether the deed can be legally varied otherwise than by deed.

It will be seen that the mortgagor has these powers of leasing against every "incumbrancer," so that every incumbrancer should exclude them: see sect. 2 (vii.).

In those mortgages where it is desired to give the mortgagor leasing powers the statutory power will be often insufficient. The term of ninety-nine years is too short for some districts, and there is no power to grant mining leases, or leases at fee-farm rents. Such additional powers may be conferred in the mortgage deed by way of supplement, sect. 18 (14). Compare Supplementary Form in *Wolst. & T.* 181, and *Davidson*, vol. ii., 3rd edit. 900.

In case of mortgages made before the Act, where it is desired to give all, or some, of the leasing powers of this section, sub-sect. (16) affords a convenient mode of so doing. For form see *Wolst. & T.* 181, which, it should be observed, is by deed.

The Act will not enable a tenant for life, or any mortgagee of his life estate, of his or their own authority, to make a lease binding on the reversioner, s. 18, sub-sect. (15), except apparently leases not exceeding twenty-one years under sect. 46 of the *Settled Estates Act, 1877*. Where the settlement was made after the 1st Nov. 1856 (*Settled Estates Act*, sect. 57), such a lease must be in conformity with the *Settled Estates Act*, as well as with the Act we are discussing.

Where partial alienation without consent of some person would work a forfeiture, as is often the case in leaseholds, the power of leasing under this section should be altogether excluded. This should be done in the interest both of mortgagor and mortgagee. Or if preferred, a clause can be inserted making the obtaining of the previous consent a condition precedent to the granting of any lease.

#### *Mortgages—Sale, Insurance, Timber, Receiver.*

By sects. 19-24 a mortgagee, where the mortgage is made by deed, will have powers of sale, insurance, of appointing receiver, and of cutting timber. Considering how widely the word mortgage is defined (s. 2, vi.), and that these provisions apply to every kind of property capable of mortgage, there will doubtless be many cases where it will be necessary for mortgagors to exclude or vary the Act, and this must be done in the mortgage deed: sect. 19 (2) (3). Also mortgagors, even in ordinary mortgages of land, may object to the power of sale being exercisable at three months notice after default, instead of six months (*David*, ii. 862), or after

interest has been in arrear two months instead of three months (*Ibid.* 863), and to the new clause that the power shall become immediately exercisable on breach of any provision in the deed other than the covenants for payment of mortgage money and interest. In some cases this seems likely to cause hardship: *Clerke & Brett*, 77.

Where a lessor is also mortgagee by deed of the tenant's interest, it may be convenient to insert some of the provisions of the lease in the mortgage, as though the condition of re-entry in the lease may be relieved against under sect. 14 the power of sale can be used under sects. 19, 20. This plan will be useful in a lease by a brewer of a public-house, where the brewer also lends money to the tenant. The lease will usually contain stringent covenants as to the management of the house, and a condition of re-entry on breach of them. But under sect. 14 the tenant may seek relief, and, if relief should not be granted, he can put the lessor to expense and cause much delay. If now these covenants are inserted into a mortgage to the lessor, of the leasehold interest, the power of sale will at once arise on the breach (s. 20, iii.), if the mortgage money has become due previous to the breach: s. 19 (1), (i.).

Mortgagees should not exclude the powers given by sects. 19-24, and in ordinary mortgages from one person to another they may be safely relied upon, except that it will be best for all parties, where the provisions relating to insurance are not excluded, to fix a maximum sum in the deed (sect. 23); and that, where it is intended that the mortgagor shall insure, the usual provision to that effect be inserted in the deed: *David*, ii. 598-608; for form, *Ibid.* 608. The statutory provision only enables the mortgagee to insure and charge the premiums.

In the case of mortgages by way of charge, mortgages of freeholds for a term, or of leaseholds by demise, it will be seen that the power of sale is not altogether satisfactory, for it only enables the mortgagee to sell the estate or interest which is the subject of the mortgage to him, and does not, like *Lord Cranworth's Act*, enable him to convey or assign all the mortgagor's interest: 23 & 24 *Vict.* c. 145, s. 15; *Hiatt v. Hillman*, 25 L. T. Rep. N. S. 55; 19 W. R. 694; see *David*, ii. 637 669.

Messrs. *Wolstenholme and Turner* (p. 49) consider this an improvement on *Lord Cranworth's Act*, but we doubt whether this will be the general opinion. Hence, in mortgages by way of charge, it will be convenient to secure either that the mortgagee shall have power to convey the legal estate, or else to insert a covenant by the mortgagor to convey it upon a sale. So in mortgages of freeholds for a term, and leaseholds by demise it will be needful to insert covenants that the mortgagor will stand possessed of the reversion in trust for the purchaser of the mortgage: see *David*, ii. 669; and for form, *Ibid.* 974; see also *Blythwood*, vol. v. 254.

It will be well sometimes, where leasehold property is liable to forfeiture on alienation without consent, to insert a proviso against exercise of the power of sale without such consent: *David*, ii. 1017, 1027.

In mortgages for long terms for raising portions it will be sometimes prudent to negative the power of sale, which could hardly be exercised without considerable sacrifice in point of value: *David*, ii. 633, 1009.

It should be noticed that sect. 30 provides for the devolution of the legal estate in mortgaged freeholds, and of powers on death of mortgagee; and that sect. 67 supplies sufficient provisions as to notices previous to the exercise of the power of sale.

If it is intended that the receiver should have either more or less than 5 per cent. commission, a provision to that effect should be inserted: sect. 24 (6). As the receiver has powers to the extent of the mortgagor's interest, s. 24 (3), the difficulty which arises, in charges, and mortgages by demise, with regard to the power of sale will not occur here. It has been suggested that a mortgagee may be unable to put in his own receiver if a subsequent mortgagee puts in a receiver first: see *Clerke & Brett*, 89; but *contra* *Wolst. & T.* 53, 54. We

think, however, that the receiver of the subsequent mortgage must give way to that of the prior. However, if desired a covenant by the mortgagor may be inserted that in any subsequent mortgage (see sect. 2, vi.) there shall be an agreement that the powers of the Act with reference to a receiver shall be excluded, sect. 19 (3). Notice of this should be given to any person who makes inquiries of the mortgagee with a view of making a loan on the property. It would seem that in case of leaseholds subject to forfeiture on alienation, appointment of receiver, if any of the property was underlet with consent, could not work a forfeiture: see s. 24 (2), and David. ii. 1018.

We postpone the consideration of these sections 19-24 with respect to bills of sale, and mortgages of debts.

(To be continued.)

### TEXT-BOOK ADDENDA.

(Continued from page 51, ante.)

*Buckley on the Companies Acts (3rd Edition), 481.*

Where a creditor claimed, and was allowed to prove, in a winding-up for certain sums, a claim against him by the liquidator being disallowed, the costs of the creditor resulting from his own claim were added to his debt, while those resulting from the liquidator's claim were paid out of the assets of the company (*In re Lombard Deposit Bank, ex parte Lombard Building Society*, 50 Law J. Rep. Chanc. 749).

*Theobald on Wills (2nd Edition), 607.*

Where there was a gift of residue among such of the children of A. as are now alive, and fourteen named persons, and there were no children of A., held that there was no lapse, the residue being divisible amongst the fourteen persons named (*In re Spiller, Spiller v. Madges*, 50 Law J. Rep. Chanc. 750).

*Rogers on Mines (2nd Edition), 620.*

A lessee of mines covenanting to work them "in the usual and approved manner," is not absolved from liability if he lets down the surface (*Davis v. Treharne*, 50 Law J. Rep. Q. B. 665)—H. L.

*Order LV., Rule 1.*

*Lely and Foulkes on the Judicature Acts (3rd Edition), 252.*

Where a plaintiff recovers on one out of three items, and the defendant succeeds as to the rest, and an order is made giving the plaintiff the costs of the item recovered, and the defendant of the rest of the claim, the plaintiff is entitled to the general costs of the cause (*Sparrow v. Hill*, 50 Law J. Rep. Q. B. 675)—C. A.

(To be continued.)

### BOOKS RECEIVED.

*The Institutes of Justinian. Edited as a Recension of the Institutes of Gaius.* By THOMAS ERSKINE HOLLAND, D.C.L., of Lincoln's Inn, Barrister-at-Law; Chichele Professor of International Law and Diplomacy, and Fellow of All Soul's College, Oxford. Second Edition. Oxford: At the Clarendon Press. 1881.

*Cassell's History of England from the earliest period to the present time.* With about 2,000 Illustrations. Part 77. London, Paris, and New York: Cassell, Petter, and Galpin.

*The Nineteenth Century.* A Monthly Review, Edited by JAMES KNOWLES. No. 60. Feb., 1882. London: C. Kegan Paul & Co.

*Contemporary Review.* Feb., 1882. London: Strahan and Co., Limited, Paternoster-row.

*Milton's Paradise Lost.* Illustrated by Gustave Doré. Edited, with Notes and a Life of Milton, by the late ROBERT VAUGHAN, D.D. London: Cassell, Petter, Galpin, & Co.

### APPOINTMENTS AND PROMOTIONS.

NOTE BENE.—Information intended for publication under the above heading should reach us not later than Friday morning in each week, as publication is otherwise delayed.

Mr. David Galbraith, of 53, Harcourt-street, solicitor, has been appointed a Commissioner in Ireland for taking Affidavits in and for the Courts in the Province of Ontario.

### LAW STUDENTS' JOURNAL.

#### THE INCORPORATED LAW SOCIETY OF IRELAND.

FINAL EXAMINATION FOR APPRENTICES TO SOLICITORS, Pursuant to the Attorneys and Solicitors Act (Ireland), 1866.

#### HILARY SITTINGS EXAMINATION, 1882.

##### PRACTICE OF THE COURT OF BANKRUPTCY.

Mr. NEILSON, Examiner.

1. State what must be set forth in an Affidavit to support a Petition by a Debtor to have himself adjudicated a Bankrupt?

2. Supposing a Bankrupt to be possessed of an income not derived from property how can the Court of Bankruptcy make it available for his Creditors?

3. State the Sittings to be held and the business to be done at them—

1st. In an ordinary Bankruptcy?

2nd. In a Composition after Bankruptcy?

3rd. In a Petition for arrangement?

4. If a Client stated to you that his Debtor was making away with his property and when sold he was about to go abroad, with a view to avoiding payment of the Debt, and of which you had reasonable evidence, what course would you advise the Creditor to adopt if the debt due to him amounted to £40?

5. Define who is deemed to be a secured Creditor, and what he must do to vote in a Sitting in Bankruptcy, or to present a Petition for Adjudication?

6. As to a Debtor Summons state—

1st. How it is procured?

2nd. How does it differ in its terms as to Traders and Non-traders?

3rd. What proceedings are to be taken by the person on whom the Summons is served to show cause so as to avoid an act of Bankruptcy?

#### QUEEN'S COLLEGE, GALWAY.

SESSION 1881-82.

The following Scholarships and Exhibitions have been awarded by the Council:—

FACULTY OF LAW.—Senior Scholarship—Mr. Michael J. Farrelly, M.A.; Junior Scholarship—First Year—Mr. Thomas E. Nelson, M.A. Exhibitions—First Year—Mr. Mark Molloy, B.A.; Mr. Timothy F. Kirwan.—By order of the President,

EDWARD TOWNSEND, M.A., Registrar.

27th January, 1882.

Professor Edward Cliffe Leslie, LL.D., who for nearly thirty years filled the chair of Jurisprudence in the Queen's College, Belfast, died in that city on the 27th ult.

From the 1st of June, 1880, to the 31st of May, 1881, the number of companies registered in England, Ireland, and Scotland, was 1,427; capital, £165,208,344.

**COURT PAPERS.**

**LAND JUDGES.**

Sittings for next Week so far as same are appointed.  
Before the Rt. Hon. JUDGE FLANAGAN.

**MONDAY.**

IN CHAMBER.—A. G. Bagot, allocate.—Trustees R. D. King, ditto.

IN COURT.—P. Kenny, receiver.

Before EXAMINER (Mr. Kennedy).

A. M. Miller, rental.

**TUESDAY.**

IN COURT.—F. W. Crofts, final schedule.—J. P. Kearney, receiver.—J. Power, ditto.

Before EXAMINER (Mr. Kennedy).

E. S. Graves, rental.

**WEDNESDAY.**

IN COURT.—T. Dowling, from 1st.

Before EXAMINER (Mr. Kennedy).

W. Mathers, vouch.—M. Murphy, ditto.

**THURSDAY.**

IN COURT.—R. Eames, receiver.—Administratrix J. J. Burke, final schedule.—J. A. Shields, receiver.

**FRIDAY.**

SALES IN COURT.

D. CARLETON, . . . . . 1 lot.

Before EXAMINER (Mr. Kennedy).

J. M. Hugo, rental.

Before the Rt. Hon. JUDGE ORMSBY.

**MONDAY.**

IN CHAMBER.—M. J. M'Kee, confirm sale.—E. Dease, delay.—Assignee M. M'Grath, allocate.

IN COURT.—T. Hignell, as to costs.—R. T. Rye, payment.—S. A. Kelly, objection.

**TUESDAY.**

IN COURT.—Assignees Cruise, final schedule.

**WEDNESDAY.**

Before EXAMINER (Mr. M'Donnell).

C. M'Gowan, rental.—R. Mullins, do.—W. Coleman, room 1st.

**THURSDAY.**

IN CHAMBER.—H. Kellett, as to partition.

**FRIDAY.**

Before EXAMINER (Mr. M'Donnell).

W. T. S. Lauder, rental.—Trustees Scully, do.—De Montmorency, do.

**COURT OF BANKRUPTCY.**

**ADJUDICATIONS IN BANKRUPTCY.**

The date of Adjudications are first given, the Sittings follow in Italics.

Cooper, George William, of 13, Brighton-vale, Monkstown, in the county of Dublin, gentleman. January 17; *Friday, February 17, and Tuesday, March 7.* John Mathers, solr.

Hayes, Peter, of Ardavan, in the county of Wexford, farmer and cattle dealer. January 25; *Friday, February 17, and Tuesday, March 7.* Jas. Goff, solr.

Hopper, James, of 51, Lower George's-street, Kings'own, in the county of Dublin, boot and shoe manufacturer. January 17; *Tuesday, February 7, and Tuesday, February 21.* Casey and Clay, solrs.

Knox, William, of Drumneath, in the county of Down, farmer. January 3; *Friday, February 17, and Tuesday, March 7.* T. D. Card and Wm. Carey and Son, solrs.

**DUBLIN STOCK AND SHARE LIST.**

DESCRIPTION OF STOCK	JANUARY				FEBRUARY		
	Sat. 28	Mon. 30	Tues. 31	Wed. 1	Thur. 2	Fri. 3	
<b>*Paid Government.</b>							
— 3 p c Consols ..	99½	98½					
— 3 p c Reduced ..							
— New 3 p c Stock ..	99½	99½	98½	99½	98½	98½	
<b>INDIA STOCK.</b>							
4 p c Oct. 1883 Tr 6½s. at							
3½ p c Jan. 1881 Bk. of Irel.							
<b>BANKS.</b>							
100 Bank of Ireland ..		313	314				
25 <i>Hibernian Banking Co.</i> ..							
20 <i>London and County</i> ..							
20 <i>London and Westminster</i> ..	70		69			68½	
10 <i>Do. New</i> ..			67				
31 <i>Monster Bank (Limited)</i> ..		64½	64	7½	64	7	
30 <i>National Bank</i> ..	23½		23½		23½		
10 <i>National of Liverpool (Ltd)</i> ..		13½	23½				
— <i>Nat. Prov. of England, ltm.</i> ..							
25 <i>Provincial Bank</i> ..						54	
20 <i>Do. do. New 1867</i> ..			23				
10 <i>Royal Bank</i> ..		29½	29½				
25 <i>Standard of B. S. A., ltd</i> ..				56½		55½	
15½ <i>Union of London</i> ..							
<b>STEAM.</b>							
100 <i>City of Dublin</i> ..						110	
50 <i>Dublin &amp; Liverpool Steam Ship Building Co.</i> ..	58						
<b>MINES.</b>							
2½ <i>Wicklow Copper</i> ..							
<b>MISCELLANEOUS.</b>							
10 <i>Alliance &amp; Dub. Cons. Gas</i> ..							
— <i>Do. do.</i> ..							
4 <i>Arnott &amp; Co., lited</i> ..							
— <i>Dublin Artisan Dwellings</i> ..			9½				
6 <i>Dub. (St'h) City Market Co.</i> ..							
7 <i>Dub. &amp; Wick. Man. Co., ltd</i> ..							
8 <i>Goulding &amp; Co., lited</i> ..				8½			
4 <i>National Discount, lrs., Ntd</i> ..		4½	4	4½			
9-4-7 <i>Patriotic Assurance</i> ..							
<b>TRAMWAYS.</b>							
10 <i>Belfast Trams</i> ..							
10 <i>Dublin United Tramways</i> ..				11			
10 <i>Leeds Trams</i> ..							
10 <i>L'pl Un'ld Tram &amp; Bus l'ld</i> ..					11½	11½	
10 <i>N'th Metr. Tramway, Lond.</i> ..						10½	
10 <i>Provincial Trams, ltm.</i> ..							
<b>RAILWAYS.</b>							
10 <i>Athenry and Tuam</i> ..							
50 <i>Belfast and County Down</i> ..							
50 <i>Belfast and Northern Cos.</i> ..							
100 <i>Dubla. W'klow, &amp; W'ford</i> ..							
100 <i>Great Northern (Ireland)</i> ..	118½				117	117	
100 <i>Gt. Southern and Western</i> ..	110		100½		109½	109½	
100 <i>Midland Gt. Western</i> ..		82	82½				
50 <i>Waterford and Limerick</i> ..			81				
<b>RAILWAY PREFERENCE.</b>							
100 <i>Belfast &amp; N'th'n Cos, 4 p c</i> ..							
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100 <i>D., W., &amp; W., 6 per cent</i> ..				144		145	
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100 <i>Mid. Great Western, 4 p c</i> ..				102½			
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— <i>Do., 4½ p c</i> ..							
— <i>Gt. South'n &amp; West'n, 4 p c</i> ..		109				108½	
— <i>L'derry &amp; Enniskillen 5 p c</i> ..							
— <i>Midland Gt. West'n, 4 p c</i> ..				106			
— <i>Navan &amp; Kingscrt 4 5 p c</i> ..							
— <i>Do., B, 5 p c</i> ..				65			
— <i>Waterford &amp; Central 5 p c</i> ..				108			
<b>MISCELLANEOUS DEBENT.</b>							
<i>Alliance &amp; Cons. Gas, 4 p c</i> ..							
<i>Ballast Office Deb., £92 6s 2d, 4 p c</i> ..				94			
<i>City Deb. of £92 6s 2d, 4 p c</i> ..				92½	92		
<i>Dub. Port &amp; Dock, 4½ p c</i> ..							

\* Shares not fully paid up are given in Italics. † x d

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## BIRTHS, MARRIAGES, AND DEATHS.

## BIRTHS.

DALY—January 27, at Ballinrobe, the wife of P. J. B. Daly, Esq., solicitor, of a son.

## MARRIAGES.

HENCHY and HOIT—January 31, at St Peter's Church, by the Rev. Morgan W. Jellett, LL.D., John R. Henchy, Esq., of Dublin, to Mary Elizabeth (Lillie), eldest daughter of H. Hoit, Esq., barrister-at-law.

MALLEY and PARKER—January 31, at St. George's Church, by the Rev. Latham C. Warren, Rector, George Alexander Malley, Esq., Straide Hill, County Mayo, second son of George Orme Malley, Esq., Q.C., to Frances Thomazine Parker, second daughter of the late John Parker, Esq., solicitor, Mountmellick.

RATTON and TIERNEY—January 25, at the Pro-Cathedral, Marlborough-street, by the Rev. John Byrne, C.C., St. Joseph's, Berkeley-street, assisted by the Rev. Robert F. Conlan, C.C., and the Rev. Alfred Murphy, S.J., John de Verde Ratton, Colonial Medical Service, younger son of the late Surgeon-Major James Alban Ratton, 3rd Madras Light Cavalry, to Susan, eldest daughter of Francis Tierney, Esq., solicitor, Upper Gloucester-street.

## DEATHS.

BROWNRIGG—January 27, at Mount-street Crescent, William Henry Browarigg, Esq., solicitor, of Elsinore, Bray.

KERNAN—January 31, at Upper Prince Edward-terrace, Blackrock, Emily, the beloved wife of Charles Kernan, Esq., solicitor.

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# THE IRISH LAW TIMES AND SOLICITORS' JOURNAL.

VOL. XVI. SATURDAY, FEBRUARY 11, 1882.

No. 785

## LIABILITY OF INNKEEPER FOR LOSS OF GUEST'S PROPERTY.

WHAT great events from little causes spring. The original and ostensible cause of the Crimean war was, in the words of her Majesty, "the key of the back door of a mosque." Leaving a bedroom door unbolted was the origin of the conflict in *Herbert v. Markwell*. But, like the heroes of the chill heights of the Tauric Ocheronese, the litigant innkeeper and his guest, who figure in the *Law Times Reports* of the 28th ult., are now at peace—concluded, let us trust, not on the principle of "leaving the door open," against which Mr. Disraeli inveighed, when he called upon her Majesty's Government, in 1855, to "shut the door, and let those who want to come in knock at the door, and then we shall have a safe and honourable peace."

Is a guest at an inn negligent in not locking his door? Such was the question presented in the case referred to (45 L. T. N. S. 649), on which three learned judges delivered elaborate judgments. The plaintiff, who was a solicitor, and his wife were staying at the defendant's hotel, and it is recorded that, on the eventful night of Sunday, the 8th of May, the plaintiff went to bed about a quarter to twelve, while his good lady had retired about an hour and a half before. Under such circumstances, we are clearly of opinion that it was, at all events, not the wife's duty to bolt the bedroom door. But, was that duty imposed on the husband? There was no necessity for having recourse to the feeble protection of "a wooden or iron pin, used to keep meat in form," as Dr. Johnson defines the instrument which was applied by the "little maid" whom Wilks has immortalised; for the door—though it had no handle on the outside, but a key that acted as a handle, and might have been prudently removed—was properly provided with a bolt. The plaintiff deposed on the virtue of his oath that he bolted the door when he went into the room, but opened it again to put out his boots. Did he then re-bolt it? He swore he did, but he exhibited some uncertainty in his evidence, and admitted that, shortly after the occurrence which gave rise to the action as next to be narrated, he said, in reply to an observation that it was impossible to unbolt the door from the inside, "If that is so, I must have made a mistake;" and he certainly showed an absence of caution in other respects, by not removing the key from the outside, and by not depositing any valuables under lock and key in the wardrobe or elsewhere in the room. Be this as it may, it was discovered next morning that his watch, which he had left on a table near the bed, and his wife's watch and some jewellery, which she had left on the dressing-table, had been abstracted. The action was brought to recover the value of the stolen property; and the jury found that the loss would not have happened if the plaintiff had used the ordinary care that might be expected from a prudent man under the circumstances, and did not happen through any wilful act or default on the part of the defendant or any servant in his employ. They assessed the value of the property at £19 10s.; and a verdict was entered for the defendant, which the plaintiff sought to have set aside, on the grounds that there was no evidence of negligence on the part of the plaintiff to go to the jury, and that his

negligence (if any) was not the proximate cause of the loss, which might have been avoided if the defendant had himself used proper care and diligence.

Now in *Calye's case* (8 Coke 32, 1 Sm. L. C. 122), it was said, "It is no excuse for the innkeeper to say that he delivered to the guest the key of the chamber in which he is lodged, and that he left the chamber door open; but he ought to keep the goods and chattels of his guest there in safety." Again, in *Morgan v. Ravey* (6 H. & N. 267), the defendant was held liable, though the plaintiff had forgotten to lock his door, notwithstanding notices posted up cautioning travellers to lock their doors. And in *Oppenheim v. White Lion Hotel Co.* (L. R. 6 C. P. 515) we find one of the judges saying, "I agree that there is no obligation on a guest at an inn to lock his bedroom door. Though it is a precaution which a prudent man would take, I am far from saying that the omission to do so alone would relieve the innkeeper from his ordinary responsibility." Those cases were cited; but there are others that might be mentioned. For instance, in *Mitchell v. Woods* (16 L. T. N. S. 676), we find Kelly, C.B., holding that there was no obligation on a guest to lock his door, and that, consequently, his omission so to do was not negligence. And in the American case of *Classen v. Leopold* (2 Sweeney, 705), we find the court saying: "*Calye's case* has not thus far been overruled or questioned in this State. Nor do I perceive any reason why it should be. The doctrine of the case was that the sole object of the giving to and acceptance by the guest of the key of his chamber (there being no attendant circumstances to show a different one), was to enable him to secure privacy at his pleasure; that the entrance of thieves or suspicious characters into the inn without the knowledge or consent of the innkeeper, was to be provided against by the outer door, which was under the care and control of the innkeeper, and which it was his duty so to keep as to prevent such entrance; while as to those guests who obtained entrance with the knowledge and consent of the innkeeper, as well as to the servants, it was his duty to see that they were not thieves or suspicious characters, and if he entertained doubts as to their character, to take proper precautionary measures to preserve his other guests from loss; and that guests had a right to rely on the faithful performance of these duties by the innkeeper, and to believe that they might repose in security in their chambers, with unlocked doors, and that no necessity existed for locking the doors except for the purpose of securing privacy when they might desire it. There is no reason to be derived from the present state of society, civilisation, and commerce, why the doctrine should not still hold good. The only reason why a guest should be held guilty of negligence in not locking his door is that it is easier to rob a room the door whereof is unlocked, than one the door of which is locked. This reason existed at the time of *Calye's case*, and it is no more apparent to courts and guests at this present day than it was then."

But, truly, the common law liability of innkeepers; on which *Calye's case* is the leading case, originated at a time when your Boniface was ordinarily the accomplice of cut-throats and highwaymen, while even locking your door was no protection against "a rat" in the arras, or the entry of some grim cut-purse through a secret panel in the wainscot. And as Willes, J., observed in

*Oppenheim's* case, Coke, in the passage already quoted from *Calve's* case, "evidently means that the fact that the guest having the means of securing his door, and neglecting to avail himself of them, affords the innkeeper no excuse by way of plea as matter of law." "I thought," said Bowen, J., in *Herbert's* case, "that, if it was any authority, it had long been killed by the judgment of Willes, J., in *Oppenheim's* case." And certainly, *Oppenheim's* case and the still later case of *Spice v. Bacon* (36 L. T. N. S. 896) are distinct authorities establishing that, while there is no absolute duty or obligation on a guest to lock or bolt his door, and his omission so to do is not *per se* negligence, it is an element to be considered by the jury with other facts which might be proved, and which taken together might amount to negligence. In accordance with this is, also, the American case of *Bohler v. Owens* (60 Ga. 185); and why such questions should be treated as questions of fact is well shown in *Burgess v. Clements* (4 M. & S. 811), where we find Lord Ellenborough saying: "I agree that if an innkeeper gives the key of his chamber to his guest, this will not dispense with his own care, or discharge him from his general responsibility as innkeeper. But if there be evidence that the guest accepted the key, and took on himself the care of the goods, surely it is for the jury to determine whether this evidence of his receiving the key proves that he did it *animo custodiendi*, and with a purpose of exempting the innkeeper, or whether he took it merely because the landlord forced it on him, or for the sake of securing greater privacy, in order to prevent persons from intruding themselves into his room." And see *Cashill v. Wright*, 2 E. & B. 891; *Armistead v. Wilde*, 17 Ad. & E. 261; *Jones v. Jackson*, 29 L. T. N. S. 399. But, as Montague Smith, J., said in *Oppenheim's* case: "The law in *Calve's* case may remain untouched. But the fact of the guest having the means of securing himself, and choosing not to use them, is one which, with the other circumstances of the case, should be left to the jury. The weight of it must, of course, depend upon the state of society at the time and place. What would be prudent in a small hotel, in a small town, might be the extreme of imprudence in a large city like Bristol, where probably three hundred bedrooms are occupied by people of all sorts." For those reasons, we ourselves are quite of the opinion arrived at in *Herbert v. Markwell*—that it cannot be laid down as a proposition of law that leaving the door unbolted is not evidence of negligence, but each case must depend on its own circumstances, and not bolting the door is one of those circumstances; and that here, even if leaving the door unbolted was not in itself sufficient evidence of negligence to be left to the jury, there were other circumstances which, coupled with it, would be sufficient. Nor is it to be regretted if, apart from 26 & 27 Vic., c. 41, this case should give a lesson to any future guest "who forgot to bar the door, O."

#### THE BLOCK IN THE IRISH LAND COURTS.

Mr. O. Raleigh Chichester writes as follows to *The Times* :—

"Sir,—The avenues of the Land Courts in Ireland are blocked, and danger and general inconvenience are resulting to the country at large, and to those who, whether they approve or disapprove the Act, are or will be affected by its operation. This blocking arises out of a simple cause, which is capable of easy and immediate remedy. That cause is the absence of fixed principles of assessment made known to and approved by the public.

"The fixing of 'fair rent' is a problem the solution of which is merely impossible, and happily our business can be carried on without solving it.

"Thus let the courts record in the case of each farm submitted to their jurisdiction (1) What is the gross value which can be extracted from it by the system of tillage or management approved in the district; (2) What should be the cost of production; (3) How much of the net results they adjudge to be paid as interest on improvements; (4) What proportion of the balance they adjudge to the landlord as rent.

"By such a system there would result the following advantages:—(a) Landlord and tenant would know precisely what evidence to bring forward; (b) They would have data to go upon enabling them to settle their cases out of court; (c) Principles would be laid down and applied, and their soundness and the method of their application could, if necessary, be appealed against to the final court of appeal, which is Parliament; (d) The capacity or the incapacity of the administrators of the law would become manifest.

"There is not, and probably never will be, a consensus of opinion as to the merits, justice, or policy of the Land Acts of 1870 and 1881, but confidence will in some measure return if these Acts are administered equably, according to principles which, whether approved or not by those concerned, are understood by them.

"Now, to attempt to settle matters out of court is, in my opinion, a most imprudent act, for the simple reason that we do not know on what principles the rents, &c., are being dealt with. I have some experience in land matters as landlord and tenant, and also as agent in a small way both in England and in Ireland."

#### THE GOVERNMENT AND THE LAND ACT.

An official return is being prepared for Parliament showing the results of the working of the Land Act in relation to rent cases from the first sittings of the Sub-Commissions up to the 20th of January. The return will supply statistics of the number of rent cases decided in each province and county, with details of the dates of the decisions, the Sub-Commissioners who adjudicated, the area, the valuation, the old rent and the new rent of each holding. A convenient summary is also a feature of the document, which will be one of much interest and value.

#### THE CONVEYANCING AND LAW OF PROPERTY ACT, 1881. WHERE IT SHOULD BE ADOPTED, AND WHERE EXCLUDED.—III.

(Continued from page 58, ante.)

##### Mortgages.

In our article last week we advised that, in an ordinary mortgage of land between two persons (a) section 18 should be excluded so far as it gives leasing powers to the mortgagor and his subsequent mortgagees, (b) power of sale might be omitted; but that where the entire estate and interest of the mortgagor does not pass by the mortgage, as in charges, and in mortgages of leaseholds by demise, some supplementary provision is needful to enable the purchaser, when the power of sale is put into force, to obtain the entire estate and interest, (c) insurance provisions might be omitted, except a statement of the sum in which it is intended the mortgagee should have power to insure, unless it is desired that the mortgagor should insure, when the usual covenant must be inserted, (d) provisions as to receiver should be omitted. We may add that (e) the mortgagor may convey as "beneficial owner," and then the covenants for title may be omitted in reliance on the covenants (c) which will be implied by sect. 7. But the exact phrase "beneficial owner" must be used. But though we advise this reliance on sect. 7 in an ordinary case of mortgage of freehold land between two persons, there are several exceptions which we must discuss in detail. Also (f) the "general words" and "all estate clause" may, in general, be omitted in reliance on sects. 6, 68. For remarks on those sections, in connection with convey-

ances on sale, see Article I., *Law Times*, Jan. 7, page 167.

If desired, the words "in fee simple" may be substituted under sect. 51 for the usual words of limitation in mortgages of the fee simple, but except in statutory mortgages, where it is desirable to follow the forms in Schedule III., there can be little advantage in altering the old forms. See Article I., *ubi sup.*

The practical result of the above suggestions, if carried out, will be a very considerable reduction in the length of most mortgages without any loss of efficiency.

#### *Mortgage of Leaseholds by Assignments.*

Here the Act may in general be relied upon in the same way as in mortgages of freeholds. The covenants implied by use of the phrase "beneficial owner" will include covenant (D.) in sect. 7 as well as covenant (C.) Where, however, there is a restraint on alienation without consent it will sometimes be well to exclude or further modify sect. 18, and to modify power of sale. See Article II., *Law Times*, page 185.

#### *Mortgage of Leaseholds by Demise.*

We have already spoken in this article of the need of a supplement to the power of sale. The remarks as to cases of restraint on alienation in the preceding paragraph apply here also. For form of mortgage of leaseholds by demise, see *Wolst. & T.* 163.

#### *Mortgage of Chattels.*

The leasing section (sect. 18) does not apply to bills of sale, but sect. 19 does, so far as it relates to power of sale, insurance, and apparently to appointment of receiver. However, as a general rule, it will be necessary either to include in bills of sale the usual provisions, or at least largely to supplement the statute.

There must generally be added power to mortgagee to take possession on default, covenants by the mortgagor not to remove the property, to keep up its value, to permit mortgagee to enter to view; and often other provisions will be necessary.

The power of sale cannot, according to this Act, be exercised unless some one of the events mentioned in sect. 20 has happened. And it would seem in addition that the mortgage money must have become due. For sect. 19 (1, i.) only gives the power "when the mortgage money has become due," and sect. 20 limits, but does not extend, this power.

In a precedent of a bill of sale now before us (*Wilson*, 2nd edit., p. 91), we find the money is made payable on demand. And, instead of the three months' notice after default, required by the statute before the power of sale can be put in force, we find forty-eight hours; and instead of two months' arrears of interest, as required by the Act, we find fourteen days; while in *Mr. Wilson's* form a breach of covenant by the mortgagor gives an immediate power of sale in cases where, under the Act, it would seem no power of sale would arise unless there was also default in payment of the mortgage money: see sects. 19 (1), 20. Hence, either the common power of sale should be inserted, or the power of sale in sects. 19, 20, greatly modified. If the latter course is adopted it will often be found convenient to rely on sect. 67, which contains provisions as to the sufficiency of notices; but care must be taken lest, in the process of modification, that section should become inapplicable. But the addition of a few words will easily prevent this. For forms of bills of sale, see *Wilson*; *Redman and Lyon*; *Wilkinson*, 838; *Greenwood*, 180; also *David*, 3rd edit., vol. ii., 1183.

It will be necessary to insert covenant for insurance by the mortgagor, if it is desired that he shall insure; if, however, this is not wished, a sum should be stated in which the mortgagee may insure. See above in this article.

The power to appoint a receiver will not be of much use to the mortgagee, but it should not be excluded. A receiver appointed under this section will not take the goods out of the "order and disposition" of the mortgagor, sect. 24 (2), but this is of no consequence if the

bill of sale is properly registered (41 & 42 Vict., c. 31, s. 20). As to effect of possession of receiver appointed by the court in case of unregistered bill of sale, see *Taylor v. Eckersley* (36 L. T. Rep. N. S. 442, L. Rep. 5 Ch. Div. 740), and *Wilson*, 39, 58.

A general description of the property comprised in the bill of sale will be inserted as usual. Of course, sect. 6 does not apply. The estate clause may be omitted (s. 63).

The usual covenants for title should be inserted. The covenants of sect. 7 do not include a covenant to enable the mortgagee to obtain possession (*Wilson*, 95; *David*, ii. 1136); and questions may arise as to their application to chattels.

(To be continued.)

### IMPLIED CONTRACTS AS TO CHATTELS.

It so happened that towards the end of his career on the bench, Lord Justice Bramwell was called upon to differ more than once from the opinion of the majority of his colleagues. In the case of *Johnson v. Raylton*, recently commented upon, the learned Lord Justice was unable to agree with the opinion of the majority, that the maker of goods who sells them agrees by implication to supply goods of his own making—a disagreement with which we ventured to express sympathy. Only a day or two after that case was decided, another knotty point of implied contract came before the Lords Justices in the case of *Robertson v. The Amazon Tug and Lighterage Company*, reported in the January number of the *Law Journal Reports*. On this occasion the Lords Justices were divided into the same two camps, but under banners precisely reversed. Lords Justices Brett and Cotton were for "no implied contract," while Lord Justice Bramwell on this occasion was for implying a contract.

The question arose upon a maritime agreement of very unusual form. The defendants, a tug and lighter company, whose scene of operations seems to have been the river Amazon, wanted to send out a flotilla, composed of a steam-tug and barges, to South America; and, instead of manning it for themselves, entered into an agreement with the plaintiff for the purpose. By this agreement the plaintiff contracted "to take steam-tug, towing six sailing barges, from Hull, and one small steamer from the Downs, the latter named to assist when required, to Para, Brazil," for £1,020. The plaintiff was to find officers, men, stores, and charts, and to provide for the men coming home again. Neither the steam-tug nor the small steamer were named in the contract; but it was admitted that the steam-tug intended was the *Villa Bella*, and the small steamer, the *Galopin*. The plaintiff does not appear to have provided the masters for the tugs, as, on reaching the Bay of Biscoy, the captain of the *Galopin*, who was employed by the company, took independent action, and deserted the expedition during rough weather. Lord Coleridge, who tried the case, and all the Lords Justices, were of opinion that this conduct was unjustifiable; and that, as the contract provided for the *Galopin* to assist, the plaintiff was entitled to damages if he could prove any. The real difficulty arose out of the legal effect of the behaviour of the *Villa Bella*. It seems that she turned out a veritable "slug" by reason of having been kept during the winter sunk in the water, and her engines and boilers being out of repair. The facts, however, tending to give her this unexpeditions character, were unknown to the company, who seem to have bought her recently. The consequence of the want of condition of the tug was said to be that the voyage took sixty days longer than it should; and the plaintiff asked for damages, to the extent of £1,200, for loss of profit. Lord Coleridge gave judgment for the plaintiff, leaving the damages to be settled by arbitration. This judgment has now been overruled; but, as one of the inconveniences of the system of judges of appeal sitting also as judges of first instance, it has been overruled by two judges, as

against two other judges, themselves personally of equal authority. All the judges agree that the contract must be taken to have been made with reference to a specific ship. Little difficulty presents itself on this head. The writing was perfectly consistent with a specific ship being intended, and evidence is admissible to supplement a written agreement to the extent of showing the subject-matter of the contract. Had the contract not related to a specific ship, an even more important question would have arisen—viz, whether the term implied in bailments and contracts of sale, the subject-matter of which is unascertained, that the thing supplied shall be reasonably fit for the purpose, is implied also in the case not of a buyer or hirer of the thing in question, but of a person who undertakes to do something for the owner with it. Lord Justice Brett appears to think that the analogy between the present case and that of a hirer is perfect, while Lord Justice Cotton denies the application of the analogy. Lord Justice Bramwell admits the analogy; but is of opinion that the law, both in the present case and in the case to which it is analogous, raises an implied contract of reasonable fitness for the required purpose, whether the chattel is ascertained or not.

Lord Justice Bramwell, in fact, believes that the same reasoning, requiring the contractor to supply the chattel in a state as fit for the purpose as care and skill can make it, applies equally to the case where the chattel is specific and where it is not. As for authority, he says he is forced to rely mainly on the *dictum* of Lord Abinger in *Smith v. Murrable*, 12 Law J. Rep. Exch. 223: "No authorities are wanted; the case is one which common sense alone enables us to decide." He also claims Story as disbelieving in the distinction. The learned Lord Justice, in fact, does not argue out the matter in his usual searching way. He relies mainly on his instincts and a *reductio ad absurdum*. He puts the case of the ship being without a rudder, and suggests that a ship is not a ship without a rudder—a suggestion which it is difficult to accept. He puts the case of a coppered ship some of the copper of which was off, or of a ship which had a large hole in the deck, or no covering in the hatchway. The inference intended to be drawn from these illustrations is doubtless that, if we are to imply or not to imply terms in the contract according to the deduction to be made from the facts as they present themselves to the parties, it makes no difference whether the thing in question is specific or unascertained. The person who is to be put in possession of the chattel expects it to be reasonably fit for the intended possessor, and the owner knows that this is his expectation. If both parties have seen the chattel, they may be expected to contract in reference to it as it is, and must be held disentitled afterwards to complain of defects which they knew. But does not this reasoning leave out of consideration a very important principle of English law expressed in the maxim *Caveat emptor*? This principle belongs, to a large extent, to the class of positive laws. It is not only that the buyer or the hirer usually does have a sharp eye to the defects of what he is buying or hiring, and therefore it is reasonable to suppose that the seller assumed that his eyes were open; but that, as a matter of policy, the buyer ought to be forced to look after his own interests at the time, or suffer for it afterwards. Questions of the kind raised in *Robertson v. The Amazon Tug Company* depend not merely on the result to be logically collected from what the parties have done, but must also be decided with reference to what the law thinks that they ought to have done. Mr. Robertson ought to have tried the speed of the tug, and seen to the engines and boilers. When he quoted a price for taking the ship and its convoy across the Atlantic without doing so, did he not take his chance? This is one of the many conceivable suggestions of common sense, which Lord Justice Bramwell admits takes a very different shape in different persons. When the chattel in question is unascertained, the intended buyer or hirer has, of course, no opportunity of testing what he is to have, and therefore an implied obligation arises. We are inclined to think

that it will be with this sort of reflection in their minds that most lawyers will rise from the perusal of the differing judgments in this case.—*Law Journal*.

### THE SLANDER OF A PERSON IN HIS CALLING.

(Continued from page 60, ante.)

As to cases I., II., and III., it is obvious that insolvency is necessarily connected with trade. If a man cannot pay his private debts, he cannot pay his mercantile debts. The damage is the same in either case, for if a merchant be incapable of paying all his debts, whether in or out of the trade, his mercantile credit, which depends on his general solvency, must be injured. And so of case IV. The words addressed to an employer, in regard to his clerk, could properly be understood as relating to him in the capacity of clerk alone. "The idea," as said in the opinion, "that a man may speak to a merchant about the dishonesty of one employed by him, and be able to separate the charge of dishonesty from his acts as clerk, and place them upon the individual only in his private relations, is delusive."

#### ILLUSTRATION.

(b) J. was a superintendent of police. B. said of him: "He has been guilty of conduct unfit for publication," but not that it was in the course of his office. *Held*, not actionable.<sup>1</sup>

RULE VII.—It is actionable to impute (a) ignorance where learning and skill are requisite, or (b) dishonesty where integrity is indispensable, or (c) immorality where morality is absolutely required, or (d) the absence of any other qualifications which are necessary to the prosecution of a particular profession or calling.

#### ILLUSTRATIONS.

(a) I. T. was an apothecary, and A. said of him: "It is a world of blood he has to answer for in this town; through his ignorance he did kill a woman and two children at S.; he has killed his patients with physic." *Held*, actionable.<sup>2</sup> II. C. was a physician, and H. said of him: "Thou art a drunken fool, and an ass; thou wert never a scholar, and art not worthy to speak to a scholar, and that I will prove and justify." *Held*, actionable.<sup>3</sup> III. B. was a midwife. W. said of her: "She is an ignorant woman, and of small practice, and very unfortunate in her way. There are few that she goes to but lie desperately ill, or die under her hands." *Held*, actionable.<sup>4</sup> IV. S. was a surgeon, and D. said of him: "I wonder you had him to attend you. Do you know him? There have been many inquests had upon the persons who have died because he attended them." *Held*, actionable.<sup>5</sup> V. J. was a physician, and R. said of him: "He killed the child by giving it too much calomel." *Held*, actionable.<sup>6</sup> VI. D. was an attorney. B. said of him: "What! does he pretend to be a lawyer? He is no more a lawyer than the devil." *Held*, actionable.<sup>7</sup> VII. P. was a barrister, and J. said of him: "He is a dunce, and will get little by the law." *Held*, actionable.<sup>8</sup> VIII. A. was a schoolmaster, and B. said of him: "Put not your son to him; for he will come away as very a dunce as he went." *Held*, actionable.<sup>9</sup> IX. R. said of F., who was a mason: "He is no mechanic; he cannot make a good wall, or do a good job of plastering; he is no workman; he is a botch." *Held*, actionable.<sup>10</sup>

Cases I., III., and V. impute professional incapacity to a most alarming degree. Of case II. it was said by Chief Justice Gibson, of Pennsylvania, in 1837, that

(1) *James v. Brook*, 9 Q. B. 7 (1846).  
 (2) *Tutty v. Alverts*, 11 Mod. 221 (1710).  
 (3) *Coady v. Hignley*, Cro. Car. 212 (1633); s. o. sub nom. *Coady & Talley's Case*, Godb. 441.  
 (4) *Wharton v. Brook*, 1 Vent. 21 (1689).  
 (5) *Southee v. Denny*, 1 Ex. 196 (1847).  
 (6) *Johnson v. Robertson*, 9 Port. 436 (1839).  
 (7) *Doy v. Butler*, 3 Wils. 59 (1770).  
 (8) *Peard v. Jones*, Cro. Car. 282 (1625).  
 (9) *Watson v. Vanderlash*, Het. 67 (1809).  
 (10) *Fitzgerald v. Redfield*, 11 Barb. 464 (1868).

rules that are the growth of a country in which collegiate testimonials are the only passports to professional fame are unsuitable to the habits of a people among whom professional instruction in colleges and universities was not originally attainable; and the learned judge was not disposed to follow it as a precedent suitable to the place and time in which he spoke. The words in case IV. obviously imported that S. was so deficient of skill and care—skill and care being certainly required of a surgeon—as that he had either caused the death of his patients, or that coroner's inquests had been held in which the inquiry had been whether he had not been the cause of the death of many persons. In case VI. the imputation of a lack of qualification for his profession seems sufficiently clear. As quaintly said in the opinion of the court: "To say of an attorney he is no lawyer is a great reflection upon him, and means that he does not understand his business; besides, an attorney must have a competent knowledge of the law, or he cannot draw a common writ or declaration. And, per Yates, Justice, the words are as great a slander upon the plaintiff, and as injurious to him, as any words possibly can be." It was argued, in Case VII., that "duce" was commonly spoken of one who was dull and heavy of wit; that one so described might not be as quick and ready as others, yet might have a more deliberate and solid judgment; but all the court thought that a "duce" was a person of dull capacity and apprehension, not fit to be a lawyer. Case VIII. is clear, and Case IX. shows that the law recognizes no distinction between a learned profession and a mechanical trade in which skill is required, except in the nature of the words necessary to render the slander actionable.

ILLUSTRATIONS.

(b) I. G. was a butcher. L. said of him: He uses false weights." *Held*, actionable.<sup>1</sup> II. B. was a merchant, and R. said of him: "He keeps false books, and I can prove it." *Held*, actionable.<sup>2</sup> III. T. was a corn-vendor. J. said of him: "You are a rogue and a swindling rascal; you delivered me 100 bushels of oats worse by 6d. a bushel than I bargained for." *Held*, actionable.<sup>3</sup> IV. F. was R.'s gamekeeper. N. said of him: "It is no wonder that we did not find any foxes in R.'s wood, because F. trapped them." *Held*, actionable.<sup>4</sup> V. R. was an attorney. C. said of him: "He is a cheat." *Held*, actionable.<sup>5</sup> VI. G. was an attorney. D. said of him: "C is a man not to be trusted in his business as an attorney. He will take fees on both sides." *Held*, actionable.<sup>6</sup> VII. G. was an attorney, and S. said of him: "He discloses his clients' secrets." *Held*, actionable.<sup>7</sup>

(To be continued.)

THE SONG OF ROLAND.—Miss Agnes Lambert contributes to the current number of *The Nineteenth Century* an article on the translation of the "Song of Roland," recently made by Mr. Justice O'Hagan, which gave the English-speaking world an opportunity of making acquaintance with the romantic French lay to which Miss Lambert emphatically gives the title of "the oldest Christian epic." She complains that while any schoolboy can stand a fair examination in the Homeric epics, the knowledge of even the well-read as to the deeds of arms of Roncevalles is generally in the vaguest possible condition. And yet it is to be noted that two phrases, "the blast of Roland," and "a Roland for an Oliver," have become proverbs in English. Miss Lambert traces the history of the poem, describes its scope, collates the old French with Mr. Justice O'Hagan's version, betraying analytical and critical power in her task, besides a variety of learning, which must put many a masculine reader to shame.

(1) *Griffiths v. Lewis*, 15 L. J. Q. B. 249 (1846).  
 (2) *Bachus v. Richards*, 5 Johns. 477 (1809).  
 (3) *Thomas v. Jackson*, 3 Bing. 104 (1823).  
 (4) *Foulger v. Newcomb*, L. R. 2 Ex. 327 (1867).  
 (5) *Rush v. Casanrough*, 2 Barr (Pa.), 187 (1846).  
 (6) *Chipman v. Cool*, 2 Tyler, 458 (1803).  
 (7) *Garr v. Selden*, 6 Barb. 416 (1848).

ADMISSION OF SOLICITORS.

The following gentlemen have been admitted Solicitors of the Court of Judicature:—

Mr. Charles H. Monsarrat, of 34, Westland-row, Dublin, son of Rev. H. Monsarrat, M.A.; of St. Thomas's Parsonage, Kendal, Westmoreland, England; and Mr. Montgomery Archdale, of Wiltou Bank, Kingstown, in the county of Dublin, son of Rev. H. M. Archdale, M.A., of same place.

TEXT-BOOK ADDENDA.

(Continued from page 58, ante.)

41 Vict. c. 15, s. 13.

Tenements occupied solely for trading in one house cannot be excluded from the computation of inhabited houses duty under 41 Vict. c. 15, s. 13, unless they are structurally divided from the rest (*Chapman v. Royal Bank of Scotland*, 50 Law J. Rep. Q. B. 670).

Order XI., Rule 1.

*Lely and Foulkes on the Judicature Acts (3rd Edition)*, 140.

Where a slander published abroad produces special damage in England, a writ for service abroad cannot issue (*Bree v. Marecaux*, 678)—C. A.

Order II., Rule 8.

*Lely and Foulkes on the Judicature Acts (3rd Edition)*, 125.

Where the cause of action arose on the same day as, but before, the issuing of the writ, the action is well brought (*Clarke v. Bradlaugh*, 50 Law J. Rep. Q. B. 678).

*Elementary Education Act, 1870 (33 & 34 Vict. c. 75), s. 74.*

Attendance without fees at a board school is not a "causing to attend school" within the meaning of the penal clauses of the Education Acts and bye-laws made thereunder (*Saunders v. Richardson*, 50 Law J. Rep. M. C. 137).

(To be continued.)

OBITUARY.

T. E. CLIFFE LESLIE, ESQ., LL.D.

The late Thomas Edward Cliffe Leslie, Esq., LL.D., Professor of Jurisprudence in the Queen's University in Ireland, who died on the 27th ult., at his residence in the Botanic Avenue, Belfast, in the fifty-sixth year of his age, was the second son of the late Rev. Edward Leslie, B.D., Rector of Annahilt, county Down, formerly prebendary and treasurer of the diocese of Dromore, by his marriage with Margaret, daughter of the Rev. Thomas E. Higginson, of Lisburn, county Antrim, and a cousin of Sir John Leslie, Bart., of Glaslough, county Monaghan, late M.P. for that county. Mr. Leslie was born in the year 1826, and was educated at Trinity College, Dublin, where he became a scholar in 1845, and took his Bachelor's degree in 1847. He was called to the Irish Bar in Easter Term 1850, and was shortly afterwards appointed Professor of Jurisprudence and Political Economy in Queen's College, Belfast. Since 1871 he had also been Examiner and Professor of Jurisprudence and Political Economy in the Queen's University in Ireland, from which University he received the *causd honoris* degree of Doctor of Laws. Mr. Leslie was an honorary member of the Société d'Economie Politique de Paris, and the author of "Essays in Political and Moral Philosophy."

APPOINTMENTS AND PROMOTIONS.

NORA BERR.—Information intended for publication under the above heading should reach us not later than Friday morning in each week, as publication is otherwise delayed.

Mr. Edward Greer, solicitor, of Moygannon, Warrenpoint, Assistant Land Commissioner, has been appointed to the Commission of the Peace for the County Down.

## BOOKS RECEIVED.

*The Philosophy of Advertising: Matters worth reading and vitally concerning every present and future Advertiser.*  
By HENRY SELL. London: Sell's Advertising Offices, 10, Bolt-court, Fleet-street, E.O. 1882.

We have much pleasure in acknowledging the receipt of this excellent work, which is evidently compiled with great care. It contains an excellent introduction on the art of advertising, pointing out the necessity for advertising, how to prevent the useless waste of time and money in doing so, the advantages of employing an experienced agent, and much other practical and common-sense advice. As many of our readers have occasion from time to time to advertise on behalf of their clients, not only in Ireland but in Great Britain and the Colonies, we can thoroughly recommend to their notice this useful handbook of Mr. Sell—himself an eminent Advertising Agent in large practice in London. In the Appendix there is a selection of 400 of the most important newspapers published in the world.

*The Life and Work of St. Paul.* By F. W. FARRAR, D.D., Canon of Westminster. Illustrated. Part I. London: Cassell, Petter, & Galpin.

## LAW STUDENTS' JOURNAL.

## THE INCORPORATED LAW SOCIETY OF IRELAND.

FINAL EXAMINATION FOR APPRENTICES TO SOLICITORS,  
Pursuant to the Attorneys and Solicitors Act (Ireland), 1866.

DUBLIN HILARY SITTINGS, 1882.

[Every answer is to be accompanied by reasons concisely stated.]

## COMMON LAW.

1. Explain the rule "*Modus et conventio vincunt legem*," and mention some of the principal restrictions and limitations to which it is subject.

2. Contracts under seal are attended with some peculiar incidents and doctrines relating to the consideration of the contract—the remedies against the real estate, and in the administration of assets—and the limitation of actions. Explain and illustrate this proposition.

3. A Contract in writing cannot be varied by extrinsic evidence. Give some examples of the application of this rule, and state for what purposes connected with a written contract extrinsic evidence is admissible.

4. Rights arising *ex contractu* are called *primary rights*—those arising *ex delicto* are called *secondary or remedial*. Explain and illustrate.

5. Where goods were sold to be paid for by a certain bill of exchange, without recourse to the buyer, in case of the bill not being paid, and the buyer knew at the time of the sale that the bill would not be paid—could the seller charge the buyer for the price of the goods in an action of debt or what other remedy would he have?

6. "The only difference between an express and an implied contract is in the mode of proof." Explain and illustrate this statement.

7. What is the limitation of the rule that money paid under a mistake of fact may be recovered back? A person having a second charge upon property paid off a prior charge in the belief that the security was valid, but it afterwards appeared, by the discovery of a will, that there was no title to the property charged. Could he recover back the money so paid?

8. Common money bonds are subject to the statute 4th & 5th Anne. Bonds with special conditions are subject to the statute 8th & 9th William III. How do these statutes respectively control them?

9. What is the meaning and effect of a memorandum of association of a company under the Companies Acts? What is a company limited by shares? What is a company limited by guarantee? What must be contained in the memorandum of association of each?

10. The power of taking in execution the body of a debtor can now be exercised in very few cases. State the provisions of the Act which now regulates this power, and when was it passed.

11. What are the provisions of the Landlord and Tenant Act, 1860, respecting the assignment of a lease containing an agreement against alienation? Illustrate the effect of the section by mentioning some decisions upon it.

12. A laid an illegal wager with B, in which C agreed to take a share; B lost the wager, and A, in expectation that B would pay the amount on a certain day, advanced to C his share of the winnings. B died insolvent before the day, and the bet was never paid. Can A recover from C the amount thus advanced?

Where B entered into a composition deed together with the other creditors of A, under an agreement that A should give B his promissory note for the remainder of the debt, which was accordingly given, and the amount paid by A; can A recover such amount from B? Explain fully the reasons of your answer.

## REAL PROPERTY, CONVEYANCING, AND EQUITY.

1. What are the principal provisions and what has been the effect of the statute of uses? To what extent do conveyances and settlements depend at the present time on the statute of uses?

2. Explain the state of the law which rendered the passing of the Act for the abolition of fines and recoveries, &c., desirable. Give its date and principal provisions.

3. Explain how the intention of a Testator was defeated in giving lands to one person, "and in case he shall die without issue" then to another. What statutable enactment now regulates the point?

4. The rules which are required to be observed in the creation of a contingent remainder may be reduced to two. What are they? Explain and illustrate.

5. To what maxims of Equity is the defence of purchase for valuable consideration without notice of the adverse title to be referred? Discuss the various cases in which this defence may or may not be made available.

6. Explain accurately the meaning of the following terms in the operative part of a conveyance, and the cases in which they should severally be used:—"Grant," "Release," "Surrender," "Appoint," "Bargain and Sell," "Confirm," "Assign."

7. Explain the doctrine of equity to a settlement, and state how far it is, and how far it is not, in the power of the wife to control the action of the court in reference to the property subject to this equity.

8. Give an example of an implied resulting trust and a constructive trust, and explain the principle on which each is founded.

9. The subject of equity jurisprudence has been treated under the several heads of *remedial*, *executive*, *adjustive*, *protective*, and *auxiliary*. Give instances of the general objects sought to be effected by the relief afforded under each head respectively.

10. What was the general rule as to the obligation of a purchaser to see to the application of the purchase-money? What enactments have affected this rule?

11. Explain the nature of *satisfaction*. In what three classes of cases do questions of satisfaction usually arise? Explain the distinction in the application of the doctrine to each class.

12. Draft an Assignment of Leaseholds by Trustees in Bankruptcy—the Bankrupt being a party.

**COURT PAPERS.**

**LAND JUDGES.**

Sittings for next Week so far as same are appointed.

Before the Rt. Hon. JUDGE FLANAGAN.

**MONDAY.**

IN COURT.—J. Morgan, receiver.—J. A. Shiels, ditto.

Before EXAMINER (Mr. Kennedy).

Administratrix T. Keller, rental.

**TUESDAY.**

IN COURT.—F. W. Crofts, final schedule.—J. O'Flaherty, transfer of carriage.

**WEDNESDAY.**

IN CHAMBER.—A. Noble, to confirm sale.

IN COURT.—M. Horgan, from 1st.

**THURSDAY.**

IN COURT.—J. M. Cochrane, receiver.—M. A. Coates, objection.—J. Doaks, receiver.

Before EXAMINER (Mr. Kennedy).

G. S. Graves, rental.

**FRIDAY.**

**SALES IN COURT.**

W. ROWLAND, . . . . . 1 lot.  
H. COWLTER, . . . . . 1 "  
M. DOWDES, . . . . . 8 lots.

Before the Rt. Hon. JUDGE OMSBY.

**MONDAY.**

IN CHAMBER.—T. Hardy, payment.

IN COURT.—W. Goggin, from 2nd.

**WEDNESDAY.**

Before EXAMINER (Mr. M'Donnell).

S. W. Hardy, rental.—J. Callaghan, vouch.

**THURSDAY.**

IN COURT.—M. Hall, adjourned motion.

**FRIDAY.**

Before EXAMINER (Mr. M'Donnell).

O. Wynne, vouch.

**COURT OF BANKRUPTCY.**

**ADJUDICATIONS IN BANKRUPTCY.**

The dates of Adjudications are first given, the Sittings follow in Italics.

- Casey, James, of Mountrussell, in the county of Limerick, dairyman. January 25; *Friday, February 24, and Tuesday, March 14.* John L. and W. Scallan, solrs.
- Flynn, Patrick, of Coolmoynce, Fethard, in the county of Tipperary, farmer. January 20; *Friday, February 17, and Tuesday March 7.* John L. and W. Scallan, solrs.
- Flynn, Thomas, of Coolmoynce, Fethard, in the county of Tipperary, farmer. January 20; *Friday, February 17, and Tuesday, March 7.* John L. and W. Scallan, solrs.
- Guller, James, of 72, Great Victoria-street, Belfast, in the county of Antrim, builder and contractor, trading as "J. and J. Guller." January 27; *Friday, February 17, and Tuesday, March 7.* H. and W. Seeds and B. Thompson, solrs.
- Jordan, Martin, of Williamsgate-street, Galway, in the county of Galway, boot and shoe dealer. January 20; *Friday, February 24, and Tuesday, March 14.* Bouchier Eaton, solr.
- Keenan, John H., of Ballyvange, in the county of Down, farmer. January 27; *Friday, February 24, and Tuesday, March 14.* Henry C. Neilson, solr.
- M'Bride, William, of North-street, Belfast, in the county of Antrim, grocer. January 19; *Friday, February 24, and Tuesday, March 14.* Robert Kelly and Henry T. Stewart, solrs.
- Scanlan, Denis, of Whitechurch, Cappoquin, in the county of Waterford, farmer and publican. January 27; *Tuesday, February, 21, and Friday, March 10.* Richard Dawson, solr.

**DUBLIN STOCK AND SHARE LIST.**

DESCRIPTION OF STOCK	FEBRUARY						
	Sat. 4	Mon. 6	Tues. 7	Wed. 8	Thur. 9	Fri. 10	
<b>GOVERNMENT.</b>							
3 p c Consols ..	—	—	99½	99½	99½	—	
2 p c Reduced ..	—	—	—	—	—	—	
New 3 p c Stock ..	98½	98½	99½	99½	98½	98½	
<b>INDIA STOCK.</b>							
4 p c Oct. 1898 } Trfble. at ..	102½	102½	103½	103½	103½	103½	
3½ p c Jan. 1821 } Bk. of Irel. ..	—	100	—	100½	—	—	
<b>Banks.</b>							
100 Bank of Ireland ..	315	—	315	315	315	—	
25 Hibernian Banking Co ..	27	28	—	28½	28½	—	
20 London and County (Ld'g) ..	—	75½	—	75½	—	—	
20 London and W'minster, W'd ..	68½	—	68½	68½	—	68½	
10 Do. New ..	—	—	—	—	59½	—	
3½ Munster Bank (Limited) ..	7	—	—	—	—	—	
10 National Bank (Limited) ..	23½	—	—	—	—	23	
10 National of Liverpool (Ld'g) ..	—	—	—	—	—	—	
— Nat. Prov. of England, Lim. ..	—	—	—	—	—	—	
25 Provincial Bank ..	—	51	—	—	—	—	
10 Do. New ..	—	—	—	—	—	—	
10 Royal Bank ..	—	—	—	22½	—	—	
25 Standard of B. S. A., W'd ..	—	—	—	—	—	—	
15½ Union of London ..	—	—	—	—	—	—	
<b>Steam.</b>							
100 City of Dublin ..	111	111½	—	112½	112½	—	
50 Dublin and Glasgow ..	—	14	—	—	—	—	
50 Dublin & Liverpool Steam ..	—	—	—	—	—	—	
Ship Building Co. ..	—	58	—	—	—	—	
20 Dundalk (Limited) ..	—	—	—	—	—	5	
<b>MINEs.</b>							
2½ Wicklow Copper ..	—	—	12½	—	—	—	
<b>Miscellaneous.</b>							
10 Alliance & Dub. Cons. Gas ..	—	—	15½	15½	—	—	
8 Do. do. ..	—	—	—	—	—	—	
4 Arnott & Co. Limited ..	—	—	—	6	—	—	
10 Dublin Artisan Dwellings ..	—	—	—	—	—	—	
10 Dub. (S'th) City Market Co. ..	—	—	—	—	—	—	
<b>Tramways.</b>							
10 Belfast Trams ..	6	—	—	—	—	—	
10 Dublin United Tramways ..	—	10½	—	—	—	—	
10 Leeds Trams ..	—	—	—	—	—	—	
10 Lpl Un'ed Tram & Bus F'd ..	—	11½	11½	—	—	—	
10 N'th Metr. Tramway, Lond. ..	—	—	—	—	—	—	
10 Provincial Trams, Lim. ..	—	—	—	—	—	—	
<b>Railways.</b>							
10 Athlery and Tuam ..	—	—	—	—	—	—	
50 Belfast and County Down ..	—	—	—	39	—	—	
50 Belfast and Northern Cos. ..	—	—	—	—	—	—	
100 Dublin, Wicklow, & W'ford ..	—	—	—	—	—	—	
100 Great Northern (Ireland) ..	—	117	117	—	—	—	
100 Gt. Southern and Western ..	—	109½	109½	109½	—	—	
100 Midland Gt. Western ..	—	82½	—	—	—	—	
50 Waterford and Limerick ..	—	—	—	—	—	—	
<b>Railway Preference.</b>							
100 Belfast & N'th'n Cos, 4 p c ..	—	—	101	—	101	—	
100 Do., 4½ p c ..	—	—	—	—	—	—	
100 D., W., & W., 6 per cent ..	—	—	—	—	—	144	
100 Gt. N'th'n (Ireland) g'd 4 p c ..	—	—	—	—	—	—	
100 Do., 3½ p c ..	—	—	—	—	—	—	
100 Gt. South'n & West'n 4 p c ..	—	—	—	—	—	—	
200 Mid. Great Western, 4 p c ..	—	—	102	—	—	—	
<b>Debenture Stocks.</b>							
— Belfast & N'th'n Cos, 4 p c ..	—	—	—	—	—	104½	
— Dublin & Wicklow 4 p c ..	—	—	—	—	—	—	
— Do., 4½ p c ..	—	—	—	—	—	—	
— Gt. North'n & West'n 4½ p c ..	109½	—	—	—	—	—	
— Gt. South'n & West'n, 4 p c ..	108½	—	—	—	—	—	
— L'derry & Enniskillen 5 p c ..	—	—	—	—	—	—	
— Midland Gt. West'n, 4 p c ..	—	—	—	—	—	—	
— Do., 4½ p c ..	111½	—	—	—	—	—	
— Water'd & Limerick 4 p c ..	—	—	—	—	—	—	
— Do., 4½ p c ..	111½	—	—	—	—	—	
<b>Miscellaneous Debent.</b>							
Alliance & Cons. Gas, 4 p c ..	—	—	—	—	—	—	
Belfast Office Deb., £2 8s 2d, 4 p c ..	—	—	—	—	—	—	
City Deb. of £2 8s 2d, 4 p c ..	—	—	—	—	—	—	
Dub. Port & Docks, 4½ p c ..	—	—	—	—	—	—	

\* Shares not fully paid up are given in Italics. † x d

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## BIRTHS, MARRIAGES, AND DEATHS.

## BIRTHS.

**SAYERS**—January 25, at John-street, Chapel, the wife of H. T. Sayers, Esq., solicitor, of a daughter.

## MARRIAGES.

**KELLY and CARNEGIE**—January 23, at Tramore, County Waterford, William T. Kelly, of this city, to Emily Ellep, eldest daughter of the late James J. Carnegie, Esq., barrister-at-law, Cork.

## DEATHS.

**DUDGEON**—February 9, at Palmerston-road, Rathmines, Charlotte, aged 7 months, infant daughter of Athol Johnson Dudgeon, Esq., solicitor.

**M'BLAINE**—February 7, at Moygannon, Rostrevor, of acute inflammation. Frederick William M'Blaine, Esq., LL.D., Divisional Police Magistrate, Dublin.

**SMART**—February 9, at his residence, Amiens-street, William Smart, Esq., Deputy Clerk of the Crown for the County and City of Dublin.

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# THE IRISH LAW TIMES AND SOLICITORS' JOURNAL.

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## THE SALE OF POISONS.

A VERY suggestive correspondence now being carried on in the *Irish Times*, coupled with the rather important case of *Templeman* (app.) v. *Trafford* (resp.), reported in the *Law Times* of the 4th inst., may well afford sufficient reason for the present paper, while the "Sheffield Poisoning Case," concluded on the 7th inst., adds another prominent illustration of the dangers arising from the sale of poisons, against which the Legislature has sought to guard by several statutes of the present reign. In the Sheffield case, arsenic (as to which see 14 & 15 Vic., c. 13) was the medium employed; there was no difficulty in procuring it from a chemist, on the pretext that it was required to colour artificial flowers; the precautionary requirements of the Legislature were duly observed—and Mr. Skinner was effectually done to death. "Arsenic, it is true," writes the *Times*, "is a rude and vulgar poison—violent, acrid, unmistakable in its symptoms, and leaving traces behind that the merest tyro can detect. It is the poison of the simple-minded, who wish to get rid of their enemy without much thought of the consequences. It is proportionately less dangerous, for there are but few house-keepers of elderly widowers, few nephews of wealthy maiden aunts, so ignorant of the rudiments of toxicology, so careless of their own prospects, that they would trust their necks to an agency so familiar. It is rather from the subtler vegetable poisons which modern science has revealed to the student that the danger lies, if danger there is. Aconitine, of which a tenth of a grain will kill, or those rare extracts whose properties remind us of the poisoned gloves and poisoned bouquets of the Italian Renaissance, are the means by which the artist in poisoning will do his work. They are to arsenic as the stiletto is to the bludgeon. Are such cases numerous? Many of our readers will remember the letter which was addressed to us a few weeks ago by a doctor, *à propos* of a case now awaiting trial, suggesting alarming possibilities of undiscovered crime. The fears then expressed cannot be absolutely proved to be groundless; but it may at least be hoped that they were excessive. Still, poisoning is certainly not extinct, and it never will be while the passions of jealousy, avarice, and revenge continue to move mankind. The hope of lessening the number of such crimes lies partly in the wider moral influences which are equally powerful against all wrong-doing, but chiefly in the development of scientific skill, which may make it more impossible to escape detection. The analyst is the best policeman against the poisoner." But, it is one thing to detect the crime, and another to trace it to the criminal. To impede the promiscuous sale of poison, without detriment as regards the various useful and necessary purposes for which it is required, to prevent its sale to those who would make an improper use of it, and by stringent safeguards against secret sales to render the purchaser easily traceable, are indeed the objects of the Legislature. But, of how little avail are all existing enactments. We boldly pronounce that no legislation for the purpose can be thoroughly effective so long as the responsibility for the legitimate sale of poisons is distributed among countless chemists and druggists; some one medical man for each district alone should be licensed to authorise sales, and in him the responsi-

bility should be centralised; through him perhaps even the delivery of the poison, purchased elsewhere, should be carried out; and the penal provisions of the law should be extended with stringency, not merely to vendors, but to those who improperly obtain the poison, or in whose possession it is found without reasonable cause. As it is, the deadliest poison is vended by the most ignorant, and is possessed by the most dangerous; it is sold with little scruple so that the law be formally complied with, and it is kept by the purchasers with carelessness the most flagrant. We have ourselves been present at a public auction in the house of a barrister, when in an open wardrobe there was found a considerable quantity of what was proved—fortunately not by a fatal mishap—to be strychnine, which had belonged to a solicitor who died insane in a lunatic asylum. "All over the country," writes a well-known Dublin pharmaceutical chemist, "the most deadly poisons are sold by grocers, ironmongers, and other small traders, many or most of whom are not only ignorant of the dangerous nature of the commodities in which they deal, but are even ignorant of the existence of such a chapter in the legislation of the country as a Poisons Act. I have myself seen a package of potassium cyanide, containing half a pound, sold across the counter in the city of Dublin to a messenger boy, without any reference, or a single question asked as to who the purchaser was. So far from complying with the necessary formalities prescribed by the Act in the way of entry in book, introduction, &c., the parcel had not even the word 'Poison' marked upon it." Mr. Brunker adds that the Council of the Pharmaceutical Society are powerless in reference to cases of this kind, in consequence of the reservation in favour of vested rights contained in section 31 of 38 & 39 Vict., c. 57; but to this statement exception, founded on section 30, has been taken by other correspondents. Yet, be this as it may, there can be little doubt that the Act has so far afforded in practice little or no protection against the sources of real alarm that now unquestionably prevail; nor do we believe that any existing enactment is in itself sufficient to cope with the perils arising from the sale of poisons.

*Templeman* (app.) v. *Trafford* (resp.), 45 L. T. N. S. 684, however, may be gladly welcomed as a most salutary decision on the Pharmacy Act of 1868 (31 & 32 Vic., c. 121), placing, as it does, such a construction on the word "seller," within the meaning of section 17, as is calculated to affix liability on the real delinquent under its provisions. That section (like s. 2 of 33 & 34 Vic., c. 26) makes it unlawful to sell any poisons by wholesale or retail, unless the box, bottle, wrapper, or cover in which such poison is contained be distinctly labelled "with the name and address of the seller of the poison." It appeared that P., a duly qualified chemist and druggist carrying on business at his own shop in one quarter of a town, rented a window in the shop of T. (the respondent) in another quarter of the same town, and supplied him, who was not a chemist and druggist, with poisons for sale on commission, such poisons being contained in wrappers labelled with P.'s name and address, but not with T.'s name and address. Beyond receiving from T. the amount realised by the sale of those poisons, less the commission, P. had nothing to do with nor any

control over the sale of them in T.'s shop. An information was preferred against T. for an infringement of the Act, by selling red oxide (or precipitate) of mercury without having been duly labelled with his name and address, upon which a question arose, on a case reserved, as to whether or not T. was the "seller," within the meaning of the enactment, which is not elucidated by an interpretation clause. *The Pharmaceutical Society v. The London and Provincial Supply Association* (L. R. 5 App. Cas. 857, 43 L. T. N. S. 389, 49 L. J. Q. B. 736) was referred to, in which the House of Lords (confirming the Court of Appeal in their reversal of the Court of Queen's Bench, who had overruled the decision of the County Court judge) held that the defendant corporation was not a "person" within and was not prohibited by the same Act from carrying on the business of chemist and druggist, but that the actual seller must be a duly qualified person; Lord Selborne, C., expressly holding it clear that it was the act of selling and the person who sold, whether he were the principal to whom the business belonged or anyone whom he employed to carry it on, that was struck at by the sections of the Act. And indeed, as was well urged, were any other construction to prevail, a qualified chemist at Aberdeen might send poisons to an unqualified shopkeeper in London for sale on commission, or a London chemist and druggist might have fifty business branches in various towns in the provinces, without having a properly qualified person to sell at any one of them; and so the provisions of an Act, passed expressly for the protection and security of the community in this respect, would be utterly useless, and the Act itself be entirely defeated. In this view Grove and Lopes, J.J., concurred. "In my opinion," said the former, "in every instance in which the word 'seller' is used in the Act, it means the person who actually conducts the sale, not necessarily the individual by whose hand it is delivered over the counter to the customer—in the present case it was a woman who actually delivered the poison to the appellant, and clearly she was not the 'seller' within the meaning of that word in the section—but the person who actually conducts or controls the business of the sale and of the shop where the sale takes place." That person was T. (the respondent), and, he added, "his name and address it is that the Act requires to be distinctly labelled on the packet containing the poison sold, the object and intention being to protect the public by insuring that the person who controls the business of the sale of poisons should be a duly qualified and duly registered chemist and druggist, whose name and address should appear on the packet." And certainly, we cordially concur with Lopes, J., that, in so construing the section, the court carried out the general scope and policy of the statute, which was passed for the protection and safety of the public. Legislation of this description, indeed, is peremptorily necessary in every community to regulate the sale of poisons; and only last year we find such Acts passed in Arkansas, West Virginia, Missouri, and Kentucky. But, in all legislation of the kind it is right to make some distinction between wholesale dealings and retail sales of small quantities, to which latter the practical danger attaches, and to guard against anything tending to create an unjust monopoly; and almost the main thing is to ensure that, whatever be the law, it shall be the duty, and *distinctly and practically* within the power of some person or persons in particular to take care to have it duly and effectively enforced. If so enforced even the existing law would be found, on the whole, not quite inadequate, while still imperfect, and though we hardly imagine that its enforcement would suffice to drive the assassin to resort,

for want of something simpler and safer, to such operose lethal contrivances as the marvellous apparatus described by the author of "Armadae."

#### THE REFORM OF LEGAL PROCEDURE.—I.

The Judicature Acts have now been in operation six years. Designed under a Liberal Ministry and carried into effect, after reconsideration and some alteration, by a Conservative one, they represent the best that could be devised by the combined wisdom of a Liberal and a Conservative Chancellor. As regards the department of Justice with which Lord Selborne and Lord Cairns have been specially familiar throughout their professional life, there is no reason to be dissatisfied with the result. The business of what was the Court of Chancery has been sensibly relieved of needless verbiage and formalism while its principles and methods remain in substance unchanged. Whatever saving has been effected is pure gain to the suitor. Practitioners have not been bewildered with novelties, nor has the benevolent legislator sown the seed of a new crop of costs with his left hand while he was grubbing up the old roots with his right. It cannot be said that the administrative work of the Court is done quickly; but it is done well and completely, and with much more approach to expedition than it used to be in the old days. And when we consider the huge bulk of this work, the complexity of its details, the weight of the responsibility undertaken by the Court in adjusting all the claims that come before it, and by its officers in working out the effects of its decisions, and finally the punctilious caution imposed on the financial department of the Court by its relations with the Bank of England and the Treasury, we may not be surprised that the mills of the Chancery Division still grind slowly. The delays incident to the nature of its business could hardly be abolished or materially lessened except at a greater expense than either the nation or the suitors would be willing to bear. And, in fact, we are not aware that there is anything like widespread or active discontent among those whose profession or affairs take them to the Courts at Lincoln's-Inn. Their strongest desire is to see the day when the full opening of the new Law Courts shall deliver them from the mean, inconvenient, and unwholesome buildings in which the Chancery Judges for the present hold their sittings.

A widely different tale has to be told of the Common Law Divisions, now merged in the Queen's Bench Division. There the working of the Judicature Acts has brought a series of bitter disappointments. We have heard of nothing but confusion, delay, vexatious contention, and increased expense. The reforms of Lord Selborne and Lord Cairns promised fairly on the face of them, but in practice they have not satisfied either the lawyers or the public. More than one reason may be assigned for this. Among others we cannot help contrasting the failure of the Judicature Acts with the success of the Common Law Procedure Act. That measure of reform introduced extensive changes with the least possible friction, and worked well for more than twenty years. The secret of this, or a great part of it, was that the Act was framed and settled down to the minutest details by men who thoroughly understood the old practice which they were reforming, and that every officer of the Courts whose duties would be affected was consulted. Thus there were no disappointments, no leaps in the dark, and no falls in stony places. It is notorious that precautions of this kind were not taken in the case of the Judicature Acts. Both Lord Selborne and Lord Cairns were accomplished advocates and lawyers, but neither of them possessed any personal experience of common law proceedings, much less of the comparatively unseen, but really important part of them which does not take place in open court. Nor was anything done to collect information or opinions from practical men as to the working of the proposed scheme in the Common Law Divisions. The Judges were consulted, no doubt. But circumstances were especially unfavourable to the proper representation of

the highest judicial experience. The Chief Justice of the Queen's Bench, a man of brilliant gifts in other ways, had not the gift of patient industry, and still less the power or disposition to bring sincere and effectual aid to the working out of other men's ideas. The Chief Baron of the Exchequer was disqualified by his age from taking any serious interest in a plan of such scope and novelty as had been started by Lord Selborne. The present Chief Justice of England, then Chief of the Common Pleas, was on the other hand too new to his work to bear the burden of the other courts in addition to his own. Practically the Judicature Act of 1873 sprang fullgrown from Lord Selborne's unassisted invention; and the changes induced upon it by Lord Cairns in 1875 had more of a political than a legal character and left its main lines as they were. The same spirit of magnificent and confident theory which presided at the framing of the Judicature Acts and the attendant Rules of Court has prevailed, with few if any exceptions in their administration. Rules have been made, abrogated, and altered, without consulting in any manner those who had to apply them, and duties have been recast and redistributed without even the pretence of regard for those who had to perform them. This way of going to work must inevitably have led to friction and confusion. But there was a deeper cause of failure in the nature of the reforms themselves. Lord Selborne and Lord Cairns were naturally imbued with the ideas of Chancery procedure, and the novelties of the Judicature Act were the fruit of those ideas almost exclusively. So far as the Chancery Division was concerned, the new leaven was added, so to speak, to a congenial element. On the common law side the reformers threw it in wholesale, and left the incongruous mixture to work as best it might. And a sufficiently strange fermentation has ensued, of which the first symptom was a violent outbreak of litigation on points of practice. The purses of many suitors have been bled to cool the mixture, but it is yet far from being "slab and good," though in a certain sense it has been good for the legal profession, and more especially for that branch of it who have cast off the name of attorneys and become solicitors of the Supreme Court. And now the report of the Chancellor's Committee on Procedure, which will shortly become the starting point of yet fuller consideration, reopens the whole matter.

For the better apprehension of the problem to be dealt with, it seems desirable to explain the fundamental difference between the Chancery and the Common Law procedure. The two sides of Westminster Hall were distinct, not only in their jurisdiction, in the form of their judgments, and in the manner of enforcing them, but in their system of pleading. Those systems had each its own origin and history and embodied opposite theories of litigation. Being brought so near one another in England, they were not without mutual influence; but the opposition of principle remained. One may say in general terms that Chancery practice aims at the modern ideal of doing complete justice between the parties, and common law practice stood on the ancient way of settling particular matters in dispute according to strict formal rules and only within the limits fixed by them. This narrowness of the common law, as it is often called, is simply the narrowness of all archaic justice and law. The notion that it is the State's business to make full inquiry into facts and work out all their legal consequences is of comparatively recent origin. All modern research into early forms of legal procedure goes to show that the Judge's office was only that of a sort of moderator. He was called in by the parties at strife, not to take the whole matter into his hands, but rather, as Sir Henry Maine has expressed it, to keep order and see fair play. But in the process of seeing fair play the singular formalism of early ways of thought and action comes in. The two parties have to play out the game for themselves, and the Court has to see that they play fair. Now this means in a subordinate degree, if at all, fairness in the sense of good conscience and equity; what it chiefly means is playing according to the rules. Each party is bound at his own

risk to know the rules and observe them in all points. If he fails in this, he loses his cause. The Court has nothing to do with helping his ignorance or relieving any hardship he may incur by failure. The rules are found, as matter of history, to be of the most rigid and artificial kind, and this comes out the more strongly the further we go back. They might conceivably be so framed as to bring out the merits of the case, but for the most part their connexion with the merits is remote or invisible. In fact, their object is a different one—namely, to put some question between the parties in a form capable of peremptory decision. Herein the founders of archaic procedure were probably wise in their generation. For the important thing, when judicial proceedings were still competing with the more ancient method of a free fight, was to provide a machinery that should effectively secure a decision of some kind. The refinements of our modern notions of law and evidence did not exist, and, if they had existed, could not have been understood. In the same way the early methods of proof were solemn, ceremonial, and incapable of discussion. Testimony was numbered, not weighed. Parties or witnesses made oath to one particular fact or assertion only, and there was no cross-examination. In the wager of law, which survived in England into the present century, though for many generations means had been found of evading its application, the defendant swore that he owed nothing of the sum demanded, and brought a certain number of other men, eleven or more, to swear that they believed him; and this once duly performed was conclusive. He had "made his law," and must go quit. Claims and defences, and the manner of establishing them, were alike restrained to a certain number of set forms. It was the business of the party to bring his case within the precise terms of one or other of those forms; and when that condition was satisfied, the Court had no discretion and no power to look further.

The actual working of our Common Law Courts in modern times was a long way from this state of things; but the system of common law pleading grew out of something like it, and preserved much of the ancient formalism to the last. It preserved altogether the theory that a lawsuit is a combat between the parties, in which they do everything for themselves and at their own risk, and the Court is concerned only to see things done in order. Whatever exceptions to this were introduced by the Common Law Procedure Act or otherwise were deliberate innovations suggested by the Chancery practice. Common law pleadings, accordingly, were quite unintelligible to a layman, and often gave no information whatever as to the nature of the facts. The plaintiff's declaration stated in the appropriate technical form the character of the right he asserted. The defendant showed in like manner, by demurrer or plea, as the case might be, whether he objected to the plaintiff's declaration as bad in form, or intended to dispute the case generally on the facts, or to prove on his own part facts establishing any special ground of defence. A defect in form at any stage was fatal, if taken advantage of in time by the other side. The ultimate object was to lead to a definite issue or matter in dispute between the parties, to be decided by a jury if it were a question of fact, by the Court if it were a question of law. We may note in passing that the clear separation of the functions of the Judge and the jury had a great effect in sharpening the definition of the rules of pleading, and led incidentally to some of the most extraordinary features of the system in its developed shape. By ingenious fictions, not to be explained here, it was made possible to obtain the verdict of the jury, under the legal direction of the Judge and subject to the correction of his law by a Court of Appeal, on mixed questions of fact and legal inferences from fact, such as whether a particular parcel of land was the freehold of J. S. Questions of this kind might involve the widest range of evidence and the most various topics of legal argument; so that in the modern period of common law procedure the simplicity of the final issue was often only apparent. In other ways, too,

the system was stretched, without any formal breach of its traditions, to meet the increasing needs of mankind. The so-called "common counts," which were of relatively modern introduction, enabled justice to be done in a great variety of cases not covered by the ancient forms of action. If they had been invented a century or two earlier, they might have enabled the Common Law Courts to compete successfully with the Chancellor for a good deal of the business that was abandoned to the exclusive jurisdiction of Equity.

Now all these inventions, however useful they were in substance, made the language of the pleadings less and less connected with the real nature of the case. The system was overloaded with endless subtleties, and had lost its original merit of forcing on the parties a single and conclusive decision, though perhaps a rude one. Meanwhile the suit was still conducted in the fashion of a judicial combat in which the Court interfered as little as possible. The parties might take any advantage not forbidden by the rules, and make the most of it. They were not bound to give one another any information, and, indeed, it was the pleader's aim to disclose as little of his case as he could before it came on for trial. Everything not contradicted by the adversary was taken to be admitted, but there were no means of compelling an admission. Even a party's own assertions in his pleadings could not be used as evidence against himself, though he was not allowed to prove anything inconsistent with them. Again, the Courts could not deal with matters involving the interests of more than two parties. The Judge was the arbiter of a single combat only; he could not provide for more complex controversies. Again, a Common Law Court had no power over the conduct of the cause by the parties, nor had it any personal jurisdiction over them even in its final judgment. It could not command them to repair any injury done or abstain from any injury threatened. Damages were the only compensation it could give, and distress its only original weapon. The personal jurisdiction of the Common Law Courts, except in cases involving danger to the peace, and so not being of a purely civil nature, depended on various early statutes. "The common law procedure," an American writer has said, "is founded upon the theory that the parties to an action owe no obedience to the Court." They took every step at their own judgment and at their own peril (in the older practice often the peril of total discomfiture) if they were wrong.

Such a system could obviously not hold its ground among the affairs of a modern society. Men's dealings have become more various, their sense of duty more refined, and their sense of justice more exacting. We now expect legal decisions to be not only certain and formally correct, but to be something like a full and fair settlement of the matter in dispute. Perhaps the ancient theory of litigation cannot be said to have been really carried out in England in its pure and primitive formalism at any time since the Norman Conquest. In any case it was modified by the ingenuity of pleaders in the ways above mentioned; it was largely set aside by the Common Law Procedure Act; and now it is abolished, in intention at least, by the Judicature Acts. The opposite system, nevertheless, has not completely replaced it.

That system is to be found in the procedure introduced by the modern civil law and adopted by the Ecclesiastical Courts. It was likewise adopted to a sensible extent, though not fully or consistently, by the English Court of Chancery, which was long in the hands of officials trained in the civil and canon law. The functions of the Court in this system is not to preside at a combat and be content with seeing fair play, but to conduct an active process of inquiry on the suggestion of the parties. The suitors are under supervision and control at every step, and may be commanded by the Court to do what it thinks just at any stage of the cause. Having them thus in its power, the Court can examine them upon oath, and make the defendant a witness against himself by interrogating him at the request of the plaintiff.

Shakespeare shows his singular justness in points of detail when at the end of the *Merchant of Venice* he makes Portia and Nerissa, who have been playing the parts of a civilian lawyer and his clerk, offer to be charged upon interrogatories. In the mouth of an English common lawyer the speech would be repugnant and impossible. For the Venetian it is perfectly appropriate. In like manner the examination of witnesses was in theory the act not of the parties, but of the Court. To this day there are official examiners attached to the Chancery Division, though their functions have become little more than ministerial. The pleadings likewise were under official control. Instead of being delivered without leave, as in the common law system, and liable to be defeated afterwards if the other party could pick a hole in it, every pleading had to be expressly allowed by the Court. No admission could be implied from the adversary's silence. The party was bound to state everything he meant to prove and to offer actual proof at every point. In one word, the procedure and jurisdiction were inquisitorial; whereas the common law procedure may be described as purely contentious. The adoption, so far as it went, of inquisitorial methods and powers by the English Court of Chancery is closely connected with the nearness of the Chancellor to the King's person. As keeper of the Great Seal he represented the dignity of the Crown in a peculiar and eminent manner, and disobedience to his judicial orders was treated as an act of direct disobedience to the Sovereign. One part of the process for compelling a contumacious defendant's appearance in the old Chancery practice was dignified by the formidable name of a Commission of Rebellion. As regards the authority of the Court and the manner of its exercise, the Chancellors adhered pretty closely to their civilian and ecclesiastical models. As to procedure, the theory of the constant active control of the Court had very much broken down in the canonical courts themselves, and the influence of the common law contributed to reduce its importance yet more in the Chancery. What had originally been subject to the discretion of the Court settled into fixed routine. The plaintiff had thus almost unlimited power to interrogate the defendant, and had also power within sufficiently wide limits to compel the production of documents. Almost the only vestige of the old function of the Court was that the defendant had to swear to his answer before one of its officers authorised for that purpose. The pleadings gave the party's version of the facts in considerable detail, and often set out at length deeds, letters, or other documents which formed part of his case. The plaintiff's bill of complaint, as his pleading was called, ended by praying of the Court the specific relief to which he thought himself entitled; for example, that the defendant might be ordered to convey to him certain lands, or to render an account, or restrained by injunction from continuing a nuisance. This was made needful by the variety and extent of the Chancellor's judicial and administrative powers. Nothing of the kind was needed, or indeed possible, in a Court of common law, where the only judgment a plaintiff could get was (with a few exceptions not affecting the general character of the system) for the recovery of a sum either claimed by him as a debt and found to be due or assessed by the jury as damages.

It must not be supposed that equity pleading was wholly simple or rational. It used to have plenty of cumbersome and formality of its own, though defects of form had never the same fatal consequences as at common law. But it was taken in hand and largely reformed at the same time that the Common Law Procedure Act simplified the records of the superior Courts at Westminster; and bills and answers in Chancery between 1852 and 1875 presented an intelligible and even fairly readable account of the whole case. Nor, considering the nature of the story that often had to be told, was there much to complain of in the way of prolixity in a well-drawn bill. Even well-drawn answers, however, were often both cramped and prolix through the necessity the pleader was under of answer-

ing with absurd minuteness a string of interrogatories which generally repeated every single allegation in the bill.

The two systems in their revised forms were as good, or nearly as good, as they could in either case be made without radical change. Taking them in those forms, as they stood for the last 30 years before the passing of the Judicature Acts, we may sum up the contrast thus:—In the common law system pleadings were concise and formal. Defects of form, however, had been reduced to minor importance by modern legislation. Further disclosure of the facts relied on could be obtained before trial only by order of the Court (represented for this purpose by a Judge or Master sitting at Chambers), whether in the form of particulars, discovery, or answers to interrogatories. In practice the powers of compelling discovery and administering interrogatories, which the Common Law Procedure Act had borrowed from Chancery, were but sparingly used. As a rule the record still showed, as it had always done, not the matters of fact asserted by the parties, but the legal conclusions they sought to establish by facts which appeared only at the trial, and were recorded only in the Judge's notes of the evidence. In equity the pleadings gave a complete history of the case as each party desired to make it out, and their formality had been reduced to a *minimum*. The plaintiff could interrogate the defendant as a matter of course, and in a hostile suit always did so. The defendant's answer was on oath, and was evidence against himself. The evidence of the witnesses was taken as a rule by written depositions. As the affidavits were settled by solicitors or counsel, who naturally made the assertions as strong as they thought the deponent would swear up to, there can be no doubt that this feature of Chancery practice led to a great deal of hard swearing, not to use a harsher term. The decree given by the Court, after hearing the cause generally, stated, except in the simplest cases, the view taken by the Judge of the rights of the parties, and then worked out its consequences by way of direction in so much detail as the nature of the case required. It also showed what evidence had been produced to the Court; this being a relic of the old civilian principle that the depositions were taken by the Court itself, or under its immediate authority. Thus the papers filed in a Chancery suit, together with the decree, would show with considerable fulness the facts of the case, the course of the proceedings, the decision of the Court, and to a certain extent the reasons for it. We need hardly add that trial by jury was a distinguishing feature of the common law system, and to laymen the most conspicuous one. At common law many cases were tried without a jury by way of reference, which sometimes was compulsory, and a few by consent in court before a Judge sitting alone. In Chancery jury trial was made possible in some cases by an Act of Parliament of recent date. But in the main the distinction kept its strength; and it was deeply implanted not only in the practice of the several Courts, but in the professional training, traditions, and habits of mind of the practitioners who frequented them.

We have now seen what sort of ground was prepared for the Judicature Acts. Bearing in mind the conditions of the problem disclosed by our review, we shall go on to consider the failures of this latest reform and the remedies proposed for them.—*Times*.

#### THE CONVEYANCING AND LAW OF PROPERTY ACT, 1881. WHERE IT SHOULD BE ADOPTED, AND WHERE EXCLUDED.—IV.

(Continued from page 63, ante.)

##### *Mortgage of Policy of Assurance.*

The estate clause may be omitted (s. 63); and also the power of attorney. Messrs. Wolstenholme and Turner (p. 168) advise that the declaration by the mortgagee, of trusts of the money received by him under the policy, and the clause making the mort-

gagee's receipt sufficient, may be omitted in reliance upon sect. 22. And this appears to be the case. Covenants by the mortgagor to keep up life assurance, and restore the same if voidable, effect a new one if void, &c., and power for the mortgagee to insure, if the mortgagor fails to do so, must be inserted as usual. A power of sale will be given by sects. 19-22, but it will hardly be considered satisfactory. It gives no power to sell by way of surrender to the insurance office. This may be remedied by a short supplementary clause. The usual covenants for title should be inserted, as they should include a covenant by the mortgagor to enable the mortgagee to recover and receive the money payable under the policy. For forms of mortgage of policy of insurance see David. Mortgages, 2nd edit. 888; Wolst. & T. 167.

##### *Mortgage to Joint Tenants.*

So far we have been considering varieties of mortgages where the variation consisted in the subject-matter of the conveyance. We now propose to discuss cases where the deviation from the standard form of a mortgage of fee simple between two persons depends on the number or legal status of the parties by whom, or to whom, the mortgage is made. As mortgages by one person to trustees, as joint tenants, are of every-day occurrence, we shall state shortly the modifications on the old form of such a mortgage which we shall now in general advise. The leasing powers of the mortgagor and his subsequent mortgagees should be excluded. See Article II., *Law Times*, Jan. 14, p. 184. The general words and "all estate clause" may usually be omitted. See Article I., *Law Times*, Jan. 7, p. 167.

We have next to consider how far it is prudent to rely upon the statutory power of sale given by sects. 19-22. These sections give the power to "the mortgagee;" but sect. 21 (4) declares that the power of sale may be exercised by any person for the time being entitled to receive and give a discharge for the mortgage money. Of course "person" will include "persons." See also sect. 64. Also by sect. 2 (vi.) "mortgagee" includes any person from time to time deriving title under the original mortgagee. If, then, there is a joint account clause, or if the mortgage money is expressed to be advanced as money belonging to the mortgagees on a joint account (sect. 61), the implied power of sale will in the first instance belong to the mortgagees, and then will pass in the ordinary way to the survivors and survivor of them, and to the executors or administrators of the last survivor. There is no occasion for any declaration that the heir of the last surviving mortgagee shall concur in a sale by such mortgagee's personal representatives, because by sect. 30 the legal estate in the mortgaged property will pass, notwithstanding any attempted devise, to the personal representatives.

Satisfactory provisions as to sufficiency of notices to mortgagor previous to sale are made by sect. 67. Thus it will be seen that the power of sale may usually be omitted. But, in some cases where the interest mortgaged is not the entire interest of the mortgagor, as in charges, or in mortgages of leaseholds by demise, a clause supplementing the statute, so as to pass the entire estate and interest of the mortgagor, will be useful; and, in some few cases, it may be well to exclude a power of sale altogether. See Article II., *Law Times*, Jan. 14, page 185.

The powers given by sect. 19-24 with regard to insurance and appointment of a receiver are given to "the mortgagee;" but here, again, we think they may be safely relied on in a mortgage to joint tenants, in the same way, and subject to the same limitations, as in a mortgage to one person. See Article II. (*ubi sup*).

The word "mortgagee" bears an extended meaning by sect. 2 (vi.), as stated above. See also sect. 64. Probably, however, as joint tenants are usually trustees, they will insert the usual clause compelling the mortgagor to insure.

Covenants for title may be omitted if the mortgagor conveys as beneficial owner, as then covenant (C.) of

sect. 7 will be implied. By sect. 64, the covenants of sect. 7 are made applicable to conveyances in joint tenancy. Sect. 14 is as follows:—"In the construction of a covenant or proviso, or other provision, implied in a deed by virtue of this Act, words importing the singular or plural number, or the masculine gender, shall be read as also importing the plural or singular number, or as extending to females, as the case may require."

If it is stated in the mortgage that the money is advanced by the mortgagees out of money, or as money, belonging to them on a joint account, the usual joint account clause may safely be omitted by virtue of sect. 61. Messrs. Wolstenholme and Turner think it not even necessary to state that the money belongs to the mortgagees on a joint account, but that it is convenient to do so (p. 82), and they insert such a statement in their form (p. 163).

We strongly advise its insertion. In case of a mortgage for a past debt, the money can be expressed to be owing to them out of money, or as money, belonging to them on a joint account (sect. 61). The statement can be inserted in the recital of the agreement for the advance; or, where there is no recital, it can either be placed in the consideration clause, or made a separate clause at the end of the deed.

(To be continued.)

### MUSIC IN THE COURTS.

(Continued from 15 Ir. L. T., p. 67.)

Church music has been considered by several of the Courts. In the States of New York, apparently, they do not think very much of the kind furnished by rural choirs to country congregations. There it has been held that the mere fact that one sings in a country choir, or plays on an instrument as an accompaniment, raises no implied liability as against the church authorities to pay a *quantum meruit* for the services rendered. It will be presumed that the services were performed gratuitously. So, if an organist of a country church sues for his or her salary, he or she must clearly prove that there was an actual employment by the church, and a promise to pay binding upon the corporate body.<sup>1</sup>

Everyone who has been in the habit of going to church knows that in well nigh every congregation there is some one or other whose vocal organs and style of singing is not quite in accord with orthodoxy. Lately in England, the Hampstead magistrates had to consider a lady's musical performances. A complaint was made by the minister, the Rev. Mr. Burnaby, against a lady who had not a proper estimate of her own vocal ability, which was not at all commensurate with her pious sincerity. In other respects the offender was an excellent gentlewoman of culture and education. She was decidedly in error as to the quality of her voice, which was very shrill, very high, and very thin, and she exercised it with a complete independence of the other worshippers. The result was that the lady inflicted untold tortures upon the people of the church, "through every pulse her music stole," and the nerves of the clergyman were so completely unstrung that he could not proceed with the service. The choir, also, was dissatisfied, as the lady's irrepressible vocal piety frequently rendered nugatory its best-intentioned artistic efforts. Remonstrance only evoked an expression of regret that her voice was not pleasing to the congregation, accompanied, however, by a strongly-expressed determination to continue performing the religious duty which she believed to be incumbent upon her. On the clergyman complaining to the justices that she was "troubling, vexing, and disquieting the congregation," they decided to give her a month in which to ease off and stop, and if she was not quiet in that time, to fine her £5.<sup>2</sup>

A very similar case came before the Court in North

Carolina some years ago,<sup>1</sup> and there it was held that the defendant was a "proper subject for the discipline of the church, but not for the discipline of the courts." In Mr. Irving Browne's interesting little work, "Humorous Phases of the Law," we are told, "The defendant was indicted for disturbing a religious congregation. He was a strict member of the Methodist Church, and a man of exemplary deportment, but he sung in such a way as to disturb the congregation. The disturbance consisted partly in his holding on the notes after the other singers had let go. He was evidently trying to realize Milton's idea of 'linked sweetness long drawn out.' This disturbance was decided and serious; the effect of it was to make one part of the congregation laugh and the other part mad; the irreligious and frivolous enjoyed it as fun, while the serious and devout were indignant." Once the preacher had shut up the book and declined to sing the hymn. The presiding elder had refused to preach in the church on account of the disturbance. On one occasion, "a leading member of the congregation, appreciating that there was a feeling of solemnity pervading the congregation in consequence of the sermon just delivered, and fearing that it would be turned into ridicule, went to the defendant and asked him not to sing," and he then refrained. On many occasions the church members and authorities expostulated with him on account of his singing and its disturbing effects, but he invariably replied, that "he would worship his God, and that as a part of his worship it was his duty to sing." One of the witnesses, being asked to describe his singing, sang a verse in his voice and manner, which "produced a burst of long and irresistible laughter, convulsing alike the spectators, the bar, the jury and the court." The jury found Linkhaw guilty; but this was reversed because there was no proof, or pretence, of any intention or purpose to disturb the worship, but on the contrary it was admitted that he was conscientiously taking part in the religious services, and doing his "level best." Now, this was a serious case. The offender was a member of the church in good standing, and there was no fault in him save the eccentric character of his vocalization. But it must have been a harrowing reflection to his fellow church members that he was to be saved, and that they were bound to listen to that singing through all eternity."

As Mr. Browne says, the Courts in North Carolina seem singularly insensible to the charms of music. In *State v. Baldwin*,<sup>2</sup> it was held no nuisance to curse and swear so loud at a tavern as to break up a singing school near by. The Judge said, the school's "interruption cannot legally be pronounced an inconvenience to the whole community. The loss of instruction in the accomplishment, to those who would fain acquire it, does not very gravely influence the good order or enjoyment or convenience of the citizens in general, so as to call for redress on the complaint of the State."

Some judges really appear to have known something about the higher kinds of music, and to have trod the loftier walks of the science of sweet sounds, and to have been able to talk of airs and melodies, accompaniments and scores, operas and dramatical performances. In *Wood v. Boosey*,<sup>3</sup> N. had composed and published in Berlin an opera in full score. After his death, Bressler arranged the score of the whole opera for the pianoforte, and in registering the arrangement in England, N.'s name was inserted as that of the original composer. The question was, Was the pianoforte arrangement an independent musical composition of which B. and not N. was the composer? Kelly, C.B., thus spoke of accompaniments: "The accompaniment is a work of greater or less skill. In some cases, perhaps in many cases, it may be in this for aught I know, the operation of adaptation is little more than mechanical, and what anyone acquainted with the science of music, any composer of experience might

(1) *Van Buren v. Reformed Church*, 62 Barb. 493.  
(2) 21 Alb. L. J. 42.

(1) *State v. Linkhaw*, 69 N. C. 214.  
(2) 1 Dev. & Bat. 195.  
(3) L. R. 8 Q. B. Ex. Ch. 233.

have been able to do without difficulty; but it may be and often is, as in the case of the six operas of Mozart by Mazzinghi, a work—I would hardly use the term of great genius—but a work of great merit and skill."

Baron Bramwell showed his knowledge of music by the following remarks:—"The truth is, an opera is originally written for the voice, and for different instruments. In this pianoforte score, as it is called, the parts written for the voice are identically preserved, and there can be no doubt that if a man had a copyright in the original opera, such a score would be an infringement of his copyright. But when we come to the parts, not for the voice, but for the pianoforte, which is not an identical repetition of what the author wrote, it is the business of the adapter, the person who arranges it for the pianoforte, to preserve the harmony and, as far as he can, the notes and all the effects of the original composition, but he cannot produce upon the pianoforte everything that the author wrote, as he wrote it. Anybody who knows anything of the orchestral score and of the pianoforte arrangement, would know that. It is a physical impossibility that fingers could play upon the pianoforte every note as it is written in the orchestral score. For example, when there is a *tremolando* in the music, that is where the violins play the same notes backwards and forwards continually, of course that cannot be done on the piano; and sometimes for a substitute an octave is played with the thumb and finger. To arrange this to the best advantage great judgment and considerable power of choice is required on the part of the arranger. Frequently there are other differences; there are prolonged notes in the one and not in the other; as the score of the opera is written for different instruments which cannot all be represented on the piano, the arranger puts in an octave below on the piano to give as far as possible the same effect. Many other changes must of necessity be made. It is quite clear, therefore, that what the person who arranges for the pianoforte does is something different from what the original composer has done. Anybody who plays any musical instrument knows it is a very common expression to say, such a piece is very well arranged, such a piece is very ill-arranged; this is a very difficult arrangement; that is an easy arrangement. Those who play the German arrangements know they are more difficult than the English, because the German, with great conscientiousness, endeavours to put into the arrangement every note that the composer has put into the score as far as he can; whereas the English composer endeavours in all arrangements to make them clear for the player, and an English arrangement is by no means so laborious as the German. It is manifest, therefore, that there is some judgment and taste required on the part of the arranger for the pianoforte; and it is also certain that if it should happen that a man should compose an opera without being able to play on the pianoforte, which is, I believe, a perfectly possible thing, he could not arrange it himself for the pianoforte. The person who arranges for the pianoforte must have a knowledge of the instrument; it would be a bad arrangement if he put in passages that do not lie well for the hands, as it is called, so as to give a facility of playing."

Piracy is not only robbery on the sea, but also, any literary theft or infringement of the law of copyright; and copyright is the exclusive right which an author or composer possesses of multiplying copies of his own work. In speaking of stealing an air, "It appears to me," said Lyndhurst, J., "that if you take from the composition of an author all those bars consecutively which form the entire air or melody, without any natural alteration, it is a piracy; though, on the other hand, you might take them, in a different order, or broken by the interposition of others, like words, in such a manner as would not be a piracy. It must depend on whether the air taken is substantially the same with the original. Now, the most unlettered in music can distinguish one song from another, and the mere adaptation of the air, either by changing it to a dance, or by

transferring it from one instrument to another, does not, even to common apprehensions, alter the original subject. The ear tells you that it is the same. The original air requires the aid of genius for its construction, but a mere mechanic in music can make the adaptation or accompaniment. Substantially, the piracy is where the appropriated music, though adapted to a different purpose from that of the original, may still be recognised by the ear. The adding of variations makes no difference in the principle".<sup>1</sup>

"The composition of a new air or melody," says Nelson, J., in *Jollie v. Jacques*,<sup>2</sup> "is entitled to protection; and the appropriation of the whole or of any substantial part of it, without the licence of the proprietor, is a piracy."

One who adapts words of his own to an old air, adding thereto a prelude and accompaniment also his own, acquires a copyright in the combination, and may, in declaring for an infringement against one who has pirated the whole, properly describe himself as the proprietor of the entire composition.<sup>3</sup> This was decided in an action brought by Samuel Lover against the defendant for pirating the words and music of "The Low Back'd Oar," of which Lover claimed to be entitled to the copyright, as author of the words, prelude, and accompaniment, the air being an old one known by the name of "The Jolly Ploughboy."

Chappel & Co., published a song under the title of "Minnie, sung by Madame Anna Thillon, and Miss Dolly at Monsieur Jullien's concerts," with a portrait of Madame Thillon; defendants published a song to the same air called "Minnie Dale, sung at Jullien's concerts (and always encoored) by Madame Anna Thillon;" the title-page contained a similar portrait to the plaintiffs'. Vice-Chancellor Wood granted an injunction to restrain the defendants from publishing their song, "Minnie Dale," or any copy or copies thereof, or any other publication containing a colourable imitation of the name, title, or title-page of the plaintiffs' song. "The defendants," said the Vice-Chancellor, "do not profess that their song is by the same composer or the same publisher. But the first thing anybody proposing to purchase the song would say would probably be, 'I want "Minnie," sung by Madame Thillon'; and that name and description, it seems to me, the defendants have no right to whatever. The plaintiffs' publication is the identical song which that lady did sing; it was composed for the plaintiffs, it is called by the name of 'Minnie,' and they had a perfect right to entitle it 'Minnie,' as a song sung by that lady; and then the name, having acquired a celebrity as the name of a song sung by her, the defendants advertise another song by the same name as sung by this lady, which cannot be meant merely to refer to the melody as sung by her. No person who heard 'Scots wha hae,' sung by Braham, would ask for 'Hey Tuitte Taitte,' the name of the old melody. Therefore, it seems to me that there was a plain and palpable purpose in the assumption of the name. The original song, as sung in America, was 'Lillie Dale,' and the defendants have changed it into 'Minnie Dale,' sung by Madame Thillon, and a description can be for no other purpose than to appropriate the property of the plaintiffs."<sup>4</sup>

An injunction was also granted to restrain another defendant from publishing a song consisting of different words to the same air, with a title-page on which was a different portrait of Madame Anna Thillon, copied from an American publication, and the words, "Minnie, dear Minnie. Madame Anna Thillon."<sup>5</sup>

A Mr. Ruesell had been in the habit of singing a song, called "The Ship on Fire," at public concerts; a Mr. Smith advertised a vocal entertainment, and gave this and other sensational songs as part of the programme. Mr. R. sued for the penalties given by the Act for the infringement of his sole right to represent this dramatic

(1) *D'Almaine v. Boosey*, 1 Y. & C. 288.

(2) 1 Blatchf. 618.

(3) *Lover v. Davidson*, 1 C. B. N. S. 182.

(4) *Chappel v. Davidson*, 2 K. & J. 123.

(5) *Shortt*, p. 197.

piece. Denman, C.J., thus speaks of the defendant's performance: "The song in question is stated in the bill to be founded on the loss of the Kent by fire in the Bay of Biscay. It represents a storm at sea, the burning of the ship, and an escape by boat to another ship, and so a safe return to land. It moves terror and pity and sympathy, by presenting danger and despair, and joy, and maternal and conjugal affection. It is a dramatic piece." The readers of the *Canadian Law Times*, anxious to rival Mr. Russell or Mr. Henry Smith, will find thirty-five lines of this descriptive and dramatic song in 12 Ad. & El. N. S., p. 218, and with it we will leave them, giving them, however, the following as a warning.

Last winter, the vicar of a country parish in England got up an amateur concert to provide funds to repair the church clock and to buy coal for the poor. The net proceeds were four pounds. But alas, the law of copyright had been infringed by some performer singing "The Muletter," a song by the late Michael William Balfe; legal proceedings were threatened to recover the penalty of £10, but matters were compromised by the vicar handing over his four pounds.—R. VASHON ROOKERS.

#### THE AFFIDAVIT OF ATTESTATION.

Questions arising out of bills of sale occur so frequently, and have often to be decided so much on the spur of the moment, that few reported cases on the subject can be allowed to pass without discussion. No less than nine cases, each dealing with an important point in this branch of the law, were reported last year; and the new year begins with a tenth in the case of *Sharp v. Birch*, reported in the January number of the *Law Journal Reports*. In the volume for last year, we had *Conolly v. Steer*—in which the Court of Appeal overruled *Lyons v. Tucker*, and held that a registered bill, given after an unregistered bill, takes priority, although there is no question of execution of bankruptcy. *Horne v. Hughes* decides that a bill of sale, partly paid off, can be transferred in consideration of the payment of the balance to the lender and a fresh advance to the borrower, not exceeding, in all, the sum for which the bill was originally given, without a fresh registration. *Marsden v. Meadows* decides that goods sold under an execution, and left with the execution debtor, may be claimed by the purchaser from a new execution creditor without a bill of sale. *Payne v. Fern* emphasised the law that the grantor of goods cannot give a good title as against the grantee. *The Oredit Company v. Pott*, *Carrard v. Meek*, and *Hamilton v. Chaine*, all turned on the vexed question of the true statement of the consideration. *Seal v. Claridge* decides that the grantee cannot also be the solicitor who attested the bill. The present case belongs to the same class as *Seal v. Claridge*, and throws light on the meaning of the word "attestation" in the Bills of Sale Act, and the proper form of the affidavit required by the statute.

The point arose, as usually is the case, in an interpleader issue; and the judgment creditor attacked the bill of sale, on the ground of the insufficiency of the affidavit required by section 10, sub-section 2, to be filed with the bill. That sub-section requires an affidavit of, amongst other things, the "due execution and attestation" of the bill. The affidavit in question stated that the filed copy was a true copy of the bill and of the attestation and execution. It also stated the date, and that the deponent was present and saw the grantor execute the bill, which was explained to him. The name and description of the grantor were also given; and it was added, "the name 'Wm. F. Law,' set and subscribed as the witness attesting the due execution thereof, is the proper handwriting of Wm. Farmery Law, who resides, &c, and is a solicitor." Mr. Law's signature appeared under an attestation clause in regular form, stating that the bill had been executed in his presence. Was this an affidavit of the "due attestation of the bill?" The claimant's counsel said it was,

because "attesting" meant merely subscribing the name. The counsel for the execution creditor, on the other hand, contended that "attestation" meant the fact that the deed was executed in the presence of the subscribing witness. There was an affidavit, in short, of the signature, but not of the fact that the execution took place in the presence of the person signing. Mr. Justice Denman, in giving judgment, pointed out that the affidavit was perfectly consistent with the fact that Mr. Law was not present at the execution. Mr. Law, no doubt, signed the statement that he was present, and there was an affidavit that he had signed; but there was no affidavit that he had been present. The mistake probably arose from the draftsman of the affidavit thinking that an affidavit that a statement was signed by the person who purported to sign it, was an affidavit of the statement. Mr. Justice Denman further proceeded to point out that it was not enough if the signature of an attesting witness was made in the absence of the person executing, especially in view of the requirements of the Act with regard to the explanation to be given by the solicitor to the grantor. Mr. Baron Huddleston and Mr. Justice Hawkins agreed in this opinion, and judgment went for the execution creditor.

There could hardly have been a different result, however clear it was, from the attestation clause itself, that the bill had been duly attested. There was little in the rest of the affidavit to eke it out, except the statement that the deponent saw the bill executed by the grantor, "the effect having been first explained to him." This explanation could only be by the solicitor attesting it, and he could not explain without being present. Is there not, therefore, an affidavit by implication that Mr. Law was present? We suppose that the counsel for the execution creditor might extricate himself from this difficulty by saying that the argument is in a circle, because it depends entirely on the bill being attested, which is not shown on the affidavit. As to the meaning of the word "attestation," there can be no doubt that the judges' interpretation is correct. A witness cannot attest unless he is present at the execution. The Lord Chancellor went much further in *Seal v. Claridge*, and decided that a witness who attests cannot also be a party to the deed, and *vice versa*. We ventured at the time to express a difficulty in taking that etymological leap; but, if *Seal v. Claridge* is good law, a *fortiori* the present case is sound. Grantees of bills of sale for the future will take care that the deponent who makes the affidavit can and does swear that the grantor signed in the presence of the attesting solicitor.—*Law Journal*.

#### TRIAL BY JURY ON ITS TRIAL.

A few days ago we reported the proceedings of a meeting held for the purpose of arranging the business of the recently formed Chamber of Commerce for London. It is proposed to invest that body with a great many miscellaneous functions. One of its duties was stated to be the creation of machinery for the settlement of mercantile disputes in a more satisfactory manner than is now practicable. The Council of the new Chamber expressed a hope that they would be able greatly to extend and facilitate arbitration in regard to commercial claims. We do not stop to criticise the feasibility of this or any other of the numerous articles of the programme; we refer to it merely as a sign—one of many visible—of the distrust of the normal and constitutional mode of settling differences. Few things, in fact, are more characteristic of our time than the partial discredit into which trial by jury has fallen. The old eulogies upon it seem in these days curiously strained and even ridiculous. It is barely possible to read with complete gravity the terms of laudation in which it was wont to be vaunted as the great instrument of popular education, the bulwark against the inroads of despotism and arbitrary power, the real security of the freedom of the Press, and the most precious of our institutions. It is hard enough to keep alive the old faith in regard to the use of juries in

(1) *Illus London News*, 16th July, 1881.



criminal trials when we see them disregarding their oaths and acquitting prisoners in the face of clear evidence. We have not to look far to mark how impotent justice, if worked by juries, may be when popular sympathy is at all enlisted on the side of crime. No one would think of making trial by jury the basis of criminal procedure in uncivilised communities; and it seems not very successful in some societies which would resent being called at all unenlightened. For the present, however, this distrust takes distinct shape only in regard to civil disputes, and, indeed, chiefly in regard to one form of them—mercantile disputes. Though the law does not recognise the existence of tribunals of commerce in this country, and all attempts to create them have hitherto failed, a sort of substitute for them has grown up. More and more are men of business reluctant to suffer purely business disputes to take the regular course of litigation. They are often settled in some domestic forum. In almost every trade of consequence this movement has been either carried out or has at least been begun. If a man buys wool or cotton or corn, and is dissatisfied with the quantity or quality of the article which he receives and does not get redress, he does not, as a rule, go to law. The question is in certain towns pretty sure to be remitted in ordinary course to two members of his trade, and the public at large never hear of it. The result of this tendency is distinctly visible in our law courts, and is likely to be more marked hereafter. The number of "heavy mercantile cases"—questions respecting the construction of ambiguous phrases in charter parties, bills of lading, or policies of marine insurance—has very much diminished; and the successors at the Bar of Mr. Justice Willes, Lord Blackburn, Sir George Honyman, and other great commercial lawyers do not find an unending succession of knotty points demanding elaborate arguments and large fees. Nowadays, in almost all commercial agreements a provision is inserted for reference to arbitration in the event of differences arising. Even at the Sittings in the City of London—pre-eminently the place for deciding commercial disputes—it is rarer than it was to see questions as to freight, or short delivery, or defective quality, or disregard of trade usages brought before a jury. Merchants are not, it may be presumed, less ready to assert their rights than they were, and trade has not been purged of the common causes of disagreement. Where, then, are the questions which never come into court settled? They are for the most part determined in a rough-and-ready fashion, perfectly well recognised in the businesses in connexion with which a dispute has arisen. The matter, as a rule, goes before two members of the trade, who receive no legal assistance, but who hear evidence, if necessary, or examine samples, or take such other step as they deem advisable in the circumstances, and who can call in some umpire should they disagree. The Stock Exchange furnishes the most complete example of a domestic tribunal of this sort—a tribunal so powerful that the courts of Law have lately had occasion to rebuke its pretensions and to remind the Committee that the Queen's writ runs even in the sacred precincts of Copel-court. In many trades and markets a similar private jurisdiction has been established; and there seems every probability that this informal species of arbitration will extend. It has, no doubt, its serious disadvantages. When really weighty interests are at stake most men would not care to be bound by the decree of a hole-and-corner Court. It is not satisfactory that evidence should be given without the sanction of an oath, and with complete impunity from punishment for false testimony. The system may snit honest disputants, but it is not exactly made for hardened rogues. There is, too, a danger that with the multiplication of the number of disputes settled in this way the character of these tribunals may deteriorate, and that the arbitrators may be not the picked men of a trade, but fussy persons with plenty of time on their hands. Though the method in use works admirably in certain circles and businesses which are concentrated in a few places and in which there is a

strong public opinion, it has yet to be proved that it would be satisfactory on a very large scale. The question presents itself whether recognition should not be given to this distinctive feature of our time, and whether the elements of economy and expedition cannot be preserved while the defects in the system are eliminated. The demand for the formation of tribunals of commerce—often rather unintelligently made and with a total ignorance of their constitution in Germany and France—comes from men who have daily occasion to see the inappropriateness of the remedies provided by Courts of Law for the kind of disputes with which they have to do, and who are not entirely satisfied with the rough and uncertain modes of settlement which take the place of ordinary litigation. Do not these demands indicate a real want in our social economy, and cannot something be done to satisfy them?

It will not do to despise these irregular tribunals as of little consequence merely because they are almost ignored by the law. Their importance lies in the fact that they have sprung up spontaneously. Trial by jury itself did not originate in the speculations of clever jurists who were struck by the merits of a tribunal of twelve. It was of slow growth. It took several shapes. As we know it, this institution is the product of successive adaptations to the wants of society; and it has survived just because its origin was so natural. Great things may be also in store for these rudimentary trade tribunals which are springing up without any unnatural forcing. Hitherto very little has been done by the Legislature to satisfy the want of the mercantile class for cheap and expeditious justice. Certainly, arbitration as understood by lawyers does not meet the requirements of the case. The matter was laid before the Judicature Commission. That body, however, did not see its way to recommend the establishment of tribunals in which commercial men should be the judges. But in its final report that Commission—which comprised many of the most eminent lawyers of the day—suggested "that there might be for every place of sufficient importance a rota or panel, to be formed from time to time, composed of merchants, shipowners, or others conversant with the trade and business of the district, or other competent persons, from which rota the Judge might, at the request of the parties, or, if he thought the circumstances of the case required it, at his discretion, select two persons who should sit with him and advise him during the progress of the case on any point upon which their special knowledge would be of use." Nothing has been done to give real effect to this suggestion, and, indeed, it does not quite run in the lines of popular demand. Something much simpler and shorter than a jury trial or an arbitration conducted with all the pomp and circumstance and delay of an ordinary reference, something more authoritative than the unrecognised tribunals of our great trades, seems needed; and doubtless in due time it will be found.—*Times*.

#### THE SLANDER OF A PERSON IN HIS CALLING.

(Continued from page 65, ante.)

Honesty, to this extent at least, is expected of a dealer, that he will not use false weights; of a merchant, that he will not keep false books; of a dealer in grain, that he will not deliver short quantities or inferior goods (Cases I., II., and III.). It would certainly be dishonesty in a gamekeeper to trap the foxes which he was employed to preserve (Case IV.); and for an attorney to cheat his clients (Case V.), or to take fees on both sides (Case VI.), or to betray their secrets (Case VII.), would be conduct grossly reprehensible and scandalous. The principle and the extent of this part of the rule are plain.

#### ILLUSTRATIONS.

(c) I. C. was a minister of the gospel. B. said of him, among other things: "Old C. stayed at our house last night, and was pretty devilish drunk." In the

declaration there was no *colloquium* referring the words to C. in his ministerial character. *Held*, sufficient.<sup>1</sup> II. S., a minister of the gospel, was charged by G. with a crime of incest. *Held*, actionable.<sup>2</sup>

With regard to case I., it is sufficient to remember that ministers of the gospel, being teachers and exemplars of moral and Christian duty, a pure and unspotted moral character is absolutely necessary to their usefulness. A merchant or a doctor or a lawyer might, by a reputation for drunkenness, lose a portion of his trade or his practice. This, however, would generally depend upon the extent to which his excesses interfered with the discharge of his duties; and a merchant who was always to be found in his store during business hours, or a lawyer whose indulgences were never known to prevent his properly managing his cases, would probably suffer little in his calling by being charged with employing his leisure in dissipation. But with a minister of the gospel it is different. His whole life, and not the hours he is engaged in the pulpit, is watched and closely scrutinized. As said in *Chaddock v. Briggs*: "He is separated from the world by his public ordination, and carries with him constantly, whether in or out of the pulpit, superior obligations to exhibit, in his whole deportment, the purity of that religion which he professes to teach. He is as much in office when retired to the bosom of his family as when employed in public duties, and his example, in the practice of all the moral virtues, and particularly of temperance, is not the least of the duties incurred by his profession." Case II. is even stronger. As said in the opinion: "In this country, or in any Christian country, no congregation would abide under his ministry for a day after he had been, in fact, detected in a crime of that peculiar nature; he could not show his face in society, but would be as certainly and effectually excluded, more especially from an office which required him to inculcate religion and morality, as if he had committed an unnatural crime; and much more certainly than if he had committed many other offences which the law makes felony." Therefore, we conclude that, though a charge of immorality not amounting to an indictable crime is not actionable in the case of men generally, see Rule V., (b), yet it is in the case of clergymen, and for the reasons above stated.

#### ILLUSTRATIONS.

(d) I. S. was a physician, and D. said of him: "He is a bad character. None of the medical men here will meet him." *Held*, actionable.<sup>3</sup> W. was a school-mistress, and R. said of her: "She is a nasty dirty slut." *Held*, actionable.<sup>4</sup> III. A. was captain of a vessel. B. said of him that he was drunk while in command of it at sea. *Held*, actionable.<sup>5</sup> IV. S. was the chief engineer of a fire department, and H. charged him with being drunk at a fire. *Held*, actionable.<sup>6</sup>

Case I. A surgeon must frequently require the assistance and advice of his professional brethren, and to impute to him that on account of his character he is not able to obtain this, for his patients, however necessary it may be, is to charge him with lacking a very important qualification for the discharge of his duties. The decision in Case II. is sustainable only on the ground that it is particularly required of a woman engaged in instructing youth that she shall not be what there she was charged with. As to Case III., it is obvious that sobriety is imperatively demanded of a captain while in command of his vessel; and the result in Case IV. depended on the same reasons.

(To be continued).

(1) *Chaddock v. Briggs*, 13 Mass. 248 (1816); *McMillan v. Bush*, 1 Blaney, 178 (1806).

(2) *Starr v. Gardner*, 6 U. C. Q. B. o. s. 512 (1839). In England an action will not lie for a verbal imputation of incontinence unless the plaintiff is benefited, or holds a clerical office of profit. *Gallway v. Marshall*, 9 Ex. 394 (1858). This doctrine is not, however, applicable to this country, where no such distinction has been drawn.

(3) *Southey v. Denny*, 1 Ex. 196 (1847).

(4) *Wilson v. Runyon*, Wright, 651 (1834).

(5) *Irwin v. Brandwood*, 3 H. & C. 961 (1864).

(6) *Gottschalk v. Hubbschak*, 36 Wis. 515 (1876).

#### INTENT IN CRIMINAL CASES.

The law relating to offences against the person where the intent of the party accused becomes the important element for the consideration of the jury is by no means free from doubt and ambiguity. In *Reg. v. Holt* (7 C. & P. 518), where the prisoner was indicted under the repealed statute, 9 Geo. IV., c. 13, the allegation was shooting at A. with intent to murder A., and Mr. Justice Littledale directed the jury that the prisoner should be acquitted if they found that the prisoner shot at A., intending to shoot at B., and with no intent whatever in his mind to do A. any harm. But in *Reg. v. Jarvis* (2 M. & Rob. 40), Baron Gurney, in a case in which the facts were similar, told the jury that it was perfectly immaterial for whom the shot was intended, and that just as if a man laid poison for one person and another took it and died it would be murder; so a blow aimed at one person and killing another would make the party equally answerable. So, too, in *Reg. v. Lynch* (1 Cox. C. C. 861), where the indictment was for wounding with intent to do grievous bodily harm, it appeared that the accused had had a quarrel in a public-house, and subsequently waited outside for the purpose of attacking his antagonist, but by mistake attacked the prosecutor, inflicting the wound in question upon him. Here it was argued by counsel, upon the authority of *Reg. v. Holt*, that the intent was not proved. Baron Alderson said, "If *Reg. v. Holt* lays down the position you contend for I shall certainly overrule it. I do not think it either good law or good sense. I shall direct the jury, that if they think the prisoner did to the prosecutor what he intended to do to another man, they must find him guilty." The view of the law taken by Baron Alderson was confirmed and made authoritative in *Reg. v. Smith* (Deans. C. O. 559), where a case was reserved, and it was held that the conviction was right; for, though he did not intend to kill the particular person, the prisoner meant to murder the person at whom he shot. The facts were briefly as follows:—Indictment charging a wounding of one Taylor with intent to murder him, and the evidence showing an intent to murder one Maloney, and that the prisoner, supposing Taylor to be Maloney, shot at and wounded Taylor. In *Reg. v. Hewlett* (1 F. & F. 91), where the charge was wounding the prosecutor with intent to do him grievous bodily harm, it appeared that the prisoner struck at another man with a knife, and the prosecutor interfered and caught the blow on his arm, and the learned judge (Mr. Justice Crowther) held that this would not sustain the charge; obviously because there was no intent to injure the person wounded, and the case is therefore clearly distinguishable from those above quoted, where, although there was a mistake as to the person, the injury was intended for the person on whom it falls.

Under the present statute (24 & 25 Vict., c. 100, s. 18), it is sufficient if it is proved that the defendant wounded, &c., any person with intent to maim, &c., any person; so that in *Reg. v. Hewlett* the prisoner could have been convicted on a count charging him with wounding B. with intent to do grievous bodily harm to A. So, too, in *Reg. v. Pretwell* (L. & C. 443) it was held that a person who fires a loaded pistol into a group of persons, not aiming at any one in particular, but intending generally to do grievous bodily harm, and who hits one of them, may be convicted of shooting at the person he has hit with intent to do grievous bodily harm to that person.

The case of poisoning one person by mistake for another seems different, if the poison be taken in the absence of the prisoner, for in such a case he can have no actual intent to injure such person. By 1 Vic. c. 85, the words were altered, and instead of "with intent to murder such person" the words "with intent to commit murder" were substituted. The late Mr. Greaves, in his note to this part of the subject in *Russell on Crimes*, vol. 1, says: "In all cases of doubt as to the intention, it would be prudent to insert one count for shooting at A. with intent to murder him, and another 'with intent

to commit murder,' and a count for shooting at A. with intent to murder a person to the jurors unknown."

It is provided expressly by 14 & 15 Vict., c. 19, s. 5, "If upon the trial of any indictment for any felony, except murder or manslaughter, where the indictment shall allege that the defendant did cut, stab, or wound any person, the jury shall be satisfied that the defendant is guilty of the cutting, stabbing, or wounding charged in such indictment, but are not satisfied that the defendant is guilty of the felony charged in such indictment, then and in every such case the jury may acquit the defendant of such felony, and find him guilty of unlawfully cutting, stabbing, or wounding; and thereupon such defendant shall be liable to be punished in the same manner as if he had been convicted upon an indictment for the misdemeanour of cutting, stabbing, or wounding."—*Law Times*.

TEXT-BOOK ADDENDA.

(Continued from page 65, ante.)

Order XIX., Rule 3.

*Lely and Foulkes on the Judicature Acts (3rd Edition), 165.*

Where a plaintiff sued for a debt not transferable by statute, and the defendant set up an ordinary debt, the plaintiff was held entitled to judgment for the whole of the debt; and the defendant's counter-claim was dismissed (*Gathercole v. Smith*, 50 Law J. Rep. Q. B. 681)—C. A.

7 & 8 Geo. IV., c. 31, s. 2.

A felonious partial demolition of a building, so as to give a right of action against the hundred, must be a demolition of part with intent to demolish the whole (*Drake v. Footit*, 50 Law J. Rep. M. C. 141).

*Lewin on Trusts, 595.*

*Tudor's Leading Cases (3rd Edition), 55.*

Leaseholds for lives were devised to A. and his heirs; and, in case A. died without issue, to B. Held, in analogy to a fee-simple, that A. could not, by dealing with the property, defeat the executory interest of B. (*In re Barber's Settled Estates*, 50 Law J. Rep. Chanc. 769).

*Theobald on Wills (2nd Edition), 525.*

Where there was a gift of residue in shares, and in case of the death of any legatee before the "final division," a gift over of his share, held that the words "final division" related to the period allowed by law for distribution, viz., a year after the testator's death (*In re Wilkins, Spencer v. Duckworth*, 50 Law J. Rep. Chanc. 774).

*Theobald on Wills (2nd Edition), 637.*

Gift of real and personal estate, on trust, out of rents and profits, in the first place to pay to testator's widow, during her life, the clear annual sum of £300, and to pay the remainder of such rents and profits to his sister during her life. Held, the rents and profits being insufficient to pay in full the annuity to the widow, that she was not entitled to a continuing charge upon such rents and profits (*Wormald v. Mussen*—reversing decision of Fry, J., 50 Law J. Rep. Chanc. 482—50 Law J. Rep. Chanc. 776)—C. A.

*Seton on Decrees (4th Edition), 464.*

Contribution in respect of costs between defendants to an action cannot be enforced in a separate action (*Middleweek v. Dearley*, 50 Law J. Rep. Chanc. 777).

(To be continued).

THE ship of the tongue perpetrated on Wednesday night in the House of Lords by Lord Carlingford is bracketed with the famous lapsus of the Registrar to the Land Commission, who will henceforth have to share his pedestal with a member of the nobility. Lord Carlingford spoke of "the Secretary of the Land League" (instead of Land Commission) as the person who had been deceived into sanctioning the publication of the famous pamphlet, "How to become the Owner of your Farm." Even the Peers laughed at the blunder.

ADMISSION OF A SOLICITOR.

Mr. James Richard Barklie, B.A., T.O.D., of Weston, Rathgar, in the County of Dublin, eldest son of the late John Robert Barklie, Esq., of Rathgar, and formerly of the County Armagh, has been admitted a Solicitor of the Court of Judicature.

OBITUARY.

F. W. M'BLAINE, LL.D.

FREDERICK WILLIAM M'BLAINE, a native of Newry, who died at Rosstrevor on the 7th instant, was educated in the Dublin University, where he obtained a Scholarship in 1840, graduated B.A. in 1842, taking a Senior Moderatorship with gold medals in classics and ethics and logics, and in 1847 obtained the degree of LL.D. He was called to the Bar in Easter Term, 1845, and joined the North-east Circuit. He succeeded in obtaining a fair amount of practice, and was appointed Crown Prosecutor for the county of Armagh. In 1850 he unsuccessfully contested the parliamentary representation of the borough of Newry in the Liberal interest, and in 1874 was alike defeated as a candidate for the county of Armagh. In the spring of last year he acted as *locus tenens* for the County Court Judge of Down, and afterwards (Feb.) was appointed a Divisional Police Magistrate for the metropolis, in succession to Mr. Charles J. O'Donel, promoted to the office of Chief Magistrate, on the resignation of Mr. J. W. O'Donnell. As a magistrate, during his lamentably short tenure of office, he proved himself a sound, zealous, and firm administrator of the law. Personally Dr. M'Blaine (who died unmarried) was extremely popular, a fluent speaker, a genial raconteur, and kindly and courteous in the extreme; and deeply, indeed, is his untimely death deplored by the large circle of his friends and by his many admirers.

APPOINTMENTS AND PROMOTIONS.

NOTE BARR.—Information intended for publication under the above heading should reach us not later than Friday morning in each week, as publication is otherwise delayed.

Mr. George Keys, Barrister-at-Law, has been appointed a Police Magistrate for the Metropolis.

BOOKS RECEIVED.

*The Law relating to Building Leases and Building Contracts, the Improvement of Land by, and the Construction of, Buildings. With a full Collection of Precedents of Agreements for Building Leases, Building Leases, Contracts for Building, Building Grants, Mortgages, and other Forms with respect to matters connected with Building. Together with the Statutes relating to Building, with Notes and the latest Cases under the various Sections. And a Glossary of Architectural and Building Terms.* By ALFRED EMDEN, of the Inner Temple, Esquire, Barrister-at-Law. London: Stevens & Haynes, Law Publishers, Bell Yard, Temple Bar. 1882.

THE LEGAL AGE OF WOMEN IN SWITZERLAND.—An important instalment of "women's rights" has been conceded in Switzerland, where the law making both sexes of full legal age at twenty-one came into force with the new year. In many cantons the age of majority for men has hitherto been as high as twenty-six; and, as women were altogether denied majority, no matter how old they were, the number of "wards" was very great. The duty of guardianship in most cases devolved on the communes, which have been relieved of much thankless labour; and for the future Swiss women, at home or abroad, whether unmarried, married, or widows, will be civilly emancipated on their twenty-first birthdays. In the town of St. Gall alone fortunes to the amount of upwards of ten millions of francs were transferred to women, formerly in wardship, under the new law, on New Year's Day.

COURT PAPERS.

LAND JUDGES.

Sittings for next Week so far as same are appointed.

Before the Rt. Hon. JUDGE FLANAGAN.

MONDAY.

IN CHAMBER.—W. Cooke, payment.—M. M'C. Gage, allocate.

IN COURT.—S. M'Clave, as to letting.—D. B. Leonard, do.—E. Atthill, receiver.

Before EXAMINER (Mr. Kennedy).  
Trustee H. Power, rental.—P. J. Boylan, vouch.

TUESDAY.

IN CHAMBER.—C. Lewis, to confirm sale.

IN COURT.—Trustees Corbett, final schedule.—M. Handley, do.—A. E. Acheson, payment.—J. O'Flaherty, from 14th.

Before EXAMINER (Mr. Kennedy).  
S. Davis, rental.

WEDNESDAY.

IN COURT.—J. Horgan, from 15th.—E. J. Brady, objection.

THURSDAY.

IN COURT.—M. Coates, from 16th.

Before EXAMINER (Mr. Kennedy).  
A Gara, vouch.

Before the Rt. Hon. JUDGE OMSBY.

MONDAY.

IN CHAMBER.—T. Barnes, to confirm sale.

IN COURT.—Trustee J. R. Dickson, receiver.—R. W. Fearon, from 16th.

TUESDAY.

SALES IN COURT.

J. HARSHAW, . . . . . 1 lot.

WEDNESDAY.

Before EXAMINER (Mr. M'Donnell).

T. L. Eshaw, vouch.—J. Callaghan, do. from 15th.—  
J. Butler, vouch.

FRIDAY.

Before EXAMINER (Mr. M'Donnell).

W. Coleman, rental from 8th.

COURT OF BANKRUPTCY.

ADJUDICATIONS IN BANKRUPTCY.

The dates of Adjudications are first given, the Sittings follow in Italics.

Brennan, Peter John, of Burlington-quay, Bandon, in the county of Cork, corn and manure merchant. January 27; *Tuesday, February, 28, and Friday, March 17. Dealy and White and G. K. Sherlock, solrs.*

Gilmora, John, senior, of 2, Hay Park-avenue, Ballinacraig, Belfast, in the county of Antrim, ironmonger. January 31; *Tuesday, February 28, and Friday, March 17. Richard Davoren, solr.*

Hogan, Cornelius, of the Glen, in the city of Waterford, cattle dealer. February 8; *Friday, March 3, and Tuesday, March 21. Richard Davoren, solr.*

M'Carthy, Thomas, of Tallow, in the county of Waterford, hardware dealer. February 8; *Friday, March 3, and Tuesday, March 21. John L. and W. Scallan, solrs.*

Murray, William Thomas, of 2, Proby-square, Blackrock, in the county of Dublin, gentleman. February 10; *Tuesday, March 7, and Friday, March 24. Jehu Mathews, solr.*

DUBLIN STOCK AND SHARE LIST.

DESCRIPTION OF STOCK	FEBRUARY						
	Sat. 11	Mon. 13	Tue. 14	Wed. 15	Thur. 16	Fri. 17	
<b>*Paid Government.</b>							
— 3 p c Consols ..	99½	99½	—	—	99½	—	
— 3 p c Reduced ..	—	—	—	—	—	—	
— New 3 p c Stock ..	98½	98½	99½	99½	99½	99½	
<b>INDIA STOCK.</b>							
4 p c Oct. 1888 } Trsfble. at ..	103½	103½	103½	—	103½	103½	
3½ p c Jan. 1881 } Bk. of Irel. ..	—	—	—	99½	—	—	
<b>Banks.</b>							
100 Bank of Ireland ..	—	—	—	—	318	318	
25 <i>Hibernian Banking Co</i> ..	—	—	—	35½	85	35	
20 <i>London and County (Lit'd.)</i> ..	—	—	—	—	—	—	
20 <i>London and W'minate. &amp; Hd</i> ..	—	68½	68½	68½	68½	68½	
10 <i>Do. New</i> ..	—	—	—	—	—	—	
34 <i>Munster Bank (Limited)</i> ..	—	—	—	—	—	7	
10 <i>National Bank (Limited)</i> ..	—	—	23	—	23	23	
10 <i>National of Liverpool (Lit'd.)</i> ..	—	—	—	—	—	—	
— <i>Nat. Prov. of England, Lim.</i> ..	—	—	—	—	—	—	
25 <i>Provincial Bank</i> ..	—	—	—	—	—	—	
10 <i>Do. New</i> ..	—	—	—	—	—	—	
<b>Steam.</b>							
50 <i>British &amp; Irish</i> ..	—	—	x d	—	—	50	
100 <i>City of Dublin</i> ..	—	—	—	—	—	114	
50 <i>Dublin and Glasgow</i> ..	—	—	18	—	—	—	
50 <i>Dublin &amp; Liverpool Steam Ship Building Co.</i> ..	—	—	—	—	—	—	
10 <i>Dundalk (Limited)</i> ..	—	5	—	5½	—	—	
<b>Mines.</b>							
45 <i>Berehaven (Limited)</i> ..	—	5/-	—	—	5/6	—	
24 <i>Wicklow Copper</i> ..	—	—	—	—	—	—	
<b>Miscellaneous.</b>							
10 <i>Alliance &amp; Dub. Cons.' Gas</i> ..	—	—	15½	15½	—	—	
8 <i>Do.</i> ..	—	—	—	—	—	—	
4 <i>Arnott &amp; Co. Limited</i> ..	—	—	—	—	—	6½	
10 <i>Dublin Artisan Dwellings</i> ..	—	—	—	—	—	—	
10 <i>Dub. (S'th) City Market Co.</i> ..	—	—	—	—	—	—	
17 <i>Hudson's Bay</i> ..	—	—	30	—	—	—	
<b>Tramways.</b>							
10 <i>Belfast Trams</i> ..	—	—	—	—	—	—	
10 <i>Dublin United Tramways</i> ..	—	—	x d	—	—	10½	
<b>Railways.</b>							
10 <i>Athenry and Tuam</i> ..	—	—	—	—	—	—	
50 <i>Belfast and County Down</i> ..	—	—	—	—	—	—	
50 <i>Belfast and Northern Cos.</i> ..	—	—	—	—	—	—	
100 <i>Dublin, W'klow, &amp; W'ford</i> ..	—	—	—	—	—	—	
100 <i>Great Northern (Ireland)</i> ..	118	—	—	118	77	118½	
100 <i>Gr. Southern and Western</i> ..	—	—	109½	—	111	111½	
100 <i>Midland Gt. Western</i> ..	—	—	82½	—	—	83	
50 <i>Waterford and Limerick</i> ..	—	—	—	—	—	—	
<b>Railway Preference.</b>							
100 <i>Belfast &amp; Nth'n Cos. 4 p c</i> ..	—	—	—	—	—	99	
100 <i>Do., 4½ p c</i> ..	—	—	—	—	—	—	
100 <i>D. W. &amp; W., 6 per cent</i> ..	—	—	—	—	—	—	
100 <i>Gr. N'th'n (Ireland) 4 p c</i> ..	—	—	—	—	—	—	
100 <i>Do., 3½ p c</i> ..	—	—	—	—	—	—	
100 <i>Gr. South'n &amp; West'n 4 p c</i> ..	—	—	—	—	—	—	
100 <i>Mid. Great Western, 4 p c</i> ..	—	—	—	—	—	—	
100 <i>Do., 5 p c</i> ..	—	120½	—	—	—	—	
<b>Debenture Stocks.</b>							
— <i>Belfast &amp; Nth'n Cos. 4 p c</i> ..	—	—	—	—	—	101½	
— <i>C'fergus and Larne 4 p c</i> ..	—	—	—	—	—	—	
— <i>Cork and Bandon, 4 p c</i> ..	—	—	—	—	—	—	
— <i>Do., 4½ p c</i> ..	—	—	—	—	—	—	
— <i>Dublin &amp; Wicklow 4 p c</i> ..	—	—	—	—	—	—	
— <i>Do., 4½ p c</i> ..	—	—	—	—	—	—	
— <i>Gr. North'n &amp; West'n 4½ p c</i> ..	—	—	—	109½	—	109½	
— <i>Gr. South'n &amp; West'n. 4 p c</i> ..	—	—	—	109	—	—	
— <i>L'derry &amp; Enniskillen 5 p c</i> ..	—	—	—	—	—	—	
— <i>Midland Gt. West'n. 4 p c</i> ..	—	—	—	—	—	—	
— <i>Do., 4½ p c</i> ..	—	—	—	—	—	—	
— <i>Water'd &amp; Limerick 4 p c</i> ..	—	—	—	—	—	—	
— <i>Do., 4½ p c</i> ..	—	—	—	—	—	—	
<b>Miscellaneous Debent.</b>							
— <i>Alliance &amp; Cons.' Gas, 4 p c</i> ..	—	—	—	—	—	—	
— <i>Ballast Office Deb., 292 6s 2d, 4 p c</i> ..	—	—	—	—	—	—	
— <i>City Deb. of 292 6s 2d, 4 p c</i> ..	—	—	—	—	—	—	
— <i>Dub. &amp; Kingstown 4 p c</i> ..	—	—	—	—	103½	—	

\* Shares not fully paid up are given in Italics. † x d

Bank Rate—Of Discount—6 per cent.. 30th January, 1882.

Of Deposit—3 per cent.. 30th January, 1882.

Name Days—February 28th, and March 15th, 1882.

Account Days—March 1st and 16th, 1882.

Business commences at 1 30 p.m.

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# THE IRISH LAW TIMES AND SOLICITORS' JOURNAL.

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No. 787

## "PLACES," WITHIN THE BETTING HOUSES ACT.

THE Betting Houses Act (16 & 17 Vic., c. 119), after reciting in the preamble that a kind of gaming had of late sprung up tending to injure and demoralise improvident persons, by the opening of places called betting houses or offices, and the receiving of money in advance by the owners or occupiers of such houses or offices on their promises to pay money on events of horse races, &c., proceeds to enact, by section 1, that "no house, office, room, or other place shall be opened, kept, or used for the purpose of the owner, occupier, or keeper, or person using the same, or of any person having the care or management, or in manner conducting the business thereof, betting with persons resorting thereto, or for the purpose of any money . . . being received by or on behalf of such owner or occupier . . . on or for the consideration of any . . . promise or agreement, express or implied, to pay or give thereafter any money . . . on any event or contingency relating to any horse race," &c. And by section 3, in which similar words are used, a penalty is imposed upon the owner or occupier of any "house, office, room, or other place," who shall open, keep, or use the same for such purposes.

What constitutes a "place" within the meaning of this Act? There have been several decisions on the subject, the latest being *Galloway (app.) v. Maries (resp.)*, which we find reported in last Saturday's *Law Times*; and they certainly present a most singular illustration of the extended operation which judicial interpretation can assign to a legislative enactment of which the real object was apparently so limited.

In *Doggett v. Catterns* (19 C. B. N. S. 765, 12 L. T. N. S. 355, 34 L. J. C. P. 159) the Court of Exchequer Chamber held (reversing the Common Pleas) that the ground underneath a tree in Hyde Park was not a "place" within the meaning of section 1, and that, therefore, section 5 did not entitle the plaintiff to recover back the deposit paid by him to the defendant upon a bet made by the plaintiff with the defendant, a betting agent and book-maker, who was in the habit of standing under a tree in the park, and there making bets on horse races, and receiving deposits. But, Pollock, C.B., in giving judgment, said he so far agreed with the Court below as to think that an open place without any "house, office, or room" might be a "place" within the statute, but he thought it must be a place capable of having an owner or occupier, which was not there the case. Bramwell, B., agreed that the decision should be reversed, but was unwilling to reverse it on the ground put by Pollock, C.B., that, to come within section 4 or 5, a person must necessarily be an owner or occupier of the place. Channell, B., and Blackburn, J., concurred for the reasons given by Pollock, C.B.; and Mellor, J., and Pigott, B., concurred for the reasons given by Bramwell, B. The next case in which the question arose is *Shaw v. Morley* (L. R. 3 Ex. 137). There it appeared that on a strip of land, part of a race-course, and adjoining and immediately outside the grand stand inclosure, a temporary wooden structure five feet high, without a roof, and having two frontages, was erected, in which, during the races, the business of betting was carried on as follows:—Outside was a board,

with the name and address of the proprietor of the structure, and betting lists, and the names of the horses, and the odds which the proprietor was willing to bet, and inside were desks facing to each frontage, at which the defendants or their clerks sat and made bets, which they then and there recorded in books open before them. Kelly, C.B., Martin and Pigott, BB., held that this structure, though it had no roof, was an "office or place" within the Act, and therefore that the proprietor was properly convicted under section 3. "It makes no matter whatever, in my opinion," said Kelly, C.B., "whether the structure had or had not got a roof upon it, or whether or not it was fastened to the ground by any means, or was movable." Again, in *Eastwood v. Miller* (L. R. 9 Q. B. 440) a "pigeon-shooting ground" was held to constitute a "place" within the Act, as was a "cricket ground" in *Hugh v. The Town Council of Sheffield* (L. R. 10 Q. B. 102); but *Bowes v. Fenwick* (L. R. 9 C. P. 339) was a yet stronger decision, holding that a stool and umbrella constituted a "place" within the meaning of this statute, passed with the object of putting down betting houses. But (*pace Mr. Biggar*) Stephen's-green Club is safe: *Oldham v. Ramsden*, 44 L. J. C. P. 309.

Now, in *Galloway v. Maries* (45 L. T. N. S. 762) it appeared that, at a race meeting in a private park, to which the public were admitted on payment of a small sum as entrance money, the respondent and one S. were together during the races within a railed inclosure called "the Ring," adjoining the grand stand, and whilst there, S. stood upon a small wooden box placed on, but not attached to the ground within the ring, and there he and the respondent, standing and acting in company together, were calling out and offering to make, and did make ready-money bets with other persons on some of the races, S. receiving the money for bets made and respondent booking the sums, and both of them remaining together at the same spot within the ring during the races. An information against the respondent was dismissed by the justices, on the ground that neither the inclosure nor the "box" was or constituted a "place" within the meaning of the Act; and the question came before Grove and Lopes, JJ., on appeal. "Not one, I think, of the previous cases goes quite so far as the contention on the part of the appellant in the present case seeks to carry it," said Grove, J.; and well might he ask, as he did, "do you say that the Legislature contemplated a thing like this loose box being a place? The object of the statute was to put down betting houses." Even *Bowes v. Fenwick* did not go so far, for in the present case the "umbrella" was gone, and only the stool or box remained. In that case, said Grove, J., "the alleged offender took up a position on a racecourse, standing upon a low stool, having a large umbrella, capable of covering several persons, fixed over his head by means of a large jointed stick, with a spike at the end which was inserted into the ground. This umbrella was kept open irrespective of the weather, and on the outside of it was painted the appellant Bowes' name and address in large letters, and an announcement to the effect that 'we pay all bets first past the posts.' There was in that case a temporary covering, and the appellant there advertised himself partly by written or printed advertisement, as before mentioned, and partly by oral advertisement, or

calling out to the surrounding crowd. The particular method of advertisement has not, however, I think, much to do with the question of 'place.' But in *Bowes v. Fenwick* there was besides the stool the large umbrella fixed with the spiked handle into the ground. The judgment of the Court of Common Pleas in that case seems to rest both upon the umbrella and the stool in this way: not that the umbrella spiked into the ground constituted fixity of place in the sense of its being attached to the soil, but that the umbrella and the stool also on which the man stood and offered bets being there they constituted fixity of place in the sense of its being a fixed spot, indicated and ascertainable by means of the stool and umbrella, to which people could and did resort for purposes of betting. Lord Coleridge, C.J., in his judgment there, says with reference to this umbrella and stool: 'It was not a house or room. It might perhaps be said that it was an office; I do not give an opinion on that point, because I am certainly of opinion that it was a "place." It was an ascertained place, for the umbrella was fixed . . . it was kept up wet or dry, and I am therefore of opinion that he was using a "place" within the meaning of the Act.' The question is, would the learned judges who decided that case have come to the same decision if there had been no umbrella in the case? I cannot doubt that they would have done so, because the ground of their decision in the case as it stands is the fixity of the place; that is to say, its being a denoted and ascertained place, where the respondent carried on for the time the business of betting, and where people might resort for betting purposes." "I must say that, in the absence of any authority on the point, I should not have thought that this 'box' could be a 'place' within the statute," said Lopes, J.; "but the case of *Bowes v. Fenwick*, which goes further than any of the other cases, is a very cogent authority to show that it was." It was held, accordingly, that the respondent was liable to conviction, and the decision of the justices was reversed.

The principle of this case, as indeed of the previous authorities, seems to be that, in order to constitute a "place" within the statute, it must be some fixed and ascertained spot occupied so far permanently, by a person indicating what the business is that he intends to carry on there, that the public may see and know that there is a definite and recognised spot to which anyone desirous of so doing may resort for the purpose of betting. "Races never alters, as is things I don't 'old with, tho' no doubt they've been from the beginnin' of the world," says Arthur Sketchley's amusing "Mrs. Brown;" nor do we 'old with betting at races among gentry who superimpose themselves on boxes, like Maries, and maintain umbrellas, like *Bowes*, contrary to the Act of 16 & 17 Vic., c. 119—yet, two words of advice we would give them: "Move on." It will not do to indulge in fixed and ascertained spots, and even a cart, like that of a "cheap Jack" at a fair, may bring its owner to grief, just as much as what in *Galloway v. Maries*, served to convict the respondent of being in the wrong "box."

#### LAND COMMISSION REPORTS.

It appears that there are some people still ignorant that there are no "official" reports of cases decided by the Land Commission. The IRISH LAW TIMES reports of those cases, however, present the double advantage arising from judicial revision, and from printing what is said by the judges *in extenso*. From the beginning we adopted this course, and accordingly the opening address of Mr. Justice O'Hagan, to which so much attention has been attracted, will be found recorded in our columns unmutated (15 Ir. L. T. 549). We

prefer to publish the *ipsissima verba* of the Bench rather than what may be "considered requisite" by anyone else. And accordingly, it need hardly be said that it was not with reference to the IRISH LAW TIMES Mr. MacFarlane, M.P., for Mr. Gray, M.P., asked in the House of Commons, on the 23rd inst., "why in the official (*sic*) report of cases decided by the Land Commission, and which contained Mr. Justice O'Hagan's opening address, the following passage had been omitted, viz.:—"That the rent should be a rent which might be fairly paid, and yet permit tenants not deficient in those qualities of industry and prudence which are expected in any walk of life to live and thrive?" The Attorney-General said that the Chief Secretary was not aware until recently of the existence of the reports which were referred to in the question—reports which recently came under our own notice in connexion with a rather peculiar incident in reference to the alleged revision of *Ruledge v. Ruledge*: see 15 L. T. 638. "In the first part of those reports," he added, "the reporters published so much of the observations of Mr. Justice O'Hagan in opening the court as they considered requisite. The learned judge informs me that the introduction was not submitted to him for revision nor revised by him, nor until this question was mooted did he ever read that production."

#### PRISONERS AND THEIR COUNSEL.

"X" writes as follows to the *Law Journal*:—"It seems that, for the present at all events, we must regard counsel for the prisoner as being only in a limited sense the prisoner's mouthpiece, and not as being 'entitled to say whatever the prisoner might say,' as laid down by the late Lord Chief Justice some two years since. With your permission, I would point out, by means of an illustration which has just presented itself, how very hardly this new rule may bear upon innocent prisoners, while completely failing to lessen the chances of escape of prisoners who, though guilty, are astute and self-possessed.

"At the last Cornwall assizes Mrs. Georgina Parkyn was tried before the Lord Chief Justice for forging and uttering a certain bill of exchange, which purported to be accepted by Lord Archibald Douglas. There was practically no evidence to prove that the prisoner had forged the document in question, and the case hinged upon the uttering—whether, when she offered the bill in payment, she knew that it was a forgery. The facts deposed to were—that Mrs. Parkyn had made certain purchases at a draper's shop, and that in payment she had tendered the forged acceptance; that the shopkeeper, on looking at the bill, said, 'Who is Lord Archibald Douglas?' and that the prisoner replied 'He is my father; he has taken a cottage for me at Roche, and this is how he sends me my money.' Lord Archibald Douglas, a comparatively young man, not much older than the prisoner, was next called, and appeared attired in the garb of a Roman Catholic priest, and proved that the acceptance upon the bill was a forgery of his signature.

"This was the case against the prisoner. It should, however, be added that in the course of the trial it came out that the husband of the prisoner was a man connected with mining adventures, and that between him and the prisoner there had been quarrels. The prisoner was very pretty, was most becomingly dressed, possessed an extremely sweet voice, with quite the intonation of a lady, and was undefended by counsel. At the end of the case for the prosecution the prisoner read a written defence, delivered with much skill, and relieved from time to time by the exhibition of becoming emotion. The defence was well arranged, and capably written. A large share of the credit of its composition has been generally attributed to a local solicitor, who advised the prisoner as to the line of defence she should adopt.

"The three main points made by the prisoner in her defence, were the following:—

"1. The prisoner said that it was absolutely untrue that she had said that Lord Archibald Douglas was her father. What she had really said was: 'Oh, that is Father Douglas!' referring to him in his capacity as a priest of the Church of Rome, of which Church the prisoner also stated that she was a member.

"2. The prisoner next said that the forged bill was given to her by her husband; that she knew nothing of Lord Archibald Douglas, save through her husband, who had told her that he had had transactions with his lordship in reference to mines, and had received money from him in respect of such transactions to the amount of £300. She further said that she was wholly ignorant of the fact that the bill was a forgery, and that the whole thing was a plot on the part of her husband (who was tired of her) to enable him to get rid of her.

"3. The prisoner further stated that her husband had treated her with great cruelty, and had told her, on more than one occasion, to get her living by her beauty. This gave her a great opportunity for enlarging upon the abominable nature of this suggestion; though there was no evidence to show that the husband had ever made use of the expression.

"The jury, after a summing-up which favoured an acquittal, returned a verdict of 'not guilty,' and the prisoner was discharged, to adjourn, it is said, with her husband to a hotel in the town, where they took up their abode.

"Now suppose that the late, instead of the present, Lord Chief Justice had tried the case, and that the prisoner had been defended by counsel; counsel for the prisoner would then have been able to lay the whole of paragraphs No. 1 and No. 2 before the jury, and, if done with any skill, a verdict of acquittal would probably have been obtained. Under the present system, however, counsel would be debarred from putting forward either No. 1 or No. 2. Let us see how this affects (1) guilty, and (2) innocent prisoners.

"Suppose that the prisoner is guilty, then, if possessed of sufficient pluck to conduct his or her own case, and lay it skilfully—and this may easily be done by means of a written speech—before the jury, an acquittal may fairly be anticipated if the defence is a plausible one. But if the prisoner is too nervous and timid to undertake this, and it is necessary to obtain the services of counsel, then, as counsel would have to abandon such defenses as No. 1 and No. 2, except as mere hypothetical solutions, his client would, in a case such as above, very probably be convicted. Suppose, again, that the prisoner is innocent, then in such a case as the one we have put, coolness and pluck would be rewarded by acquittal, and nervousness and timidity by conviction. But, as innocent prisoners are naturally the least likely to have any previous acquaintance with Courts of justice, they are those most likely to suffer from a nervous dread of the ordeal of trial. In the case above, the prisoner was before a Court of justice not for the first nor even the second time. The present system seems, then, to come to this, that a prisoner who is not embarrassed by his or her position has, with a plausible defence, a very good chance of acquittal; while an innocent prisoner with a good defence, but unable to put it, except as a mere hypothesis by the mouth of counsel, will run every risk of conviction. Further than this, a prisoner may yet deliver, by means of a speech written by counsel or by a solicitor, much that, even under the former procedure (e.g., No. 3, as above), counsel would be debarred from laying before the jury.

"Under these circumstances it would seem to be good policy for counsel to defend prisoners by means of written speeches, which prisoners should read. But does not this show plainly that it would be wise to return to the principle that counsel is the mouthpiece of the unsworn prisoner for all purposes, and that the jury must take the statements of the prisoner so made, for what they may consider them to be worth."

THE LAND LAW ACT, 1881.

A Parliamentary paper published on Saturday gives returns of the judicial rents fixed by the Sub-Commissioners, under the Act of 1881, in all the cases notified by them to the Irish Land Commission up to and including January 28th, 1882. The following is a summary, showing, according to counties and provinces, the number of cases in which judicial rents have been fixed by Sub-Commissioners; and also the acreage, tenement valuation, former rents, and judicial rents of the holdings:—

	No. of Cases in which Judicial Rents have been fixed.	Acreage: Statute Acres.	Tenement Valua- tion.	Former Rent.	Judicial Rent.
<b>ULSTER:—</b>					
Antrim ..	50	1,321	£ 1,784	£ 1,789	£ 1,820
Armagh ..	18	111	99	151	90
Cavan ..	108	2,853	1,513	2,179	1,711
Donegal ..	70	2,803	1,348	1,755	1,287
Down ..	122	2,404	2,486	3,044	2,355
Fermanagh ..	29	1,260	1,085	1,343	1,018
Londonderry ..	3	250	240	304	237
Monaghan ..	15	200	100	126	105
Tyrone ..	110	2,865	1,645	2,317	1,773
<b>Total ..</b>	<b>530</b>	<b>14,232</b>	<b>9,800</b>	<b>12,958</b>	<b>9,796</b>
<b>LEINSTER:—</b>					
Carlow ..	15	917	729	1,088	933
Kildare ..	40	1,629	1,002	1,508	1,170
Kilkenny ..	91	3,823	2,279	3,066	2,528
King's ..	18	628	370	369	308
Meath ..	14	448	374	498	420
Queen's ..	37	1,537	903	1,445	1,013
Wexford ..	53	2,712	1,068	1,448	1,174
<b>Total ..</b>	<b>253</b>	<b>11,595</b>	<b>6,618</b>	<b>9,670</b>	<b>7,541</b>
<b>CONNAUGHT:—</b>					
Leitrim ..	28	904	409	563	440
Mayo ..	113*	2,485	631	1,084	743
Roscommon ..	71	1,329	605	930	680
Sligo ..	9	395	132	239	182
<b>Total ..</b>	<b>221</b>	<b>5,033</b>	<b>1,877</b>	<b>2,866</b>	<b>2,060</b>
<b>MUNSTER:—</b>					
Clare ..	62	2,134	1,184	1,838	1,337
Cork ..	11	429	248	364	275
Kerry ..	66	2,678	1,841	3,312	2,608
Limerick ..	67	2,379	2,013	3,273	2,493
Tipperary ..	98	3,374	2,365	3,189	2,491
<b>Total ..</b>	<b>304</b>	<b>11,992</b>	<b>£7,554</b>	<b>£11,997</b>	<b>£9,199</b>

From another return just presented to Parliament it appears that there have been, down to January 28, 31 cases of sales to tenants under section 26 of the Act, in which the advances made by the Commission amounted to £1,579. Under sections 24 and 25 advances amounting to £7,817 have been made to five tenants; advances amounting in all to £18,814 have also been sanctioned but not completed.

THE CONVEYANCING AND LAW OF PROPERTY ACT, 1881. WHERE IT SHOULD BE ADOPTED, AND WHERE EXCLUDED.—V.

(Continued from page 74, ante)

Mortgage by Joint Tenants.

The special question raised here is upon the covenants for title. If the mortgagors simply convey "jointly as beneficial owners" it would seem that a joint covenant would be implied by sect. 7. Messrs. Wolstenholme and Turner (pp. 92, 157) suggest an adaptation, which they consider will also raise by implication several covenants. But it partly depends on sect. 64, and partly on sect. 7 (2), and we should certainly prefer, where joint and several covenants are desired, to use the ordinary forms in full. Another plan would be to make the mortgagors convey jointly as beneficial owners, and then add a declaration that it was intended that joint and several covenants by them should be implied.

\* Exclusive of decisions made by the Civil Bill Court.

Sect. 7 (7) permits variations and extensions of the implied covenants. But we should prefer to use the old forms in the present case. We shall conclude our remarks on this part of our subject by considering rather more fully the following important security.

*Mortgage by Tenants in Common, being Partners, of their Works.*

Here obviously the leasing power of the mortgagors and their subsequent mortgagees must be excluded. General words and "all estate clause" may, as usual, be omitted. But the covenants not to remove the movable portions of the works, to keep the premises in good repair, to insure against fire, and a declaration that all machinery, set up after the mortgage, shall become subject to the security, will still be inserted. (For form compare David. Mortgages, 3rd ed. 913.) The power of sale, given by the statute, will require some modification, especially when the security comprises machinery, which makes it liable to registration under the Bills of Sale Act, 1878, and it is not intended to register it. The notices required before exercise of the power (s. 20, i., ii.) will be found too long for the mortgagee, while the mortgagors may also reasonably desire to prevent a power of sale arising immediately on any breach by them of any covenant relating to the property (sect. 20, iii.). If it is intended that joint and several covenants for title should be given, the best way will be to use the ordinary forms. As to joint and several covenants see David. i. 115; ii. 935.

*Further Charge.*

Where it can be so arranged, a further charge, made between the same parties as the original mortgage, or their representatives, is usually made by indorsement. Where, however, this cannot be done, the new deed should be described as supplemental (sect. 58) to the old one, and so the recital of the old deed can be omitted. Of course the two deeds should always be kept together. The form of the further charge will depend much on the frame of the original mortgage. Thus, if in the mortgage there is an express power of sale, a declaration should be inserted in the further charge that the power shall also apply to the further advance: see David. Mortgages, 1282. If, on the contrary, the mortgage was executed after the 31st Dec., 1881, and the power of sale was omitted in reliance on sects. 19, 22, then no reference should be made to any power of sale. The statutory power will be implied, for the word "mortgage" in sect. 19 includes a charge (sect. 2, vi.). It will be noticed that in the "short form" of transfer of mortgage given in Schedule IV. there is no reference to any power of sale. It should be observed that these short forms are merely intended to be models, and are useful as showing what expressions will be sufficient in relation to the provisions of the Act (sect. 57); they must not be confused with the statutory mortgage, and other statutory conveyances in Schedule III., which, by virtue of sect. 26-29, raise by implication various covenants. If there are any special covenants or provisions in the mortgage which are intended to apply to the fresh advance, mention should be made of them in the further charge. So also if the new advance is on a joint account, it should be so stated. The form in Schedule IV., of which we have previously spoken, suggests a reduction in the length of that part of the deed which charges the property. It declares "that all the property comprised in the before-mentioned indenture of mortgage shall stand charged with the payment to B. and C. of the sum of £ , and the interest thereon hereinbefore covenanted to be paid, as well as the sum of £ and interest secured by the same indenture."

From this it would seem that a simple declaration that the property shall "stand charged" is sufficient, without any further clause that it shall not be redeemable except by payment of the fresh advance also. We find, however, that Messrs. Wolstenholme and Turner, who are generally inclined to be satisfied with the Act, add words to the effect of the latter clause (Wolst. & T.

169), and we shall advise our readers to follow their example.

*Second Mortgage.*

The effect of the Act will be to encourage the making of second, and inferior, securities. By sect. 15 the mortgagor can compel the first mortgagee to allow him to inspect the deed, and to take copies. This was formerly usually obtainable only as a matter of favour. Also the right to consolidate against a second mortgagee will be found somewhat diminished both by the Act (sect. 17), and the recent decision in *Jennings v. Jordan* (45 L. T. Rep. N. S. 598; L. Rep. 6 App. Cas. 698). Another cause of the increase of these securities will be the conciseness, and consequent cheapness, which will be attainable by reliance on the Act. There are two classes of persons who take second mortgages—the one who desire good security for their money, but a higher rate of interest than can be obtained on a first mortgage; and another class who have money already due to them from the mortgagor, and must simply take what security they can get. It is with the interests of the first class we are now concerned. The Act makes no difference as to the inquiries of the first mortgagee before the security is effected, or to the notice given afterwards. The leasing powers of sect. 18, if they have not been excluded by the previous mortgage, will undoubtedly improve the position of a second mortgagee when in possession, while the provisions of the Act relating to the discharge of incumbrances and actions respecting mortgages will often be found useful: see sects. 5, 25. It will not be necessary for us to go into any details with respect to the frame of the second mortgage. But we may add that leasing powers of mortgagor and subsequent mortgagees should be excluded.

*Transfer of Mortgages.*

Where the transfer cannot be made by indorsement, it will be convenient to state that the transfer is supplemental to the mortgage, and so save the recital (sect. 57). The estate clause in the assignment of the debt should be omitted (sect. 63). General words and estate clause in the conveyance of the estate should also be omitted (sects. 6, 63); and, if it is stated that the mortgagor conveys "as mortgagor" both in the assignment of the debt and the conveyance of the estate, his covenants for title may be omitted as being implied by sect. 7 (F).

If the transfer is made to parties who advance the sum on a joint account, this should be so stated, and then, by sect. 61, no joint account clause will be needed.

If the mortgagor joins, and if he has made incumbrances since the mortgage which is to be transferred, he will not covenant as to title, and must therefore take care not "to direct as beneficial owner" the conveyance by the old mortgage, as otherwise covenants would be implied, sect. 7 (3). Compare David. ii. 1299.

If the mortgagor joins, and if he has made no fresh incumbrances, the form will be very much like a new mortgage. There will be an assignment of the debt, omitting the estate clause. The mortgagor will convey "as beneficial owner," and covenants and powers added as may be desired. Compare David. ii. 1302.

*Reconveyance.*

Here, again, if the deed cannot be indorsed, it will usually be convenient to make it "supplemental" (sect. 57). Also the "estate clause" will be omitted; and, if the mortgagor conveys "as mortgagor," his covenant against incumbrances may be omitted as implied by sect. 7 (F).

In our next article we intend to discuss the statutory forms which derive their authority from Part V. of the Act (sects. 26-29).

(To be continued).

ADMISSION OF A SOLICITOR.

Mr. William J. Marshall, second son of John Marshall, of Glendalough, in the county of Wicklow, Esquire, has been admitted a Solicitor of the Court of Judicature.



THE SLANDER OF A PERSON IN HIS CALLING.

(Continued from page 78, ante.)

Rule VIII.—*The language, to be actionable, must refer to some act or transaction which is a part of or incident to the person's occupation.*

ILLUSTRATIONS.

I. A. was a merchant. B. said of him: "He keeps false books." *Held, actionable.*<sup>1</sup> II. C. was a blacksmith. N. said of him: "He keeps false books, and I can prove it." *Held, actionable.*<sup>2</sup> III. R. was a farmer. E. said of him: "He keeps false books." *Held, not actionable.*<sup>3</sup>

As to Case I., it requires no argument to show that a merchant must keep books, and that to say of him that he keeps false books must necessarily injure him in the estimation of the public with which he deals. So, as said in Case II., the keeping of a book of accounts is incident to the business of a blacksmith, and necessary in this country, where credit is usually given as well by the mechanic as by the merchant and professional man. But Case III. presents a different calling, with different modes of dealing. A merchant sells to the public generally; a blacksmith works for the public generally. But a farmer sells his produce in large quantities; he carries it abroad to market; and he delivers it for cash, and not on credit. Books of account are not necessarily incident to his business.

Other illustrations of this rule readily occur. Thus, to say of a painter that he is a poor hand at making a coat, or of a tailor that he never made a boot that fitted, or of a lawyer that he is an execrable musician, would obviously in each case afford no ground of action.<sup>4</sup>

Rule IX.—*As the charge must be of something that affects generally the character of the party in his occupation, words imputing want of skill or ignorance in a particular transaction are not actionable per se; but aliter if that act is of so grave a nature as to necessarily injure his general reputation in that occupation.*

ILLUSTRATIONS.

I. P. was a physician, and M., another physician, said of him: "P. hath killed Mr. A. with physic, which physic was a pill, and the vomit was found in his mouth; and Dr. B. and Dr. C. were there, and found it so, and it is true." *Held, not actionable.*<sup>5</sup> II. F. was an attorney. B. said of him: "F. knows nothing about the suit." *Held, not actionable.*<sup>6</sup> III. C. was a physician who had treated a female patient, one S. M. said of him: "If Dr. C. had continued to treat her, she would have been in her grave before this time; his treatment of her was rascally." *Held, not actionable.*<sup>7</sup> IV. S. was a physician, and U. said of him, in reference to the case of a woman whom he had attended at her confinement, when she was delivered of twins, both she and the offspring dying shortly afterwards: "He has killed three, and ought to be hung,—damn him. They all died through his mismanagement. I have understood he left the after-birth, and a man that would do that ought to be hung." Subsequently one Mrs. H. having employed S., U. said to her: "He was the means of your sickness, by cutting an artery in your head. Damn him, you ought not to pay him a cent. If Mr. H. had took him up for it, it would have cost him four hundred dollars. It ought to be put in the newspapers." *Held, actionable.*<sup>8</sup> V. S. was a physician, and H. said of him: "Dr. S. killed my children; he gave them teaspoonful doses of calomel, and they died. Dr. S. gave them teaspoonful doses of calomel, and it killed them. They did not live long

after they took it; they died right off, the same day." *Held, actionable.*<sup>1</sup>

Case I. was decided in Queen Elizabeth's time. Coke for the defendant argued that the action would not lie because a physician might involuntarily kill a patient, not knowing the disease, and yet no discredit would attach to him. And all the judges agreed that the action lay not; "for it cannot be any discredit to a physician to say that he killed one with physic: it is a usual and common expression, and it may be without any default in him; for they may mistake the diseases in their own bodies, much more in others, and apply wrong medicines which may be the cause of the patient's death, and yet no discredit unto them," following Coke's argument. Case II. arose in New York in 1811; and *Poe v. Dr. Mendford* (case I.) was approved, the court saying: "There is not an instance in the books which we have met with of a suit sustained for words charging a professional man with ignorance in a particular case. To carry the right of action so far would be unnecessary for the protection of any profession, and would be an unreasonable check upon the freedom of discussion. There is no physician, however eminent, who is not liable to mistake the symptoms of a particular disease, nor any attorney who may not misunderstand the complicated nature and legal consequences of a particular litigation." The charge in case III. implied nothing more than unskillfulness or ignorance in the treatment of one case, and could hardly affect the physician's reputation as to his general competency to practise his profession.

Cases IV. and V. illustrate the latter part of the rule. The opinion of the Chief Justice in *Sumner v. Utley* (case IV.) is able and exhaustive, and so far as it relates to the rule we are considering cannot be abridged without losing some part at least of the argument. "I readily admit," said Hosmer, C.J., "that falsehood may be spoken of a physician's practice in a particular case, ascribing to him only such a want of information and good management as is compatible with great general knowledge and skill in his profession; and that when such a case arises, unless some special damage exists, his character will be considered as unhurt, and no damages will be presumed. But, on the other hand, it is indisputably clear that a calumnious report concerning a physician in a particular case may imply gross ignorance and unskillfulness and do him irreparable damage. A physician may mistake the symptoms of a patient; or may misjudge as to the nature of his disease, and even as to the powers of a medicine; and yet his error may be of that pardonable kind that will do him no essential prejudice, because it is rather a proof of human imperfection than of culpable ignorance or unskillfulness. On the contrary, a single act or omission of his may evince gross ignorance, and such a deficiency of skill as will not fail to injure his reputation and deprive him of general confidence. If he were called on to administer to one manifestly intoxicated, and treat his disease as if it were an apoplexy, no person of good sense after knowledge of this would employ him in his profession. These remarks have a more striking application to the business of a surgeon or man-midwife. While a physician exercises a profession often beset with great difficulties, the employment of a man-midwife and surgeon, for the most part, is merely mechanical. If a surgeon were requested to take blood from a person, and should proceed to this operation by opening an artery instead of a vein, by reason of which he should bleed to death; or if he should amputate a limb without having applied a tourniquet or some other compression of the main arteries, and the person practised on should die in his hands from loss of blood—who would afterward employ him? So if a man-midwife should deliver a woman and leave the afterbirth, whatever may have been the ancient practice, would it not in the present state of the art exhibit such powerful proof of ignorance and want of

(1) *Backus v. Richardson*, 5 Johns. 478.  
 (2) *Burich v. Makerson*, 7 Johns. 315 (1819).  
 (3) *Rathbun v. English*, 6 Wend. 407 (1831).  
 (4) Sol. Jour., Nov., 1880.  
 (5) *Poe v. Dr. Mendford*, Cro. Eliz. (1898).  
 (6) *Foot v. Brown*, 5 Johns. 68 (1811).  
 (7) *Camp v. Martin*, 28 Conn. 88 (1854).  
 (8) *Sumner v. Utley*, 7 Conn. 257 (1828).

(1) *Secor v. Harris*, 18 Barb. 425 (1854).

skill as greatly to injure his general character? On this subject I cannot doubt, and shall not be surprised at the harsh declaration of the defendant, if applied to such a one, that 'he ought to be hung.' If a surgeon should be such an arrant bungler in his profession as not to know an artery in the head from a vein, and should puncture the former instead of the latter, would not his reputation as a man of knowledge and skill receive essential damage? Undoubtedly, in all the cases put the stigma of gross ignorance and unskillfulness would justly be applied to him; and his character would sink under the reproach. As a general principle, it can never be admitted that the practice of a physician or surgeon in a particular case may be calumniated with impunity, unless special damage is shown. By confining the slander to particulars, a man may thus be ruined in detail. A calumniator might follow the track of the defendant, and begin by falsely ascribing to a physician the killing of three persons by mismanagement; and then the mistaking of an artery for a vein; and thus might proceed to misrepresent every single case of his practice until his reputation would be blasted beyond remedy. Instead of murdering character by one stroke, the victim would be cut successively in pieces; and the only difference would consist in the manner of effecting the same result. The redress proposed on the proof of special damage is inadequate to the case. Much time may elapse before the fact of damage admits of any evidence; and then the proof will always fall short of the mischief. In the meantime the reputation of the calumniated person languishes and dies. . . . I think that prejudice to the plaintiff in his profession, as the natural and probable consequence of the words, must inevitably result. That the defendant intended to impute to the plaintiff, by the words spoken, the most monstrous and culpable ignorance and mismanagement, it is impossible for me to doubt. Surely he would not have execrated him, and declared that he ought to die an ignominious death, and that his practice ought to be published in a newspaper, if he meant nothing more than what the defendant would have the court suppose; that is, to impute to the plaintiff the common imperfections of humanity. On the contrary, every person of sense or reflection who should believe the imputations cast upon him would consider him as a man of ignorance and unskillfulness and unworthy of confidence. And this impression would be deepened by the expression that the plaintiff was liable to heavy damages; for it has often been decided that nothing short of gross ignorance and want of skill will authorise a suit against a practising physician.<sup>1</sup> What woman would trust herself in such hands, with full information that three persons had perished under his culpable mismanagement? Or what person would employ as a surgeon the man who ought to be hung for cutting an artery? I would frown on every action of slander brought to gratify a petulant and quarrelsome disposition; but, when the reputation of a skillful man is assailed by a wanting calumny, I shall ever be disposed to go the full length of principle to afford him adequate redress." Peters and Lauman, JJ., concurred in the judgment of the Chief Justice. Daggett, J., dissented, being of opinion that the words did not impute to the physician ignorance or malpractice in his profession generally. "I cannot," said he, "so understand them. They are employed only about his treatment of a pregnant woman and her twin children—one dead at the birth, and the other dying with its mother soon after its birth. As this idea seems to be embraced by my brethren and to influence their opinions, I have looked with attention into that part of the declaration brought into view by this motion; and it strikes me as entirely silent, except as to the plaintiff's management in the case stated, and not to impute any ignorance except in the management of this particular case."

(1) *Slater v. Baker*, 2 Will. 369; *Leam v. Prentice*, 8 East, 342.

*Secor v. Harris* (case IV.), while no doubt correctly applying the rule laid down in the former case, that where a physician is charged with gross ignorance and a total want of skill in his profession, in a single instance, the words are actionable *per se*, to the facts there established, is remarkable for the evident misapprehension entertained by the judge who delivered the opinion of the court concerning the scope of the ruling in *Sumner v. Utley* (case III.). Mason, J., evidently entertaining the idea that both *Poe v. Dr. Mendford* and *Foot v. Brown* had been overruled in that case, together with the general principle which they established.<sup>1</sup> But in *Poe v. Dr. Mendford* and *Foot v. Brown* it was decided that the language in each case respectively imputed simply a want of skill in a particular transaction. The question in *Sumner v. Utley* was whether the words charged the physician with mere ignorance in a particular case, or with a want of general professional knowledge and skill. On this, as we have seen, the judges differed; but they did not differ as to the principles of the law of slander. The Chief Justice and the majority of the court thought that the words did impute to the plaintiff general incompetence in his profession; the dissenting judge, that they did not. It was the application of a legal rule, and not its existence or propriety, that was determined in *Sumner v. Utley*.

In *Van Epps v. Jones*,<sup>2</sup> it was said by McCay, J.:—"Can it be contended that it is actionable to say of a lawyer that he will not pay his debts, much less a particular debt?" I am not sure it would be actionable to say of a lawyer, falsely, that he would not pay some particular money collected by him as a lawyer, or that it would be actionable to say of a blacksmith, untruly, that he had lamed a certain horse in shoeing him."

Words imputing a want of integrity, whether used in reference to a man's general conduct or to his behaviour in a particular case, are equally actionable, for obvious reasons.—JOHN D. LAWSON, St. Louis, Mo.

#### ADMIRALTY APPEALS.

In delivering judgment, on the 14th inst., on the appeal from the Court of Admiralty, in *re the "Universal,"* Deasy, L.J., said it would be well if professional gentlemen engaged in these cases recollected that although the technical evidence given was quite intelligible to the judge before whom it came, and to whose court such cases were specially attached, there was one judge, at all events, of the Court of Appeal who did not understand these terms, and it would be advisable to put a gloss upon them when bringing cases to Appeal. His experience was that when these technical terms were translated into plain English they were a good deal more intelligible and quite as useful. One thing in the evidence, "the combing of the hatchway," he did not understand at all, and had not taken into consideration at all. However, the learned judge before whom the matter came at first had treated it as of no importance, and therefore, in all probability no harm was done. His observations had reference more to the future, and he hoped the hint he had thrown out would be acted upon.

#### CALLS TO THE INNER BAR.

On the 18th inst. the following gentlemen were called within the Bar:—William Harris Faloon, Constantine Molloy, John Adye Curran, David Ross, Arthur Houston, Edmund T. Bewley, Francis Nolan, George Keys, and Isaac Weir.

(1) Notwithstanding this, we find this judge saying, in the course of his judgment: "I do not go the length to say that falsehood may not be spoken of a physician's practice, in a particular case, without subjecting the party to this action. A physician may mistake the symptoms of a patient, or may misjudge as to the nature of his disease, and even as to the powers of medicine, and yet his error may be of that pardonable kind that will do him no essential prejudice, because it is rather a proof of human imperfection than of culpable ignorance or unskillfulness; and where charges are made against a physician that fall within this class of cases, they are not actionable, without proof of special damages." Mason, J., in *Secor v. Harris*, *supra*.

(2) 50 Ga. 238 (1873).

## LATENT DEFECTS IN GOODS SOLD.

Where, after a sale of goods, a defect appears of which neither party were aware at the time of the sale, and which they could not then have discovered without damaging the goods, a somewhat difficult question as to their respective rights arises. But, when we desire to examine any such sale, we must, in the first place, before considering whether any defect was latent or patent, see what was the exact contract entered into by the parties, and decide whether it has been fulfilled; for if the seller has not fulfilled his contract, the case is at an end, and no further inquiry will be needed.

Our next step will be to inquire whether the seller gave any express warranty, or there is anything in the transaction from which the law will imply a warranty, or whether, on the other hand, the goods were sold "with all faults." And, although, in many cases, it is by no means easy to determine these points, we shall generally find, where difficulties arise, that their solution depends on the amount of reliance placed by the buyer in the skill and judgment of the seller.

If we can discover anything said or done before the completion of the contract, which amounts to an express warranty, the seller will be responsible for any defects which prevent the article answering to the terms of the warranty, but his liability will not extend beyond those terms; for "we cannot by inference insert in a contract implied provisions with respect to a subject which the contract has expressly provided for."<sup>1</sup>

In an action arising out of the sale of a note made by O., it was found by the referee that the plaintiff, upon the sale, agreed that the note was the genuine note of O., and not further or otherwise. O. was an infant, and hence the note may be said to have had a latent defect; but the fact was not known to either party. On this finding it was held that no warranty could be implied that O. was an adult, even if the words "not further or otherwise," were struck out.<sup>2</sup> On the other hand, an express agreement that provisions shall pass an inspecting officer, does not prevent the additional implied condition that they are fit for the purpose for which they are required.<sup>3</sup>

If there is no express warranty, we return to the preliminary inquiry, whether the contract has been fulfilled; whether the article delivered answers the description in such a contract? Where a man said, "send me your patent furnace to fit up my brewing copper," and the furnace was sent, but did not suit the copper; it was held that the seller had performed the contract; for the buyer had ordered a definite article, and, though he had stated the purpose for which it was wanted, the form of his order showed that he relied on his own judgment as to whether it would suit him.<sup>4</sup> But where on a sale by sample the article sold was described as rape oil, but was in reality rape oil adulterated with hemp oil, the seller was held responsible, even though the bulk agreed with the sample, and in the opinion of the jury, the purchaser well knew what he was buying.<sup>5</sup> And in *Josling v. Kingsford*,<sup>6</sup> the decision was the same on its being shown that an article sold as oxalic acid was not oxalic acid, though the seller had disclaimed all responsibility as to quality, and at his suggestion the buyer had inspected the article. Where, however, a man bought pigs which he subsequently found had typhoid fever, and it was argued that the contract was for pigs, but that what was delivered was not pigs, but masses of typhoid fever, the House of Lords solemnly decided that a pig with typhoid fever is a pig.<sup>7</sup> But, beyond this general rule that the goods sold must be of the kind bargained for,

the law will imply that where a man sells an article generally, he thereby warrants that it is merchantable, that it is fit for some purpose;<sup>1</sup> and where he sells it for a particular purpose, he thereby warrants it fit for that purpose.<sup>2</sup> In *Jones v. Bright*, the defendants were manufacturers of copper. They were introduced to the plaintiffs by a mutual acquaintance, Fisher, with the remark, "Mr. Jones is in want of copper sheathing for a vessel;" upon which the defendant said, "we will supply him well." Under this contract copper was supplied which proved defective through some intrinsic latent defect in the quality of the copper, and it was held that the defendants were liable on an express warranty that the copper which was sold for a particular purpose was fit for that purpose. *Brown v. Edgington*,<sup>3</sup> was a similar case, though perhaps the facts were somewhat stronger against the seller. In *Randall v. Newson*,<sup>4</sup> the defendant, a carriage maker, put a pole in the plaintiff's carriage which broke and caused damage, owing to a latent defect in the wood, for which he was held liable. The principle underlying this and the other cases to which we are about to refer, appears to be that where the buyer trusted in the judgment of the seller, the latter is liable for all defects whether latent, patent, or discoverable. "It" says Tindal, C.J., "a party purchases an article upon his own judgment, he cannot afterwards hold the vendor responsible, on the ground that the article turns out to be unfit for the purpose for which it was required; but if he relies upon the judgment of the seller, and informs him of the use to which the article is to be applied, it seems to me the transaction carries with it an implied warranty that the thing furnished shall be fit and proper for the purpose for which it was designed."<sup>5</sup> "When a person desirous to obtain an article for a particular purpose, but, not being himself skilled in respect to such articles, applies to one professing to be acquainted with the subject, or who, by his occupation, holds himself out to the world as understanding it, and the latter furnishes what he alleges to be suitable, it is plainly to be inferred that both parties understand the purchase to be made upon the judgment and responsibility of the seller."<sup>6</sup> In *Jones v. Bright*, the rule is carefully limited to products of art, though Best, C.J., points out that the decisions in the case of horses turn on the same principle. And in *Hoe v. Sanborn*, the rule is laid down, "that the vendor is liable for a latent defect arising from the manner in which the article was manufactured, but not for any latent defect in the material which he is not shown, and cannot be presumed to have known." In both cases the court seems to have feared encroaching on the decision in *Parkinson v. Lee*;<sup>7</sup> but all that is there decided is, that where goods are sold by sample, there will not be, in addition to an express warranty that the bulk is like the sample, an implied warranty against a latent defect in both the sample and the bulk of which both parties were equally able to judge; and it has since been said of that case that either it does not determine the extent of the seller's liability on the contract, or it has been overruled.<sup>8</sup> Hence the above rule in *Hoe v. Sanborn* must, we think, be considered too restricted; indeed, it is by no means easy to fix any definite limit to the liability of a vendor for latent defects, since it depends to so great a degree on the varied facts of each case.

We have seen that the rule of *Jones v. Bright* is not confined to defects in products of art, but may become applicable, as in *Randall v. Newson*, to a pole of wood; and, though *Jones v. Bright* applies to a sale of manufactured goods by the manufacturer himself, the courts would, probably, not hesitate to extend the rules laid

(1) *Dickson v. Jicinia*, 10 C. B. 602, 610; *Budd v. Fairmanor*, 8 Bing. 48, 61; *Baldwin v. Van Deusen*, 37 N. Y. 487.

(2) *Baldwin v. Van Deusen*, 37 N. Y. 487.

(3) *Biggs v. Parkinson*, 7 H. & N. 965.

(4) *Chantor v. Hopkins*, 4 M. & W. 402; *Downes v. Dow*, 84 N. Y. 411; *Oberine v. Hart*, 23 L. T. 851; *O'Brien v. Bayley*, 5 Q. B. 298; *Archdale v. Moore*, 19 Ill. 568; *Whitmore v. South Boston Iron Co.*, 3 Allen 58.

(5) *Nichol v. Goddard*, 10 C. B. 191.

(6) 13 C. B. (N. S.) 447.

(7) *Ward v. Hobbs*, L. R. 4 App. Cas. 24.

(1) *Loring v. Fishoon*, 6 Taunton, 106; 4 Camp. 168. The rule applies, however low the price.

(2) *Jones v. Bright*, 5 Bing. 644.

(3) 2 Man. & Gr. 379.

(4) 2 Q. B. D. 102.

(5) *Brown v. Edgington*, 2 Man. & Gr. 379.

(6) *Hoe v. Sanborn*, 21 N. Y. 552, and see also *Bartlett v. Hopport*, 24 N. Y. 118.

(7) 2 East, 314.

(8) *Randall v. Newson*, 2 Q. B. D. 106.

down there to sales by other persons, if it appeared that confidence had been placed by the buyer in the seller, and the latter had accepted the responsibility.<sup>1</sup> In *Gray v. Case*,<sup>2</sup> the facts were very like those in *Jones v. Bright*; the article was described as "copper sheathing," but the sellers were not the manufacturers. It was held that the law would not imply a general and unqualified promise that the goods should be good, sound, substantial and serviceable; but Lord Tenterden was inclined to think "that in point of law, if a person sold a commodity for a specific purpose, and with knowledge at the time of the sale that it was to be applied to that purpose, he must be understood to warrant that the commodity so sold should be reasonably fit and proper for the purpose for which it was sold." And, though the other judges did not concur in this opinion, it was apparently approved by the Court of Appeal in *Randall v. Newson*, where Brett, L.S., remarks, "it is obvious that Lord Tenterden did not consider the seller relieved by reason of the defect being latent." The case of *Bhuett v. Osborne*<sup>3</sup> arose out of the sale of a bowsprit for a ship, which turned out to be useless through a latent defect in the wood; and Lord Ellenborough decided in favour of the seller, but on what ground is not very clear, unless, as Maule, J., suggested, he treated it as a sale of a specific bowsprit, and therefore under the rules applying to a sale of a given article.<sup>4</sup> However that may be, Lord Ellenborough lays down the general rule that he who sells, impliedly warrants that a thing sold should answer the purpose for which it is sold. In *Burnaby v. Bollett*,<sup>5</sup> the defendant bought a dead pig which was exposed for sale at a butcher's shop, and re-sold it to the plaintiff, without taking it away. Neither the plaintiff nor defendant were butchers by trade, or had any knowledge that the pig was unsound, though it afterwards turned out to be unfit for human food. Under these circumstances, it was held that the defendant was not liable. He was not dealing in the way of a common trade, or the question, as we shall see, might have been somewhat different. In *Emmerson v. Matthews*,<sup>6</sup> it was held that where a meat salesman, who is not a dealer in meat, but merely sells on commission, offers for sale a carcass with a defect of which he is not only ignorant, but has not any means of knowledge, the defect being latent, he is not liable to any penalty, and does not, as a matter of law, impliedly warrant that the carcass is fit for human food, and is not bound to refund the price, should it not turn out to be so. And in *Smith v. Baker*,<sup>7</sup> the court remarked that the law would be the same where the seller has no means of knowing of the defect on an ordinary outward inspection, though he might have discerned it by cutting into the meat. In all these cases the judgment seems to have turned on the fact that the buyer had quite as much opportunity of investigating the meat as the seller, the latter not being actually a dealer. One of the most recent cases on this part of the subject is *Bragg v. Morrill*.<sup>8</sup> There the plaintiff bought an iron shaft from the defendant, and employed him to turn it so that the plaintiff could attach pulleys at any point he chose. It turned out that there was a latent defect in the shaft, by which the plaintiff was damaged; but the court decided in the defendant's favour. There was no complaint that the defendant did not properly perform what work he did upon the shaft; therefore we may put part of the transaction, which was paid for separately, out of the question, and we then see at once that it comes within the decision in *Burnaby v. Bollett*; for all the defendant did was to sell a shaft for the purpose of holding pulleys, without knowing their weight, or size, or the

amount of work they were to do. The only point in which this case goes further than *Burnaby v. Bollett* is, that here the defendant was by trade a founder; but, on the other hand, the seller in that case knew the exact object for which the article was bought, whilst here he did not; and this fact also distinguishes the case from *Randall v. Newson*, where the seller not only knew the exact purpose for which the pole was wanted, but fitted it to the carriage himself.

It has been stated that an implied warranty is raised in the sale of provisions where they are sold for immediate use by dealers and common traders in provisions; but the statement is combatted by Benjamin in his work on the sales of Personal Property;<sup>9</sup> and in *Burnaby v. Bollett*, decided by the Court of Exchequer in 1847, the conclusion deduced from the old cases and text-books is, "that there is no other difference between the sale of victuals for food, and other articles, than this—that victuallers, butchers and other common dealers in victuals, are not merely in the same situation that common dealers in other commodities are, and liable under the same circumstances as they are, so that, if an order be sent to them to be executed, they are presumed to undertake to supply a good and merchantable article; but they are also liable to punishment for selling corrupt victuals, by virtue of an ancient statute, certainly if they do so knowingly, and probably if they do not, and are therefore responsible civilly to those customers to whom they sell such victuals, for any special or particular injury by the breach of the law which they thereby commit." Where an article is sold "with all faults," the question of latent defects scarcely arises; for such a stipulation throws upon the buyer the burden of examining all faults, both secret and apparent; and the seller will not be liable for any such defect, unless he was guilty of any fraud, either in making a false representation, or in using means to conceal some defect.<sup>10</sup> The celebrated case of *Ward v. Hobbs*<sup>11</sup> arose out of a sale of pigs, which turned out to have typhoid fever, and it was argued that, since it is a criminal offence knowingly to send animals affected with a contagious disease to a public market,<sup>12</sup> the mere sending was a representation that the pigs were not so affected. But the House of Lords decided that there was no such implied warranty, there being a perfectly clear written statement that the vendor will not warrant the goods, and that the goods must be taken with all faults, together with the fact that the goods were open to inspection. And Lord Chancellor Cairns, further observed that in order to qualify this, there must be something as clear in statement in an opposite direction; thus a verbal statement that the vendor believed the animals to be free from disease, might be foundation for an action of deceit, in which case we conclude that a *scienter* would have to be proved; but the question did not arise, for the statement of claim relied upon a warranty, but made no case of deceit or fraud or failure of consideration. The law as to latent defects relating to carriers<sup>13</sup> is somewhat different from that which applies to goods sold.<sup>14</sup>—*Central Law Journal*.

Mr. John Holmes has been elected Member of Parliament for Christchurch, south capital of the Middle Islands, New Zealand. Mr. Holmes was a student of Trinity College, where he greatly distinguished himself. He was called to the Bar in 1865, and then proceeded to New Zealand, where he has filled several important offices.

(1) See the remarks of Tindal, C.J., in *Brown v. Edgington*, 2 Man. & Gr. 278.

(2) 6 D. & Ry. 900.

(3) 1 Stark. N. P. 384.

(4) 2 Man. & Gr. 286.

(5) 16 M. & W. 644.

(6) 7 H. & N. 586.

(7) 40 L. T. 281.

(8) 49 Vt. 45; 24 Am. Rep. 102.

(9) 16 M. & W. 644.

(1) Story, Sales of Per. Prop., s. 373; Chitty on Cont., 10th ed., p. 414n; Addison on Contracts, 7th ed., p. 495; Parsons on Contracts, 6th ed., p. 588.

(2) 2nd ed., p. 549.

(3) *Baylehole v. Walters*, 3 Camp 154; *Schneider v. Heath*, 3 Camp. 506; *Melish v. Moteaux*, Peake, N. P. C. 115.

(4) L. R. 4 App. Cas. 12.

(5) 32 & 33 Vict., Cap. 70.

(6) As explained in *Redhead v. Midland Ry.*, L. R. 4 Q. B. 379.

(7) *Randall v. Newson*, 2 Q. B. D. at p. 110; and see the remark there as to *Francis v. Cockrell*, L. R. 5 Q. B. 501.

## FALSE PRETENCES.

The case of *Martin v. Newton*, which appears in the columns of this week's *Justice of the Peace*, illustrates very forcibly the difficulties which attend the distinction as it now exists between larceny and obtaining goods by false pretences. It will be seen from the report that the appellant in the case referred to had been convicted under section 12 of the Summary Jurisdiction Act, 1879, of stealing 80s. His counsel contended that if any offence had been committed at all, it amounted to an obtaining by false pretences and not to larceny. If this contention had been allowed by the court, the conviction would necessarily have had to be quashed, for the magistrate's power of convicting summarily does not extend to cases of obtaining by false pretences.

Larceny differs from the offence of obtaining property by false pretences in that in the former the property must be taken *in vitio domino* against the wish and intention of the owner. In the latter, on the other hand, the owner consents to the property being taken out of his possession, though such consent has been induced by fraud. *Reg. v. Prince*, L. R. 1 C. C. R. 160; 88 L. J. M. C. 8, is a leading case on the point under discussion. In that case the defendant had been indicted and tried at the Central Criminal Court for stealing money amounting to £100. At the trial it was proved that the prosecutor had paid moneys amounting to £900 into the London and Westminster Bank on a deposit account in his own name. On the 27th April, 1868, that sum was standing to his credit at the bank. On the same day a forged order, purporting to be the order of the prosecutor, for payment of the deposit was presented at the bank by the prosecutor's wife. The order was considered genuine by the cashier. The amount of the deposit and interest was therefore paid her in eight £100 and other notes. Among them was a £100 note numbered 72,799, dated 19th November, 1867. On the following 1st July the prosecutor's wife eloped with the prisoner, and both were soon afterwards discovered on board a steamer at Queenstown, bound from Liverpool to New York. They were passing as married people under the name of Mr. and Mrs. Prince. All the notes were found in the possession of the wife of the prosecutor, with the exception of the £100 note specified above. That note the prisoner was shown to have paid away for some sheep he purchased. He stated he had received it from the prosecutor's wife. On these facts being proved, the prisoner's counsel at the trial contended that the evidence did not establish any larceny by the wife of the note from the bank, but rather an obtaining it by forgery or false pretences, and consequently that the receipt of the note by the prisoner from her was not a receiving of stolen property. The common sergeant, who tried the case, overruled the objection, and held that the forged order presented by the wife was a mere mode of committing a larceny against the bank, and that the prisoner could be convicted on the fourth count of the indictment, which laid the ownership of the money in the London and Westminster bank. The prisoner was then found guilty by the jury on that count, but a question was reserved for the consideration of the Court of Crown Cases Reserved whether the obtaining the note under the circumstances detailed amounted to a larceny.

The conviction was quashed by the court, which laid down the two following important propositions as containing the law on the subject:—Where a servant is entrusted with his master's property with a general authority to act for his master in his business, and he is induced by fraud to part with his master's property, the person who is guilty of the fraud and so obtains the property is guilty of obtaining it by false pretences, and not of larceny, because to constitute a larceny there must be a taking against the will of the owner, or of the owner's servant duly authorised to act for the owner. The second proposition laid down by the judges was that where a servant has no such general authority from his master, but is merely entrusted with the possession of his goods for a special purpose, and

the servant is cheated out of that possession the person who thus by fraud obtains the goods commits larceny, for the servant has no authority to part with the property in the goods, except to fulfil the special purpose for which they were entrusted to him. The court then proceeded to apply the principles thus laid down to the case before them, and decided that the defendant should have been indicted for obtaining the bank note by false pretences and not for larceny; for a cashier of a bank is a servant having a general authority to conduct the business of the bank, and to part with its property on a genuine order of a customer being presented. If he be deceived by a forged order and part with the bank's money, he parts, intending to do so, with the property in the money. Such a case, therefore, will fall within the former of the two propositions, and amount to an obtaining the money by false pretences and not to larceny.

An earlier case on the subject than that of *Reg. v. Prince* is the case of *Rez v. Jackson*, 1 Moo. C. C. 119. There a pawnbroker's servant, having a general authority from his master to act in his business, delivered up a pledge to the prisoner under the following circumstances:—On the 7th of March the defendant visited the prosecutor's shop and produced duplicates of property previously pledged, amounting to £34. He asked for the property to be produced, and also for a light, as he had some diamonds to sell. He then produced a small packet of diamonds and induced the prosecutor's assistant to agree to advance £180 on them. The latter then handed him back the packet of diamonds to seal up, which he did, and then returned a packet, which the assistant believed to contain the diamonds, as the two packets resembled each other in all respects. The property previously pledged for £34 was then returned to the prisoner, and he received £124 in cash and notes, that being the amount less the £34 and interest thereon, which the assistant had agreed to advance on the diamonds. The packet of supposed diamonds when opened in the following June was found to contain £4 worth of coloured stones. It was proved at the trial that the assistant had no authority from his master to lend money except on pledges of an equivalent value, and that when he delivered the £124 and the goods, he imagined he had the diamonds in his pocket. When he delivered the goods he parted with them entirely, having previously received the parcel of supposed diamonds. The jury convicted the prisoner of larceny. The conviction was, however, subsequently quashed by the 12 judges on the ground that the assistant, who had a general authority from his master to act in his business, having delivered up absolutely and entirely the goods pawned to the pawnor, though he had been induced to do so by fraud, the pawnor could not be found guilty of larceny.

A case almost on all fours with *Jackson's* case is that of *Reg. v. Barnes*, 2 Den. C. C. 59. There the prisoner, who was a servant to the prosecutors, who carried on business in Canterbury as grocers, had authority, in the absence of the chief clerk, to purchase a commodity called "kitchen stuff" for his masters, and to pay for it. The chief clerk was authorised by the prosecutor to repay the prisoner for such purchases upon his producing a ticket containing a statement of the purchase having been made. One evening the prisoner went to the chief clerk in the counting house and demanded 2s. 3d., representing that he had paid that sum for 18 lbs. weight of "kitchen stuff." He then produced a ticket containing the name of Scott as that of the seller, and 2s. 3d. as the price. The ticket being in the usual form, the clerk paid him the 2s. 3d., which the prisoner received and applied to his own use. It was proved at the trial that the prosecutors had no customer of the name of Scott, and that the dealing alleged by the prisoner to have taken place, had in fact never taken place. On these facts, the Court for Crown Cases Reserved decided that the prisoner had been wrongly indicted for larceny, for as the clerk had delivered the money to the prisoner with

the intention of parting with it wholly to him, he was only liable for the misdemeanour of obtaining money by false pretences.

The cases cited illustrate the distinction between theft and obtaining goods, &c., by false pretences. However, there is such a thing as theft by a false pretence (a phrase used by Stephen, J., in his work on Criminal Law). For theft may be committed by fraudulently obtaining from the owner a transfer of the possession of a thing, the owner intending to reserve to himself the property in the thing transferred, and the offender intending at the time when he obtains the possession, to convert the thing to his own use without the owner's consent. Thus, if a person fraudulently bargains with another for the purchase of goods for cash, and fraudulently induces the latter to let him have the goods, pretending that he is then about to pay for them, and he then carries off the goods but without paying the agreed price, it will be a case of larceny by a false pretence. The reason for this is, that the vendor did not intend to transfer the property till the payment of the price fixed. On the same principle it has been decided in *Reg. v. Longstreeth*, 1 Moody, 187, that if a person by pretending to be the owner fraudulently obtains goods from the carrier, to whom they have been entrusted, he will commit a theft, for the carrier, not being the owner of the goods, cannot transfer the property in them, but only the possession. Another case illustrating this branch of the subject is *Reg. v. Bunce*, 1 F. & F. 528. There a woman fraudulently induced B. to give her 10 sovereigns to conjure with. She at the same time promised to bring back the 10 sovereigns, and also £170 to which the said B. was entitled. The woman having thus obtained possession of the 10 sovereigns, made off with them. Whether she was under the circumstances guilty of theft, or of obtaining money by false pretences, was held to depend on whether or not B. intended to part absolutely with the 10 sovereigns; for if B. intended them to be returned, it was a case of theft; but if B. did not so intend, it was merely a case of obtaining money by false pretences.—*Justice of the Peace*.

#### TEXT-BOOK ADDENDA.

(Continued from page 79, ante.)

##### *Tudor's Leading Cases (3rd Edition), 92.*

Leaseholds for lives in settlement, subject to a trust for renewal, were, after refusal of the lessor to renew, sold under the Settled Estates Act. Held, that the first taker was entitled only to the income of the purchase-money (*In re Barber's Settled Estates*, 50 Law J. Rep. Chanc. 769).

##### *Public Health Act, 1875 (s. 275).*

##### *Chambers on Public Health (8th Edition), 484.*

Where the drainage works of a corporation became vested in a new district drainage board, constituted under the Public Health Act, 1875, held that an injunction obtained against the corporation restraining them from polluting a river, was not binding on the new body under section 275 of the Public Health Act, 1875 (*Attorney-General v. Birmingham District Drainage Board*, 50 Law J. Rep. Chanc. 786)—C. A.

##### *Robson on Bankruptcy (4th Edition), 455.*

##### *Pitt-Taylor on Bankruptcy, 43.*

On an application by a trustee for leave to disclaim onerous property of the bankrupt, the Court will not consider the effect of the disclaimer on the interests of third parties (*In re Clarke, ex parte East and West India Dock Co.* 50 Law J. Rep. Chanc. 789)—C. A.

##### *Williams on Executors (8th Edition) 1,416.*

Where lands were devised to trustees upon trust to accumulate the rents for 21 years, and to lay out the same in the purchase of lands, and at the end of the 21 years the real estate, subject to the trusts of the will, was to be held upon trust for H. for life, with remainder to his first and

other sons in tail, upon the application of the infant sons of H., an allowance was made to their father for their maintenance (*In re Allan, Havelock v. Havelock*, 50 Law J. Rep. Chanc. 778).

##### *Robson on Bankruptcy (4th Edition), 539.*

##### *Pitt-Taylor on Bankruptcy, 117.*

A mortgagee of a policy of assurance alleged to be the separate property of a wife, was held bound to produce his title deeds on the application of the trustee of the bankrupt husband (*In re Thorpe, ex parte Tutton*, 50 Law J. Rep. Chanc. 792)—C. A.

##### *Woodfall on Landlord and Tenant (12th Edition), 671.*

Where a yearly tenant, in defiance of an agreement made with his landlord to the contrary, made use of a watercourse for a period of 44 years, the rule that a tenant cannot prescribe for an easement against his landlord was held to apply (*Outram v. Maude*, 50 Law J. Rep. Chanc. 783).

(To be continued.)

### BOOKS RECEIVED.

*The Students' Pocket Law-Lexicon, or Dictionary of Jurisprudence: explaining Technical Words and Phrases used in English Law; together with a Literal Translation of Latin Maxims.* London: Stevens & Sons, 119, Chancery-lane, Law Publishers and Booksellers. 1882.

### COURT PAPERS.

#### CIRCUIT LIST.—SPRING ASSIZES, 1882.

##### HOME CIRCUIT.

Trim—March 6, at 11 30 o'clock.	Maryborough—March 13, at 11.
Mullingar—March 8, at 11 30.	Carlow—March 16, at 11.
Tullamore—March 10, at 11 30.	Naas—March 17, at 11.

Judges—MORRIS, C.J., and FITZGERALD, J.

Registrars { Arthur H. Courtenay, Esq., 14, Fitzwilliam-sq., East.  
                  { Arthur S. Fitzgerald, Esq., 41, Merrion-square, East.

##### NORTH-EAST CIRCUIT.

Drogheda—March 6, at 11 o'clock.	Downpatrick—March 17, at 11.
Dundalk—March 7, at 11.	Belfast and Carrickfergus—
Monaghan—March 9, at 2.	March 30, at 2.
Armagh—March 12, at 11.	

Judges—PALLES, C.B., and LAWSON, J.

Registrars { Andrew Palles, Esq., 21, Northumberland-road.  
                  { Arthur Lawson, Esq., 27, Upper Fitzwilliam-street.

##### NORTH-WEST CIRCUIT.

Longford—March 6, at 2 o'clock.	Lifford—March 20, at 12.
Cavan—March 10, at 11.	Londonderry (city and co.)—
Enniskillen—March 14, at 11.	March 22, at 12.
Omagh—March 16, at 10.	

Judges—DEASY, L.J., and FITZGERALD, B.

Registrars { J. W. Clerke, Esq., 37, Upper Mount-street.  
                  { John Allen Shone, Esq., 61, Upper Sackville-street.

##### CONNAUGHT CIRCUIT.

Carrick-on-Shannon—March 7, at 11 o'clock.	Castlebar—March 18, at 4.
Sligo—March 10, at 4.	Galway (town and co.)—March
Roscommon—March 15, at 4.	25, at 4.

Judges—MAY, C.J., and OMSBY, J.

Registrars { George C. May, Esq., 13, Fitzwilliam-square.  
                  { Alfred Hamilton Ormsby, 16, Fitzwilliam-sq., East.

##### MUNSTER CIRCUIT.

Ennis—March 7, at 11 o'clock.	Tralee—March 15, at 11.
Limerick (city and co.)—March 9, at 11.	Cork (co.)—March 20, at 11.
	Cork (city)—March 23, at 11.

Judges—BARRY, J., and DOWSE, B.

Registrars { James Barry, Esq., St. Helen's, Rathgar.  
                  { B. Dowse, jun., Esq., 33, Mountjoy-square.

##### LEINSTER CIRCUIT.

Nenagh—March 7, at 11 o'clock.	Waterford (city and co.)—March
Kilkenny (city and co.)—March 10, at 11.	17, at 11.
Clonmel—March 14, at 11.	Wexford—March 21, at 11.
	Wicklow—March 24, at 11.

Judges—FITZGIBBON, L.J., and HARRISON, J.

Registrars { Pelham J. Mayo, Esq., 33, Merrion-square, North.  
                  { Robert F. Harrison, Esq., 3, Mountjoy-square, North.

HIGH COURT OF JUSTICE.

CHANCERY DIVISION.—LAND JUDGES.

List of Petitions presented to the Land Judges in the month of January, 1882.

DATE	TITLE OF MATTER	OBJECT OF PETITION	COUNTY	PROFIT RENT	SOLICITOR
Jan. 3	Georgina G. West, owner and petitioner	Sale	Dublin, Kildare, Queen's Co. Co. Cork	£ s. d. 2,798 17 8	Thomas Gerrard
" "	Agnes Ramsay Wood and others, owners; <i>Anna Massey, petitioner</i>	Sale	Co. Tipperary	120 0 0 Estimated	Webb, Scott, and Seymour
" "	Rodolph F. Scully, owner; <i>George M. Arnold, petitioner</i>	Receiver and sale	Co. Tipperary	1,830 0 8	John Cavanagh
" "	The Earl of Huntingdon, owner; <i>Robert Bradshaw, petitioner</i>	Sale	Galway, Waterford, and Cork	8,658 10 0 Griffith's Valuation	Archibald Robinson and Son
" 4	William Gorges Molloy, owner; <i>The Representative Church Body, petitioners</i>	Receiver and sale	Roscommon	957 17 5	John Mounsell
" 6	Robert Craven Wade, owner; <i>Henry M. Wade and another, petitioners</i>	Receiver and sale	Meath	Not stated	A. M'Dermott
" "	Patrick Lacy and others, owners; <i>Matthew H. Chamberlaine and another, petitioners</i>	Sale	City Dublin	In owner's possession	William P. M'Evoy
" 11	Francis W. Martin and another, owners; <i>Henry Wm. Geoghegan and another, petitioners</i>	Sale	Roscommon	701 8 0	Thomas Geoghegan and Sons
" 12	Hon. H. B. Bernard, owner; <i>Jeremiah O'Donovan, petitioner</i>	Sale	Co. Cork	645 11 5	William G. Murphy
" 13	Francis M. L. C. Murphy, owner; <i>Sir Wm. S. M'Mahon, petitioner</i>	Sale	Kilkenny	1,642 1 9	John A. French
" "	Henry Butterfield, owner; <i>Nenry Loan Co. (Limited), petitioners</i>	Sale	Co. Armagh	61 10 9	Alexander Gartlan
" 16	Elizabeth Sampey, owner; <i>William J. Biens, petitioner</i>	Sale	Roscommon	85 9 6	Thompson and Tallow
" "	Trustee of William Russell, owner; <i>Marcus Goodbody, petitioner</i>	Sale and receiver	Westmeath	40 11 11	John Julian
" 18	Martin F. O'Flaherty, owner; <i>The Scottish Amicable Life Assurance Society, petitioners</i>	Receiver and sale	Co. Galway	1,028 4 8	Phelham J. Mayne
" "	Henry Leader, owner; <i>Thomas Tronton and another, petitioners</i>	Sale	Co. Cork	784 14 5	Arthur Oldham
" 19	Thomas Potterton, owner and petitioner	Sale	Co. Meath	586 14 7	J. M. Ross Todd
" "	Henry Edmond Anderson, owner; <i>Royal Land Building and Investment Co., petitioners</i>	Sale	City Dublin	564 9 0	Bennett Thompson
" "	Mary Anne Craike, owner; <i>William Perrin, petitioner</i>	Sale	Galway	208 16 5	Bennett Thompson
" "	William Armstrong, owner; <i>Philip J. Dogra and another, petitioners</i>	Sale and partition	Tipperary	In owner's possession	G. O'B. Kennedy
" 23	William Dundas, owner and petitioner	Sale and partition	Longford	157 8 8	Thomas Kiernan
" "	Elizabeth Eugenia Hayes and others, owners and petitioners	Sale	Dublin	180 9 10	William Hayes
" "	The Clare Slob Lands Reclamation Co. and another, owners; <i>John A. Walker, petitioner</i>	Sale	Co. Clare	Not stated	John D. Rosenthal
" "	W. R. Fitzwilliam Barry & others, owners; <i>Richard C. Hendy, petitioner</i>	Sale	Cork	519 1 9	H. J. P. West
" 24	Walter Thom, owner; <i>Juliette Harris, petitioner</i>	Sale	Meath	855 0 0 Valuation	Thomas O'Meara
" 25	Philip Brady, owner; <i>Henry Watson and another, petitioners</i>	Receiver and sale	Co. Leitrim	Not stated	Trevor Overend
" "	James Blake, owner; <i>Henry Blake, petitioner</i>	Receiver and sale	Co. Galway	In owner's possession	E. and G. Stapleton
" "	Edward Bor Reade, owner; <i>Archibald Robinson, petitioner</i>	Sale	King's Co.	48 15 0 Griffith's Valuation	Archibald Robinson and Son
" 27	Joseph W. Madden, owner and petitioner	Sale	Mayo	1,011 6 0	S. C. M'Cormick
" "	John Law Hackett, owner; <i>Governor and Co. of Bank of Ireland, petitioners</i>	Receiver and sale	Roscommon	Not stated	E. H. DeMolegns
" 28	As-ignees W. Stewart and another, owners; <i>John C. Estriean, petitioner</i>	Sale	Tyrone	51 17 6	William J. Glass
" 30	George A. Waller, owner; <i>James Sinclair and another, petitioners</i>	Receiver and sale	Co. Tipperary	71 1 0 Griffith's Valuation	John A. French

LAND JUDGES.

Sittings for next Week so far as same are appointed.

Before the Rt. Hon. JUDGE FLANAGAN.

MONDAY.

IN COURT.—J. Horgan, judgment.—W. Rowland, receiver.—J. M. Cochrane, from 16th.—Executor J. Murphy, from 22nd.—R. F. Rynd, to make order absolute.

Before EXAMINER (Mr. Kennedy).

C. Burke, vouch.

TUESDAY.

IN CHAMBER.—A. Rotten, allocate.

WEDNESDAY.

IN COURT.—P. Callan, as to schedule.

THURSDAY.

IN COURT.—Trustees Corbett, from 23rd.

FRIDAY.

SALES IN COURT.

H. BELL, - - - 1 lot.

Before the Rt. Hon. JUDGE ORMSBY.

MONDAY.

IN COURT.—H. Lester, from 16th.—A. Raymond, payment.—Stein v. Cooke, action.—S. Radcliff, as to receiver.

WEDNESDAY.

Before EXAMINER (Mr. McDonnell).

M. C. French, rental.

THURSDAY.

IN CHAMBER.—R. Jellett, as to partition.

IN COURT.—M. Hall, from 16th.

COURT OF BANKRUPTCY.

ADJUDICATIONS IN BANKRUPTCY.

*The dates of Adjudications are first given, the Sittings follow in Italics.*  
 Callaghan, John Francis, of Rose Hill, Sunday's Well, Cork, in the city of Cork, Esquire. February 7; *Friday, March 10, and Tuesday, March 28.* Henry C. Neilson, solr.  
 Crow, William Thomas, of Dundrum, Cashel, county Tipperary, manure and corn agent. January 20; *Friday, March 10, and Tuesday, March 28.* Casey & Clay, solrs.  
 Donovan, James, of Tarbert, in the county of Kerry, hotel keeper. February 14; *Friday, March 3, and Tuesday, March 21.* Samuel Benner, solr.  
 Kenny, Plunkett, of Rocksvage, Inniskeen; in the county of Monaghan, Esq., J.P. and D.L. February 17; *Friday, March 10, and Tuesday, March 28.* Richard Davoren, solr.  
 Murphy, William, of Parliament-street, in the city of Kilkenny, shopkeeper. February 14; *Friday, March 10, and Tuesday, March 28.* George C. Lett, solr.

A FRESH batch of Queen's Counsel has been created. One of the number, Mr. Faloan, was called to the Bar so long ago as 1838—just forty-four years ago—more than half a lifetime! While we congratulate Mr. Faloan on at last "spoiling silk," we cannot help reflecting on the awful antiquity which a barrister must sometimes attain before he can change the texture of his toga. We are glad to notice among the new Queen's Counsel Mr. John Adye Curran and Mr. Keys, the two new Divisional Magistrates.—*Evening Telegraph.*

INJURIES TO PROPERTY IN IRELAND.—A House of Commons return of the amount of money levied off the baronies of the several counties in Ireland for malicious injuries in 1880 and 1881, shows that in 1880 the amount levied from Leinster was £2,014 13s. 10d., from Munster £5,729 5s. 10d., from Ulster £2,958 8s. 11d., and from Connaught £2,091 4s. 7d.—total, £12,788 10s. 2d.; while in 1881 the total rose to £21,553 1s. 4d., Leinster contributing £4,714 2s. 2d., Munster £10,262 10s. 10d., Ulster £2,885 14s. 10d., and Connaught £3,740 13s. 6d.

DUBLIN STOCK AND SHARE LIST.

DESCRIPTION OF STOCK	FEBRUARY					
	Sat. 18	Mon. 20	Tues. 21	Wed. 22	Thur. 23	Fri. 24
<b>Government.</b>						
3 p c Consols ..	99½	99½	99½	99½	99½	99½
3 p c Reduced ..	99½	99½	99½	99½	99½	99½
New 3 p c Stock ..	99½	99½	99½	99½	99½	99½
<b>INDIA STOCK.</b>						
4 p c Oct. 1889 } Trstble. at ..	103½	103½	103½	103½	103½	103½
3½ p c Jan. 1881 } Bk. of Irel. ..	99½	99½	99½	99½	99½	99½
<b>Banks.</b>						
100 Bank of Ireland ..	318	316½	316	316	316	315½
25 <i>Hibernian Banking Co.</i> ..	35½	35½	36	36	36	36
20 <i>London and County (Ltd)</i> ..	68½	68½	68½	68½	68½	68½
20 <i>London and Westminster, Ltd</i> ..	68½	68½	68½	68½	68½	68½
10 <i>Do. New</i> ..	—	—	—	—	—	—
31 <i>Munster Bank (Limited)</i> ..	7	7	7	7	7	7
10 <i>National Bank (Limited)</i> ..	22½	22½	22½	22½	22½	22½
10 <i>National of Liverpool (Ltd)</i> ..	—	—	—	—	—	—
10 Nat. Prov. of England, lim. ..	—	—	—	—	—	—
25 <i>Provincial Bank</i> ..	54½	54½	54½	54½	54½	54½
10 <i>Do. New</i> ..	—	—	—	—	—	—
10 <i>Royal Bank</i> ..	20½	20½	20½	20½	20½	20½
<b>Steam.</b>						
50 <i>British and Irish</i> ..	—	—	—	—	—	—
100 <i>City of Dublin</i> ..	114	114	114	114	114	114
50 <i>Dublin and Glasgow</i> ..	—	—	—	—	—	—
50 <i>Dublin &amp; Liverpool Steam Ship Building Co.</i> ..	—	—	—	—	—	—
10 <i>Dundalk (Limited)</i> ..	—	—	—	—	—	—
<b>Mines.</b>						
4½ <i>Berehaven (Limited)</i> ..	—	—	5/-	—	—	—
2½ <i>Wicklow Copper</i> ..	—	—	—	—	—	—
<b>Miscellaneous.</b>						
10 <i>Alliance &amp; Dub. Cons.' Gas</i> ..	15½	15½	15½	15½	15½	15½
8 <i>Do. do.</i> ..	—	—	—	—	—	—
4 <i>Arnott &amp; Co., Limited</i> ..	—	—	—	—	—	—
20 <i>C. Dub. Brewery Co. (Lim.)</i> ..	5	5	5	5	5	5
10 <i>Dublin Artisan Dwellings</i> ..	—	—	—	—	—	—
17 <i>Hudson's Bay</i> ..	—	—	—	—	—	—
25 <i>Ir. C. S. Building Society</i> ..	42	42	42	42	42	42
<b>Tramways.</b>						
10 <i>Belfast Trams</i> ..	—	—	—	—	—	—
10 <i>Dublin United Tramways</i> ..	10½	10½	10½	10½	10½	10½
10 <i>L'pl Un'd Tram &amp; Bus Ltd</i> ..	11½	11½	11½	11½	11½	11½
<b>Railways.</b>						
100 <i>Dublin, Wicklow, &amp; W'ford</i> ..	—	—	—	—	—	118½
100 <i>Great Northern (Ireland)</i> ..	—	—	—	118½	—	—
100 <i>Gt. Southern and Western</i> ..	—	—	—	—	111	—
100 <i>Midland Gt. Western</i> ..	83	83	82½	82½	82½	82½
50 <i>Waterford and Limerick</i> ..	—	—	—	—	—	—
<b>Railway Preference.</b>						
100 <i>Belfast &amp; Nth'n Cos., 4 p c</i> ..	—	—	—	—	—	—
100 <i>Do., 4½ p c</i> ..	—	—	—	—	—	—
100 <i>O., W., &amp; W., 5 p c (1880)</i> ..	—	—	—	118	—	—
100 <i>Do. do. (1864)</i> ..	118½	118½	118½	118½	118½	118½
<b>Debenture Stocks.</b>						
— <i>Belfast &amp; Nth'n Cos., 4 p c</i> ..	—	—	—	—	—	104½
— <i>C'fergus and Larne 4 p c</i> ..	—	—	—	—	—	—
— <i>Cork and Bandon, 4 p c</i> ..	—	—	—	—	—	—
— <i>Do., 4½ p c</i> ..	—	—	—	—	—	—
— <i>Dublin &amp; Wicklow 4 p c</i> ..	—	—	105½	105½	105½	105½
— <i>Do., 4½ p c</i> ..	—	—	—	—	—	—
— <i>Gt. Northern (Ireland) 5 p c</i> ..	—	—	—	—	—	—
— <i>Do., 4 p c</i> ..	109½	109½	109½	109½	109½	109½
— <i>Gt. North'n &amp; West'n 4½ p c</i> ..	—	—	—	—	—	—
— <i>Gt. South'n &amp; West'n, 4 p c</i> ..	—	—	—	109½	—	—
— <i>L'derry &amp; Enniskillen 5 p c</i> ..	—	—	—	125	—	—
— <i>Midland Gt. West'n, 4 p c</i> ..	—	—	—	—	—	—
— <i>Do., 4½ p c</i> ..	—	—	—	—	—	—
— <i>Waterford &amp; Central 5 p c</i> ..	—	—	—	—	106	—
— <i>Waterford &amp; Limerick 4 p c</i> ..	—	—	—	—	—	—
— <i>Do., 4½ p c</i> ..	—	—	—	—	—	—
<b>Miscellaneous Debent.</b>						
— <i>Alliance &amp; Cons.' Gas, 4 p c</i> ..	—	—	—	—	—	—
— <i>Ballast Office Deb., 292 6s 2d, 4 p c</i> ..	—	—	—	—	94	—
— <i>City Deb. of 292 6s 2d, 4 p c</i> ..	—	—	—	—	—	—
— <i>Dub. &amp; Kingstown 4 p c</i> ..	—	—	—	—	—	—
— <i>Dub. Port &amp; Docks, 4½ p c</i> ..	99½	99½	99½	99½	99½	99½

\* Shares not fully paid up are given in Italics. † x d

Bank Rate—Of Discount—6 per cent. 30th January, 1882.  
 Of Deposit—3 per cent. 30th January, 1882.

Name Days—February 28th, and March 15th, 1882.

Account Days—March 1st and 16th, 1882.

Business commences at 1 30 p.m.

*Holloway's Pills.*—The Great Need.—The blood is the life, and on its purity depends our health, if not our existence. These Pills thoroughly cleanse this vital fluid from all contaminations, and by that power strengthen and invigorate the whole system, healthily stimulate sluggish organs, repress over-excited action, and establish order of circulation and secretion throughout every part of the body. The balsamic nature of Holloway's Pills commends them to the favour of debilitated and nervous constitutions, which they soon resuscitate. They dislodge all obstructions, both in the bowels and elsewhere, and are, on that account, much sought after for promoting regularity of action in young females and delicate persons who are naturally weak, or who from some cause have become so.



# THE IRISH LAW TIMES AND SOLICITORS' JOURNAL.

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No. 788

## CURRENT DECISIONS.

It will be remembered that in the recent case of *M'Morrow v. Monson* (15 Ir. L. T. Rep. 15) the Court of Appeal were called on to reverse a decision of the Common Pleas Division, pronounced under the impression that the question involved had been concluded by *Nagle v. Sullivan* (6 L. R. Ir. 149), which would have been found otherwise, and the delay and expense of the appeal would not have been occasioned had the report of that case in the *IRISH LAW TIMES* (vol. 14, p. 43) been cited, which recorded what had really been there decided: *see per* Lord O'Hagan, *ibid.* Hardly less illustrative of the utility of our series of reports is the important decision in *Ferguson v. The Guardians of Ballina Union*, presented in our current issue. On the case coming, upon a civil bill appeal, before Lord Justice Fitzgibbon at the Mayo Assizes, he was of opinion that the guardians *were liable* for damages caused by the inferior quality of potatoes, supplied under the Seed Supply Act, 1880, and would have affirmed the decree *eo instanti*, had not the previous case of *M'Kenna v. The Guardians of Monaghan Union*, deciding the contrary, been reported, as it was, in the *IRISH LAW TIMES* (vol. 15, p. 42); but, fortunately it was brought under his notice, and in consequence he consented to state a case for the Exchequer Division, who have now decided that the guardians were *not liable*.

Circumstances like this speak trumpet-tongued themselves, and remove any necessity for blowing our own trumpet. But, it is not for our own sakes that we draw attention to such matters: it is for the gratification that the knowledge of them confers on our readers. For that reason their attention may be directed, also, to the decision in *Eiffe (app.) v. M'Kenna (resp.)*, recorded too in our current issue, where it will be noticed that Lord Justice Fitzgibbon brought forward and relied on the case of *Montgomery v. Montgomery*, decided by the House of Lords, and reported solely in the *IRISH LAW TIMES* (vol. 14, p. 9). For strange to say, while it is in this Journal alone that the decisions of the inferior courts, and in circuit cases (the utility of which is so strongly demonstrated by *Ferguson v. Guardians of Ballina Union*) are recorded, so it is the only legal publication in Ireland that has undertaken to supply full reports, specially taken, of the important decisions of the highest tribunal of all, in Irish cases. From the House of Lords down to the Land Sub-Commissions, no court that decides Irish cases is unrepresented in the *IRISH LAW TIMES*—and of no other legal publication whatever can this be proclaimed.

As regards land cases, indeed, our position is especially unique. While there are no "official" re-

ports of such cases, decided by the Land Commission, our reports present the double advantage arising from judicial revision, and from printing what is said by the judges *in extenso*; and alone in our pages, can it be said, are the decisions both of the Sub-Commissions and County Courts to be found permanently recorded. In our columns all such cases will be found uncurtailed and unmutated; and we shall be surprised if *Eiffe v. M'Kenna*, for instance, should ever hereafter—no matter after what amount of delay, of which we, at all events, cannot be accused—should be recorded elsewhere with such completeness. Even in the short interval pending the publication of full Reports, we endeavour to satisfy all immediate exigencies by NOTES or CASES, such as will be found in the current issue; and this is a department which it is our intention to carry on with increasing vigour and vigilance. But, we need hardly say that in mere notes of cases the completeness of a more pretentious report is not to be expected; and in them appears only what is "considered requisite"—to use the words of the reporters whose version of Mr. Justice O'Hagan's address (omitting an important passage accurately recorded in our version) was observed upon the other day in Parliament. Indeed, one never knows where now-a-days law reports, especially land cases, may not come under notice; and we observe that in an able and thoughtful paper by Professor Brougham Leech on "Compensation to Irish Landlords," in the current number of the *Contemporary Review*, the case of *Speer v. Smyly*, decided by Sub-Commissioner Fitzgerald, as reported in the *IRISH LAW TIMES* of December 24, is made the subject of ingenious commentary.

For this reason also, as not merely the profession but the public are now being made so much acquainted with legal reports—and the public might be misled where there would be no such danger to the profession—it behoves the reporter and the commentator to use the utmost caution. Accordingly, for our own part, we have no hesitation in deferring any note or notice of the latest and most important of the Irish judicial contributions to "the law of the land." *Adams v. Dunseath* has been specially reported for this serial—a case, certainly, of a magnitude that well warranted the lengthened and elaborate judgments delivered (and which were but partially given by the daily press)—but, while we expect to have it "immediately if not sooner" in the hands of our readers, we shall take care to wait till we can present a full and thoroughly authentic report of it; and meantime, we shall conclude with the words with which (as we read in *Garasse*, p. 731) St. Augustine used commonly to end his sermons: "Parcite mihi, fratres mei; nolo discere quod sequitur."

## PROOF OF "MEANS" TO PAY.

"MEANS," does not mean, in the sense we are here to discuss, what the wisacre had in contemplation who, because he had heard of a vagabond having been committed as he had no "visible means of subsistence," went about with a roll of sausages under his arm. He would so perhaps escape the power of that bluff Norfolk J.P., who growled out, "Dr. Tanner, sir—if he were in this country I'd commit him for getting his livelihood without ostensible means of subsistence." And certes, your justice of the quorum is capable of strange adjudications. "Look'e, gentlemen, this fellow has a trade," said Scruple, J.P., in Farquhar's comedy of the Recruiting Officer, when the collier's case was called on, "and the Act of Parliament here expresses that we are to impress no man that has any visible means of a livelihood." "May it please your worship," interposed Kite, sergeant (in the army), "this man has no visible means of a livelihood, for he works underground:" and the collier was delivered up as a recruit accordingly—besides the army wants miners, as Captain Plume remarked. But rather, the "means" within our purview are those whereof, in reply to the Chief Justice's reproof, "your means are very slender and your waste great," Falstaff said, "I would it were otherwise; I would my means were greater, and my waist slenderer." By "means" we mean revenue, tangible assets, realised money, or realisable capital such as Shylock had in view when he said of Antonio, "His means are in supposition." A man may even be insolvent within the technical meaning of the bankruptcy law, and yet possessed of "visible means;" and on the other hand, as Baron Dowse once wittily put it, "a man may say he is not in embarrassed circumstances, but that is not at all inconsistent with his having no money to pay costs, for the less money a man has the less embarrassment he will have in knowing how to deal with it." A man may be as poor as a modern Irish landlord, and yet have "means to pay," because he may otherwise have the ability to earn or acquire the means by his personal exertions, for such means embrace, in the words of Leonato,

"Both strength of limb and policy of mind,  
Ability in means and choice of friends."

Such "means" it is that are contemplated, at all events, by the Debtors Act (and see the Employers and Workmen Act, 1875, s. 9); but, whether a stricter interpretation should be assigned to the C. L. P. A. Act, 1870, is a more or less debatable question, on which it is unnecessary to say anything as the subject is so amply treated in *Kav. & Quill, Remit. of Actions* (2nd ed., 64 *et seq.*), where reference is approvingly made to our own views as stated in the note to *Torkington v. Connor*, 8 Ir. L. T. Rep. 89; so that it may here suffice merely to cite some additional authorities on what constitutes visible means within the Act: *Duff v. Apothecaries Hall*, 7 Ir. L. T. 556; *Scott v. Comerford*, 10 *ib.* 200; *Lunny v. McCaffrey*, 11 Ir. L. T. Rep. 103; and as to what averments in reference to such will be sufficient in the affidavits, see *Stamp v. Hickey*, 8 Ir. L. T. 485; *Greyson v. Quinn*, 13 *ib.* 89; *Ryan v. Broughall*, 14 Ir. L. T. Rep. 119; *M'Manus v. Maguire*, 15 *ib.* 31. But, though a practising solicitor, who has taken out his licence, may be considered as having visible means within the C. L. P. A. Act, 1870 (*Hennegan v. Jackman*, 19 W. R. 208; *Hunter v. D'Arcy*, 8 Ir. L. T. Rep. 95), it appears that a barrister who has chambers and has gone circuit is not necessarily to be deemed in possession of means, under the Debtors Act, for he "might have received no fees although in practice," and the law does not enable him to enforce payment: *Anon.* 13 Ir. L. T. 119. But

*semble*, it might be otherwise if the learned gentleman's mother made him an allowance: *ib.* So that Falstaff, too, might be taken to have "means to pay" the sums in respect of which he had made default to Mrs. Quickly, when Henry IV. declared,

"For competence of life, I will allow you.  
That lack of means enforce you not to evil."

Yet, on the other hand, according to *Foster v. Stackpoole* (13 Ir. L. T. 35), it would seem not to be enough to show that a gentleman lives at Pall Mall Place, Westminster, is a member of the Civil and United Service Club and of the Raleigh Club, and appears to live expensively and spend large sums on his personal pleasures, where after all it appears that he is altogether dependent on his mother for his maintenance. And the recent case of *Chard v. Jervis* goes to the same effect, where Sir George Jessel, M.R., remarked, "It might be a very immoral act to incur debts without the means of paying them, but it by no means followed that because a man was living in good style he had a pound in his pocket; a father or some other relation might be paying everything for him, and a wife might do the same thing."

We find the last-mentioned case reported in the *Times* of the 16th ult., and it will certainly serve as a warning to tradesmen who supply goods on credit to gentlemen apparently of good position and ample means, but who are really living on the separate incomes of their wives, and have no means of their own. The plaintiffs were corn merchants, and had obtained judgment against Captain Scott Jervis, the defendant, for £29, for hay and oats supplied to the defendant at his residence. Failing to get paid, the plaintiffs moved for an order for committal, on an affidavit in which one of them deposed: "Most of the goods, the subject of the action, were supplied to the defendant for horses kept at his residence. The defendant resides at Cherrington-park, and keeps up a large establishment there, and to all appearances he is a man of means. I am informed and believe that the defendant is continually in the hunting field, and that he keeps several horses, some of them hunters, at his residence, but that they are, together with the furniture, carriages, and effects at Cherrington-park, claimed by the defendant's wife, or her trustees. From the defendant's mode and style of living, I believe he is in a position to pay the amount due in this action." The defendant, on the other hand, deposed: "In the year 1874, I was duly adjudicated a bankrupt, and have not obtained my discharge. Since the date of my bankruptcy I have not earned or otherwise acquired, and I am not now possessed of any money or property of any description whatever, and I am quite unable to pay the plaintiffs' claim in this action or any part thereof. My wife has an income settled to her separate use, but I have no interest whatever either in the capital or income of the funds from which she derives such income. It is not true that I am continually in the hunting field. In fact, I have never ridden to hounds while I have resided in the County of Gloucester." On those affidavits Stephen, J., granted an order for committal; and the defendant having appealed to the Divisional Court, Field, J., and Huddleston, B., affirmed the order, being satisfied that the defendant had failed to make out that he was unable to pay. The defendant then took the case to the Court of Appeal; and thereupon made the following further affidavit: "The house in which I live is an old farm-house, converted into a residence, which is rented, furnished, with a garden, at a rental of £100 per annum. The rates and taxes amount to between £8 and £10 per annum. My wife has two maid-servants, whose wages amount to £15 per annum and no more, and a boy, who works outside, at wages amounting to £12 per annum and no

more, and these are all the servants that are kept, and the rent, rates, taxes, and wages are all paid by my wife. I have no horse at all. My wife has one horse and no more, the value of which does not exceed £10. The premises are situated four miles from a railway station, and the same distance from the nearest town, Tetbury, and there are no shops in the neighbourhood of Cherrington-park, and it is necessary to keep a horse in order to supply the house with provisions and necessaries. I did not make any gift, settlement, or other disposition of any money or property whatsoever, before or at the time of our marriage, nor have I since made any gift, settlement, or other disposition of any money or other property whatsoever. My wife's property comes entirely from her own family, and is settled on her and our children, and I have no estate or interest whatsoever under such settlement, nor has my wife any power to give me any estate or interest whatsoever, except in the event of there being no children of our marriage, of whom there are already three. I have not ridden to hounds or hunted anywhere for the last eight years. My bankruptcy has never been closed." Notwithstanding this disillusionising deposition, the plaintiffs still contended that the evidence of means was sufficient, citing *Harper v. Scrimgeour*, 5 Ch. Div. 366; but submitted that, at all events, the evidence the other way should be overwhelming in order to induce the Court of Appeal to interfere, citing *Esdale v. Visser*, 13 Ch. Div. 421. In *Harper's* case a husband, who had bought but not paid for a horse, deposed that, though his wife had horses and carriages, he had none of his own, nor had he any money at his command to attend court to answer the application, and his wife declined to supply him with any. Notwithstanding which he was committed. But, in *Chard's* case Sir George Jessel observed that *Harper's* case decided a mere question of fact, and therefore was not binding, while even in the conclusion of fact he saw nothing in the case as reported to induce him to concur. So, in effect, *Harper's* case stands overruled. *Esdale's* case, again, was relied on mainly for the *dictum* of the late Lord Justice James that, "When all the materials for coming to a decision on the point have been before the Judge and he has applied his mind to them, it would require an overwhelming case to induce the Court of Appeal to differ from the Judge if he says he is satisfied of the debtor's ability to pay." But in *Bruce v. Pemberton* (March, 1880), which was not mentioned in *Chard's* case, on appeal from a decision by Denman, J., the Court reversed his order notwithstanding a like argument against interfering in a matter of discretion (see 14 Ir. L. T. 175), the order there having been made against a divorced wife, who swore she had no income but what a gay life supplied. In the present case, referring to the *dictum* of James, L.J., the Master of the Rolls said he distrusted adjectives. The word "overwhelming" was a strong one, and he was not satisfied it was the right word to use. Of course, it would require a strong case to induce the Court of Appeal to overrule the decision of the Court below on a question of fact. The evidence must clearly be sufficient to convince the Court of Appeal that the Judge below was wrong, and he thought James, L.J., only meant that the Court of Appeal must be satisfied of that, and that he did not intend to go beyond that. But even then James, L.J., said, "When all the materials for coming to a decision have been before the Judge," and in the present case there was now before this Court material and important evidence which was not before the Divisional Court. Lord Justice Holker added that he thought the *dictum* in question ought not to be admitted without considerable hesitation. Of course, the evidence must be such as clearly to convince the Court of Appeal that the Court below was wrong;

but if it was meant that there must be a mathematical demonstration, an appeal from such an order would never be allowed at all.

The previous cases having been thus disposed of, the Court proceeded to consider the facts of the one in hand. The defendant appeared to have been living on his wife's means, and to have ordered goods in his own name; but, the plaintiffs' own evidence showed that they knew that the furniture and other effects of the defendant's residence were claimed by his wife's trustees. There was no evidence that she allowed him anything, or "that he had settled anything on his wife." The defendant's first affidavit did not answer the plaintiffs' in sufficient detail, but the second was such that there was not evidence left to show that the defendant had any means at all. And accordingly, the appeal was allowed. In connexion with the statement we have above quoted, in reference to its not appearing that the defendant had settled anything on his wife, we may note the recent case of *Sweeny v. Goulding* (15 Ir. L. T. Rep. 47), where, on a motion for an order for payment under the Act, the question whether the defendant was possessed of means depended on whether or not a bill of sale which he had given to his brother, and which had been set up as against an execution sought to be first levied, was fraudulent and void; and the Court held that the plaintiff should be left to his remedy by an interpleader issue. And with that case may be collated another (not there cited) of *M'Laughlin v. Brown*, 12 Ir. L. T. 89, where under similar circumstances Palles, C.B., refused to grant the order, as if the defendant's assignment there in question was fraudulent it was open to the plaintiff to prosecute him. And as regards the effect of bankruptcy, see *Re A. B.*, 11 Ir. L. T. Rep. 90; *Re Deere*, L. R. 10 Ch. 658.

It would seem, however, that, but for the additional affidavit in *Chard's* case, the decision would not have been reversed. It was reversed with regret; and in future cases not quite so strong, husbands may not improbably be still presumed to have means, when their wives, having separate property, allow them to live in ostensible opulence and luxury. Two things we regret,—that the existing rule throws the *onus probandi* of means on creditors, and that appeals of this kind have now received such an encouragement. But one thing we rejoice in,—that in this case the appeal succeeded, although it is needless to say we disapprove of the defendant's conduct; for truly, in the words of the Master of the Rolls, "If the Court were to commit him to prison it would not be exercising the jurisdiction given to it by the Act, but would be inventing a new jurisdiction, which might be summed up thus:—Whenever a wife has money you may send her husband to prison in order to compel her to pay his debts."

#### POWERS OF PROVINCIAL LEGISLATURES.

The case of *The Citizens' Insurance Co. of Canada v. Parsons* (45 L. T. N. S. 721) raises again a question which has been several times discussed by the Judicial Committee—namely, the distribution of legislative power between the Parliament of Canada and the legislatures of the various provinces comprised in the Dominion; and at the present time the practical working of such a constitution as that of Canada is not without interest and instruction both for lawyers and politicians, in reference to possible proposals for the extension of the principle of local self-government in the United Kingdom.

The matter is provided for by sects. 91 to 95 of the British North American Act of 1867 (30 Vict., c. 8), by which the Dominion of Canada was created. The

scheme of this legislation is to give to the Dominion Parliament authority to make laws for the good government of Canada in all matters not coming within such classes of subjects as are assigned exclusively to the provincial Legislatures; but "for greater certainty but not so as to restrict the generality of the foregoing terms of this section," sect. 91 assigns to the Dominion Parliament exclusive authority in twenty-nine enumerated classes of subjects; and concludes as follows:—"Any matter coming within any of the classes of subjects enumerated in this section shall not be deemed to come within the class of matters of a local or private nature comprised in the enumeration of the classes of subjects by this Act assigned exclusively to the Legislatures of the provinces." Similarly sect. 92 gives to the provincial Legislatures exclusive power to make laws in relation to sixteen enumerated classes of subjects.

It must, however, have been foreseen that no sharp and definite line had been or could be drawn, and the words of sect. 91 seem to endeavour to provide for the case of an apparent conflict. The fact, however, that the question has been raised in as many as six different appeals before the Judicial Committee, and that in two of them the decisions of the courts below were reversed, shows the matter is not left free from doubt. In the first case (*L' Union St. Jacques de Montreal v. Belisle*, L. Rep. 6 P. C. 81; 81 L. T. Rep. N. S. 111) it was held that an Act of a provincial Legislature, passed to relieve a benefit society which was in a state of financial embarrassment, related to "a matter merely of a local or private nature in the province," within sect. 92 of the Act, and not to "bankruptcy and insolvency," within sect. 91, and was therefore not *ultra vires*. Similarly in *Dow v. Black* (L. Rep. 6 P. C. 272; 82 L. T. Rep. N. S. 274) an Act empowering the majority of the inhabitants of a parish to raise, by local taxation, a subsidy for the promotion of the construction of a railway already authorised by statute, was held to relate to a local matter within the province, though the railway was intended to extend beyond the province, and "railways extending beyond the limits of the province" are expressly excepted from the control of the provincial Legislatures. In both these cases the courts below had taken the opposite view.

The case of *The Attorney-General for Quebec v. The Queen Insurance Company* (3 App. Cas. 1090; 38 L. T. Rep. N. S. 897) decided that the imposition of a stamp duty on policies of assurance, renewals, and receipts, was not "direct taxation within the province," and was *ultra vires*.

In *Vulfin v. Langlois* (5 App. Cas. 115; 41 L. T. Rep. N. S. 662) leave to appeal was refused on petition, on the ground that, "The administration of justice in the province, including the constitution, maintenance, and organisation of provincial courts, both of civil and criminal jurisdiction, and including procedure in civil matters in those courts," which was reserved to the provincial Legislature, did not relate to election petitions.

In *Oushing v. Dupuy* (5 App. Cas. 409; 42 L. T. Rep. N. S. 445) it was decided that sect. 91, by reserving to the Dominion Parliament questions of "bankruptcy and insolvency," gave power to interfere to that extent with "property and civil rights in the province," though sect. 92 assigned them to the provincial Legislature. But in the last case (*The Citizens' Insurance Company v. Parsons*) referred to above, the Judicial Committee held that those words covered a provincial statute "to secure uniform conditions in policies of fire insurance," notwithstanding that the Dominion Parliament has exclusive powers for "the regulation of trade and commerce," and that such a power did not include the regulation of the contracts of a particular business in a single province.

The above series of decisions are sufficient to show the many difficulties and pitfalls which must in practice attend the working out of any such scheme of divided legislation.—*Law Times*.

#### THE SOLICITOR-GENERAL IN THE HOUSE.

The *World* says:—Mr. Porter having, in spite of nervousness, made a favourable impression by his maiden speech, contrived within the next few days to establish himself as one of the most impressive figures in the House. It was not the exhibition of golden chains and sparkling personal adornments upon a portly form, or the wearing of such habiliments as, in combination with a hat tilted rakishly on the side of the head, conveyed a vague suggestion of sporting proclivities, that did it, but the effect produced upon all beholders when the Solicitor-General for Ireland, uncovering, presented to the view a bald and polished pate, towering aloft in a domelike form, and evidently so tightly packed with legal lore as to afford no space for the smallest wrinkle. By silently bringing this magnificent cranium to bear upon the Legislature from the end of the treasury bench, Mr. Porter has created a general feeling of awe and uneasiness, particularly amongst the occupants of the front Opposition bench; and when, at an early hour on Saturday morning, he betook himself to the Peers' Gallery, and from that elevation regarded the House below, he unconsciously led admiring plebeians to believe that a shining light of unexampled splendour had been imparted to our old nobility.

#### MR. BRADLAUGH'S TAKING OF THE OATH.

The expulsion of Mr. Bradlaugh from the House of Commons destroys much of the importance of the legal question whether his proceeding at the table of the House on Tuesday amounted to a compliance with the statute requiring him to take the oath, but still the question is of considerable interest. If Mr. Bradlaugh did, in the words of the Act, "solemnly and publicly make and subscribe the oath at the table in the middle of the House, and while a full House is duly sitting, with the Speaker in the chair, at such hours and according to such regulations as the House may by its Standing Orders direct," we imagine that no Court of law would inquire into the question whether he was competent by belief to take the oath. So far as the Standing Orders are concerned, Mr. Bradlaugh's act does not seem impeachable. But was it done "solemnly and publicly?" In one sense it was public, but in another it was by stealth. In no sense was it "solemnly" done. Whatever that word may mean; it cannot describe the act of a member who rushes up to the table of the House, hurries through a form of words, signs a paper, and throws it on the table, while the Speaker all the while is loudly and continually calling "Order!" The Act did not intend to allow a member of the House of Commons to snatch the oath in spite of its teeth; but meant him to take the oath with the sanction and recognition of the House.—*Law Journal*.

#### THE COST OF THE LAND COURT.

The *Morning Post* points out that the charge for the Irish Land Commission amounts to £84,919, and as this charge appears now for the first time on the Estimate, Mr. Forster will be properly pressed for explanation upon every vote. When it is remembered that for this sum 18 courts are in active operation, it will not be said that the sum is extravagant. On the other hand, it will be pointed out that the rental dealt with and fixed by the Commissioners amounts only to £38,000, a sum considerably less than that expended on the machinery elaborated to attain so small a result. It appears that the maximum salary payable to an Assistant Commissioner of the non-legal class is £750. Mr. Forster will either have to prove that gentlemen of fine tact, large experience, proved impartiality, and of some legal acumen—fit, in short, to exercise judicial functions of the most delicate and anxious character—are plentiful in Ireland at a rate of pay which in this country would be regarded as inadequate, or he will have to admit that the persons selected do not inspire that general confidence without which the administration of justice is in danger of failure and contempt.

## NOTES OF CASES.

## HIGH COURT OF JUSTICE.

## CHANCERY DIVISION.

(Before FLANAGAN, J.)

MURDOCK v. MURDOCK.

Feb. 18, 1882.—County Court jurisdiction—Administration suit—Institution of, within year from death of intestate—County Courts Act, 1877, s. 41.

Appeal in a suit by the plaintiff, as one of the next of kin, against the defendant, the administrator of Joseph Murdock, farmer, county Armagh, deceased, for administration of the estate. At the hearing before Mr. R. W. Gamble, Q.C., County Court judge of Armagh, the point was raised on the part of the defendant that the suit having been brought before twelve months had elapsed from the date of the death of the deceased; there was no jurisdiction to entertain it. The County Court judge, acting on the practice which prevailed in the county courts, dismissed the suit upon that ground.

T. L. O'Shaughnessy, for the appellants.  
Cuming, contra.

*Judgment reserved.*

FLANAGAN, J., in delivering judgment, said that, by the 41st section of the County Courts Act of 1877 it was perfectly plain that a suit could be brought before the expiration of the twelve months. He felt certain that the section of the Act had not been brought under the notice of the County Court judge. He had no alternative, however, but to reverse the decision of the court below, and to refer the case back to the County Court judge, with a declaration that the suit was properly brought, defendant to pay the costs of the appeal.

## COMMON PLEAS DIVISION.

(Before FITZGERALD, J., and a Jury.)

LORD CLONCURRY v. DEWANE and OTHERS.

Feb. 14, 20, 1882.—Costs—Action to recover land on title—Land Law Act, 1881, s. 51—Jud. Act, s. 53—County Courts Act, 1877, ss. 53, 54.

In the case above entitled, and in 26 others, the plaintiff proceeded by way of action to recover land on the title, in respect of holdings in the county of Limerick, the plaintiff claiming in each case under assignment from the sheriff. Mesne rates were, also, claimed, but that demand was abandoned.

In each of the cases defence had been entered by Messrs. M'Gough and Fowler, solicitors; but they only appeared at the trial of one of them. They then intimated that, as Lord Cloncurry did not seek to recover mesne rents, they would not further contest his right to recover possession. Formal evidence was given, a jury was sworn in each case, and verdicts returned against the defendants.

Holmes, Q.C., and Rynd, for the plaintiff, asked for judgment.

[FITZGERALD, J.—You are entitled to judgment, but I must consider the question of costs.]

When these proceedings were commenced there was no machinery by which services could be substituted in the Civil Bill Court, and in each and every one of the cases it was necessary for the plaintiff to obtain an order to substitute service in consequence of the impossibility of serving the tenants except by registered letter or posting the writs on some public place in the neighbourhood. It is only right to say that some time ago Lord Cloncurry selected three or four cases from among the 80 or 81 he had to proceed with, and got judgment in these, thinking that then the remaining tenants would surrender their farms, and thus open the way for negotiation. In the test cases the defendants appeared; a point of law was raised, and argued before the Divisional Court, as to the necessity for a demand of possession, which was over-

ruled; in fact; Lord Cloncurry was put to every inconvenience and expense that was possible. Even after judgment was finally obtained in these cases, the solicitor acting for Lord Cloncurry wrote to the defendants in the present cases, communicating the result arrived at, and stating that they must yield up possession of their farms, but that, which would have opened the door possibly for amicable arrangement, was refused, and there was no course open but to proceed by ejectment.

[FITZGERALD, J.—I will consider all the cases, and as the question raised is of an unusual character I may consult the Lord Chief Justice or some of my colleagues as to what rule should be made concerning costs—whether, having regard to the 51st section of the Land Law Act, 1881; and other circumstances, any limit should be put upon the liability of the defendants, and as to whether all these ejectments were necessary. It is not the ordinary case of a purchase under a sheriff's deed, but the purchase by Lord Cloncurry, as landlord, of tenants' interests, which immediately merged into the reversion].

*Decision deferred.*

FITZGERALD, J.—I have very carefully considered these cases, and have found them to be of the same character from beginning to end. I shall deal, therefore, with one case as governing the rest. Lord Cloncurry brought actions for the recovery of rents from his tenants; and in July last he recovered judgment. These were not actions of ejectment, but actions to recover rent simply. There was no appearance in the cases for the defendants; and judgment went for Lord Cloncurry for the arrears due for and costs. Their subsequent course of action shows that the tenants were acting on advice that was being given to them; for Lord Cloncurry having issued the writs of *f. fs.* the sales took place in August, and in each case the tenant allowed his farm to be sold, and sold, too, for nominal sums, ranging as low in some instances as 21. The interest in each of the several farms was purchased by Lord Cloncurry. The tenants were advised to let their farms go, to let them be sacrificed as things they had no interest in, and to allow them to pass into Lord Cloncurry's hands. Accordingly, in the month of September Lord Cloncurry instituted actions of ejectment. In every one of the actions a defence had been filed, and filed in the names of M'Gough and Fowler, who appeared to be solicitors not connected with Limerick, but somehow or other interested in all these defendants. They entered, first of all, an appearance in each case, and required a statement of claim to be delivered in each, and then pleaded the statutable defence of possession, putting the landlord upon the proof of his title. There were thirty of those cases in all, and, as I understood from Mr. Holmes, three were selected as test cases, and one of the three as a trial test came before the Lord Chief Baron, and, upon the occasion of the trial in November, his lordship reserved the point as to whether a formal demand was necessary before, under such circumstances, the landlord could eject. That point was discussed and disposed of by the Common Pleas Division, and one would have thought that after that, there being no other point or question in the case, Messrs. M'Gough and Fowler would have considered it consistent with their duty to their clients, or at least would have advised their clients under such circumstances that it would be unnecessary to proceed to trial in the remaining 27 cases. However, no such thing took place; and accordingly they had the form of 27 trials gone through. Twenty-seven juries were sworn, the issue papers were sent to them, and verdicts were recorded, a vast deal of expense being incurred, and I shall say inquired for no object whatever. I assume Messrs. M'Gough and Fowler had authority to defend these actions of ejectment, but I would shut my eyes to the surrounding circumstances if I did not see that the defence to these ejectments and the whole course of the procedure here were in accordance with what is known now as the "no rent"

policy—the non-payment of rent *in toto*, and with the object of making the farms when they came into the landlord's hands, if he ever got them into his hands, mere deserts. As I have said, great expense was incurred by these unnecessary trials, and I reserved the question as to whether the defendants' liability as to costs should be curtailed until I looked into the case, which I have done since with great care. I had a second object in view, however, in delaying. As I stated at the time of the trial, about this day week, I saw the ruin and desolation these parties had brought upon themselves by reason of this litigation, and I thought that whoever the parties or the organisation were or was that advised them to adopt this course, they would, out of their funds, come forward and enable the parties to come to terms by paying the rent and the costs, thus recouping Lord Clonourry for the loss he had been at, and enabling him to reinstate the tenants in possession of their farms. No such course, as I understand, has been adopted. Therefore, I am now to determine the question of costs. What struck me, in the first instance, was that the question arose under the 51st section of the Land Law Act, 1881, but I have considered that section since, and the scope of the Act—that it deals with cases between landlord and tenant, and that it is to settle the relations between landlord and tenant—and I have come to the conclusion that that section only applies where the landlord as such is seeking to recover for non-payment of rent, or where the landlord as such seeks to recover from the tenant for overholding, but not to cases where ejection is brought on the mere title. My opinion, therefore, is that these cases do not come within the 51st section of the Land Law Act. If they came within that section, and if the Civil Bill Court had jurisdiction, I would have no discretion but to refuse the landlord his costs. Another question arose of the same formidable character, and that was whether, in the exercise of the discretion given me here, sitting at Nisi Prius under the 53rd section of the Judicature Act—in which it is provided that upon the trial by jury, where an issue in fact is found by the jury, the costs follow the result, unless the judge presiding for special reasons, makes an order to the contrary—there are special reasons why I should deprive Lord Clonourry of the costs of these actions in which he has succeeded, and an element in that would be whether any of the cases would come within the jurisdiction of the Civil Bill Court. I have looked at the abstracts carefully in each case, and I find that the majority of the cases come within that jurisdiction. Quite irrespective of the Land Law Act, there is jurisdiction given to the Civil Bill Court to try all cases of ejection on the title where the valuation—that is the general valuation—does not exceed £30. I find that the rents sued for here were in most cases under £30, and, therefore, it may be taken that the valuation was under £30. These cases come within the Civil Bill jurisdiction, and might have been tried there. There is, however, a question left to my discretion—whether I should interfere to deprive Lord Clonourry of the ordinary results of a successful verdict. I have come to the conclusion that I ought not to interfere, and for this reason—first of all, Mr. Holmes has told me that there would have been considerable difficulty in serving processes for the Civil Bill Court; for at the time the actions were brought there was not the same facility given for serving processes as now exists, and I know enough from my late experience to teach me that the lives of process-servers who attempted to effect personal service in this very county encountered very great danger. From this very county (Limerick) I had recently to try a remarkable case in which a process-server was stripped and beaten almost to death, and where the sub-agent was also stripped and beaten, and but for the interference of the priest of the neighbourhood life would have been sacrificed. That alone would be sufficient ground for coming to this court and applying for leave to substitute service by posting, according to the rules. In addition to that, I cannot shut my eyes to the fact that in this litigation the

defendants have brought desolation and misery upon themselves. I assume now that the solicitors had ample authority and power to defend the cases, but I cannot shut my eyes to the surrounding circumstances. I believe that these parties were advised to defend all these cases in pursuance of what is known as the No Rent policy or No Rent Manifesto. They brought all this litigation upon themselves. The litigation was purely and wholly unnecessary. Even to gain a little time it was unnecessary, and, on the whole, I find no reason in these cases for depriving Lord Clonourry of the costs he has been put to. Nay more, I have come to the conclusion that he ought to have his costs, and I'll give you, Mr. Holmes, judgment with costs in each of these cases.

Holmes, Q.C., read to his lordship a letter from Messrs. White and White, Lord Clonourry's solicitors, dated 30th December, 1881, and addressed to Messrs M'Gough and Fowler, offering to take from them consents for judgment in the twenty-seven cases if tendered on or before the 22nd of that month, and consent or consents same as had been given in the two cases selected for trial with Edward Ryan's case, which would have reserved to the defendants in all the twenty-seven cases whatever right would have accrued from the argument of the law point reserved in Edward Ryan's case.

FITZGERALD, J.—They would have gained some time by that, and the costs would have been about £2 in place of all that have accrued. I was not aware of that at the time I gave my judgment, but that is an additional reason fortifying the judgment I have given.

[*Cf. Tooker v. Clements*, 12 Ir. L. T. 243.—E. N. B., Ed.]

#### EXCHEQUER DIVISION.

(Before FITZGERALD and DOWSE, BB.)

GRIFFIN v. GRIFFITH and PURCELL.

Feb. 25, 1882.—*Remittal of action to county court—Defendants resident in different civil bill jurisdictions—Action of tort—C. L. P. A. Act, 1870, s. 6.*

Motion, on behalf of the defendants, that the name of one of them (Griffith) be struck out, inasmuch as the question at issue could be decided without his being a party; and that the action be remitted to the county court, unless security for costs given, under C. L. P. A. Act, 1870, s. 6.

The action, in tort, was brought to recover £200 damages for the breaking and entering of the dwelling-house of the plaintiff, and expelling him therefrom and carrying away the furniture of the dwelling-house. In reference to the remittal (the purpose of the present note), it was alleged that the plaintiff was not possessed of visible means, but it appeared that the defendants resided in different civil bill jurisdictions.

MacNeill, in support of the motion, cited *Fes v. Hall and Thacker*, 11 Ir. L. T. 577; and stated (*ex rel. P. White*) that in *Macdonogh v. Wells*, Chatterton, V.C., sitting as a vacation judge, 1881, remitted the action (in tort) to the civil bill court, within the jurisdiction of which one of the defendants resided, though the other resided in England.

*J. Roche, contra*, was not called on.

The Court refused to strike out the name of the defendant Griffith; and refused to remit on the ground that the defendants resided in different civil bill jurisdictions.

[See *Robinson v. Davidson*, 18 Ir. L. T. Rep. 49, but note that was an action in contract. *Cf. Reagan and wife v. Flood*, 12 Ir. L. T. Rep. 122.—E. N. B., Ed.]

#### LAND SUB-COMMISSION.

(Before F. HODDER, Barrister-at-Law, J. F. BOMFORD and J. M. WEIR, Esqrs.)

M'MERROW v. IRVINE.

Feb. 7, 1882.—*Town-park—Town, what constitutes—Land Law Act, 1881, s. 58 (2).*

Application to fix judicial rent. The tenant was a shopkeeper, residing in Ederney, Co. Fermanagh, within half a mile of which the holdings (8a., and 9a. 2r. respectively) were situate. For the laudlord, it was contended that the holdings were town parks.

It was held that the lands were not town-parks—Ederney having been shown to be merely a village of three hundred inhabitants.

[It was held by Assistant Commissioner Roche, Feb. 4, 1882, that Athleague, Co. Roscommon, containing some 200 inhabitants, did not come within the Act. It was held by Assistant Commissioner M'Carthy (*Killeen v. Lambert*, Feb. 27, 1882) that "Claremorris (Co. Mayo), being a considerable market town, must be considered to be a town within the meaning of the section." But, it has a population of over 1,300.—*H. N. B., Ed.*]

### APPOINTMENTS AND PROMOTIONS.

Mr. J. Randal Donaldson, Solicitor, Dundalk, has been appointed a Commissioner for taking the Acknowledgment of Deeds by Married Women in the County of Louth.

Mr. Alexander Bell, Solicitor, of No. 13 Parliament-street, Dublin, has been appointed a Commissioner for Taking Affidavits in and for the Courts in Ontario.

### BOOKS RECEIVED.

*A List of Judicial Rents, with Summary, Tables, and Index.* Compiled by CHARLES EASON, Junr. Dublin: W. H. Smith & Son.

*The Nineteenth Century.* A Monthly Review, Edited by JAMES KNOWLES. No. 61. March, 1882. London: C. Kegan Paul & Co.

*Contemporary Review.* March, 1882. London: Strahan and Co., Limited, Paternoster-row.

*Cassell's History of England from the earliest period to the present time.* With about 2,000 Illustrations. Part 78. London, Paris, and New York: Cassell, Petter, and Galpin.

*Milton's Paradise Lost.* Illustrated by Gustave Doré. Edited, with Notes and a Life of Milton, by the late ROBERT VAUGHAN, D.D. London: Cassell, Petter, Galpin, & Co.

### LAW STUDENT'S JOURNAL.

#### THE INCORPORATED LAW SOCIETY OF IRELAND.

EASTER SITTINGS, 1882.

#### NOTICE.

The PRELIMINARY EXAMINATION of Candidates for Apprenticeship will be held at the Solicitors' Hall, Four Courts, Dublin, on Monday and Tuesday, the 3rd and 4th days of April, 1882, at Eleven o'clock.

N.B.—All Papers to be lodged on or before Friday, 17th March, 1882.

The FINAL EXAMINATION of Candidates seeking admission as Solicitors will be held at the same place, on Wednesday and Thursday, the 5th and 6th days of April, 1882, at the same hour.

By Order of the Council,

JOHN H. GODDARD, *Secretary.*

Solicitors' Hall, Four Courts, Dublin.

N.B.—The decision of the Court of Examiners will be announced on Wednesday, the 26th of April, 1882, at Three o'clock, p.m.

Candidates residing in the country need not remain in town to hear decision, but can learn same from the Dublin Morning Papers of the day following the announcement.

### COURT PAPERS.

#### LAND JUDGES.

Sittings for next Week so far as same are appointed. Before the Rt. Hon. JUDGE FLANAGAN.

#### MONDAY.

IN COURT.—H. G. Smith, final schedule.—Assignees C. Hodson, receiver.—J. T. M'Donough, do.—Devises R. C. Hurly, payment.—J. Blake, from 2nd.

Before EXAMINER (Mr. Kennedy).

C. G. Martin, rental.—P. Roe, to take account.—S. Davis, rental.

#### TUESDAY.

IN COURT.—Assignees Miller, from 1st.—Trustees Corbet, from 2nd.

Before EXAMINER (Mr. Kennedy).

G. S. Roper, rental.—M. Linane, do.

#### SALES IN COURT.

T. J. NOLAN, . . . . . 1 lot.

#### WEDNESDAY.

Before EXAMINER (Mr. Kennedy).

Assignees T. Daly, vouch.

#### THURSDAY.

Before EXAMINER (Mr. Kennedy).

A. Elliott and others, rental.

#### FRIDAY.

#### SALES IN COURT.

TRUSTEE A. M. BLAKE, . . . . . 1 lot.  
J. ELLIOTT AND OTHERS, . . . . . 1 "

Before the Rt. Hon. JUDGE OMSBY.

#### WEDNESDAY.

Before EXAMINER (Mr. M'Donnell).

F. A. Echlin, rental.

#### FRIDAY.

Before EXAMINER (Mr. M'Donnell).

S. Hamilton, rental.—H. Leader, do.—Assignees W. Bolton, do.—Executors J. Henderson, from 24th Feb.

### COURT OF BANKRUPTCY.

#### ADJUDICATIONS IN BANKRUPTCY.

*The dates of Adjudications are first given, the Sittings follow in Italics.*

Devitt, James, and Peter Devitt, both of Sligo, in the county of Sligo, saddlers, trading as "J. and P. Devitt." February 17; *Tuesday, March 14, and Friday, March 31. William Montgomery and Bennett Thompson, solrs.*

Hernon, Patrick, of No. 2, Upper Dominick-street, Galway, in the county of Galway, grocer, spirit and provision dealer, and pensioner Royal Irish Constabulary. February 18; *Friday, March 10, and Tuesday, March 28. Henry M. Rynd, solr.*

Meany, John, of Ballinvreena, in the county of Limerick, farmer. February 13; *Tuesday, March 14, and Friday, March 31. John L. and W. Scallan, solrs.*

The important and influential committee appointed by the Incorporated Law Society to consider the report of Lord Coleridge's committee have reported. They would retain pleadings and abolish divisional courts in banco, sending all appeals, whether from chambers, or for new trials, to the Court of Appeal. They disapprove of the omnibus summons, and would make costs to be paid by a beaten suitor costs as between solicitor and client. There is much good sense in this report. We hope the committee will use their efforts to carry out their views, and also to abolish trial by jury.—*Law Times.*

DUBLIN STOCK AND SHARE LIST.

DESCRIPTION OF STOCK	FEBRUARY			MARCH		
	Sat. 25	Mon. 27	Tues. 28	Wed. 1	Thur. 2	Fri. 3
<b>*Paid Government.</b>						
3 p c Consols ..	99½	—	99½	99½	99½	99½
3 p c Reduced ..	—	—	—	—	—	—
New 3 p c Stock ..	99½	99½	99½	99½	99½	99½
<b>INDIA STOCK.</b>						
4 p c Oct. 1882 } Tryflic. at ..	—	103½	103½	103½	—	104½
3½ p c Jan. 1881 } Bk. of Irel. ..	—	—	—	—	—	—
<b>Banks.</b>						
100 Bank of Ireland ..	315	315½	—	315	315	315½
25 <i>Hibernian Banking Co.</i> ..	—	—	35½	—	—	—
20 <i>London and County (Lit'd.)</i> ..	—	73½	73½	—	—	—
20 <i>London and W'minster, Ltd</i> ..	68½	68½	—	68½	—	68½
10 <i>Do. New</i> ..	—	—	—	—	—	—
3½ <i>Munster Bank (Limited)</i> ..	—	—	61	7	7	—
10 <i>National Bank (Limited)</i> ..	22½	22½	22½	22½	—	—
10 <i>National of Liverpool (Lit'd.)</i> ..	—	—	—	—	—	13½
— <i>Nat. Prov. of England, Lim.</i> ..	—	—	—	—	—	—
25 <i>Provincial Bank</i> ..	—	—	53½	—	54	—
10 <i>Do. New</i> ..	23	—	—	—	—	—
10 <i>Royal Bank</i> ..	—	—	29½	—	29½	—
<b>Steam.</b>						
50 <i>British &amp; Irish</i> ..	—	—	—	—	—	—
100 <i>City of Dublin</i> ..	—	—	112½	—	—	—
50 <i>Dublin and Glasgow</i> ..	—	—	—	—	—	—
50 <i>Dublin &amp; Liverpool Steam Ship Building Co.</i> ..	—	—	—	—	—	—
10 <i>Dundalk (Limited)</i> ..	—	—	—	—	—	—
<b>Mines.</b>						
4½ <i>Borahaven (Limited)</i> ..	—	—	—	—	—	—
2½ <i>Wicklow Copper</i> ..	—	—	—	—	—	—
<b>Miscellaneous.</b>						
10 <i>Alliance &amp; Dub. Cons. Gas</i> ..	15½	15½	—	15½	15½	—
8 <i>Do. do. New</i> ..	—	—	9½	—	—	—
4 <i>Arnott &amp; Co. Limited</i> ..	—	—	—	—	—	6½
20 <i>C. Dub. Brewery Co. (Lim.)</i> ..	—	—	—	—	—	—
10 <i>Dublin Artisan Dwellings</i> ..	—	—	—	—	—	—
17 <i>Hudson's Bay</i> ..	—	—	—	—	—	—
25 <i>Ir. C. S. Building Society</i> ..	—	—	—	—	—	—
7½ <i>Mitchell's Whousing Co., Ltd</i> ..	—	—	5 xd	—	—	—
4 <i>National Discount, Bro., Ltd</i> ..	—	—	3½ xd	—	—	—
<b>Tramways.</b>						
10 <i>Belfast Trams</i> ..	—	—	—	—	—	—
10 <i>Dublin United Tramways</i> ..	10½	10½	10½	10½	10½	—
10 <i>L'pi Un'ed Tram &amp; Bus Ltd</i> ..	—	—	—	—	—	—
<b>Railways.</b>						
100 <i>Dublin, Wicklow, &amp; W'ford</i> ..	—	—	76½	—	—	—
100 <i>Great Northern (Ireland)</i> ..	—	—	x d	—	—	—
100 <i>Gt. Southern and Western</i> ..	112	—	x d	110	—	—
100 <i>Midland Gt. Western</i> ..	—	—	83	—	—	—
50 <i>Waterford and Limerick</i> ..	—	—	—	—	—	—
<b>Railway Preference.</b>						
100 <i>Belfast &amp; Nth'n Cos., 4 p c</i> ..	—	—	—	—	—	—
100 <i>Do., 4½ p c</i> ..	—	—	—	—	—	—
100 <i>D., W., &amp; W., 5 p c (1860)</i> ..	—	—	—	—	—	—
100 <i>Do. do. (1864)</i> ..	—	—	—	—	—	—
400 <i>Gt. Nth'n (Irid) gt'd 4 p c</i> ..	—	—	x d	—	—	—
100 <i>Gt. South'n &amp; West'n 4 p c</i> ..	—	108½	—	—	—	106½
100 <i>Watf'd. &amp; C'tl Irel., 6 p c</i> ..	—	—	—	—	—	100
<b>Debtenture Stocks.</b>						
— <i>Belfast &amp; Nth'n Cos., 4 p c</i> ..	—	—	—	—	—	—
— <i>C'fergus and Larne 4 p c</i> ..	—	—	—	—	—	—
— <i>Cork and Bandon, 4 p c</i> ..	—	—	—	—	—	—
— <i>Do., 4½ p c</i> ..	—	—	110	—	—	—
— <i>Dublin &amp; Wicklow 4 p c</i> ..	105½	—	105½	—	—	—
— <i>Do., 4½ p c</i> ..	—	—	—	—	—	—
— <i>Gt. Northern (Ireland) 5 p c</i> ..	—	—	—	—	—	—
— <i>Do., 4 p c</i> ..	—	—	—	—	—	—
— <i>Gt. North'n &amp; West'n 4½ p c</i> ..	—	—	—	—	—	100½
— <i>Gt. South'n &amp; West'n. 4 p c</i> ..	109½	—	—	—	—	109½
<b>Miscellaneous Debit.</b>						
— <i>Alliance &amp; Cons. Gas, 4 p c</i> ..	—	—	—	—	—	—
— <i>Ballast Office Deb., 292 6s 2d, 4 p c</i> ..	—	—	—	—	—	—
— <i>City Deb. of 292 6s 2d, 4 p c</i> ..	—	—	—	92	—	—
— <i>Dub. &amp; Glas. S.P.Co. (1887) 5 p c</i> ..	—	—	—	98½	—	99
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BIRTHS, MARRIAGES, AND DEATHS.

BIRTHS.

JOYCE—February 23, at Great Charles-street, the wife of John Joyce, Esq., barrister-at-law, of a son.  
LE POER TRENCH—February 28, at Hatch-street, Dublin, the wife of P. N. Le Poer Trench, Esq., barrister-at-law, of a son.  
MARTIN—February 21, at The Mall, Ramelton, the wife of William Martin, Esq., Sessional Crown Solicitor, of a son.

MARRIAGES.

PURVIS and TRIMBLE—December 8, at St. Mary's Church, Farnell, Auckland, Frederick Arthur Purvis, Esq., barrister-at-law, of Tairanga and Kaitiaki, New Zealand, to Elizabeth, third daughter of William Trimble, Esq., late of Belfast, Ireland.

DEATHS.

WAUCHOB—January 14, at Buenos Ayres, South America, Daniel, son of the late Samuel Wauchob, and grandson of the late William Hamilton Roe, Esq., both solicitors of this city.

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# THE IRISH LAW TIMES AND SOLICITORS' JOURNAL.

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## PRESUMPTIONS OF LIFE, DEATH, AND SURVIVORSHIP.—I

THE subject on which we propose here to touch (in reference to which the latest decision is that of the Land Commission in *Gill v. Manly*, reported in our current issue), is one that has given rise to problems of the greatest intricacy, and cases of peculiar and even romantic interest, while the divergencies of the law of different countries cannot fail to attract the earnest attention of the comparative jurist. Something, too, may be found to say upon it that has not been already stated in the elaborate note to *Nepean v. Doe* in Smith's Leading Cases; and at all events, we do not propose to travel over the ground there occupied, but by reference to what is there said (to which we do not intend to advert) the reader may supply any deficiencies in our own treatment, which in some respects we advertently confine within a more limited scope, dealing chiefly with the most recent cases or with matters not elsewhere accessibly noted.

As regards presumptions in favour of the continuance of life, it was said of old by Stair, treating of the Scottish law, "Life is presumed. This some do extend to an hundred years of age, but others only to fourscore, which is confirmed by that of the Psalmist, that the age of man is threescore ten unless by strength of nature he come to fourscore. Hence it is that heirs cannot be served upon presumption of the death of their predecessor unless witnesses or fame concur, and hence also women may not marry in their husband's absence till that age." But, in 1871, we find Lord Deas thus referring to this theory: "The law undoubtedly holds that there is a presumption in favour of life, even although it is proved that a party has gone to a distant region and has not been heard of for a considerable period of years. This presumption admittedly ceases entirely at the end of a hundred years from the date of his birth. But there is no rule requiring that the hundred years shall actually have elapsed before it shall be inferred from facts and circumstances that the party is dead. The presumption of life is stronger or weaker during that century as more or less of the period has elapsed, and according as more or less time has elapsed since the party was heard of." Subsequent decisions introduced perhaps somewhat more relaxation, though still the Scottish judges were especially cautious in this matter: see *Stewart's Trustees v. Stewart*, 2 R. 488; *M'Lay v. Borland*, 3 R. 1124; but, now it is regulated by a special Act of Parliament: 44 & 45 Vict., c. 47. In England, too, it was once considered that there was a presumption that a person continues alive until the contrary be shown: *Wilson v. Hodge*, 2 East, 313. But in *Re Phene's Trusts* (L. R. 5 Ch. 150) the question whether there was any presumption of law that a person continued to live, arising upon proof of prior existence, was very fully discussed, and it was held that, whether in civil or criminal cases, the law makes no such presumption; and so, in *R. v. Lumley* (L. R. 1 C. C. R. 196) it was held that there was no presumption either way. This question was discussed in the American case of *Montgomery v. Bevens* (1 Sawyer, C. C. R. 666), where Field, J., after examining the English cases, said: "But the law as thus declared in

England is different from the law which obtains in this country, so far as it relates to the presumption of the continuance of life. Here, as in England, the law presumes that a person who has not been heard of for seven years is dead; but here the law, differing in this respect from the law of England, presumes that a party once shown to be alive continues alive until his death is proved, or the rule of law applies by which death is presumed to have occurred—that is, at the end of seven years. And the presumption of life is received in the absence of any countervailing testimony as conclusive of the fact, establishing it for the purpose of determining the rights of parties as fully as the most positive proof. The only exception to the operation of this presumption is when it conflicts with the presumption of innocence, in which case the latter prevails." The principle last mentioned was approved in another American case decided last August: *People v. Feilen*, 8 Pacific Coast L. J. 163, and is sustained by the English case of *R. v. Twynning*, 2 B. & Ald. 385; and see *R. v. Lumley, ubi supra*. The recent case of *R. v. Willshire* (6 Q. B. D. 366, 44 L. T. N. S. 222) is, also, an authority that those conflicting presumptions neutralise each other, and that in such case the question should be left to the jury as a naked matter of fact (and so, see Bishop on Stat. Crimes, s. 611); but, there we find some expressions of Coleridge, C.J., in favour of holding that from proof of the existence of life its continuance may be presumed. In that case it appeared that in 1864 W. married A. In 1868 he was convicted of bigamy for marrying B., A. being then alive. In 1879 he married C., and in 1880, C. being then alive, he married D. On a charge of bigamy against this much-married man, for marrying D., C. being then alive, whereupon he set up the defence that A. was alive when he married C., it was held that the question should have been left to the jury whether A. was not alive when he married C., as, if so, the marriage with C. would be invalid. The prisoner had set up a life in 1868, which, said the learned judge, "must be presumed to be continuing in 1879, no evidence of any kind being given, but it being shown simply that the woman was alive in 1868. . . . The prisoner was not bound to do more than set up the life in 1868, which would be presumed to continue, and it was then for the prosecution to show by evidence that that presumption was rebutted." And see *Re Corbishley's Trusts* (14 Ch. D. 846, 49 L. J. Ch. 266), holding that, where a *cestui que trust*, who takes a vested interest under a settlement, has not been heard of since a period prior to the date of the settlement, the presumption is that he was alive at that date. Nor can we quarrel with Mr. Litton's judgment in *Gill v. Manly* (16 Ir. L. T. Rep. 57), when in reference to the alleged death of a *cestui que vie* who, if alive, would be only about sixty years of age, he considered it quite within the probabilities of human existence that the person in question might still be alive and well, and that there should be stronger evidence of his death than the mere fact of his absence from the country without being heard of: cf. *In re Webb's Estate*, Ir. R. 5 Eq. 235. In the Scottish case of *Master and Seamen of Dundee v. Cockerill* (8 M. 278) a seaman turned up after an absence of sixteen years, and had the pleasure of being ordered to refund considerable payments which had been made by a

charitable society to his wife *qua* widow; and it is not long since our pages were occupied with a romantic case in which administration on the estate of a living person had been granted: 15 Ir. L. T. 20; the law on which subject has been ably treated in a recent number of the *American Law Review* (Vol. I., N. S. 337); and not without reason is it held that a grant of administration is not sufficient proof of death: *Re Beamish*, 9 W. R. 475; *Wms. Ex'rs. In Ommaney v. Stilwell*, 23 Beav. 328, it was held to have been shown that a person who sailed with Sir John Franklin in 1845 was alive in 1850; and in 1858 the Franklin expedition gave rise to another curious case, in Scotland, on the subject of the presumption of life, *Fairholme v. Fairholme's Trustees* (20 D. 813), where the Lord Justice-Clerk observed: "There have been at different times cases of very great interest as to the fate of persons who have gone on foreign expeditions, and great difficulties have arisen in regard to the evidence of death; but this case possesses a most peculiar interest. It is impossible for us not to feel that it has this character to an extent which no other case on record possesses, and it is curious that the best and most authentic, and indeed the only connected evidence as to the fate of the Franklin expedition is that which is afforded by the proof in this case, which would form, if published, a most deeply interesting pamphlet." It was there held that the survivors of that expedition had perished in or about the spring of 1850; while in *Ommaney's* case it had been held that one of them was still alive then. But, as we have no ambition to write a deeply interesting pamphlet, we shall pass on to the next branch of our subject.

#### THE BALLOT ACTS.

The modifications which the Government proposes to make in the Ballot Acts in rendering them permanent are set forth in Sir Charles Dilke's Bill, which was issued on Wednesday. This measure is for the most part the same as last year's, the alterations being but few. One of the matters dealt with is the extension of the hours of polling. The local authority, which can divide a borough into polling districts, is empowered to direct that at Parliamentary elections there the poll shall be kept open until 8 in the evening. And if after some experience the prolongation of the hours appears to be inexpedient, authority is similarly given to revoke the direction. An appeal, however, is allowed from the local authority to the Privy Council. Votes are often lost through the "directions" given in the Ballot Act of 1872 for the guidance of voters not being explicitly followed. Accordingly, the Bill provides that a ballot paper shall not be invalidated by a departure from the directions, where the returning officer is satisfied that it does not enable the vote to be identified, and was not intended to have that effect, and that the paper shown for whom the vote was intended. After a ballot paper has been marked, any display of it, so as to make known the candidate voted for, is to invalidate it in case of a petition, and to render the elector liable to a fine of £5. Trifling informalities in a nomination paper are made curable by amending it under certain restrictions. Some change, also, is made in the mode of procedure at the counting of the votes. One of the new provisions of this year's Bill is that the ballot papers shall be of such material and colour and so printed as to secure both secrecy and the observance of the Ballot Acts with respect to the ascertaining by an election Court of the votes given by any person. Moreover, the returning officer is required to send to the Secretary of State a tabular form showing the numbers of (1) the ballot papers rejected for various reasons; (2) the voters on the register; (3) the ballot papers delivered; (4) the papers taken out of the boxes; (5) the counterfeit papers taken out; (6) the votes counted; and (7) the votes marked by the presiding officers. A

provision with regard to polling stations is that in every county or borough there must be at least one polling station for every 500 electors. An Act of 1847 requires all soldiers, within two miles of the place, where a nomination or election of a member of Parliament is being taken or a poll declared, to be confined throughout the day to their barracks or quarters. It is proposed to repeal so much of this Act as relates to the day of nomination. Sir Charles Dilke's measure contains several special provisions with regard to its application to Scotland and Ireland.

#### TOWN-PARKS.

In the House of Commons, on the 3rd instant,

Mr. O'CONNOR POWELL asked the Attorney-General for Ireland whether he would inform the House on what principle certain lands were held to be town-parks under the Land Law Act, thereby excluding the tenants of those lands from the benefits of that measure; whether it was possible in defining a town-park to determine what was a town; whether lands adjacent to villages or small places having no town Board or other local public authority, and with a population of less than 3,000 persons ought to be included in the category of town-parks; and whether the Government intended to propose any amendment of the Land Law Act for the purpose of removing the uncertainty in which the law in respect of this matter was involved.

The ATTORNEY-GENERAL for Ireland.—In reply to the first inquiry in this question, four conditions must be fulfilled in order that a holding should be a town-park within the second sub-section of the 58th section of the Land Act of 1881:—(1) It must be what is ordinarily termed a town-park. (2) It must adjoin or be near a city or town. (3) It must bear an increased value as accommodation land above its ordinary letting value if occupied as a farm. (4) It must be occupied by a person residing in the city or town or its suburbs for the accommodation of his residence there. In reply to the second inquiry, what constitutes a town within the Act is a circumstance to be determined by the facts of each case, and I doubt whether a hard-and-fast definition would not be open to considerable difficulty. In reply to the third inquiry, if the town is under commissioners or other municipal body, there is no difficulty in concluding that it is a town within the Act, but calling a place a town will not make it a town; and, as a general rule, I should say that holdings adjoining or near villages or small places are not town-parks within the Act. As a matter of opinion merely, I should doubt the prudence of a statutory definition that no place is a town if its population does not exceed 2,999, which is, I take it, the gist of this inquiry. As to the last inquiry, it is a matter of policy, and should be addressed to the Prime Minister, but so far as I have seen, the Act is working smoothly in this respect. The small holdings adjoining the City of Limerick, some of which are within the borough boundary, were held not to be town-parks, because they did not answer the whole four conditions I have mentioned; and in another place the attempt to turn a village into a town by getting up a market or fair, so as to call the adjoining holdings town-parks and exclude them from the Act, was rejected by the Sub-Commissioners, who held that by such contrivance the place did not become a town or the holdings town-parks.

#### SERVICE OUT OF THE JURISDICTION.

The practice in obtaining leave for the service of writs out of the jurisdiction has been the subject of difference of opinion on the bench; the Chancery practice differed from that at common law; the Judicature Rules applying both to Chancery and common law cannot be said to be very clearly drafted; and considerable dissatisfaction has recently been expressed in Scotland at the working of the rules in reference to persons residing in that country. The case of *Forster v.*

*Barrow*, decided by the Court of Appeal, and reported in the February number of the *Law Journal Reports*, throws much light on the subject, and demands attentive reading. The writ in the action claimed £3,000 damages for misrepresentation, in respect of a Welsh coal mine, by the defendant, jointly with two others who were sued in a separate action. Leave to serve the writ in Scotland was given on the strength of an affidavit of the plaintiff to the effect that he was induced to buy a share in the mine by the misrepresentation of the defendant and the two others, and that all the negotiations in respect of the mine took place in London. The defendant entered what is described as "a conditional appearance," and applied to have the order for service rescinded, making an affidavit that he received none of the plaintiff's money, that he had no negotiations with him, and that he did not see him in London at the time of the sale. The plaintiff filed an affidavit in reply not denying the defendant's allegations but suggesting that the other two persons were the defendant's agents. It was not contended that, if the defendant's affidavit was admissible, the order for service could stand; on the other hand, it was not clear that, if standing alone, the plaintiff's affidavit would not be sufficient. Lord Justice Baggallay, notwithstanding the very great vagueness and circuitry of its terms, expressed the opinion that it would be sufficient. Upon the motion to rescind the order made before Mr. Justice Chitty, it was not contended that the affidavit of the defendant could be read, the case of *The Great Australian Gold Mining Company v. Martin*, 46 Law J. Rep. Chanc. 289, being considered—very insufficiently, as we think—conclusive on that point. The defendant's affidavit was, however, tendered in the Court of Appeal, and the point was taken that under Order XI, Rule 3, it was necessary that the plaintiff's affidavit should state whether the defendant was a British subject, and pledge itself to the existence of a cause of action within the jurisdiction. The Court of Appeal overruled these minor points; but on the main question held that the defendant's affidavit could be read, and, therefore, rescinded the order.

The difficulties under Order XI, Rule 3, arise from the defective drafting of that rule. The Master of the Rolls, although admitting his personal responsibility in the matter, is constrained to confess that "Rule 3 is not so carefully framed as it might be." It says: "Every application for an order for leave to serve such writ or notice on a defendant out of the jurisdiction shall be supported by evidence by affidavit or otherwise, showing in what place or country such defendant is or probably may be found, and whether such defendant is a British subject or not, and the grounds upon which the application is made." The country in which the defendant is expected to be found is material to every application for service out of the jurisdiction, because the time allowed for appearance must be regulated according to the defendant's distance from England. But whether the defendant is, or is not, a British subject, is only material where service is proposed out of the Queen's dominions. Within the Queen's dominions the Queen's writ runs whether to a subject or a foreigner; but, outside the Queen's dominions, although a subject would be served with a writ, a foreigner would only be served with a notice of a writ, in order to avoid an affront to the country in which he is. The bad drafting of the rule might give rise to the question whether a foreigner in Scotland ought not to be served with a notice, instead of a writ; but the present case allays any doubts on that subject. A foreigner in Scotland will be served with the writ in the same way as a Scotchman. With regard to the form of the affidavit, it is now held by the Court of Appeal that matters immaterial to the application need not be inserted, although Rule 3 requires their insertion. In fact, the terms of Rule 3 requiring a statement of the nationality of the defendant are not imperative in the case of a foreigner within the Queen's dominions or a subject abroad. With regard to the more general question whether the defendant on appearing may move

on affidavits to rescind the order allowing service abroad, the defendant seems to have been too diffident. *The Great Australian Mining Company v. Martin*, on examination, will be found not to decide that an affidavit by the defendant is not admissible. Lord Justice Baggallay, indeed, seems to have been of opinion that the plaintiff in his affidavit was not bound by the words of the rule—"the grounds upon which the application is made"—to depose to facts showing a cause of action within the jurisdiction; but he was overruled by Lords Justices James and Bramwell. The defendant's affidavit was, in fact, admitted and considered, although the plaintiff's affidavit in reply was eventually held to show sufficient ground for the service of the writ. Moreover, in *Foley v. Maillardet*, 33 Law J. Rep. Chanc. 335, Lord Westbury decided that, according to the old Chancery practice, such an affidavit was admissible. The course open to the defendant who is served with a writ out of the jurisdiction, and who contends that no cause of action arose within the jurisdiction, is to appear and apply to rescind the order for service. The case refers to a conditional appearance; but no such modified appearance is, we believe, to be found in the rules. Whether, in case of conflict between the affidavits of the plaintiff and the defendant, the judge will decide as best he can, is a question of some difficulty. At the time when *The Great Australian Gold Mining Company v. Martin* was decided, the judges seemed inclined to allow the action to proceed when the affidavits were conflicting. Already, however, a change in the view taken is apparent. The Master of the Rolls, in the case before us, says that "it is not the proper time to try the merits of the action; it is the proper time to try whether the action shall be heard in England." But Lord Justice Baggallay says that "the affidavit of the defendant distinctly shows that there was no jurisdiction to make the original order;" and Lord Justice Lush says that "the defendant has clearly shown that a cause of action, so far as he is concerned, did not occur within the jurisdiction." When a defendant is not so fortunate, and can only deny the plaintiff's allegations, it is not at all clear that the judges will try the preliminary question on affidavits, or how they can satisfactorily do so. Even if the plaintiff does not show a cause of action within the jurisdiction on his statement of claim, the defendant cannot demur, as was held in *Preston v. Lamont*, 45 Law J. Rep. Exch. 797. If, therefore, he cannot show, beyond contradiction, that no cause of action arose in England, he seems bound to wait until the trial, when even if it turns out that there was no such cause of action, and that he ought not to have been sued in England at all, he will find judgment go against him.

With regard to the question between the Courts on this side the Tweed and on the other, the Master of the Rolls has another confession to make. Rule 1a of Order XI was passed on the complaints made across the border that Scotchmen were unjustly sued in English Courts. But it only applies to actions of contract. The Master of the Rolls explains that the complaint was only made in reference to such actions; but there is no reason whatever in principle why the rule should be so confined. The general question whether Scotchmen ought to be liable to be served in Scotland with English writs is a question of reciprocity. At present, an Englishman having property in Scotland, however small, by a sort of process of foreign attachment is liable to be sued in the Scotch Courts. No writ need be served, and the Englishman perhaps hears nothing of the proceeding until he finds the judgment registered in England, and execution issued upon it. The Scotch law on the subject is based on the accident of the Englishman having property across the border, while the English law is based on a principle which is perfectly fair for both. The place where the cause of action arises is the only just test. If an Englishman goes to reside in Edinburgh and runs into debt, it is hard on his Scotch creditors if they are bound to sue in England, whither their debtor may have removed himself. Englishmen would not object to an Act of Parliament

passed for England and Scotland, and applying the test of the place where the cause of action arose to the jurisdiction of the Courts of both countries. Provision might be made, at the same time, for trying the question, if disputed, by means of an issue, before further expense is incurred.—*Law Journal*.

### CONSPIRACY.

The law of conspiracy has received its most recent definition in the judgment of Lord Justice Brett, in *Reg. v. Aspinall* (L. Rep. 2 Q. B. Div. 59)—viz., "An agreement to accomplish an end forbidden by law, though by means which would be harmless if used to accomplish an unforbidden end, is a criminal conspiracy. An agreement to accomplish, by means which are if done by themselves forbidden by law, an end which is harmless if accomplished by unforbidden means, is a criminal conspiracy. An agreement made with a fraudulent or wicked mind to do that which, if done, would give to the prosecutor a right of suit founded on fraud, or on violence exercised on or towards him, is a criminal conspiracy." Now it is not an offence to obtain by false pretences any chattel which is not the subject of larceny at common law; thus: A dog not being the subject of larceny at common law it was decided in *Reg. v. Robinson* (Bell C. C. 34) that an indictment charging the prisoner with obtaining two pointers, worth £5 each, by false pretences, could not be sustained, as a dog was not a chattel within the meaning of the Act.

A conspiracy to obtain a dog by false pretences is, however, undoubtedly an indictable offence, but a question arose at the Middlesex Sessions on Wednesday, the 15th ult., before Mr. Prentice, Q.C., whether it was a conspiracy which a court of quarter sessions had jurisdiction to try. By 5 & 6 Vict., c. 38, it is enacted that, after the passing of that Act, neither the justices of the peace acting in and for any county, riding, division, or liberty, nor the recorder of any borough, shall at any session of the peace or any adjournment thereof, try any person or persons for any treason, murder, or capital felony, &c., or any unlawful combinations or conspiracies, except conspiracies and combinations to commit any offence which such justices or recorder respectively have or has jurisdiction to try when committed by one person. It was argued that the jurisdiction of quarter sessions was limited to indictable offences, and that it would be their duty to quash any indictment presented by a grand jury which disclosed upon the face of it no offence, or an offence punishable only on summary conviction, and that, as it was conceded that to obtain a dog by false pretences was not an indictable offence, the court would have no jurisdiction to try such an offence, and that it followed by the expressed words of the statute that they were precluded from trying a conspiracy to commit that offence. On the other hand, it was contended that, though it was quite true the court would quash a count in an indictment alleging an obtaining of a dog by false pretences, they would do so not by reason of any want of jurisdiction, but because it disclosed no offence in law, and that it was therefore an apparent fallacy to argue they had no jurisdiction to try the conspiracy. Mr. Prentice said he entertained great doubt on the point, and that he should avail himself of the provisions of 4 & 5 Will. 4, c. 36, s. 16, and remit the case to the Central Criminal Court.

In the same case counsel moved to quash two other counts on the ground that they were too general, simply alleging a conspiracy "to cheat and defraud" the prosecutor, and to "injure and prejudice" him, without going on to allege the object of the conspiracy. Now counts such as these, though good after verdict, are, in our opinion, clearly bad, if the objection be taken before plea pleaded. The rule with regard to the effect to be given to pleadings after verdict is thus stated in *Heyman v. Reg.* (L. Rep. 8 Q. B. 102): "Where an averment is imperfectly stated, and the verdict on an issue involving that averment is found, if it appears to the court after

verdict that the verdict could not have been found on this issue without proof of this averment, then, after verdict, the defective averment, which might have been had on demurrer, is cured by the verdict." The rule is not applicable to the case of the total omission of an essential averment, and if there be such a total omission the verdict is no cure.

Now a count in an indictment for conspiracy which merely avers that the defendants conspired to "cheat" the prosecutor of his goods or moneys, or "by divers false pretences conspired to cheat and defraud" him of his goods or moneys is certainly good, but the object of the conspiracy must be generally stated. The leading case is *Reg. v. Gill* (2 B. & Ald. 204), in which an indictment was sustained which merely charged the defendants with conspiracy "by divers false pretences and subtle means and devices to obtain and to acquire to themselves of and from A. B. and C. D. divers large sums of money, of the respective moneys of the said A. B. and C. D., and to cheat and defraud them respectively thereof." It seemed at first as if the court desired to distinguish between cases where the object of the conspiracy was an offence *per se* indictable, and a conspiracy to commit an Act not indictable, and to lay down the rule that in the former case the means need not be set out, but in the latter class of cases they must be: (see *Reg. v. Biers*, 1 Ad. & El. 327). In *Reg. v. King* (7 Ad. & El. 721) the principle that it is unnecessary to set out the means by which the conspiracy was to be carried out was broadly affirmed to be good by several judges. Mr. Justice Holroyd said, "The conspiracy is the offence, and it is quite sufficient to state only the act of conspiring and the object of the conspiracy in the indictment."

In the year 1848 an indictment was sustained in the Exchequer Chamber (*Reg. v. Sydsorf*, 11 Q. B. 245) which merely averred that the defendants "unlawfully, fraudulently, and deceitfully did conspire, combine, confederate, and agree together to cheat and defraud A. B. of his goods and chattels." Chief Justice Wilde said: "The case of *Reg. v. Biers* has been relied upon as supporting the objection, and as overruling *Reg. v. Gill*, from which we think the present case is not distinguishable. But upon referring to the judgment in *Reg. v. Biers*, there appears strong reason to doubt whether it did not go wholly on the one objection to the special counts. Neither *Reg. v. Gill*, nor any other authority at all bearing on the point was referred to in the judgment; and it appears distinctly from the recent case of *Reg. v. Gompertz* (9 Ad. & El. 824) that *Reg. v. Biers* has never been considered by the Court of Queen's Bench as overruling *Reg. v. Gill*. We are therefore of opinion that this count is good."

In *Reg. v. Aspinall* the principle of criminal pleading which we have endeavoured to explain was again formally decided to be the true principle, and the decision in *Reg. v. Gill* affirmed, the case coming before the Queen's Bench on a writ of error.—*Law Times*.

### THE WORK OF THE LAND COMMISSION.

A Parliamentary return of one page shows that up to the 24th of February 72,408 applications had been made to the Land Court to fix fair rent, and 2,180 agreements to fix fair rents. The total number of judicial rents fixed and agreed upon was 5,336. The applications to have leases declared void amounted to 1,424, but only 33 have been declared void, while 188 applications have been dismissed, and 219 withdrawn or compromised. 704 appeals with respect to fair rent have been lodged, and 56 appeals disposed of, the rest having been reserved to await the decision of the Appeal Court in the case of *Adams v. Dunseath*, 16 Ir. L. T. Rep. 16.

### DEATH SENTENCES AND EXECUTIONS.

A Parliamentary return, issued on 25th ult., shows that in the 20 years previous to and including 1880, 512 persons were sentenced to death in England and Wales, of whom 279 were executed, and 194 sent into penal servitude for life.

## NOTES OF CASES.

## HIGH COURT OF JUSTICE.

## CHANCERY DIVISION.

(Before FLANAGAN, J.)

CHRISTIE v. FARR and CORKIN.

Feb. 13, 1882.—*Vendor and Purchaser—Notice of prior charge—Letter stating prior charge “useless”—Registration—Priority.*

In this case it appeared that, in Oct., 1867, Hiram Farr, became tenant of the premises in question, consisting of a mill at Cramlin, in the county Antrim, under Mr. Pakenham, by agreement for a lease for twenty years. On the 8th of March, 1876, he deposited that agreement with the plaintiff to secure him against loss on a guarantee of £500, on which £250 remains still due. At the time of this deposit a memorandum was given, but was never registered. On 13th April, 1881, Mr. Farr agreed to sell the mill to Mr. Corkin for £165, and that agreement was registered on 23rd June, 1881. The County Court judge had made a decree declaring the mill liable on Christie's equitable mortgage. From this decree Corkin appealed, alleging that he was a purchaser for value without notice.

*Campion, Q.C., and W. F. Kane, for the appellant.  
Jackson, Q.C., and W. Long, contra.*

*Judgment reserved.*

FLANAGAN, J., in delivering judgment, said that the law on the question was that, where there was express notice to a purchaser, he was not entitled to priority by registration. The notice, no doubt must be clear and precise, and brought home to the party by indisputable evidence. The question in the present case was whether the evidence sustained the conclusion of the County Court judge, and he (Judge Flanagan) had no hesitation in affirming the decree. Mr. Corkin's own evidence was that “he was told there was a letter, but that it was useless.” The case had been ably argued by Mr. Kane, who argued that the qualifying words, namely, “that the letter was useless” took away the effect of the notice, but his lordship held that the notice was sufficient, and affirmed the decree.

## QUEEN'S BENCH DIVISION.

(Before MAY, C.J., FITZGERALD and BARRY, J.J.)

EARL OF RANFURLY v. DICKSON.

Feb. 21, 1882.—*Practice—Transfer of action—Action to recover land on title—Counter-claim for specific performance of lease—Jud. Act, ss. 35, 36, 37, 38—O. L., r. 3.*

Motion, on behalf of the defendant, to transfer the action to the Chancery Division. The action was one of ejectment, to recover possession of a plot of ground and houses in Dunganon, and was founded on a notice to quit, which had been served previous to the 1st May last, the tenancy having expired on the 1st November, 1881, as the plaintiff alleged. The defendant alleged that he held the lands and premises under an agreement for a lease for twenty-one years from November, 1867, which would only expire on the 1st November, 1888; and he had delivered a statement of defence, and counter-claim, accordingly, by the latter claiming specific performance of the agreement.

*Cuming, in support of the motion, submitted that the questions involved were more suitable for decision in the Chancery Division—where the terms of the lease could be settled—than at common law.*

*Holmes, Q.C., contra.—It is alleged that the agreement for the lease was made by Mr. Dickson with the agent of Lord Ranfurly, but the agent could not make an agreement for a lease on his behalf, as the present Lord Ranfurly was at the time a minor.*

[MAY, C.J.—The issue is whether the agent had

power to enter into an agreement for a lease on behalf of Lord Ranfurly, who was at the time a minor.] That is substantially the question.

[FITZGERALD, J.—I think we could try that here. MAY, C.J.—At the time the agreement was alleged to have been made in 1867 the brother of the present earl held the title?]

Yes, and the present earl was then a boy at Eton, at the time the alleged agreement was made. The effect of granting the application, and probably the object in making it, would be to deprive Lord Ranfurly of a trial within a reasonable time; for if the case were sent into the Court of Chancery, it would probably not be decided for twelve months. The judges of this Division are in the habit of having infinitely more complex questions decided before juries every day in the week. If Mr. Dickson was anxious to go into the Court of Chancery, he had six months' notice that it was the intention of Lord Ranfurly to eject him. However, he took no step, and, accordingly, on the 18th November, after the notice to quit expired, the ejectment was served. There was no promise on the part of the present Earl of Ranfurly to grant a lease, for he was then only sixteen years of age, and Mr. Bowen was not acting as agent at the time for Lord Ranfurly at all, but simply for the testamentary guardians.

[MAY, C.J.—Who were the parties to this alleged agreement?]

Colonel the Hon. William S. Knox and Mr. Henry Alexander, the testamentary guardians; but the agreement they were parties to was that the defendant should hold these premises in Dunganon up to the 1st day of November following the date at which the present earl should attain age. There was no absolute agreement for a lease for 21 years, and it was not proved that any other agreement was made. The question involved is simply a question of fact to be decided by a jury, and the plaintiff, if it be not sent into the Court of Chancery, would have a speedy trial.

[MAY, C.J.—The testamentary guardians would have no power to grant a lease beyond the expiration of the minority of the present earl.]

And that is substantially the question to be tried. No doubt the document contained a paragraph to the effect that the grantors (the guardians) would then advise Lord Ranfurly to give a lease for a term of 20 years, but that had not been done; and Mr. Dickson, treated like a tenant from year to year, had been served with the necessary legal process to determine his tenancy. The question in the case is thus a very simple one and would most fitly be tried by jury.

*Cuming, in reply.—The question is not raised directly whether Colonel the Hon. W. S. Knox and Henry Alexander, the testamentary guardians of Lord Ranfurly, had power to enter into the agreement or not; but the question is, whether it was not the Earl of Ranfurly himself who entered into the agreement. Mr. Dickson had expended large sums in improving and repairing the property on the faith of the agreement for a lease, and had paid the rent at the amount fixed on the faith of an agreement for a lease, and he alleged that agreement was recognised by the then Earl of Ranfurly and the present earl. It is a question for a court of equity whether there was power on the part of the testamentary guardians of Lord Ranfurly to make an agreement for a lease, and whether that power had been ratified and confirmed from 1867 up to the present date by the then Earl of Ranfurly and the present earl. The landlord had in his possession the original agreement and the duplicates until the other day; and it was not until the present year, after recent events, that notice to quit was served on the defendant.*

MAY, C.J.—We are unanimously of opinion that we should not make any order transferring the case to the Chancery Division, as it is simply a matter of fact that is to be tried. The agreement entered into by the testamentary guardians with the defendant was an agreement that he should remain in possession until the present Earl of Ranfurly attained his majority, and a promise that they would recommend Lord Ranfurly to give a

lease; but it did not appear that Lord Ranfurly ever did anything of the kind. The defendant repaired the premises, and expended money on them; but he did so under an agreement which gave him no absolute interest after the termination of the minority of Lord Ranfurly. There is nothing in the case necessitating its being sent to a court of equity. We must, therefore, refuse the motion—costs of both parties to be costs in the cause.

[*Cf. Diver v. Black*, 12 Ir. L. T. 183, 309.—E. N. B., *Ed.*]

**EXCHEQUER DIVISION.**  
(Before PALLER, C.B.)  
**QUALLEY v. DWYER.**

Jan. 9, 1882.—*Practice—Summary Procedure in Bills of Exchange Act—Action not brought within six months—Amendment of writ of summons—Promissory Note, what constitutes.*

Motion, on behalf of the defendant, to set aside the writ of summons in this action as irregular and void, on the ground that it was brought under the Summary Procedure on Bills of Exchange Act, and that the document on which the action was brought was not a bill of exchange, nor had the action been brought within the period of six months required by the Act. The document, dated Ennistymon, 23rd April, 1881, was as follows: "On demand I promise to pay Mary Gallagher or her order the sum of £75 sterling on her giving up possession of the room which she now occupies."

*J. Roche*, in support of the motion, submitted that the document did not constitute a promissory note at all within the meaning of the Act of Parliament; and also objected that the document being payable on demand, the six months' time allowed by the Act must be taken to commence from its date, 23rd April, 1881, and that therefore the action was late.

*O'Hea*, *contra*, conceded that the second point was fatal, but asked for leave to amend the writ.

PALLER, C.B., made an order giving liberty to the plaintiffs to amend the writ by striking out the notice under 24 & 25 Vic., cap. 43, or otherwise as they might be advised—service of the amended writ upon the defendant's attorney to be good service upon the defendant, and plaintiffs to pay the costs of the motion.

**COURT OF BANKRUPTCY.**  
(Before MILLER, J.)

*In re MARTIN.*

Jan. 10, 1882.—*Land Law Act, 1881, s. 1 (14)—Rule 87—Sale of bankrupt's interest in tenancy—Leave to apply to Land Commission—Practice.*

The bankrupt had held a farm near the town of Kilkeel, county Down; and after he had been examined in reference to his assets,

*Carton*, Q.C., on behalf of the assignees, asked for liberty to apply to the Land Commission Court to sell the tenant-right interest, as that was now necessary under the Land Law Act, 1881, s. 1 (14), and Rule 87, which provided that, where the sale of the tenant's interest was to take place under the assignees in bankruptcy, notice should be given to the landlord of the intended sale, and that then application should be made to the Land Commission Court for liberty to sell according to the provisions of the Land Law Act, in order to have the value ascertained.

[MILLER, J.—Then the Land Commission Court is the court to ascertain the value of the farm?]

That is so, and the landlord is entitled, in the first instance, under the Act to get the option of buying or selling.

*Mr. Scallan*, solicitor, on behalf of the bankrupt.

MILLER, J., gave the necessary permission.

**ADMISSION OF A SOLICITOR.**

Mr. Charles Roulston, B.A., T.C.D., eldest son of Mr. Daniel Roulston, of Derry, has been admitted a solicitor of the Court of Judicature. Mr. Roulston, who took a high place at the recent examination of Solicitors' Apprentices, and whose career as a student in Trinity College, Dublin, was most creditable, was apprenticed to Mr. Forrest Reid, Sessional Crown Solicitor for Londonderry.

**REVIEWS.**

*A List of Judicial Rents, with Summary, Tables, and Index.* Compiled by CHARLES EASON, Junr. Dublin: W. H. Smith & Son.

In the absence of any defined general principles expressed by the Land Sub-Commissions, on the subject of what exact criterions should be taken into consideration in fixing judicial rents, it has been rendered rather more difficult than it might have been for the parties to effect settlements out of court on any common and recognised basis. Something more assured than a mere rough guess, however, as to what would probably be the result of insisting on a judicial determination in particular cases, may be arrived at by computing general averages, and seeing what as a rule has been the ratio of the rents already fixed by the Commissioners. In this point of view it seems to us that the tabulated returns now compiled by Mr. Charles Eason, jun., ought to prove essentially serviceable, and may tend to lead to a larger number of arrangements out of court; while, apart from this practical object, those returns undoubtedly possess extreme interest as showing the actual effect of the administration of the Land Law Act. If at all inaccurate, it need hardly be said they would be worse than useless. And in noticing the Table of Judicial Rents published in Eason's Almanac (see *ante*, p. 51), it happens that we detected some errors therein in reference to the three holdings which were the subject of decision in *Dunne v. Clarke and Birmingham v. Clarke* (15 Ir. L. T. Rep. 123), as to which Mr. Eason's statement, as well as the newspapers, differed from our report. Mr. Eason has now, however, revised his figures by the Official Return, and it is gratifying to observe that the result in this instance is to establish the entire accuracy of our report. As now published, Mr. Eason's tabulated List of the Judicial Rents fixed by the Sub-Commissions, having been corrected by comparison with the Official Return, is entirely reliable; and it only remains to say that the manner in which he has arranged and summarised his figures not only bespeaks the most intelligent supervision on his part, but cannot fail to conduce to their general utility. Mr. Eason has exhibited a creditable spirit of enterprise, and his classified records—under date and place, with name of landlord and tenant, area, valuation, former rent, and judicial rent—constitute a work of substantial and permanent value.

**APPOINTMENTS AND PROMOTIONS.**

NOTE BENE.—Information intended for publication under the above heading should reach us not later than Friday morning in each week, as publication is otherwise delayed.

The following gentlemen have been appointed Commissioners for taking Oaths:—Messrs. Chas. Fitzgerald, solicitor, Clonmel; Wm. F. St. Leger, solicitor, Fermoy; James Harvey, solicitor and barrister, Invercargill, New Zealand; William Mitchell, petty sessions clerk, Castle Dawson, near Derry; John Lowry, petty sessions clerk, Moville, Donegal; Patrick J. Sheehan, Mallow, County Cork; Joseph Charles Higgins, seed merchant, Clonmel; John R. Toomey, Arklow; Edward D. Elmes, chemist, Carrickmacross.

LIST OF SHERIFFS FOR 1882.

Counties	High Sheriffs	Sub-sheriffs	Returning Officers
ANTRIM	Anthony Trall, LL.D., Ballylough, Bushmills	Henry Haigh Bottomley, Belfast	William M. Moore, 8 Angelsea-street
ARMAGH	James Malcolm, Lurgan	William H. D. Moore, 1 College-st., Dublin, and Lurgan	William Hardy, 42 Mountjoy-square, South
CARLOW	Robert French Brewster, 26 Merrion-square, S., Dublin	Edward Leonard Jameson, Hermitage, Carlow	Charles N. Jameson, 182 Great Brunswick-street
CARRICKFERGUS TOWN	James J. Reid, The Barn, Carrickfergus	Robert Kelly, Junior, Donegal-street, Belfast	Henry T. Stewart, 33 Lower Ormond-quay
CAVAN	Captain W. M. Leslie, Corroneary House, Ballisboro'	John M. J. Townley, Clonerry, Cavan	Burton Booth, 38 Gardiner's-place
CLARE	H. H. Wilson Fitzgerald, Adelphi, Corofin	Charles Gabbett Mahon, Ennis	John Cullinan, 61 Blessington-street
CORK	Sir James L. Cotter, Bart., Sunny Hill, Mallow	John Gale, Panorama-terrace, Cork	Richard H. M. Orpen, 33 Angelsea-street
— City	Daniel Vincent O'Sullivan, 1 Adelaide-place, Cork	William Bryan Galloway, South Mall, Cork	Henry A. Coffey, 28 Westland-row
DONEGAL	William Hart, Kilberry	John Smyth M'Cay, Letterkeany	George C. Leil, 43 Dame-street
DOWS	Colonel Andrew Nugent, D.L., Portaferry	Hugh Cunningham Kelly, Ballymacarrett, Belfast	Henry T. Stewart, 33 Lower Ormond-quay
DROGHEDA TOWN	Alderman Thomas Connolly, Bull Ring, Drogheda	Frederick M'Cay, No. 6 Laurence-st., Drogheda	John T. Simpson, 25 Westmoreland-street
DUBLIN	Joseph Wilson, Westbury, Stillorgan	William Ormsby, 2 Morgan-place	William Ormsby, 2 Morgan-place
— City	E. D. Gray, M.P., Pembroke House, Up. Mount-st.	James Campbell, 8 Inns-quay	James Campbell, 8 Inns-quay
FERRMAGH	Thomas Teevan, Race View, Enniskillen	Luke Patrick Knight, Abbey Lodge, Maguire's Bridge	George Knight, 14 North Great George's-street
GALWAY	James Blake, Cregg Castle, Drumgriffin	John Redington, Prospect Hill, Galway	Samuel P. Redington, 32 Rutland-square
— Town	Algarnon H. Perese, Boxborough Loughrea	John Redington, Prospect Hill, Galway	Samuel P. Redington, 32 Rutland-square
KERRY	Falkner Colles Sandes, Tiernacree, Tarbert	William Harnett, Tralee	William Sterne, 19 Parliament-street
KILDARE	Thomas F. Cooke-Trench, Millecote, Naas	Henry A. Lee, 2 Inns-quay, Dublin	Henry A. Lee, 2 Inns-quay
KILKENNY	Chambre E. Ponsonby, Kilcooley Abbey, Thurles	Peter M'Dermott, Kilkenny	Purgoy Poe, 2 Clare-street
— City			
KING'S COUNTY	Henry Vincent Jackson, Inane House, Roscrea	Robert Whelan, Tullamore	Andrew E. Johnston, 3 Palace-street
LEITRIM	Thomas Robert Palmer, Glasdrummon, Drunkkeerin	Arthur Harrison, Drumlummon, Carrick-on-Shannon	Arthur Ellis, 7 Great Denmark-street
LIMERICK	Robert De Ross Rose, Ardhuc House, Limerick	Frederick St. Clair Hobson, Limerick	William D'Alton, 11 Stephen's-green, North
— City	William Boyd, Westfield, Limerick	Charles Henry Fitt, George-street, Limerick	John Barry, 13 Lower Ormond-quay
LONDONDERRY	A. J. S. C. Chichester, Moyola Park, Castledawson	Thomas Chambers, Londonderry	William M. Lane, 31 College-green
LONGFORD	Edward More O'Ferrall, Lisard, Edgeworthstown	Charles Webb, Creavaghmore, Ballymahon	James Wilson, 2 Upper Gloucester-street
LOUTH	Arthur Macan, Drumcassel, Castleblinham,	John Cornwall Balfie, Dundalk	Burton Booth, 33 Gardiner's-place
MAYO	R. Rutledge-Fair, Cornfield, Hollymount, Co. Down	Thomas Fair Rutledge, Hollymount	Messrs. Whitney and Armstrong, 36 Dawson-street
MEATH	R. G. Dunville, Redburn, Hollywood, Co. Down	Joseph Lowry, Kells	John Thomas Hinds, 37 Westmoreland-street
MONAGHAN	Andrew M'Math, Thornford, Castleblaney	W. A. Swan, Monaghan	Messrs. Baskin and Brooks, 3 Upper Sackville-street
QUEEN'S COUNTY	Robert R. Reeves, Caperd, Rosenallis	William Davis Pattison, Urley, Portarlington	John Malcolmson, 30 Lower Baggot-street
ROSCOMMON	James Glancy, Enfield, Ballintubber, Castleroa	George James, Roscommon	W. J. M'Coy, 38 Lower Gardiner-street
SLIGO	Alexander Perceval, Temple House, Ballymote	William Alexander, Somerton, Ballymote	St. George C. W. Robinson, 16 Nassau-street
TIPPERARY	Sir John Craven Carden, Bart., Abbey, Templemore	Gerald Fitzgerald, Chommel	Thomas F. O'Connell, 28 Bachelor's-walk
TYRONE	George C. Lendrum, Magheracrossa, Ballinamallard	George A. Rogers, Omagh	Thomas C. Dickie, 13 Parliament-street
WATERFORD	Henry P. Charnley, Satterbridge, Cappelquin	John Thomas Hudson, Glenbeg	Shapland M. Tandy, 2 Beresford-place
— City	Abraham Stephens, Waterford	Patrick Francis Hanrahan, Waterford	Shapland M. Tandy, 2 Beresford-place
WESTMEREATH	Francis T. James Longworth, 21 Herbert-street, Dublin	John Irwin, Mullingar	Edmond Mooney, 16 Fleet-street
WEXFORD	George Frederick Brooke, Somerton, Castleknock	Thomas Wilkinson, Enniscorthy	Richard W. Elgee, 34 Dawson-street
WICKLOW	Charles W. Barton, Glendalough House, Annamoe	Frank W. Browne, 33 Upper Fitzwilliam-st., Dublin	Messrs. Lyle and Browne, 33 Upper Fitzwilliam-street

## BOOKS RECEIVED.

*The Law of Compensation under the Lands Clauses, Railways Clauses Consolidation Acts, the Public Health Act, 1875, the Artisans and Labourers Dwellings Improvement Act, 1875, and other Acts; the Metropolis Local Management Act, &c. With a full collection of Forms and Precedents.* By EYB LLOYD, of the Inner Temple, Barrister-at-Law. Fifth Edition. With additional Forms and Precedents. London: Stevens & Haynes, Law Publishers, Bell Yard, Temple Bar, 1882.

*Self-Preparation for the Intermediate Examination as it at present exists on Stephen's Commentaries on the Laws of England, containing a complete Course of Study, with Statutes, Questions, and advice as to portions of the work which may be omitted, and of portions to which special attention should be given; also the whole of the Questions and Answers at the Nine Intermediate Examinations which have at present been held on Stephen's Commentaries. Intended for the use of all Articled Clerks who have not yet passed the Intermediate Examination.* By JOHN INDERMAUR, Solicitor (First Prize-man, Michaelmas Term, 1872), &c. Second Edition. London: Stevens & Haynes, Law Publishers, Bell Yard, Temple Bar. 1882.

## LAW STUDENT'S JOURNAL.

## THE INCORPORATED LAW SOCIETY OF IRELAND.

EASTER SITTINGS, 1882.

## NOTICE.

The PRELIMINARY EXAMINATION of Candidates for Apprenticeship will be held at the Solicitors' Hall, Four Courts, Dublin, on Monday and Tuesday, the 3rd and 4th days of April, 1882, at *Eleven o'clock*.

N.B.—All Papers to be lodged on or before *Friday, 17th March, 1882*.

The FINAL EXAMINATION of Candidates seeking admission as Solicitors will be held at the same place, on Wednesday and Thursday, the 5th and 6th days of April, 1882, at the same hour.

By Order of the Council,

JOHN H. GODDARD, *Secretary*.

Solicitors' Hall, Four Courts, Dublin.

N.B.—The decision of the Court of Examiners will be announced on Wednesday, the 26th of April, 1882, at *Three o'clock, p.m.*

Candidates residing in the country need not remain in town to hear decision, but can learn same from the Dublin Morning Papers of the day following the announcement.

## THE INCORPORATED LAW SOCIETY OF IRELAND.

TRINITY SITTINGS, 1882.

## FINAL EXAMINATION.

## NOTICE.

Candidates wishing to present themselves at the above Examination must lodge their papers, &c., on or before the *first day of Easter Sittings, 1882*.

By Order,

JOHN H. GODDARD, *Secretary*.Solicitors' Hall, Four Courts, Dublin,  
*3rd February, 1882.*

THE CRIMINAL CODE BILL.—The *Times* understands that only the first part of this bill will be proceeded with during the present session.

## COURT PAPERS.

## LAND JUDGES.

Sittings for next Week so far as same are appointed.

Before the Rt. Hon. JUDGE FLANAGAN.

## MONDAY.

IN CHAMBER.—A. Gara, allocat.—W. M'Kinley, do.—C. Burke, do.

IN COURT.—M. A. Bredin, make order absolute.—Assignees Millar, from 7th.—D. Bingham, from 8th.—T. T. M'Donogh, do.—County Court Appeal, *Vint v. Miscamble*.

Before EXAMINER (Mr. Kennedy).

J. Trueman, rental.—C. G. Martin, do.—P. Roe, to take account.

## TUESDAY.

IN CHAMBER.—J. Russell, to confirm sale.  
IN COURT.—M. Quane, final schedule.—H. Bell, do.—J. E. O'Sullivan, do.—R. F. Rynd, from 27th Feb.—H. J. Blake, from 7th March.—Trustees Corbet, do.

Before EXAMINER (Mr. Kennedy).

H. Leader, rental.—A. J. Philips, directions.—G. S. Roper, rental.

## WEDNESDAY.

IN CHAMBER.—J. S. D. Shanks, to confirm sale.

Before the Rt. Hon. JUDGE ORMSBY.

## WEDNESDAY.

Before EXAMINER (Mr. M'Donnell).  
S. S. Hamilton, rental.—J. Young, do.

## FRIDAY.

Before EXAMINER (Mr. M'Donnell).  
J. Eyre, rental.—Executor J. Henderson, for deeds.

## COURT OF BANKRUPTCY.

## ADJUDICATIONS IN BANKRUPTCY.

*The dates of Adjudications are first given, the Sittings follow in Italics.*

Boyd, John, of Lisnacloskey, in the county of Antrim, farmer. February 21; *Tuesday, March 21, and Tuesday, April 4.* Henry C. Neilson, solr.

Hamilton, Hugh, of Tummery, in the county of Tyrone, farmer. February 21; *Tuesday, March 21, and Tuesday, April 4.* John L. and W. Scallan, solrs.

Murray, Eleanor, of Ballybay, in the county of Monaghan, spinster. February 17; *Tuesday, March 21, and Tuesday, April 4.* E. H. De Moleyns, solr.

M'Wade, John, of Green-street, in the city of Dublin, merchant, trading as "M'Wade and Co." February 17; *Friday, March 17, and Friday, March 31.* Richard Davoren, solr.

M'Williams, Robert, of English-street, Armagh, in the county of Armagh, baker. February 21; *Friday, March 17, and Friday, March 31.* Thomas Gerrard, solr.

Wynne, John, of Scotstown, in the county of Monaghan, draper, grocer, and leather merchant. February 21; *Friday, March 17, and Friday, March 31.* Henry C. Neilson, solr.

THE RAILWAY COMMISSION.—The *Law Journal* observes that the appointment of Mr. Walter Macnamara as Registrar of the Railway Commission is satisfactory. As reporter of the cases decided by the commissioners, and as their deputy-registrar, he has had ample experience of the work which he will have to do; and, in the son of Mr. Henry Macnamara, the first lawyer-commissioner, the traditions of the tribunal are maintained.



DUBLIN STOCK AND SHARE LIST.

DESCRIPTION OF STOCK	MARCH					
	Sat. 4	Mon. 6	Tues. 7	Wed. 8	Thur. 9	Fri. 10
<b>Government.</b>						
3 p c Consols ..	—	99½	—	100½	100½	—
3 p c Reduced ..	—	—	—	—	—	—
New 3 p c Stock ..	99½	99½	99½	99½	99½	99½
<b>INDIA STOCK.</b>						
4 p c Oct. 1898 } Trustee at	—	104½	—	—	104½	104½
3½ p c Jan. 1891 } Bk. of Irel.	101	—	—	—	—	—
<b>Banks.</b>						
100 Bank of Ireland ..	315½	314½	—	315	315½	315½
25 <i>Eibernian Banking Co.</i> ..	—	—	—	—	—	—
20 <i>London and County (Ld.)</i> ..	—	—	—	—	—	—
20 <i>London and W'minster, Ltd.</i> 68½-9	—	—	—	69	—	—
10 <i>Do. New</i> ..	—	—	—	59½	—	—
3½ <i>Munster Bank (Limited)</i> ..	—	7	—	—	—	—
10 <i>National Bank (Limited)</i> ..	32½	32½	32½	32½	32½	32½
25 <i>Provincial Bank</i> ..	53½	—	—	—	—	—
10 <i>Do. New</i> ..	—	23	—	—	—	—
10 <i>Royal Bank</i> ..	—	—	—	—	—	—
25 <i>Standard of B. S. A., Ltd.</i> 57½	—	—	—	—	—	—
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100 <i>City of Dublin</i> ..	—	107	—	—	—	—
<b>Mines.</b>						
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24 <i>Wicklow Copper</i> ..	—	—	—	—	—	—
<b>Miscellaneous.</b>						
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4 <i>Arnott &amp; Co., Limited</i> ..	—	—	—	6	—	—
C. <i>Dub. Brewery Co. (Lim.)</i> ..	—	—	5	—	—	—
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100 <i>Gt. South'n &amp; West'n 4 p c</i> ..	106	—	106	106	—	105½
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— <i>Do. 4½ p c</i> ..	—	—	105	—	—	—
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— <i>Gt. South'n &amp; West'n. 4 p c</i> ..	—	—	—	—	—	—
— <i>Midland Gt. West'n. 4 p c</i> ..	—	106	—	—	—	106
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BIRTHS, MARRIAGES, AND DEATHS.

BIRTHS.

BAYLY—March 6, at Marine Hotel, Bray, the wife of Lieutenant-Colonel E. Bayly, of a daughter.  
 ORR—March 3, at Roslin, Terenure-road, the wife of John Mathews Orr, Esq., solicitor, of a son.  
 PIGGOTT—February 27, the wife of F. T. Piggott, Esq., barrister-at-law, of a son, who only survived his birth for a short time.

MARRIAGES.

SCHOLEFIELD and BOLSTER—March 9, at St. Michael's, Limerick, by the Ven. Archdeacon Jacob, assisted by the Rev. L. Griffiths, Robert Scholefield, Esq., solicitor, of Belgrave-square, Dublin, to Margaret, daughter of Richard G. Bolster, Esq., The Mall, Tralee.

DEATHS.

GARRATT—March 5, at Wellington-road, after a long illness, Maud, the beloved wife of William Alexander Garratt, and daughter of the late James H. Fitzgerald, Esq., solicitor.  
 JORDAN—March 8, at his residence, Mountjoy-square, Dublin, Edmund Jordan, Esq., barrister-at-law.

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On TUESDAY, the 18th day of APRIL, 1882.

In the Matter of the Estate of

CATHERINE M'GOWAN  
 and MARY KELLY, otherwise M'GOWAN, and OWEN KELLY, the Husband of the said MARY KELLY, otherwise M'GOWAN,  
 Owners and Petitioners.

TO BE SOLD BY PUBLIC AUCTION,

Before the Right Honourable Judge Ormsby,

At his Court,

Land Judges' Court, Inns-quay, Dublin,

On TUESDAY, the 18th day of APRIL, 1882,

At the hour of Twelve o'clock noon,

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Dated this 6th day of March, 1882.

IGNATIUS O'KEEFFE, for Examiner.

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THOMAS DONNELLY, Esq., Solicitor, 27 Dame-street, Dublin; or to

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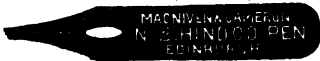
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# THE IRISH LAW TIMES AND SOLICITORS' JOURNAL.

VOL. XVI.

SATURDAY, MARCH 18, 1882.

No. 790

## PRESUMPTIONS OF LIFE, DEATH, AND SURVIVORSHIP.—II.

"We have fortunately no rule founded on presumption derived from the lapse of any fixed period of time; and every case which I have ever seen shows how unwise it would be to attach any such weight merely to the lapse of a certain number of years without regard to the age and character of the party, and his condition in life, and the character of the country in which he was last resident." Yet, notwithstanding the satisfaction with the Scottish law thus expressed by the Lord Justice-Clerk Hope, in *Fife v. Fife* (17 D. 954), the unsympathetic Legislature had the temerity last year to pronounce, that great hardships had arisen from the want of any limitation to the presumption of life as regards persons who had been absent from Scotland or had disappeared for long periods of years, and that it was desirable to provide a limitation. It was accordingly provided, in effect, by 44 & 45 Vic., c. 47, that in the case of persons absent and unheard of for seven years, the presumption of life should be limited to that period, so far as to enable the Court to make an order for the disposal of the income of their heritable or movable estates; but title to the fee or capital of such movable estates requires the lapse of another seven years from the date of such order, which is increased to thirteen years as regards the heritable estates. Certainly, this seems to be a sufficiently temperate tampering with a presumption that your usual Scotchman lives to the age of a hundred. Quite cautious enough, at all events, are also the provisions of the Austrian Civil Code. Under Article 24, the cases in which an individual who has disappeared may be presumed dead, and in which, consequently, the representatives can obtain a "declaration of decease" from the tribunals called the *Todeserklärung*, are thus enumerated: (1) When a person, eighty years of age, has disappeared from his domicile for the space of ten years; (2) when a person, of any age, has disappeared for a period of thirty years; (3) when a person has received a severe wound in war, or was in a vessel since shipwrecked, or has been exposed to any other danger of death, since the happening of which three years have elapsed. The last category is rather wide in its scope. In one case (S. viii., No. 3, 847) it was held that, where a man afflicted with melancholy had declared that he would kill himself, in a tone and manner which left no doubt as to his intention, and had made preparations to carry his threat into execution, he should be considered as being exposed to the danger of death; so that, on his having disappeared during three years, he was treated as legally dead, and his wife obtained a certificate of his death in order to enable her to marry again. In the French Civil Law there exists nothing analogous to the Austrian declaration of decease; and the French declaration of absence, permitting parties interested to exercise the same rights as if the person were dead—only granted in cases of prolonged absence—does not confer on the wife of the absent party the right to re-marry. In the United Kingdom seven years' absence was the period fixed by the Statute of Bigamy (1 Jac. 1, c. 11, s. 2, and so 10 Car. 1, s. 2, c. 21, 24 & 25 Vic., c. 100), and five years is the period fixed in California. Seven

years was the period fixed, also, by 19 Car. 2, c. 6 (Eng.), which was passed to remove or lessen the inconvenience arising from the difficulty of ascertaining and proving the death of *cestui que vies* in leases—an inconvenience which had become very great in the seventeenth century in consequence of the increased intercourse between distant countries. This was followed up by 6 Anne, c. 18, the provisions of which have never been adopted here (see 1 Gabbett, Dig. 473). But the statute of 7 Will. 3, c. 8 (Ir.), corresponds to the English enactment of 19 Car. 2, c. 6. In those days there was a presumption of the continuance of life until the contrary was shown, more distinct than that (if any, as to which the decisions have been already mentioned) which may now be at all recognised: *Wilson v. Hodges*, 2 East, 313; *Doe v. Jesson*, 6 ib. 80; *Rowe v. Hasland*, 1 W. Bl. 404. But, the effect of the statute law in question was that, in such cases, the presumption of life terminated on the expiry of seven years from the period when the person was last known to be living: *Doe v. Jesson*, *ubi supra*; *Nesbitt v. M'Manus*, 3 Ir. C. L. R. 600; the fact of his death being then presumed, but not the particular time of his death within the seven years: *Nepean v. Doe*, 2 Sm. L. C. 562.

The analogy derived from the statutes of bigamy, and concerning leases for life, was afterwards adopted and applied in other cases in which the duration of life came into question: 1 Greenl. Ev., s. 41, n.; *M'Mahon v. M'Elroy*, 1 R. 5 Eq. 1. And now the rule is general, that a person shown not to have been heard of for seven years by those (if any) who, if he had been alive, would naturally have heard of him, is presumed to be dead, unless the circumstances of the case are such as to account for his not being heard of without assuming his death: *Nepean v. Doe*, *ubi supra*; *Hope-well v. De Pinna*, 2 Camp. 113; *M'Mahon v. M'Elroy*, *ubi supra*; *De Martana v. De Martana*, 33 L. T. N. S. 685; *Wentworth v. Wentworth*, 71 Maine Rep.; *Davie v. Briggs*, 8 Central L. J. 55; but there is no presumption as to his having been either dead or alive at any particular period of time during the seven years: *Nepean v. Doe*, *ubi supra*; *Watson v. King*, 1 Stark. 121; *Re Phene's Trusts*, L. R. 5 Ch. App. 139; *Re Lewes' Trusts*, L. R. 6 Ch. 356, 11 Eq. 236; *Re Green's Settlement*, L. R. 1 Eq. 282; *R. v. Lumley*, L. R. 1 C. C. 196; *Davie v. Briggs*, *ubi supra*; see *Gill v. Manly*, 16 Ir. L. T. Rep. 57. A case depending on his having been dead or alive at any precise time in the period of seven years must be proved affirmatively: see same cases; *Re Nichols*, L. R. 2 P. & M. 461; *Re Smith*, 31 L. J. P. & M. 181; but see *Re Walker*, L. R. 7 Ch. 120; *Re Westbrook*, W. N. 1873, 167; and the question of time is one of fact for the jury: *Nesbitt v. M'Manus*, 3 Ir. C. L. R. 600; *R. v. Wiltshire*, 6 Q. B. D. 366; *R. v. Lumley*, *ubi supra*. The onus of proving his death at such particular time is cast on the person asserting it, or to whose title it is necessary to prove the exact date. "It is, however, often a doubtful question on whom the onus of proof is thus shifted," writes a recent author, who, after examining the then decisions on the point (and see *R. v. Wiltshire*, *ubi supra*), adds that "it is much to be desired that some rule, even a merely arbitrary one, should be settled on the subject:" Banning, *Limitation of Actions*, 104-5.

It has been said that the presumption of the law is better than that of man (*Esprit des Loix*, l. 29, c. 16); and we would go further than Mr. Banning, for we would rather approve of the introduction of a statutable enactment of some such description as we find in the *Presumption of Life Limitation (Scotland) Act, 1881*, section 8, providing that, for its purposes, in all cases where a person has left Scotland, or has disappeared, and where no presumption arises from the facts that he died at any definite date, he shall be presumed to have died on the day which will complete a period of seven years from the time of his last being heard of, at or after such leaving or disappearance. Taking the law as it stands, however, we shall next proceed to note some further points.

#### THE SALE OF POISONS.

In connexion with our recent paper (*ante*, p. 69), maintaining that the existing legislation regulating the sale of poisons is inadequate, the following passages from the evidence on Dr. Lamson's trial should be noted. On his re-examination by Mr. Poland,

William Ralph Dodd, an assistant at Messrs. Allen and Hanbury's, wholesale and retail chemists, of Plough-court, Lombard-street, said:—"We do not enter in the register of poisons sales to medical men. Aconitia, with its preparations, is one of the poisons under the Poisons Act. If it is one of the public who buys aconitia or any such poison the purchaser must be introduced by some person we know. Then we have to enter in our register the date, name of purchaser, name and quantity of the poison sold, the purpose for which it is required, and then to take the signatures of the purchaser and the person introducing. If we are satisfied that the purchaser is a medical man, then we need not, by the statute, make the entries. We thus referred to the Directory to see whether there was such a medical man.

"Mr. JUSTICE HAWKINS.—Supposing I went in and having got hold of the 'Medical Directory' and taken a name—say Mr. Brown—would you serve me with two grains of aconitia?"

"Witness.—That would not be sufficient.

"What would be?—You would have to write your name in a formal manner.

"What then?—If I were satisfied that you were a medical man I would let you have it.

"Then, do I understand, that anyone of respectable appearance and well-dressed might apply and that without any means of satisfying yourself that he is not an impostor and not telling you what is untrue, you would supply him?"

"Witness.—The only test would be the style of writing which is a characteristic of medical men.

"Mr. JUSTICE HAWKINS.—That hardly seems satisfactory.

"Mr. Poland said the statute was the 31st and 32nd Vic., cap. 121, section 17, schedule A. The Amendment Act was 32nd and 33rd Vic., cap. 117, section 3. The sale to a duly qualified medical man was not dependent upon an introduction and need not be entered.

"Mr. JUSTICE HAWKINS.—It strikes me that anyone could go in and represent himself as a medical man if he had picked up sufficient knowledge to be able to write 'aconitia' in the technical way and be supplied with it without difficulty, and though the matter is not before us in this case, it may be that the law requires amendment in this particular."

But, how? Does not this matter supply an additional illustration that we were right in pronouncing, that no legislation of the kind "can be thoroughly

effective so long as the responsibility for the legitimate sale of poisons is distributed among countless chemists and druggists; some one medical man for each district should alone be licensed to authorise sales, and in him the responsibility should be centralised; and through him perhaps even the delivery of the poison, purchased elsewhere, should be carried out." But, be this as it may, we cannot but agree with the *Standard*, that it is clear that the facilities for obtaining poisons enjoyed by anyone who can quote a name out of the "Medical Directory" ought to be abridged. Palmer, Pritchard, and Smethurst were also medical men. Unquestionably, as we need hardly point out, the detection and conviction of the most accomplished poisoner of the age is in no degree due to the operation of any legislative enactment regulating the sale of poisons; and everyone must agree with the presentment of the jury—concurrent in by Mr. Justice Hawkins—that upon such sales greater restrictions should be imposed by the Legislature.

#### THE REFORM OF LEGAL PROCEDURE.—II.

(Continued from page 78, *ante*.)

The framers of the Judicature Acts undertook—whether wisely or not it is too late to discuss—to provide one uniform system of pleading and procedure for all the superior courts of justice consolidated by the Acts into one Supreme Court. They had before them, as we have seen, two distinct systems which, though time and neighbourhood had produced a certain amount of mutual approach and softened down their sharpest points of opposition, still retained their own peculiar characters. They had likewise to deal with men imbued with one or other of those systems, and unwilling to give up more of their familiar principles and practice than the letter of reforming legislation positively compelled them to do. Controversies were not wanting at the time, which it is now needless to revive. A majority of the Chancery Bar were persuaded that the very existence of equity jurisprudence was in danger—a fear which has in no way been realised. Equity jurisprudence has been gently constrained to speak less in artificial metaphors and more in the language of common understanding, and is all the better for it. Hardly any one foresaw what would happen in the Common Law Divisions, and those who did were not listened to. The outcome was a compromise between equity and common law practice, in which equity got considerably the larger share. It is needless to enter into the details of the scheme which has been at work since the morrow of All Souls in 1875, and is by this time familiar to the present generation of lawyers. Let it suffice to call to mind the more salient features. The pleadings were assimilated, or intended so to be, to a shortened and further simplified Chancery pattern, but the Chancery practice of combining the defendant's pleading with a sworn answer to interrogatories was not adopted. Powers of interrogation and discovery as wide as those previously existing in Chancery were given, but subject to leave being obtained. This apparently wholesome provision is, perhaps, of all the reforms of the Judicature Acts that which has had the most surprising results. The common law method of taking evidence was justly preferred, though evidence by affidavit was not excluded; and this latter is still used, not only in interlocutory proceedings, where even at common law it has long been admitted, but at all stages of that large and important class of Chancery suits which are purely administrative, or where the facts in dispute are of slight importance as compared with the legal questions arising on facts or documents which are admitted. As to the mode of trial, the provisions of the Judicature Act, and the Rules of Court were found obscure; but, after much confusion and one or two conflicting decisions, things went on in substance as they had done before. Last, and by no means least, an elaborate system of appeals was instituted.

The scheme of the Judicature Act, as applied to the Common Law Divisions, offered to the suitors and their advisers two chief points of novelty—great increase of powers of discovery and great multiplication of opportunities for appeal. This new machinery was derived from a procedure that in its origin was of an inquisitorial nature and under the control of the Court; and, though that control had lost most of its reality, the procedure had on its native ground been fixed in a well-established routine, and if somewhat cumbersome and costly, was not on the whole felt as vexatious. Now the machinery was put in full working order into hands accustomed to work a purely contentious procedure. The result was that for every avenue of technical dispute that was closed, one or more were opened; and in the field thus opened contentions were vastly multiplied. In order to put some check on eager and vexatious litigants, it had been thoughtfully provided that the new powers of discovery should be exercised only by leave of the Court. As it turned out, no more effectual encouragement to long and wasteful litigation could have been given. Plaintiffs, or rather their solicitors, were anxious to make the best use of the weapons for the first time at their disposal. Defendants were as anxious to keep their effect within bounds. The whole subject being strange to practitioners of the common law, disputes naturally arose. In the regular course they came before a Master in Chambers; and if they had gone no further, it might have been well enough. But from the Master there was an appeal to the Judge at Chambers, often made necessary less by the inherent difficulties of the case than by the imperfect materials for decision brought in the first instance before the Master. From the Judge, again, there was an appeal to the Divisional Court, from that, again, to the Court of Appeal, and, finally, from the Court of Appeal to the House of Lords. It is only fair to remember that this last step was excluded by the Judicature Act in its original form. Three appeals, however, are a heavy enough burden for points of practice to carry. Thus, the anxiety of reformers to prepare cases in the best possible manner for a full and fair trial, or even to bring about at an early stage disclosures which would make trial needless, produced an abundant crop of litigation and that of the most vexatious and useless kind; upon interlocutory applications. Probably this would have happened even if all suitors conducted their causes in good faith. Possibly things would have been different if counsel and solicitors had striven to work the Acts and Rules with a single eye to saving the time and the purses of their clients. But lawyers are men, and cannot be expected to work against their own apparent interest. And although many lawyers in both branches of the profession are men of honour above the breath of suspicion, and most are honourable, this is not the case with all. There is notoriously a sort of solicitors who live and thrive by taking up cases which better men will have nothing to do with. Their delight is in sharp practice and in running up costs, against the adversary if practicable, but otherwise against their own client. And we fear there are counsel who do not scruple to lend themselves to these objects. Every change in the practice of the courts is watched by such people for their own purposes. A few of them can do much mischief, and on this occasion their activity has not been wanting. When two practitioners of this class meet as adversaries they play into each other's hands. Whichever of them is defeated is slow to dispute the costs charged against him by the victor. They come out of his client's pocket, not his own, and the next time, besides, it may be himself who wants to make costs in the same fashion. Thus the game is carried on at the client's expense, and he innocently wonders why the reign of abundant and cheap justice which reformers promised him persists in appearing so remarkably far off. The officers of the Court have no effectual power to stop the abuse of its process except in the most flagrant cases. On the whole, the expense of proceedings in the Common Law Divisions (now the Queen's Bench

Division) has decidedly increased under the Judicature Acts.

We now come to the report of the Committee appointed last year. Dealing first with the question of pleadings, they consider the proposal of making some kind of concise pleading a part of the very first step taken in an action. This they reject, rightly as we think. For a great majority of the actions that are brought are undefended or practically so. The High Court of Justice is, as regards these cases, nothing but a public office for collecting debts under the pressure of public authority. The simplest machinery that answers the purpose is the best; and as the writ of summons in its present form is found effectual, it would be a mistake, as the Committee point out, to increase its cost by adding more matter to it. The truth is that in these cases, and in a good many others, the defendant knows perfectly well what the plaintiff's claim is, and the expense of any fuller statement would be mere waste. We start, then, with the writ, and its indorsement showing the nature of the claim, just as they stand at present. What is to be done about further pleadings? The Committee think that in a majority even of disputed actions they are not required for ascertaining the question between the parties. They propose that within a certain time the defendant shall give notice of any special defence he means to raise. This notice, we apprehend, would not go into the facts, but only specify the nature of the defence. After this, "the plaintiff shall give notice of any special matter on which he intends to rely." Thus we should have a rudimentary system of pleading, limited to the indication, with the least possible technicality, of the general nature of the case intended to be made at the trial. Beyond this the Committee think no pleading should be allowed, unless by order. Their intention is in the right line, but we do not feel sure that their method is a safe one. To allow pleadings by leave of the Court is, in the first place, to make a new occasion for interlocutory applications. And we have seen for the last half-dozen years what interlocutory applications are capable of. In fact, they are the spring and strength of the present distress. There would be danger on either hand in this conditional allowance of pleadings. Leave to plead might come to be a matter of course whenever the action was seriously defended. In that case we should be where we are now, with the additional expense of an order of the Court. On the other hand, applications to deliver pleadings might be stubbornly resisted. In that case the discussion whether there should be pleadings or not might cost as much as the pleadings themselves; and what is more, it would be a new demand on the time of Judges and Masters. Doing things by leave of the Court looks very well at first sight; but it has an ill sound after the recent experience of the Common Law Divisions. At least two other ways of dealing with this question occur to us. The present practice is that the plaintiff must deliver a statement of claim, unless it is dispensed with by the defendant. It would be simple to reverse this rule, and say that a statement of claim should be delivered only if the defendant required it. Similarly, it might lie upon the plaintiff to require a statement of defence. But such a rule would be effective only with the provision that the party requiring a statement when in the opinion of the Court it was not necessary or useful for the determination of the case should have to pay the costs of it. Otherwise the requisition would tend to become a matter of form. And there is another way which would be simpler and better—namely, to abolish pleadings altogether. Pleadings are assertions either of facts relied upon, or of conclusions of law which the party founds upon facts he intends to prove, or partly of the one and partly of the other. The old common law system exhibited pure, or almost pure, conclusions of law. In the Chancery system facts prevail, but conclusions of law were often added. In the Scottish system the facts and the law of the case are pleaded separately. We must assume that for England the day of formal pleadings is over. Whatever pleading is now possible must be mainly a

statement of fact. To what purpose should such a statement be made in that form? It must be made as being in the interest of one or both parties. One party may want information from the other; or he may think a connected account of his case advantageous to himself; or both may be agreed about the facts on which the question arises, and wish to lay them before the Court as admitted. As things now are, the parties may state a case for the opinion of the Court if they can agree upon it; and if one of them wants information from the other, he can get it by way of particulars and discovery. For neither of these purposes, then, does pleading seem to be needful. It may be said that pleadings are in the interest of both parties, inasmuch as they provide halting points in the action at which their advisers are in a manner compelled to take a survey of the field. Opportunities are thus made for compromise or arbitration which may prove of great value. These halting-places, however, seem to be fairly well given by the notice of defence and notice of special matter in reply which are proposed by the Committee as the regular steps in a contested suit. These notices might and ought to be so framed in all simple cases as to define the real issue between the parties, and to define it to the satisfaction of a plain man's understanding, a purpose for which the old pleadings were too artificial and the new statement of claim is too lax. There remains the case of a party wishing to tell his story for his own advantage. This he should certainly be allowed to do, though common law suitors till 1875 did pretty well without it. But, subject to one condition, we do not see why the statement should be called a pleading, or why the leave of the Court should be necessary. That condition is that the statement should be regarded as a luxury of litigation. We would let parties please themselves about delivering statements; but the cost of them should be borne, in any event, by the party making them, unless the Court certified that in the particular case they were necessary or materially useful. In this suggestion we were only borrowing the principle of the Committee's own excellent recommendation as to discovery, which we shall presently mention. A party's statement of his case should be treated as merely a memorandum. If it were useful only or chiefly to his own counsel, he should pay for it himself; if found useful by the Court, he should be allowed credit for it, but not too easily.

Next come the knotty questions of interlocutory applications and discovery. The Committee say "that much of the expense of litigation is now due to the power which the parties have of resorting to all the modes of procedure furnished by the Judicature Acts, without regard to the real requirements of the cases." Exactly so. We have constructed a machine for doing justice in varied and elaborate forms, and have forgotten that it is also a machine for making costs, and worked by those who are under the strongest temptation to regard it chiefly in that light. The Committee, therefore, were disposed "to recommend a change in procedure which should enable the Court, at an early stage of the litigation, to obtain control over the suit, and exercise a close supervision over the proceedings." In itself this general idea deserves nothing but approval. The difficulty in the way of working it out is one that can hardly be got rid of by any device of administrative skill. Judges and Masters cannot well exercise of their own motion, a paternal jurisdiction to control the proceedings and out down useless costs. This kind of jurisdiction has been tried long ago in the civilian procedure, and to some extent in Chancery; and we have seen that it degenerated into mere formality. Unless it can command superhuman zeal and diligence in its officers, the Court must be aided by the parties to do this kind of work thoroughly; and there is too much reason to fear that the parties, as represented by their solicitors, will seldom be strenuously minded to give this aid. Our belief is that whenever the public finds out the real state of things there will be a far more vehement demand for a reform of the legal profession than there ever has been for the reform of legal

procedure. That time, however, is not yet. Meanwhile the difficulty is no reason against seeking the best remedy which under present conditions can be found.

The Committee propose to swallow up the present crowd of disjointed interlocutory applications in one general "summons for directions," which is to include questions of further particulars, venue, discovery, evidence, mode of trial or reference, "and any other matter or proceeding in the action previous to trial." Subsequent separate applications which might have been made on the general summons are to be discouraged by throwing the costs upon the party making them. It is contemplated, we presume, that the summons for directions should be a regular incident in every contested case; this it certainly would become. A large foresight on the part of the Judge or Master hearing it would seem to be required if he is to settle at one stroke the whole course of the proceedings down to trial. If this foresight failed in any particular there would be other supplementary applications, not without vexatious wrangles on the question whether they were necessary or not. It may be, however, that the proposed rule as to costs, if strongly worked, would be sufficient to keep this head of litigation within due bounds. And if the necessity or advisability of getting all interlocutory matters disposed of at once had the effect of making the settlement of a somewhat rougher kind than at present, we do not think it would be any great harm. Human justice and government are rough instruments at best, and beyond a certain point it is waste of labour and skill to polish them. Certainly our average standard of discrimination is finer than that of the Cornish juryman who, in a capital case, delivered his opinion to the foreman that "between the hanging of 'en and the not hanging of 'en there isn't a halfpenny odds." But it is quite possible to refine too much, and to make distinctions in law and procedure which look very well on paper, but, being in truth minuter than the inevitable margin of human error, turn out idle in practice. On the whole, we do not look with any confident faith on the "summons for directions," but as nothing could well be worse than the present confusion, it is at least worth trying. The proposal to assign each action and all interlocutory matters therein to a particular Master's list, from which the Masters themselves dissent, is a point of detail to be fully discussed only by and among experts. The apparent analogy to the long established practice before the Chief Clerks in Chancery is by no means conclusive. For the Chief Clerk is the officer of a particular Judge to whom the cause is attached through all its stages. He is not a separate officer of the Court giving his own decisions and liable to have them appealed from, but the delegate of the Judge exercising his powers under general instructions, and with liberty to refer to his principal at any time. In the Queen's Bench Division it would obviously be impossible to attach causes to particular Judges; and the partial imitation of Chancery practice recommended by the Committee would probably satisfy nobody.

On the point of discovery the Committee report that the powers of obtaining disclosure of documents and delivering interrogatories are often exercised oppressively. They are engines for harassing opponents and piling up needless expense. The Committee propose that discovery and interrogatories shall be allowed only within limits to be fixed by the Master—as a rule, we presume, on the hearing of the "summons for directions." And, what is still more to the purpose, the costs are to be allowed "where and where only such discovery or interrogatories shall appear to have been reasonably and usefully asked for." This is the Committee's master stroke, and goes to the root of the mischief. To a certain extent it is approved beforehand by experience. Some of the Masters have lately made a practice of reserving the costs of interlocutory applications for the final taxation—that is, they leave it to be determined in the light of a review of the whole proceedings in the action whether the particular application was proper. Another recommendation is made,

and on similar principles, as to giving notice to admit specific facts, refusal to admit them being at the risk of costs, if it appears to the Court to have been improper. This if adopted, would further strengthen the argument for wholly doing away with pleadings.

With regard to the trial of causes, the Committee "recommend that, in the absence of directions to the contrary, the mode of trial shall be by a Judge without a jury." This proposal at first sight looks revolutionary. But a little consideration will show that the innovation is much less than it seems. Out of the whole number of actions commenced in the Queen's Bench Division those which now are tried out by a jury are in the proportion of 1 in 400, or  $\frac{1}{400}$  per cent. Those which come into Court at all are between 2 and 3 per cent., and the majority of these go off in various ways, often at the last moment. "The parties go down to trial with all their witnesses and deliver their briefs, and then are coerced into a reference; the Judge, the jury, and counsel, all feeling that a jury is wholly incompetent to deal satisfactorily with the matter." The Committee are justly of opinion that this is a scandal which should be put short. For this end they propose that, as a rule, the trial should be before a Judge alone, but a jury may be had on the application of either party if he can satisfy the Master that trial by jury would be convenient in the particular case. In cases of libel, slander, seduction, false imprisonment, malicious prosecution, and breach of promise of marriage, the absolute right to jury trial is to be preserved. We think this provision errs in over caution, if at all. The semi-political reasons which make it proper to retain the jury in criminal cases do not apply to these. There is no reason to suppose that jurymen are more competent than a Judge to decide questions involving personal honour and reputation. And the most delicate questions of this class have, in fact, for many generations been decided by equity judges sitting alone. We are not aware that their decisions have given rise to any dissatisfaction, or have been considered worse than those of juries. As to the common run of civil causes, we have little doubt that they would be much better dealt with by a Judge alone. The saving of time, to begin with, would be considerable. Counsel's speeches would be shortened, there would be no summing-up, and much less dispute about points of evidence. And the cases where the jury are likely to form a better opinion of the facts than the Judge would without them may be reduced to an exceedingly small number. We do not mean to undervalue the services of a good jury in some kinds of cases. A special jury of business men in London, Manchester, or Liverpool is oftentimes of substantial assistance to the Judge. In this case, however, one is apt to think it is hardly worthy of a great nation to compel skilled mercantile assessors (for such they really are) to give their time and labour to the Court for a nominal recompense. Another function of the jury, humble but not to be despised, is to veil the uncertainties of human judgment. There are cases in which it is almost impossible to derive a conclusion from the evidence with any reasonable confidence. It may be plain that at least one of two or more conflicting witnesses is perjured, but extremely difficult to say which. In these cases the jury have to agree somehow. Their verdict, being necessarily unqualified, and unaccompanied with reasons, has an appearance of certainty, and the public, fortunately for the credit of justice, do not hear how it was arrived at. The jury disperses and its responsibility is dispersed also. A Judge sitting alone might feel embarrassed on occasions of this sort. But there is nothing in the nature of things or in the recommendations of the Committee to prevent the jury from being retained in every case in which it is really useful now. The Judges would have to arrive at some sort of understanding as to the extent to which they should give reasons for their decisions; but there would be no grave difficulty about this. A new check on the jury, where retained, is proposed by the Committee in the shape of a rule enabling the Judge to direct a new trial on the application of either party if

he is dissatisfied with the verdict. This also is less of an innovation than it looks, for the Court which now grants or refuses a new trial seldom refuses it when the Judge who tried the cause thinks the verdict was wrong. The simplified procedure for obtaining a new trial would, of course, be swifter and cheaper.

There remains the topic of appeals, besides some other points of practice. As to interlocutory matters, it is proposed that the appeal from a Master should still be to a Judge at Chambers, and that there should be a further appeal from him only by leave of himself or of the Court. We think it a mistake to admit an application to the Court. Successful or not, it would mean more costs. It would be better to leave the Judge at Chambers an absolute discretion as to the propriety of allowing an appeal. He might be wrong, but, after all, so might the Court. In interlocutory business it is more important to make the way clear to *finis litium*, or rather to the final *litis contestatio*, than to secure the highest refinement of judicial wisdom. As to appeals on the result of a trial, the following are the principles embodied in the Committee's recommendations:—

Appeals from a Judge sitting alone or from his absolute direction of a verdict to go straight to the Court of Appeal. Applications for a new trial in jury causes to go to Court in Banc of three judges, not including him who tried the cause. (This would apply, it will be observed, only where the judge trying the cause was not dissatisfied with the verdict.) The decision of the Court in Banc to be final, "except with their leave or in case of difference of opinion, or where the subject-matter of appeal exceeds £500." Appeals from the Court in Banc to go to a Court of Appeal of at least five judges.

This arrangement, it is thought, would avoid overloading the Court of Appeal with work that used to be, and can be, effectually done by the judges of first instance, and would give more weight to its decisions. The suggestion involves no violent change, and is about as good a one as could be made under existing conditions. But there is a fact officially ignored in all discussions of the rearrangement of judicial business, which nevertheless is true, and which sooner or later the public and Parliament must face. It is that of late years the work of the judges and officers of the Courts has increased out of all proportion to their number. And every reform which improves or expedites procedure tends to increase it still more. Time and labour may doubtless be saved in many ways by improvements of this kind; but they will attract at least as much new business as the saving allows room for. An able military critic lately pointed out the indisputable truth that no amount of ingenious manipulation of short service, reserves, or any other invention would enable one boy to do the work of two men. It is the same in the case before us. Increased accommodation and higher speed are not to be made out of nothing or to be had for nothing in a Court of Justice any more than on a railway, and if the public choose to have them they must be paid for. Cheap justice means rough justice. The County Courts are sufficiently rough in comparison with the Superior Courts, and even they are by no means very cheap. It is for the public to make up their mind whether cheapness or efficiency is to be considered first. So long as it passes for an unalterable maxim that no shilling is to be spent on doing a thing well if it appears that it can be patched up for ninepence, there is not much prospect of the nation seeing the best value for its money, either in the Courts of justice or in other departments.—*Times*.

**A LONG LAW SUIT.**—The longest law-suit ever heard of in England was between the heir of Sir Thomas Talbot, Viscount Lisle, on the one part, and the heirs of Lord Berkeley on the other, respecting certain possessions not far from Wotton-under-Edge in the county of Gloucester. It commenced at the end of the reign of Edward IV., and was pending till the reign of James I., when a compromise took place, it having lasted above a hundred and twenty years.

THE CONVEYANCING AND LAW OF PROPERTY ACT, 1881. WHERE IT SHOULD BE ADOPTED, AND WHERE EXCLUDED.—VI.

(Continued from page 84, ante.)

STATUTORY MORTGAGE.

*Mortgage by one Person to another.*

Up to the present time we have been considering how far documents can be abbreviated by omission of clauses in reliance on the statute, or by the substitution of some technical words which, by virtue of the statute, supply some lengthy covenant or provision. But, in Schedule III. of the Act, are certain forms of great brevity which, in small transactions of a simple nature, seem likely to be much employed. They derive their efficacy from Part V. of the Act, ss. 26-29. Form No. 1 is a deed of statutory mortgage. By the employment of that form there will be implied, by virtue of sect. 26, (a) Covenant by mortgagor for payment of the mortgage money and interest at the stated time, (b) Covenant for payment of interest after default, (c) Proviso for redemption. The heirs of the mortgagor will be bound by his covenants, by virtue of section 59, and the representatives of the original mortgagee can claim the benefit of the covenants (s. 2, vi.). To imply these provisions the deed must be expressed to be "by way of statutory mortgage," and the mortgagor must convey "as mortgagor." Persons using these forms will doubtless generally rely on the Act throughout. The mortgagor should also convey as "beneficial owner," so as to imply the covenants of sect. 7. General words and "all estate clause" will be omitted (ss. 6, 68). Power of sale and other provisions will be omitted under sects. 19-24. The result is, that a statutory mortgage, when the parcels are brief, can be easily written on a sheet of note paper. These statutory forms may be used with variations and additions (see sects. 26, 27, and notes at the end of the forms). So that leasing powers of mortgagor and his subsequent mortgagee should be excluded as usual, and covenant by mortgagor to insure can be added, if desired. It will be well, in accordance with the forms in Schedule III., throughout these forms to use the word "convey" in the operative part, instead of "grant" (s. 40), and to employ the new technical words "in fee simple," instead of the ordinary words of limitation, "and his heirs" (s. 51). But we should feel inclined to add the words "in fee simple" in the conveying part, although in the form in the schedule they occur only in the habendum. The first form, as thus altered, would read: "A. as a mortgagor and beneficial owner hereby conveys to M. *in fee simple* all that [etc.], to hold to and to the use of M. *in fee simple*." But of course this is not a point of any vital consequence.

It should be noticed that these statutory mortgages can only be made with respect to freehold or leasehold land (s. 2, ii.) and that they must be made by deed (s. 26). It is not unlikely that, besides being used in small transactions, they will often be employed instead of memorandums of deposit, accompanied by agreements to execute mortgages. They will also be found extremely convenient in family arrangements, where the object is to obtain a legal security with as little expense as possible, and where the parties are known to, and have confidence in, each other.

*Mortgage by several Persons to one.*

By sect. 28 the covenants for payments of principal and interest implied under sect. 26 will be joint and several. This is quite satisfactory, and in accordance with common practice (see David, ii. 915, 935.) With regard to implied covenants for title, and other matters not peculiar to statutory assurances under this part of the Act, the reader must be referred to our previous remarks.

*Mortgage by one Person to several.*

Here, by sect. 28, the covenants will be joint, except in the case mentioned below. This is in accordance with present practice: David, ii. 871. If the money is

stated to be owing to the mortgagees on a joint account, the benefit of the covenants for payment of the money and interest, and the money itself, will pass to the survivors and survivor, and the personal representatives of the last survivor, in the usual way (ss. 60, 61).

If, however, the amount secured is expressed to be secured to the mortgagees in shares, or distinct sums; the covenant implied will be deemed to be with each severally in respect to the share or distinct sum secured to him. This is in effect a case of several mortgages in one deed, and so the implied covenant seems quite satisfactory.

*Transfer of Statutory Mortgage.*

Where a mortgage exists in "statutory" form, it will obviously be convenient, when a transfer takes place, to make a "statutory" transfer. The deed must expressly state that it is made "by way of statutory transfer," and should be drawn in one of the three forms (A), (B), and (C) in Schedule III., Part II. Then by sect. 27 (2) the mortgage money and interest, and the right to sue, and the estate of the mortgagee in the land, becomes vested in the transferee. The transfer must be indorsed on the mortgage, or declared supplemental to it, or else it will be needful to recite the mortgage. The transferor conveys "as mortgagee," which raises the ordinary covenant by a mortgagee against his own incumbrances, sect. 7 (F). This is quite satisfactory. The three forms (A), (B), (C) correspond to the three varieties of transfer explained in David, ii. 814. In Form (A) the mortgagor does not join. Compare David, ii. 1292, 1295. In Form (B), a "covenantor" joins, and by implication covenants for payment of mortgage money and interest by force of sect. 27 (3). This form is applicable to a case where the mortgagor is a party, but has charged or limited the equity of redemption. He simply joins for the purpose of covenanting for payment, and so is styled "a covenantor." It should be noticed that this differs considerably from the corresponding form in David, ii. 1299. The statutory form contains no recital of the state of the mortgage debt, or request by the mortgagor to the old mortgagee to transfer the debt and the estate. It is therefore less eligible than the common form, but doubtless it will in most cases be found practically sufficient.

Form (C) is a statutory transfer and statutory mortgage combined, and derives its efficacy from sect. 27 (4). It is applicable to a case where the mortgagor joins in a transfer, and has not made any incumbrances since the original mortgage. According to the old form, a transfer under such circumstances was made so as to be, in fact, a new mortgage, but the old mortgage was kept on foot to defeat any possible mesne incumbrances. This plan is followed in the statutory form. Also the old mortgagee conveys by the direction of the mortgagor, and the latter conveys as beneficial owner, so that the covenants of sect. 7 (C) by the mortgagor are implied, as well as those of sect. 7 (F) by the mortgagee. The form is therefore satisfactory. By sect. 27 (4) no extra stamp will be required by reason only of the deed being designated a mortgage.

In statutory transfers, as well as in statutory mortgages, joint and several covenants by the persons conveying as mortgagors, or joining as covenantors, will be implied; and also, where there are more transferees than one, the covenants will be deemed to be made with them jointly, except the amount is stated to be secured in distinct shares or sums (s. 27). The statutory forms of transfer are therefore applicable to cases where there are several mortgagors or mortgagees. If the money belongs to the transferees on a joint account it should be so stated.

*Statutory Reconveyance.*

This form is authorised by sect. 29, probably for the sake of providing a convenient short model form, as it has no special force given it by statute. It is made supplemental to the last transfer of the mortgage, and not to the mortgage; nor is the mortgage recited. Apparently it is considered that, as the reconveyance is supplemental to the transfer, and the transfer to the



mortgage, therefore the reconveyance is supplemental to the mortgage. However this may be, the statutory reconveyance gives no information as to what is the mortgage which is being reconveyed. Also it conveys the estate "discharged from all principal and interest secured by and from all claims and demands under the said indenture"—i.e., the transfer.

Now, the transfer, in the case to which the form relates, was not "a statutory transfer of mortgage and statutory mortgage" in form (C), for otherwise it would have been recited as such, and not merely as "a statutory transfer." So that either the mortgagor did not join at all in the transfer, or only joined as covenantor. But, in any case, a reconveyance should release the mortgagor from that which bound him, viz., the original mortgage. So that, though this statutory form should be used when the previous assurances have been "statutory," it will require considerable alteration. The mortgage should be expressly referred to, and the land conveyed discharged from it. The mortgagee conveys "as mortgagee," and so the covenants of sect. 7 (F) are implied.

#### *Mortgage of Leaseholds.*

The forms in Schedule III only relate to freehold land, but statutory mortgages and transfers may also be made of leaseholds. The forms require little alteration. The lease must be recited, and, where necessary, the usual short recital as to mesne assignments and acts in the law must be added: (for form, see David. ii. 971; Wolst. & T. 163.) The word "convey" will be used in the operative part, but instead of the words "in fee simple" there will be substituted "the residue of the term of years granted by the said lease except the last three days thereof." Also there must be a trust of the last three days in favour of purchaser: (for form of such a trust, see David. ii. 974; and compare Wolst. & T. 164.)

(To be continued.)

#### HEAD-NOTE ODDITIES.

In noting Mr. Heard's recent productions the *Law Journal* observes: "The head-notes to reported cases form a field which would, we think, further reward the research of Mr. Heard. Their brevity, of course, tends to obscurity, and this obscurity often takes a humorous turn. Perhaps the best of them all is one which has, we think, escaped Mr. Heard. It is the head-note to *Smith v. The Great Eastern Railway Company*, L. R. 2 C. P., which runs as follows:—

"The plaintiff was bitten by a stray dog at a railway station while waiting for a train. It was proved that, at 9 p.m., the dog flew at and tore the dress of another female on the platform; that, at 10.30, he attacked a cat in the signal box near the station, when the porter there kicked him out and saw no more of him, and that he made his appearance again at 10.40 on the platform, where he bit the plaintiff. Held no evidence to warrant a jury in finding that the company had been guilty of any negligence in keeping the station reasonably safe for passengers."

"In this inimitable tale it is difficult to know which most to admire—the rapidity with which the hero changes his sex, being first a dog, then attacking 'another female,' and then again a 'he;' or the punctuality of this dog, putting to shame the best express train of the company which so basely repudiated him, or the anticlimax by which, after all this graphic history of tearing, cat-baiting, and kicking, no one has to pay for it. He was an irrepresable dog, too. His historian, being evidently told that there was something not quite clear in the narrative as given, endeavoured, in the 'Law Reports Digest,' to give an appearance of more probability to the story. But even there we find him flying at 'another person.' Mr. Heard has also, we think, missed the unparalleled case of the County Court judge 'who *actually* took a note of the evidence' as recorded last year in the *Law Reports*. Head-notes of cases supply good material for compilations like the

present, because the modern tendency to diffuseness does not affect them so largely. The recent examples chosen are almost all much longer than the older examples. Our own columns and head-notes of the *Law Journal Reports* are quite at the service of Mr. Heard, and we imagine that he might often run his quarry to earth in the "*Irish Law Reports*."

#### PARISIAN LAW-STUDENT LIFE.

Most foreigners get their ideas of the Parisian student and his way of living from books like Kimball's "Romance of Student Life Abroad," Thackeray's "Paris Sketch Book," Murger's "*Le Pays Latin*," and some of the tales of Alfred de Musset. They consequently obtain a rather narrow and one-sided view of life in the Latin Quarter. Kimball presents only the romantic side of the French student; Thackeray takes you among the art students only; Murger does not so much describe the Latin Quarter as he does the career of a woman who happens to live in it; and Alfred de Musset, with his Mimi Finsom and his Bernerette, gives you a poetical rather than a real picture of persons and things on the left bank of the Seine. The writer has not yet come who has treated the Parisian student life as thoroughly as Tom Hughes did the Oxford, and Astor Bristed the Cambridge, student doings; nor have we in our language any work on French schools, colleges, and universities half as complete and interesting as Mr. Hart's book on life at Göttingen, Berlin, and Leipsic. Until such a faithful chronicler arrive the following sketches may throw some light on an attractive subject:—The Latin Quarter is that extensive part of Paris which is bounded on the north by the Seine, on the south by the Mont Parnasse Railway station, on the west by the Rue Bonaparte, and on the east by that shapeless pile, the Halle aux Vins. The university buildings are not contiguous. The Law School is at ten minute's walk from the Medical School, and it takes you eight minutes to walk from the Collège de France and the Sorbonne to the School of the Fine Arts. The Sainte Geneviève Library is at least at twelve minutes' distance from the Mazarin Library, and the uniformed members of the Polytechnic School have to walk at a brisk step if they wish to gain the Boulevard St. Michel in eight minutes. The visitor to the quarter and the student living in it are, therefore, obliged to ramble about if they desire to see the attractions of this scholastic spot. The attractions are numerous. There is the Odéon, the second theatre in France, a Doric structure that witnessed the early triumphs of Hugo, Ponsard, George Sand, and Dumas. There is the Institute, whose massive cupola resembles that of the Invalides, a resemblance which suggested to Heine the bitter hint that the men beneath the former cupola are also invalids. The Mint, the Senate, the Courthouse, the Prefecture of Police, the Sainte Chapelle are all in the student quarter. It is a quarter which, in spite of the modern improvements set on foot by Napoleon III., its aristocratic-looking Boulevard St. Michel (the main artery of the section), its many new houses and pretty shops, its broad streets usurping small, winding, and romantic ones, still contains much that gives it a stamp of its own. When you stand under the shadow of the Pantheon, or within earshot of the silver chimes of St. Etienne de Mont, or under the gloomy vaults of St. Severin—when you see the crowds of young men seated in front of the café, grouped in front of the lecture-rooms, strolling along boulevard and street, you are persuaded that you are in the midst of a quarter where youth and merriment and studious quiet predominate. In the spring the lilacs waft their sweet perfume upon the student as he passes the garden of the Luxembourg, and in autumn he can behold the gorgeous tints of falling leaves in the Jardin des Plantes. The Parisian student, with the exception of the followers of Æsculapius, is a late riser; "Paris is like the Duke de Vendôme," said Benjamin Constant. "It is epicurean, cynical, lazy. It gets up at noon, but it arises to go forth and conquer." The

Parisian student is something like that. At any rate, when he does not arise, he takes his breakfast in bed, and when he does he takes it in a *crémier* restaurant. This repast consists not of beefsteak, nor of buckwheat cakes, nor of ham and eggs, but of a bowl—a Caspian Sea full—of coffee and an infinitesimally small roll. We should not forget the spoon, which may be classed just after the ladle in size. When he has finished this first breakfast (cost 20c. to 30c.) the student goes to the lecture-room, or to his studies, or to the hospital, as the case may be. Students of the law generally complete their studies in three years; at the end of that term they are *licenciés*. In order to attain this degree, which opens the way to all liberal and administrative positions, they must have passed four examinations satisfactorily, and presented a thesis that has been approved by the Faculty. They attend lectures at the Law School and frequent private classes called *conférences*. There is no roll-call at the lectures, and therefore attendance is as irregular as at an American college chapel. Every regularly registered law student has his card—*carte d'étudiant*—signed by the Dean and Secretary of the Faculty, and the signature of the bearer is likewise affixed. This card is good for one year only, and must be shown by the student when requested to do so. The lecture-rooms are generally arranged in amphitheatre form. They are old and dingy, and the system of ventilation dates back to Noah's days. The Professor has a red gown. He now and then takes a sip of the sugar-water on the desk before him. The students distinguish themselves by the noise they make before the learned gentleman's arrival, by the paucity of the notes they take, by their listless attention when he is there, and by the impatient snapping of their watch cases when he stays beyond his time. The *conférences*—a species of French "coaching clubs"—are the real workshops of the law students. There they are questioned by young and keen tutors, who stand in pretty much the same relation to the Law School that the Privat Dozenten do to the university in Germany. The *conférenciers* treat of the same subjects as the lecturing Professors, but in a more thorough and questioning manner. Indeed, they supplement the Professors. The following are the studies to be mastered by the French law student:—In the first year he is required to study Books I. and II. of Justinian's "Institutes," the general history of French law as taught by the Professor, who, of course, recommends his own text-book; two books of civil law, two books of penal law, and certain specified articles of criminal procedure. In the second year the candidate takes up Books III. and IV. of Justinian's "Institutes," political economy as taught by the Professor, the third book of the civil law, and three books of civil procedure. His third and last year comprises the study of administrative law, the Commercial Code, some more articles of the civil law, and private international law as taught by the Professor. Having passed on those subjects, the last examination taking place before five Professors, he presents his thesis, consisting of two dissertations, one in Latin, and one in French, and when it has been approved he has it printed. He usually dedicates it to his grandparents, if living, his parents, if living, and if deceased, to their memory; to his brothers and sisters, to his favourite Professor, and to his intimate friends, not collectively, be it noted, but singly and by names. The dedication page of a French student's thesis somewhat resembles the string of hieroglyphics on the obelisk in the Park. The degree of *licencié* is not the highest in the gift of the Law Faculty, though it is the one generally sought. The highest is that of LL.D., and this is obtained by another year's study, and satisfactory examination on all of Justinian's "Institutes," the Pandects, the whole of the civil law, the history of law, the *droit coutumier*, industrial and commercial law, constitutional law, and finance. Though there is no Professor of elocution as in our Law Schools, and though moot courts are not held, the students exercise their oratorical powers in the *conférences*, but, above all, in the cafés and beer saloons. It is there that you can

frequently hear some hot debate on law or politics between two students. I have also assisted at some very fine informal discussions in students' rooms, where the arguments were good, the flow of elocution easy, and the reading displayed broad. But what the French student lacks is training in Parliamentary law. He has but a very faint idea of it in his youth, and that he continues in his maturer years to have a vague idea on the importance of the matter is proved by the worse than school-boyish indecorum of the proceedings in the Chamber of Deputies. A little less Demosthenes and a little more Cushing would do them no harm. When eleven o'clock strikes in the dome of the Sorbonne most of the students hasten to their lunch or *déjeuner à la fourchette*, and when that meal is despatched they stroll leisurely to their habitual café. The most popular of the day cafés are the Source, frequented by Parisians, South Americans, a few Luxembourgers, a colony of Basques, and a sprinkling of other nationalities; the Voltaire, a respectable, solid establishment, with a good stock of papers; the Cluny, the Anglo-Saxon head-quarters, though there are numerous Roumanians in the billiard rooms up-stairs; the Vachette, the "swell" café of the quarter, where coffee costs just 1 cent more than in the other coffee-houses on the Boulevard St. Michel, and where the women are just one shade older and better dressed. It is in these resorts that the Parisian student takes his noon cup of coffee or sips his *mazagan* or slowly quaffs his *liqueur*. Here he reads the morning news or discusses a question of study with his friends, or plays a game of sixty-six, *écarté*, *baocarat*, or whist, or tries his hand at checkers or at chess. At about 1 30 he leaves and goes about his regular occupation.—*New York Times*.

#### LEX NON COGIT AD IMPOSSIBILIA.

THE following, we need scarcely say, comes from Ireland:—

"Every process server shall before service compare the copies of the civil bills delivered to him for service with their respective originals, and prior to the service of such copies endorse his name upon the original, the time when, the manner in which, and the place where such service was made, and the person (whether relative or servant) on whom the same was served."

The extract is from "Rules for the Guidance of Process Servers," issued by the clerk of the peace for County Clare. After this we should think that process servers will give up the business in despair. The Court whose officer he is, appears to be harder upon him than even the defendant and his sympathising friends are said sometimes to be. A man may escape being made to eat the writ he is serving, but how can any merely human process server record the details of an event before it happens?—*Law Journal*.

#### THE PREROGATIVE OF MEROY.

A Parliamentary paper which has been lately issued will lend considerable support to those who wish to inaugurate a tribunal of appeal in criminal cases. It is a return of cases since 1860 "in which appeal has been made on behalf of persons convicted of capital offences to the Home Secretary for the exercise of the Royal prerogative of pardon or mitigation of sentence." The total number of these appeals amounts, in the last twenty years, to 512, giving a yearly average of some twenty-five cases, and of these 279, or an average of nearly fourteen a year, have been unsuccessful. Of the remaining convicts, the majority have been sentenced to penal servitude for life or shorter term, thirteen have been reprieved without commutation of sentence, and sent to Broadmoor as lunatics, and six have been granted a free pardon. In one case only was the sentence of death quashed by the existing Court of Crown Cases Reserved. The bearing of these statistics upon the administration of the criminal law is undeniably important. Seeing that in eleven out of every twenty-five instances in which an appeal is made the sentence

is commuted, it must be assumed that, did no power of appeal exist, the most fatal miscarriage of justice would constantly occur. That the power of reviewing doubtful verdicts in so numerous a class of offences should be vested in the Home Office seems, to say the least of it, illogical and anomalous to the last degree.—*Law Times*.

#### EXPULSION FROM CLUBS.

Club law, in one sense, is daily receiving illustration in Ireland. In another and less unpleasant sense it is receiving frequent illustration in England. The latest club case is that of *Lambert v. Addison*, which was decided by Mr. Justice Kay, on February 1, in a way open to considerable remark. Captain Lambert was a member of the Junior Army and Navy Club. In May, 1880, he called the attention of the general meeting of the club to a special piece of alleged misfeasance of the committee in readmitting, as a member of the club, without a new ballot or formal re-election, a certain Lieutenant Gould, who had retired from the club in December, 1879. It appeared that Mr. Gould had been readmitted because Sir Norman Pringle, to whom the committee had applied for pecuniary assistance, had made it part of the terms on which he gave that assistance that Mr. Gould should become a trustee. Mr. Gould became a trustee, and was not only readmitted to the club, but was placed upon the committee. The committee were entrusted by the rules with the power of electing new members, and of publishing such bye-laws in regard thereto as they might feel expedient. Mr. Gould was readmitted under a bye-law passed in November, 1879, enabling retired members to be readmitted, with the committee's approval, on payment of back subscriptions, which payment he made. Captain Lambert, as he had a right to do, criticised the action of the committee, and described it to the meeting as "a pocket borough, keeping within their number the selection of members." He was himself put up for election on the committee at the same meeting, but was not elected. Subsequently he seems to have expressed rather loudly his dissatisfaction with the management of the committee, occasionally even in the presence of strangers or servants. In December he received a notice that the committee were going to take his conduct into consideration, under rule 11. This rule provided that, "if the conduct of any member, either in or out of the clubhouse, shall, in the opinion of the committee, . . . be injurious to the character and interests of the club, the committee shall be empowered to request such member to resign," and to expel him if he refuse: "Provided that no request be sent to any member unless the resolution to send the same be agreed to by two-thirds of the members of the committee actually present at a meeting to be specially summoned for the purpose." After some correspondence—in which Captain Lambert apologised if he had overstepped just criticism, but declined to attend before the committee to answer the charges against him—he was eventually requested to resign; the resolution to that effect being carried by six votes to three; in which six votes was included that of Mr. Gould, whose presence in the club was the chief ground of complaint against the committee.

On these facts, Mr. Justice Kay held that the plaintiff was expelled in accordance with the rules, and after a fair trial, or opportunity of a fair trial, and that perfect *bona fides* had been shown throughout. He referred, in support of his decision, to Lord Romilly's observation in *Hopkinson v. Marquis of Exeter*, 37 Law J. Rep. Chanc. 178; L. R. 5 Eq. 68, that, "if the decision of the club meeting has been arrived at *bona fide*, and without caprice or improper motive, it is a judicial opinion from which there is no appeal;" and to the remarks of Lord Justice James in *Dawkins v. Antrobus*, L. R. 17 Chanc. Div. 617, "unless we can say that their decision, that such conduct would be injurious to the character and interests of the club, was so manifestly absurd and manifestly idle that it could only have been a false pre-

tence to cover something else, and, therefore, was, in fact, fraudulently put forward for the purpose of giving effect to some preconceived notion of removing him without cause, we have no right to sit in judgment on their decision." Now, if the conduct of Captain Lambert had not consisted entirely of reflections on the committee who sat in judgment on him; or if the question had been submitted, as the committee had power to submit it, to the judgment of a general meeting, there would be no doubt as to the correctness of the decision. But, seeing that the committee were sitting in judgment in their own cause, and that one of the chief grievances of the plaintiff was the presence in the club at all of one of the members of the committee whose vote expelled him, we cannot but think that there is considerable room for doubt whether the case is not rather within the scope of *Fisher v. Keane* and *Labouchere v. Earl of Wharncliffe*, than of *Dawkins v. Antrobus*. In the former case, reported 49 Law J. Rep. Chanc. 11; L. R. 11 Chanc. Div. 353, the plaintiff had been expelled by the committee for drunkenness, accompanied by bad language to a guest in the club, without a hearing, and the action of the committee had been sustained by a general meeting. The Master of the Rolls reinstated the plaintiff on the ground that he had not had a fair trial before the committee, and that the case was not put properly to the general meeting. So in *Labouchere's* case, one of the grounds on which he was reinstated in the Beefsteak Club was, that the question of expulsion was put to the general meeting in the form of an issue between the committee and Mr. Labouchere. But the case under consideration is parallel to the last cited case, in that the committee were judges in their own cause, and the practically casting vote was given by the very member of the committee whose admission was the subject of the plaintiff's complaints. There is obvious impropriety in a "quasi-judicial tribunal," as the cases have it, being composed entirely of those, criticism on whose conduct is the matter in issue, and eventually determining its action by the vote of a person who, the plaintiff said, not only ought not to have been a member of the tribunal, but ought not to have been a member of the club at all. The case, indeed, is somewhat similar to that of *Lyttelton v. Blackburn*, in which, pending an appeal to a general meeting, the committee of a proprietary club expelled a member for complaining of the conduct of the committee at a general meeting, and by letter to the committee in a quite unexceptionable manner. But that case, reported 45 Law J. Rep. Chanc. 219, was decided by Vice-Chancellor Bacon, on the sworn answer of the committee that they had not acted capriciously, wantonly, or unjustly; and in the consideration that, probably, the Court had no jurisdiction to interfere if they had. This case is in conflict with the later cases already cited, and the two cases of *Lyttelton v. Blackburn* and *Fisher v. Keane* cannot stand together. The committee's answer in *Lyttelton v. Blackburn* was of little value except as a plea "of not guilty," and their performance of a judicial or quasi-judicial office was not in accordance with the "ordinary principles of justice." Their conduct, as well as the plaintiff's had been called in question, and each party had declared its intention of appealing to the club in general. Yet, while that appeal was pending, they sat as judges in their own cause, and gave judgment in their own favour by expelling their critic. Vice-Chancellor Bacon, himself, seems now to prefer the law as laid down in those cases to his own; since in the case of *Foster v. Harrison*, decided by him on January 9 this year, he reinstated a member who had been expelled by a club committee for getting the club fined for an infringement of the licensing law. The present state of the law on this point, as laid down by the Master of the Rolls and followed by Vice-Chancellor Bacon, would, therefore, appear to be that in expulsion cases the club should not only act strictly in accordance with the rules of the club, but with the ordinary principles of justice; and that, in particular, attention should be given to the constitution of the Court, so that no one who has any bias or interest in

the matter in question should sit as a member of the tribunal on the inquiry. On these principles, it is difficult to see how the decision in the case of *Lambert v. Addison* is right. Governing bodies are notoriously impatient of criticism. They can hardly be justified in inflicting so serious a punishment as expulsion from a club for criticisms, however indiscreet, when they had another mode of operation open to them.—*Law Journal*.

#### LIABILITY TO COUNTY CESS.

At Monaghan Assizes, on March 11th, Judge Lawson decided that the sale of a tenant-right of a farm carries with it the liabilities as well as the advantages possessed by the previous tenant, and that, although the sale took place after the passing of the Land Act of 1870, the holding having been created before that Act, the new tenant is bound to pay the whole of the county cess.

#### NOTES OF ENGLISH CASES.

(From the *Law Journal*.)

##### COURT OF APPEAL.

Before JESSEL, M.R., BRETT AND HOLKER, L.JJ.

##### UNION BANK OF LONDON v. INGRAM.

Feb. 1.—*Conveyancing and Law of Property Act, 1881* (44 & 45 Vict., c. 41), s. 25—*Order for Sale of mortgaged Property after Decree for Foreclosure*.

A building estate, situate near Addison Road, Kensington, had been mortgaged (1) to Ingram, (2) to the Union Bank, (3) to a Miss Lee, and successively to five other mortgagees. Under a decree for redemption and foreclosure made in this action in May, 1879, the official referee, in April, 1881, found £9,083 due to Ingram. The bank then redeemed Ingram, and in November, 1881, the official referee found £23,219 due to the bank. About £4,000 was due to Miss Lee. The property had been valued by experienced valuers at only £18,500. The bank now asked for a sale under section 25 of the Conveyancing and Law of Property Act, 1881. KAY, J., was of opinion that there was no power to make an order for sale after a foreclosure decree; but suggested a reference to the Court of Appeal.

*Ince, Q.C.*, and *Methold* for the appellants.

*Freeman* appeared for the eighth mortgagee, but nobody opposed the granting of the order.

Their LORDSHIPS were of opinion that there was nothing in the wording of the section which prevented the Court from making an order for sale, at any time before foreclosure, absolute.

*Appeal allowed.*

##### HARLOCK v. ASHBERRY.

Feb. 3.—*Mortgage—Foreclosure—Action—Recovery of Land—Statutes of Limitations—Payment of Rent by Tenant*.—3 & 4 Wm. IV., c. 27, ss. 2, 40; 7 Wm. IV. & 1 Vict., c. 28.

Appeal by the defendant from the judgment of FRY, J. The case is reported 50 Law J. Rep. Chanc. 745.

*Kekewich, Q.C.*, and *H. A. Giffard, Q.C.*, for the appellant.

*Cookson, Q.C.*, and *Covens Hardy, Q.C.*, for the plaintiff.

Their LORDSHIPS held that a foreclosure action is an action for the recovery of land within section 2 of 3 & 4 Wm. IV., c. 27., and not section 40; that the payment required by 7 Wm. IV. & 1 Vict., c. 28, to take the case out of that section must be a payment of principal or interest by the mortgagor or his agent, or some person bound or entitled to pay on his behalf. Held, overruling FRY, J., that payment of rent by the tenant to the mortgagee is not such a payment that there could not be a ratification in law, even had there been evidence in fact of such payment by the mortgagor, to make it a payment on her behalf.

Appeal accordingly allowed, except as to the part of the mortgaged property in the occupation of Wade, the tenant, who had paid the mortgagee the rent.

(From the *Times*.)

##### QUEEN'S BENCH DIVISION.

(Before MATHEW and CAVE, JJ.)

##### DRAKE AND OTHERS v. JARDINE AND OTHERS.

Feb. 18.—*Service of process—Jurisdiction—Balance of convenience*.

In this case the traveller of the plaintiff firm, wholesale grocers in the City, called upon a Belfast grocer, and got an oral order for a quantity of sugar, to be shipped promptly and paid for, as the traveller said, on delivery of bills of lading in London. The sugar was shipped, though not by the next vessel, and the bills of lading were delivered in London; but the sugar was lost before delivery, and the Belfast grocer refused payment of the amount claimed, which was £130, whereupon the wholesale house sued him in the High Court. By a recent rule or order of the High Court of Justice, the Court or Judge are to exercise a discretion as to allowing service of process of the High Court on a party in Scotland or Ireland where either the contract or the breach of it occurred in England, having regard to the amount claimed, and whether there is in the place in Scotland or Ireland where the party lives a local Court of limited jurisdiction, and, generally, to considerations of convenience. There was an affidavit for the plaintiffs that they would have to call brokers in the City to prove what was meant by "prompt shipment," and, further, that there is no local Court of limited jurisdiction in Belfast. Under these circumstances the Judge at Chambers had made an order allowing service of process on the grocer in Belfast in an action in the High Court, to be tried in London. This was an appeal on his part from that order.

*Mr. Crump*, on his behalf, contended that as the grocer lived in Belfast, and his witnesses would be there, the action ought to be there, and there was no such preponderance of convenience as required it to be brought here.

*Mr. R. V. Williams* and *Mr. Hansell*, on the other side, for the wholesale house in London, insisted that the order was right, as the sum was considerable, and the breach of contract was in London, by non-payment on delivery of the bills of lading, and there was no local Court at Belfast.

*Mr. Justice Mathew* observed that on this application it must be assumed that the breach of contract was in London, the contract being for payment on delivery of bill of lading there, and

*Mr. Justice Cave* observed that it was the fault of the defendant, the grocer, for entering into such a contract, and that he ought to have stipulated that payment should be on delivery of the sugar to him at Belfast.

On the whole, after some discussion,

The Court came to the conclusion that there was no ground for disturbing the decision of the Judge, who had exercised his discretion upon all the circumstances of the case as to the balance of convenience on one side or the other.

Appeal dismissed with costs.

#### LIABILITY OF MEMBERS OF DISPENSARY COMMITTEES.

At the recent Claremorris Quarter Sessions, before *Mr. Richards*, County Court Judge, *Dr. O'Rorke*, medical officer of Ballinrobe Dispensary District, sued *Mr. Monahan* for £1 ls., for one visit paid to a patient on a visiting ticket issued by defendant; also for 10s. 6d., for advice given to a patient at the Dispensary, on a black ticket issued by the defendant. In both instances the patients were held by the Committee of Management of the Dispensary District not to be fit persons to receive Dispensary medical relief, and the tickets were cancelled. The defence was that defendant did not know for whom he had issued the tickets or the circumstances of the patients, but thought both tickets had been obtained by children. The judge said that the issuer was

guilty of carelessness, and that the system being liable to such abuse, he would give a decree for the amount claimed against the defendant, as the person who called in the Doctor was liable for the payment of his fees, and defendant was the person in these instances who had demanded the medical officer's services. No appeal against the decision was made. This case establishes the liability on the part of a ticket issuer for having improperly exercised his privileges; while in former cases numerous instances of decrees against the recipients of medical relief are recorded, but this is the first case of a decree against a ticket issuer.

#### THE SALARIES OF CORONERS.

The new Coroners' Act having been submitted to the grand jury at Armagh on Monday last, they appointed a committee of five to ascertain the average number of inquests held by each of the three county coroners. That being done, the grand jury proceeded to present for half a year's salary to each, but payable up to 1st May next. Mr. Coroner Peel took exception to this, but as the grand jury would not, in accordance with the 3rd section of the Act, pay the half year due on 1st November last, he retained Mr. Boyd, Q.C., to bring the matter before the judge, the Right Hon. A. Lawson. The grand jury having received notice, sent the foreman and Mr. J. C. Stronge, J.P., to the judge, who heard their case in chamber. His lordship decided that they were bound to pay the coroners the half year's salary due at November 1st, 1881, and so on half yearly. The grand jury then afterwards sought to deduct the fees paid at July, 1881, but to that Mr. Peel also objected, and the grand jury gave way, complying with the law.

#### TEXT-BOOK ADDENDA.

(Continued from page 90, ante.)

*Lely and Foulkes on the Judicature Acts (3rd Edition), 194.*

The principle of protecting confidential communications is not to be extended to protect those that are made by a third party to a solicitor for the purpose of enabling the solicitor to advise his client in a matter as to which no litigation is pending or contemplated (*Wheeler v. De Marchant*, 50 Law J. Rep. Chanc. 798)—C. A.

*Robson on Bankruptcy (4th Edition), 557.*

*Pitt-Taylor on Bankruptcy, 115.*

A delivery of goods, seized under an *elegit*, to the execution creditor at the value appraised by the jury, is a sale under section 95, subsection 3, and is, therefore, a protected transaction (*In re Bannister, ex parte Vale*, 50 Law J. Rep. Chanc. 797)—C. A.

*Sugden on Powers (8th Edition), 442.*

An instrument exercising a power of appointment must be executed and construed, according to the rules applicable at the time of its execution, to an ordinary instrument of that kind, although the power may have been created before, but exercised after, a change in the law relating to the construction and execution of such instruments. So held where a power to appoint, by will, was created before, but exercised after, the passing of the Wills Act (*Freme v. Clement*, 50 Law J. Rep. Chanc. 801).

*Judicature Act, 1873, s. 49.*

*Lely and Foulkes on the Judicature Acts (3rd Edition), 44.*

Where, in an action, the only order made is "that the defendant do pay the costs of the action," an appeal against the order is not an appeal for costs only (*Dicks v. Yates*, 50 Law J. Rep. Chanc. 809)—C. A.

*Copinger on Copyright (2nd Edition), 70.*

There can be no copyright in a title which is not original (*Dicks v. Yates*, 50 Law J. Rep. Chanc. 809)—C. A.

(To be continued.)

#### APPOINTMENTS AND PROMOTIONS.

NOTE BENE.—Information intended for publication under the above heading should reach us not later than Friday morning in each week, as publication is otherwise delayed.

Mr. Jeffrey Browning, Suffolk-street, has been appointed solicitor of the Land Commission.

Sir Samuel Ferguson, LL.D., Q.C., Deputy Keeper of Public Records, has been elected President of the Royal Irish Academy.

#### BOOKS RECEIVED.

*A Concise Practical Treatise on the Law of Property.* By H. W. BOYD MAOKAY, Esq., LL.B., of the Middle Temple and the King's Inns, Barrister-at-Law &c. London: H. Sweet, 3 Chancery-lane, W.C., Law Book-seller and Publisher. 1882.

#### LAW STUDENT'S JOURNAL.

##### THE INCORPORATED LAW SOCIETY OF IRELAND.

EASTER SITTINGS, 1882.

##### NOTICE.

The PRELIMINARY EXAMINATION of Candidates for Apprenticeship will be held at the Solicitors' Hall, Four Courts, Dublin, on Monday and Tuesday, the 3rd and 4th days of April, 1882, at Eleven o'clock.

N.B.—All Papers to be lodged on or before Friday, 17th March, 1882.

The FINAL EXAMINATION of Candidates seeking admission as Solicitors will be held at the same place, on Wednesday and Thursday, the 5th and 6th days of April, 1882, at the same hour.

By Order of the Council,

JOHN H. GODDARD, Secretary.

Solicitors' Hall, Four Courts, Dublin.

N.B.—The decision of the Court of Examiners will be announced on Wednesday, the 26th of April, 1882, at Three o'clock, p.m.

Candidates residing in the country need not remain in town to hear decision, but can learn same from the Dublin Morning Papers of the day following the announcement.

##### THE INCORPORATED LAW SOCIETY OF IRELAND.

TRINITY SITTINGS, 1882.

##### FINAL EXAMINATION.

##### NOTICE.

Candidates wishing to present themselves at the above Examination must lodge their papers, &c., on or before the first day of Easter Sittings, 1882.

By Order,

JOHN H. GODDARD, Secretary.

Solicitors' Hall, Four Courts, Dublin,  
3rd February, 1882.

*Holloway's Pills.*—Nervousness and want of Energy.—When first the nerves feel unstrung, and listlessness supplants energy, it is the right time to take some alternative as Holloway's Pills to prevent disorder running into disease. These excellent Pills correct all irregularities and weaknesses. They act so kindly, yet so energetically on the functions of digestion and assimilation, that the whole body is revived, the blood is rendered richer and purer, the muscles become firmer and stronger, and the nervous and absorbent systems are invigorated. These Pills are suitable for all classes and all ages. They have a most marvellous effect on persons who are out of condition; they soon rectify whatever is in fault, restore strength to the body and confidence to the mind.

## COURT PAPERS.

## LAND JUDGES.

Sittings for next Week so far as same are appointed.

Before the Rt. Hon. JUDGE FLANAGAN.

## MONDAY.

IN CHAMBER.—W. Mathers, allocate.

IN COURT.—Assignees S. M'Clean, to examine witness.—T. Sexton, from 13th.—W. Rowland, receiver.—County Court Appeal, Vint v. Miscampbell, judgment.

Before EXAMINER (Mr. Kennedy).

A. M. Miller, rental.—G. S. Graves, do.

## TUESDAY.

IN COURT.—Trustees Corbett, from 14th.

## THURSDAY.

IN COURT.—H. J. Blake, from 14th.

Before EXAMINER (Mr. Kennedy).

J. M. Walker, rental.—C. Martin, do.

## FRIDAY.

## SALES IN COURT.

R. EAMES	-	-	-	1 lot.
V. WALL	-	-	-	1 „
P. LAWLESS	-	-	-	1 „
R. L. WATSON	-	-	-	2 lots.

Before the Rt. Hon. JUDGE ORMSBY.

## WEDNESDAY.

Before EXAMINER (Mr. M'Donnell).

T. Colslough, rental.—J. Callaghan, do.—J. S. Peet vouch.

## FRIDAY.

Before EXAMINER (Mr. M'Donnell).

J. Ronayne, rental.

## HIGH COURT OF JUSTICE.

## CHANCERY DIVISION.—LAND JUDGES.

List of Petitions presented to the Land Judges in the month of February, 1882.

DATE	TITLE OF MATTER	OBJECT OF PETITION	COUNTY	PROFIT RENT	SOLICITOR
Feb. 2	Elizabeth Chambers and others, owners; <i>Louisa Chambers, petitioner</i>	Receiver and sale	Co. Meath	£ s. d. 289 2 6	G. O'B. Kennedy
" 8	Catherine Fitzgerald, owner; <i>The Munster Bank, petitioners</i>	Receiver, Partition, and Sale	Co. Cork	828 4 8	Thomas H. Kenny
" 4	Edmund Fitzgerald, owner and petitioner	Sale	Co. Limerick	865 0 11	Charles L. Perrott
" 6	John O'Flanagan and others, owners; <i>Catherine Peacocke, petitioner</i>	Receiver and sale	City Dublin	486 15 6	Mitward Jones and Co.
" 11	William Hitchcock and others, owners; <i>Edward Roper, petitioner</i>	Sale	Co. Limerick	249 18 9	Alexander D. Kennedy
" 7	Francis Joseph Jackson, owner; <i>Arthur Henry Jackson, petitioner</i>	Receiver and sale	King's Co.	266 9 9	T. W. Hardman and Sons
" 11	Hampden Evans Tener, owner; <i>Michael King and another, petitioners</i>	Receiver and sale	Tyrone	278 16 9	John A. French
" 8	John Dean Vimpani and Wife, owners and petitioners	Sale	Co. Dublin	65 0 0	Keily and Lloyd
" 9	Alexander Hunter Steen and another, owners and petitioners	Partition and Sale	Co. Antrim	1,861 2 9	L'Estrange and Brett
" 11	Robert Swanton and others, owners and petitioners	Sale and parti- tion	Cork	280 4 8	Babington and Co.
" 11	Robert Swanton, owner; <i>John Atkins, petitioner</i>	Sale and parti- tion	Cork	59 8 2	Babington and Co.
" 14	James Martin, owner; <i>The Governor and Co. of Bank of Ireland, petitioners</i>	Sale	Dublin	Not known	E. H. DeMolegns
" 16	Leslie Wren, owner; <i>The Edinburgh Life Assurance Company, petitioners</i>	Receiver and sale	Counties Meath and Kerry	710 15 0	J. and J. Galloway.
" 11	Martin Murphy, owner; <i>Patrick O'Connell, petitioner</i>	Sale of life estate in certain funds	—	—	Charles Thorp.
" 20	Charles J. S. Stephens, owner; <i>James Fuller, petitioner</i>	Sale	Galway	99 10 0	Johnston, Dillon, and Co.
" 21	Hugh Hamilton, owner; <i>James M'Carthy, petitioner</i>	Receiver and sale	Tyrone	61 15 0 Griffith's Valuation	Andrew Elliott.
" 22	Elizabeth A. Gordon and another, owners; <i>William Seeds, petitioner</i>	Sale	Antrim	186 5 0	Charles Higginson
" 24	Cork Harbour Docks Company, owners; <i>Thomas F. Lyons and another, petitioners</i>	Sale	Cork	Not known	Babington and Babington.
" 27	Cornelius A. Keogh, owner; <i>John Gilbert King, petitioner</i>	Receiver and sale	Co. Sligo	969 8 8	Chomley and St. George
" 28	William P. Cullen and Wife, owners; <i>The Scottish Union and National Insurance Co., petitioners</i>	Receiver and sale	Galway and Leitrim	167 12 0 Griffith's Valuation	A. H. Goddard

# THE IRISH LAW TIMES AND SOLICITORS' JOURNAL.

VOL. XVI.

SATURDAY, MARCH 25, 1882.

No. 791

## PRESUMPTIONS OF LIFE, DEATH, AND SURVIVORSHIP.—III

IN the American case of *Wentworth v. Wentworth*, already cited, decided in 1880, it was held that the rule that it must appear that the person whose death is in question has not been heard of by those persons who would naturally have heard from him during the time had he been alive, does not confine the intelligence to any particular class of persons—it may be to persons in or out of the family; and the mere failure to hear from an absent person for seven years, who was known to have had a fixed place of residence abroad, would not be sufficient to raise the presumption of his death, unless due inquiry had been made at such place without getting tidings of him. So in *Re Rhodes, Frazer v. Renton*, 28 L. T. N. S. 392, it was held that death will not be presumed if it appears that further evidence can be obtained; so, if sufficient inquiries have not been made: *In re Creed*, 1 Drew. 235; *Goods of How*, 1 S. & T. 53; *Goods of Smyth*, 28 L. J. Pro. 1; *Re Timball's Trust*, 30 Beav. 151; and in *Gill v. Manly*, 16 Ir. L. T. Rep. 57, the same principles, in effect, were most properly applied. Accordingly, in equity or probate proceedings, advertisements are directed, though the seven years have expired: *Re Allin*, 15 W. R. 1164; *Re Atkinson*, I. R. 5 Eq. 219; and see as to the particularity necessary in affidavits in such cases, *Goods of Cooke*, I. R. 5 Eq. 240, and as to the form of procedure for settlement of those questions in the Probate Division, *Peppercorne v. Gardner*, L. R. 3 P. & D. 149. In *Re Webb's Estate* (I. R. 5 Eq. 235) it appeared that a person emigrated to Australia, under circumstances showing that he was likely to communicate constantly with his family in Ireland, and having so communicated with them for some time, then ceased to do so, and was not heard of for more than seven years. From his last letter it was probable that, had he lived, he would have continued to write home. Inquiries were made by his family concerning him, and advertisements published, but with no result. And it was held that there was sufficient *prima facie* evidence to establish a title, depending on his death without issue during the lifetime of a person who died after the expiration of the seven years. Compare *Gill v. Manly*, 6 Ir. L. T. Rep. 57. But, the presumption does not arise where it is improbable there would have been any communication with home: *Bowden v. Henderson*, 2 Sm. & G. 360; *Watson v. England*, 14 Sim. 28; and see *Re Smith*, 31 L. J. P. & M. 182; *M'Mahon v. M'Elroy*, *ubi supra*; *Re Mileham*, 15 Beav. 507. There is no presumption as to the age at which a person died who is shown to have been alive at a given time: see *Steph. Ev.*, c. 14, a. 99 (and as to death without issue, see *Re Webb*, *ubi supra*; *Mullaly v. Walsh*, I. R. 6 C. L. 314; *Doe d. Banning v. Griffin*, 15 East, 293; *Re Hanby*, 25 W. R. 427; or leaving no widow, *Re Westbrook*, W. N. 1873, 167). But the age and state of health at the time of disappearance are to be regarded: *Gill v. Manly*, 16 Ir. L. T. Rep. 57; *Danby v. Danby*, 5 Jur. N. S. 54; *R. v. Harborne*, 2 A. & E. 544; *Re Beasney*, L. R. 7 Eq. 498. In *Gill v. Manly*, 16 Ir. L. T. Rep. 57, the departed (not declared deceased) would, at the time of controversy, be only about sixty years old—the age at which the terrible

Duke of Alva first set out on his six years' career to crush the liberties of the Netherlands.

The circumstances appearing in the case last mentioned were as follows:—In April, 1842, a lease was made for 21 years, and during the life of Bryan Gill, then aged 21, or 24. In 1856 Bryan Gill went to Stevens's Hospital, Dublin, suffering from an affection in his eyes; and a short time afterwards some members of his family called, but could hear nothing of him. It was deposed that he had left this country in that year; and it was stated that, when leaving home, before going to the hospital, he had got £5 from his relatives. It did not appear that he had at any time subsequently asked for any assistance from them; and William Gill, his brother, had not heard from him since, and stated his belief that his other brothers and sisters had not heard from him. But the other brothers and sisters made no affidavit; nor did it appear what inquiries were instituted to discover his whereabouts; and it was sworn by or on behalf of the lessor that a bailiff had been informed that Bryan Gill was a mate on board an American vessel in March, 1875. During Bryan Gill's absence rent had been paid by William Gill, and received by the lessor, but not, so far as appeared, with knowledge that, as alleged, Bryan Gill was dead. William Gill (whose elder brother would have been entitled to the land, if Bryan Gill was still alive) claimed to be a "present tenant," under a tenancy from year to year, and served an originating notice to fix a judicial rent, under the Land Law Act, 1881, at a time when Bryan Gill, if still alive, would be about sixty years of age. On an application by the lessor to set aside the originating notice, it was contended that it lay on William Gill to show by evidence that there was sufficient ground for deeming that Bryan Gill was dead; and that it was, also, material for him to establish the time of the death, whether before or after the passing of the Act, in order to sustain his position as a "present tenant" from year to year within its provisions. If the evidence of the bailiff were to be received, it would appear that Bryan Gill was alive about six years and eleven months previous; it was objected that this was only the hearsay of a person who had not even made an affidavit; but, some degree of reliance seems to have been placed on it by the Court. The case of *Prudential Assurance Co. v. Edmunds* (2 App. Ca.) may be referred to, however, where the question, in 1874, was as to the death of Nutt, who had disappeared in 1867, and his sister and brother-in-law deposed that they had not heard of him for seven years, but, on cross-examination, admitted that a niece of Nutt's had said that in 1872 she saw a man at Melbourne whom she believed to be her uncle (in which the jury thought she might be mistaken), but he was lost in the crowd before she could speak to him. Kelly, C.B., declined to tell the jury that Nutt should be presumed dead, as having been absent for seven years without being heard of, but, on the contrary, charged strongly for the defendants on the ground that all the members of Nutt's family had "heard" what the niece had stated. The Court of Appeal, however, held this to be a misdirection, and, as the House of Lords could not agree on the subject, their decision stood affirmed. If then the bailiff be eliminated from *Gill v. Manly*, it stands as a case where a man had disappeared for no

less than 26 years, unheard of. But, on the other hand, there was the circumstance (which rightly seems to have weighed mainly with the Court) that, while it was stated that there were brothers and sisters of Bryan Gill living, they had made no affidavit, nor did it appear what inquiries had been instituted to discover his whereabouts: see cases above collected. It was contended that, although there was no presumption of his death at a particular date, yet, if the presumption were that he was dead at the end of the first seven years, it should be presumed that he was dead before the commencement of the second seven years. But, Mr. Commissioner Litton held, rightly as we think, that sufficient evidence had not been brought forward to establish the death at all, so as to warrant any presumption. Indeed, if he quite got over that "affection in his eyes," Bryan Gill, aged 60 (the first grand climacteric not being till 63), may even be counted, at the present moment, among the readers of the IRISH LAW TIMES; but we do not think it was a case that admitted of any *presumptio juris* whether of life or death, although like the Corsair,

"Nor trace, nor tidings of his doom declare  
Where lives his grief, or perished his despair."

#### RECENT BILLS OF SALE CASES.

The true statement of the consideration in a bill of sale is largely a question of fact. The meaning of the words used in the bill may be a question of law in the sense that it is for the judge to determine it; but the advantage to the debtor, in consideration for which he really and truly gave the bill, must be a question of pure fact. A series of decisions on this subject is finding its way into the books, slender as is the basis of the whole superstructure. When the Bills of Sale Act, 1878, required the bill to "set forth the consideration," it probably occurred to one that the most formidable of the numerous obstacles to the validity of the bill was being established. When, however, the matter came before the Courts, there was a general agreement that the consideration set out must be the genuine consideration inducing the giving of the bill. We believe the point was not even taken that the bill itself, under the hand of the grantor, should be considered conclusive evidence that the consideration was as there stated. It is too late now to argue that evidence outside the document may be inquired into to show that the real consideration was something different from that stated, unless some adventurous person should carry the point to the House of Lords. The crucial question, therefore, being not so much the meaning of the consideration stated, but what in very truth was the consideration, the matter resolves itself, in most cases, into a question of fact, as is pointed out by the Master of the Rolls in the case of *In re Spindler, ex parte Rolph*, reported in the February number of the *Law Journal Reports*.

In that case Spindler assigned his household furniture and other goods to Nicholson in consideration, as expressed in the deed, "of the sum of £50 by the assignee paid to the assignor at or immediately before the execution hereof." The bill was executed on March 23rd, and on that day a letter was signed by Spindler directed to Nicholson, and asking him to deduct £3 10s, his expenses in preparing the bill, and to pay £25, a quarter's rent due for Spindler's house. This letter was evidently required by Nicholson in order to justify his not paying the whole £50, the consideration stated in the bill. In fact he handed Spindler only £31 10s. Of the balance he kept £3 10s. for his own services, and on March 30 paid £25 to Spindler's landlord for rent due on the 25th. The conclusion arrived at by the judges was that the preparation of the bill, the retention of the rent, and the advance of £21 10s. was the true consideration for the bill of sale, and not "£50 paid at or immediately before the execution," although those three items came in all to £50. The Master of the Rolls arrives at this conclusion by, first of all, eliminating

£25 from the £50, because this sum never was in fact paid to the grantor, and he never had the chance of retaining it, the grantee not trusting him to do so, but protecting his own security by having in hand wherewith to keep the landlord from distraining on the goods. He then criticises the words "paid at or immediately before the execution," pointing out that the £25 were not paid till seven days after the execution. Some previous cases in which the statement of the consideration was upheld require to be considered. In the case of *In re Haynes, ex parte The National Mercantile Bank*, 49 Law J. Rep. Bankr. 62, decided by the Court of Appeal, the bill was stated to be in consideration of an advance of £2,050 at the execution, when, in fact, £550 of this sum was handed back to the bank for the purpose of taking up some bills on which the grantor was liable to the bank. The money was paid in notes and gold to the grantor, and handed back to the grantee. The Chief Judge in Bankruptcy pronounced this "a comedy," but Lord Justice James was unable to see it in that light. The Master of the Rolls does not approve or question this decision, but remarks that the Court of Appeal decided as a matter of fact that the real consideration was the same as the consideration stated. In the case of *In re Rogers, ex parte Challinor*, £560 was stated to be the consideration; but £40 was retained as the solicitor's costs of the bill, and £20 for a valuation of the goods. The Court of Appeal, again overruling the Chief Judge, held this to be a sufficient statement of the consideration. The Master of the Rolls considers that this case presents more difficulty, but he approves of the finding of fact under the circumstances that the real consideration was £560, but the mere form of handing the £60 backwards and forwards was not gone through. The later case of *Hamilton v. Chaine*, 50 Law J. Rep. Q. B. 456, is referred to by Lord Justice Lindley, but is not referred to by the Master of the Rolls or Lord Justice Lush. It is a case in which the Court of Appeal gave a strict construction to the requirement that the consideration should be stated; and it is difficult to reconcile it with *Re Haynes*, on which case Lord Justice Brett, in his judgment in *Hamilton v. Chaine*, throws some doubt. In the last-mentioned case the consideration was stated to be £700, and a cheque for that amount was actually received by the grantor and cashed. He, however, returned £7 10s. and a promissory note for £10 for commission and expenses. However expedient it might be to forbid a proceeding of this kind, a misstatement of consideration is but a slender basis on which to found the decision. We confess to feeling sympathy with the more masculine views expressed by Lord Justice James in preference to those of Lord Justice Brett and the Chief Judge. Those, however, who are concerned in a bill of sale, will do well to take to heart the more stringent views of the latter judges, and give the ultimate destination of every penny expressed to be advanced in the bill of sale. When money is retained to meet a future liability—a temptation sometimes felt in respect of interest—all the judicial commentators agree that this cannot be truly stated as advanced, and if so stated, the bill is void.—*Law Journal*.

#### JURY TRIAL—CHARGING THE JURY.\*

We have an excellent work on each of the above-stated subjects, which for fairness, completeness, learning, and ability may be recommended to the American lawyer.

It is not our purpose to review the above-named works, but to discuss some very important points contained therein, and in connexion with the subjects—Jury Trial, and Charging the Jury; and they are so connected, and bear such relation one to the other, that it is necessary they should be considered, not by comparison; but by a united view of their connexion and constant bearing one on the other.

(1) Proffatt on Jury Trial.

(2) Charging the Jury (Thompson).



The history of jury trial is very interesting and instructive, showing in its rise and development, its influence in reducing the rigor of English jurisprudence, and tempering with justice and mercy the severity of English law in the administration of civil and personal rights.

Proffatt truly remarks: "The popular courts of the Anglo-Saxons were the means of cultivating, diffusing, and maintaining a spirit of freedom, order, and self-government, and in these courts we find the characteristic element of their jurisprudence, and from them, as has been shown to be the case generally with popular assemblies, there arose those special tribunals to which we must look to find the origin and idea of the jury."<sup>1</sup>

The trial by jury may be considered one of the gems of the great bulwark of English liberty—*magna charta*—secured by the memorable expression that no freeman shall be hurt in either his person or property—*nisi per legale iudicium parium suorum vel per legem terræ*. The leading commentators on English law refer to this instrument as the security of trial by jury.<sup>2</sup>

The gradual development of jury trial shows that it was brought into use as a matter of convenience, then recognised under some rulers as a concession, until it finally came to be claimed as a right through judicial precedent, and finally by the enactments of the royal charter, and gradually acquired character and form under the conditions and pressing wants of society and the developments of law.

The trial of Sir Nicholas Throckmorton,<sup>3</sup> in the reign of Mary, illustrates the force of a jury trial at that day, and the necessity of such an institution, while at the same time it illustrates this truth: that the jury, to be of sufficient service in protecting individual liberty and civic rights, must be surrounded and supported by free, untrammelled popular action; and to be efficient and useful, it must be actuated by that public spirit and a fearless conscientiousness sufficient to resist under all circumstances every feature of despotism. Nevertheless, the true functions of the jury, while it is independent in the exercise of its legitimate authority, are not, as we will discuss in a subsequent portion of this paper, independent of or superior to the courts under which it acts.

With the downfall of the Stuarts, and the abolition of the Star Chamber, began the independence and enlarged province of the jury, which has made it one of the most valued and cherished of England's free institutions.

The trial by jury has flourished in all free communities and endeared itself to popular regard, and we can easily see the reason in examining its relation to civil government; the character and functions of the jury are so nearly allied to the moral and social condition of a people that its leading features will always be influenced by the spirit of liberty as reflected in the public institutions; and in its own province it will also influence the administration of law in obedience to a free and liberal estimation of personal and civil rights. Yet it must be remembered that in the history of trial by jury the system is influenced to a great extent for its worth and character in a free State by the character of the people among whom it is established. Streams are not purer than their source.

The English Colonists settled here with a strong love for the trial by jury. Its history in the formation of the Constitution of the United States is not only interesting, but the views of some of the public men of the early days of the Republic instructive. It was provided by the Constitution of the United States (Art. III, sec. 2) that the trial by jury of all crimes, except impeachment, should be preserved; but it was silent in regard to trials in civil cases. The reason of this omission is supposed to be owing to the diversity of practice in the different colonies which made it difficult to adopt a measure which would command

general approval.<sup>4</sup> The convention that drew up the Constitution was greatly divided on the subject.<sup>5</sup> It was thought best to say nothing in relation to the trial by jury at the time of the framing the Constitution, for the reason "that the changes which are continually happening in the affairs of society may render a different mode of determining questions of property preferable in many cases in which that mode of trial now prevails."<sup>6</sup>

The English sentiments in favour of trial by jury had fully impressed the Colonists. It was said by the Supreme Court (Story, J. delivering the opinion): "One of the strongest objections originally taken to the Constitution was the want of an express provision securing the right of trial by jury in civil cases."<sup>7</sup>

The impatience and anxiety of the people in reference to this omission were exhibited in conventions and resolutions, until it was incorporated in the seventh amendment to the Constitution, as proposed by the first Congress in 1789, and ratified by a sufficient vote of the States by 1791, which extended the right of trial by jury in all suits at common law where the value in controversy exceeds twenty dollars, but this provision is confined to the Federal judiciary by express terms—"in any court of the United States."

The trial by jury is now universally recognised in the States, though some have restricted the right in criminal cases to graver offences than in others.

In discussing this question, we wish to refer to the diminished influence and powers of juries at the present time in England and the United States—especially in the Federal courts—compared with its former history in the early part of the present century; and this is clearly illustrated by the force and language used and expressed in instructions to the jury.

Forsyth remarks: "An institution like the jury, existing for ages amongst a people, cannot but influence the national character," and on this subject he appropriates a chapter: "The jury considered as a social, political, and judicial institution."<sup>8</sup> An examination of this subject, as treated by Forsyth and Proffatt will fully illustrate the beneficial influence resulting from this institution alike in England and America, in a social and political sense, as well as its judicial bearing on the functions of the court; but it is evident from its history that the judicial authority and power have been modified from time to time through the legislative departments, and this produced from the social influence bearing on the tendency and practical application of the jury system.<sup>9</sup>

In this article we will discuss the relative changes which have occurred in the judicial status of the jury in England and America; we will endeavour to point out the distinctions existing in the character of the charges to the jury from an English and an American court, State and Federal—a difference, it may be observed, which has been produced in a measure by legislation; yet in many instances judicial *dicta* have established authority going beyond the organic, constitutional or legal functions of the courts; and this may occur from a disposition on the part of the judiciary to enhance its powers, and dictate through the medium of the legal form of "charges to the jury" the determination of the verdict.

The profession is well acquainted with the exalted eulogium of Blackstone on the trial by jury as "the glory of the English law," and also with the lucid demonstrations of the existing defects at the time he published his Commentaries.<sup>7</sup>

The power of the courts, through the charge, has increased very much in England since the days of Blackstone. We will not weary the learned reader by

(1) Proffatt on Jury Trial, p. 19, section 14.  
(2) 4 Black. Com., 349; Lingard, vol. 2, ch. 14.  
(3) Howell's State Trials, vol. 1, p. 870.

(1) Proff. Trial by Jury, section 83.  
(2) Story Com on Const., sec. 1763.  
(3) Federalist, No. 83, Article by Hamilton.  
(4) *Parsons v. Bedford*, 3 Pet 446.

(5) Hist. of Trial by Jury, chap. xviii.  
(6) On this point, *vide* M. de Tocqueville—*De la Démocratie en Amérique*, Tom. 11, 184-186.  
(7) Black. Com., vol. 2, pp. 378-9-81, 2, 3—Wendell's edition.

tracing the development of the power of the court over the jury in England, though its history is interesting and instructive to the American jurist in many respects.

Thompson has accurately said, speaking of the character of instructions given by an English court: "In that country the judges, in summing up, are in the constant habit of intimating to the jury their opinions upon the weight of the evidence; and even where the question is purely one of fact, it is no ground for a new trial that the judge expressed his opinion in strong terms upon the facts, provided he left the jury to the exercise of their discretion."<sup>1</sup>

Brougham remarks on this subject, in reference to the course of Lord Ellenborough: "Upon each case that came before him he had an opinion, and, while he left the decision to the jury, he intimated how he thought himself. This manner of performing the office of a judge is now generally followed and most commonly approved."<sup>2</sup>

It has been held in England that the judge has an undoubted right to state to the jury his own impressions of the evidence, even though he do it in strong terms.<sup>3</sup>

Thompson says: "In the Federal courts a rule obtains similar to that in the English courts. In these courts the propriety of the judges leaving to the jury questions of fact which are fairly in doubt, is not questioned. He may, if in his discretion he judge proper, sum up the facts to the jury, as the English judges are in the habit of doing, and submit them to the free judgment of the jury, together with proper instructions as to the inferences of law deducible therefrom. But he should, in all cases, take care to separate the law from the facts, and to leave the latter in unequivocal terms to the judgment of the jury, as their true and peculiar province."<sup>4</sup> He may not only thus present to the jury the facts proved, but he may give his opinion as to those facts for their consideration. But, as the jurors are the triers of the facts, such an explication of opinion by the court should be so guarded as to leave the jury free to exercise their own judgment. They should be made distinctly to understand that the instruction was not given as a point of law by which they were to be governed, but as a mere opinion as to the facts, to which they should give no more weight than it was entitled to.<sup>5</sup> The same doctrine was reiterated in a subsequent case, preserving the same distinction. The judge's opinion on a matter of fact may properly be given, but it is not conclusive, and is to receive at their hands no more consideration than they think it entitled to."<sup>6</sup>

"It is not error for a judge to give his opinion to the jury on the weight of evidence."<sup>7</sup>

"That he must not instruct them on the sufficiency of evidence to show a controverted fact or as to the credibility of witnesses."<sup>8</sup>

"That he should not give such instructions as to supersede an inquiry into facts by the jury" is fully explained in the case of *Chesapeake & Ohio Canal Co. v. Knapp*.<sup>9</sup>

The distinguished author of "Charging the Jury" has very carefully and fairly presented the history of this question as it arose, and has progressed in our Federal judiciary. We make reference to a decision of the Supreme Court of the United States, of later date than the publication of his essay.

"A judge has no right to submit a question when the

state of the evidence forbids it. *Michigan Bank v. Eldred*, 9 Wall. 844. On the contrary, where there is an entire absence of testimony, or it is all one way, and its conclusiveness is free from doubt, it is competent for the court to direct the jury to find accordingly. *Merchants' Bank v. State Bank*, 10 id. 604. The practice condemned in *Michigan Bank v. Eldred* is fraught with evil. It tends to create doubts which otherwise might not, and ought not to exist, and may confuse the minds of the jury and lead them to wrong conclusions."<sup>1</sup>

Thompson is inclined to favour a stronger exercise of power on the part of the court than has yet been sanctioned by judicial authority of the Supreme Court. He says: "Our books of reports are filled with decisions on the propriety of giving or refusing certain evidence, with scarcely any attention paid to the question whether the verdict is right—decisions which, in the eyes of an English jurist, would look trivial in the extreme. With us "the province of the jury" is a sort of sacred realm, surrounded by the barrier of a superstitious veneration; while in reality, it is in many cases a judicial White Friars, whose privilege of sanctuary is pernicious to the best interests of society."—*Introduction*, p. vii.

Thompson asserts what is known to every judge, speaking of the weight and effect of testimony, and how it should affect the cause:—"The judge, by reason of his experience in such matters, is, in ordinary cases, much better qualified to sift testimony and to weigh evidence than the jury. He is an expert in such matters; almost as much as in matters of law. This being so, his aid should never be withheld from the jury in determining the questions of fact arising in the trial of causes. It should be his office, and not merely his privilege, to sum up the evidence and to give the jury the benefit of his opinions as to the facts of the case."—*Introduction*, p. vii.

The author says, in the body of his essay, writing of the Federal Court, "It is the general practice for the presiding judge at a *non pro* trial, in his charge to the jury, to take up the facts and circumstances in proof, explain their bearings on the controverted points, and declare what are the legal rights of the parties arising out of them."<sup>2</sup> He cites, *Express Co. v. Kountz*.<sup>3</sup>

The author also, following the decisions of the Supreme Court of the United States, says: "We must accept it as the settled rule of the Supreme Court of the United States, that when the judge is clear of doubt that a verdict ought to be rendered either for the plaintiff or defendant, and that it would be his duty to set a contrary verdict aside, he ought to instruct the jury so to find. On the other hand, such a direction cannot properly be given to the jury unless the evidence is such as to leave no room for doubt that it is the duty of the jury to find accordingly."<sup>4</sup>

On this point he cites *Pence v. Langdon*,<sup>5</sup> which uses the following language:—"The jury should not be instructed to find for the defendant, unless the evidence is such as to leave no doubt that it is their duty to return a verdict in his favour."

Every legal view from Thompson is worthy of careful consideration, and demands the respect of the profession, and while the judicial grade of the charge to the jury has not reached by general agreement of the decisions in the United States, the recognition of the right of the courts to influence the jury according to the particular bearing of testimony, and in some respects we do not agree with the author to the extent he goes, yet we concur with him when he says "the judge, by reason of his experience in such matters (alluding to the weight of testimony), is, in ordinary cases, much better qualified to sift testimony and to weigh evidence than the jury."—*Introduction* viii. The

(1) Thomp. "Charging the Jury," sec. 41; *Bolcher v. Prettie*, 4 Moore & Scott, 295; *Poizer v. Steels*, 5 Scott, 28; *Bolarte v. Melville*, 7 Barn & Cres 430, 435.

(2) Brougham's Miscellanies—"Public Characters," p. 89.

(3) Thompson, "Charging the Jury," sec. 41; *Davidson v. Starley*, 3 Scott N. R. 46.

(4) *M' Lanahan v. Universal Ins. Co.*, 1 Pet. 170.

(5) *Tracy v. Swartworth*, 10 Pet. 80.

(6) *Gaves v. Stiles*, 14 Pet. 322.

(7) *Michel v. Harmony*, 13 How., U. S., 115; *Richardson v. City of Boston*, 24 How., U. S., 188; *United States v. Fourteen Packages*, 11 G. B. 245; *Conseguia v. Willings*, 1 Pet. C. C. 225.

(8) *Chesapeake & Ohio Canal Co. v. Knapp*, 9 Pet. 841, 2 Pet. 187.

(9) *Charging Jury*, Thompson, sec. 42, 9 Pet. 841.

(1) *M'Gwire v. Corwine*, U. S. R., S. C. 111. October Term, 1879. *Michigan Bank v. Eldred*, and *Merchants' Bank v. State Bank*, are cited by Thompson—pp. 89, 88, 93.

(2) Thompson "Charging the Jury," p. 118.

(3) 8 Wall. 342, 353.

(4) Thompson, "Charging the Jury," p. 28.

(5) 99 U. S. 578. For cases leaning towards the old rule, Thompson refers to *Drakely v. Gregg*, 3 Wall. 242; *Hickman v. Jones*, 9 Wall. 197.

general principle thus stated must nevertheless, in its application, be subjected to the practical bearing of the testimony in the case.

#### THE CHARGE SHOULD BE ON THE LAW OF THE CASE.

In many States the law in relation to instructions to the jury is that the charge should be on the law of the case. This presents a point not directly discussed by Thompson in his work "Charging the Jury."

It is evident in nearly every trial submitted to the jury that the testimony controls the law of the case; the verdict must be according to law, the application of which is in accordance with the testimony.

"The purpose of instructions is to give to the jury a statement of the law applicable to the particular case, to declare what presumptions of law are applicable to the facts, and to declare the legal effects of certain evidence."

"The purpose of an instruction is to assist the jury in correctly applying the law to the facts of the case." Thus it appears, the authorities are satisfactory that, the law of the case being governed by the testimony, it is a logical sequence that the court must connect the instructions on law points in obedience to the testimony. On this point Thompson and Proffatt agree. The former sustains this view by the clear and forcible manner in which he has treated the question, that it is an "error to lay down abstract propositions of law;" to sustain which he has cited in a note more than one hundred authorities from American Reports. In explanation of his views, and the accuracy of his conclusions, he cites approvingly "the fair test of the propriety of a charge cannot be whether, in the abstract, it is right. It must be taken in view of the evidence charged, on which the jury is required to respond. A charge in the abstract, as a mere legal proposition, might be perfectly inoperative and harmless; when, however, referred to a certain set of facts and circumstances in proof, it might have a most important and conclusive influence on the jury in forming their verdict."

It has been very well said, "We hold in all cases an instruction—unless it be upon an abstract proposition of law, which the court may give or refuse at its pleasure—must have some evidence on which to base it and spring out naturally from the evidence."

It has been held and uniformly sustained, "though the decisions of questions of fact belongs to the jury, yet, when the court is asked for instructions, based upon evidence, it must judge of the relevancy, and to some extent of the definiteness and certainty of that evidence, but should avoid giving any instruction upon a question which the evidence does not fairly allow to be raised."

"It is no invasion of the privilege of the jury for the court to present to them its views of the nature, bearing, tendency and weight of evidence."

The above cited cases sustain the position, beyond controversy, that instructions on the "law of the case" must, as far as the evidence is applicable, be stated by the court. Especially is this true under the views presented alike by Thompson and Proffatt, in relation to instructions not containing mere abstract propositions of law. In this connexion we deem it proper to say the court should never invade the province of the jury.

No question is of more importance, nor addresses itself with more interest to the court than this. It is apparent that the English courts now recognise what in former years would have been a serious encroachment on the province of the jury; and that the Federal Judiciary has in its Circuit and District Departments exhibited a leaning towards the policy of the English

courts; yet in the Supreme Court of the United States the old American land-marks are preserved with fidelity to the earlier days of the independent functions of the jury.

The position of the State courts is, however, more decided in maintaining the independent relations of the jury than the lower Federal tribunals.

The practice introduced in modern times of drawing the jurors, with unlimited right of challenge, for cause has, and will continue to have a beneficial and purifying influence in every department of our judiciary where the jury is used.

We close this article with a reference to an opinion delivered by one of our most eminent and learned Chief Justices of State courts. He says:—

"It is of the highest importance in the administration of justice, that the court should never invade the province of the jury; should give them no intimation as to his opinion upon the facts, but should leave them wholly unbiased by any such intimation to ascertain the facts for themselves." And again, the Chief Justice observes, in the same opinion, "But it pertains to the judge to declare the law applicable to the case. He has nothing further to do with the facts than as furnishing the basis of his charge, while the jury are the triers of the facts under the law, as given them in charge by the judge, who, upon contested questions of fact, should sedulously avoid giving the least intimation as to his own opinion."

The force, truth, and excellence of this opinion of Chilton, C.J., commends itself to the Bench, and should be carefully read by State and Federal judges. We would call attention to it on another point which is discussed in this article, that notwithstanding the requirement that the jury is the judge of the facts in the case, and the jury must be charged according to the "law of the case" to what extent they must form "the basis of his charge." This can be done without any leaning on the part of the judge to either side, or influencing the jury beyond the force of the law.—*Virginia Law Journal*.

#### THE CONVEYANCING AND LAW OF PROPERTY ACT, 1881. WHERE IT SHOULD BE ADOPTED, AND WHERE EXCLUDED.—VII

(Continued from page 116, ante.)

##### LEASES.

##### Effect of Provision as to Relief against Forfeiture.

The Act, by its provisions for relief against forfeiture (sect. 14) makes a very considerable difference in the position of landlords and tenants, but in general there will be little alteration in the form of leases, as the section cannot be excluded by stipulation: sect. 14 (9).

Sect. 14 does not affect the law relating to re-entry, or forfeiture, or relief in case of nonpayment of rent: sect. 14 (8). Nonpayment of rent is dealt with by 23 & 24 Vict. c. 126, s. 1.

Breach of covenant to insure falls within this section; and 23 & 24 Vict. c. 126, s. 2, and 22 & 23 Vict. c. 85, ss. 4 to 9, under which relief for breach of covenant to insure was formerly obtained, are now repealed by sect. 14 (7) and Part I. of Schedule II. to the Act. The repeal, however, does not affect past and pending transactions (sect. 71). By sect. 14 (6) the section does not extend to assignment by, or bankruptcy of, the lessee, nor to certain covenants in mining leases.

The following remarks therefore apply to covenants to insure, but not to covenants to pay rent, or to the covenants excepted by sect. 14 (6).

However stringently the lease may be worded, the lessor cannot bring any action to enforce a forfeiture for breach of covenant without giving previous notice, in writing (sect. 67), in accordance with sect. 14 (1).

(1) Proffatt on Jury Trial, s. 311.

(2) *Sawyer v. Sauer*, 10 Kan. 470.

(3) Lipscomb, J. *Thompson v. Shannon*, 9 Tex. 538. Cited by Thompson in his work "Charging the Jury," p. 91.

(4) *Galena, etc., R. Co. v. Jacobs*, 20 Ill. 478, 486; *Parker v. Fergus*, 82 Ill. 419. Cited by Thompson, p. 93.

(5) *Roach v. Bunting*, 18 Pet. 313.

(6) *United States v. Fourteen Packages of Pins*, 41 U.S. 236.

(1) *Hair v. Little*, 28 Ala. 236. Opinion by Chilton, C.J.

Also if the lessor demands as compensation for the breach of covenant an unreasonable sum, he will run the risk of being made liable for costs, if the court is of opinion that the conduct of the lessor has been vexatious: sect. 14 (2).

However, in all ordinary cases, leases should be drawn as usual, and the provisions for re-entry on breach, or non-performance, of the covenants inserted in the ordinary way.

Sometimes it may be advisable to specify a sum to be paid by the tenant on breach of some particular covenant, as liquidated damages. But it should be remembered that if the court considers the sum is really inserted as a penalty, it will relieve against it: (see *Chitty Contracts*, 10th ed. 807; *Pollock Contracts*, 1st ed. 419; *Sloman v. Walter*, 2 L. C. Eq. 1094; *Protection Loan Co. v. Grice*, 43 L. T. Rep. N. S. 564; L. Rep. 5 Q. B. Div. 592).

The section is so framed as to exclude the method which no doubt would have been adopted to evade the Act. By sect. 14 (5) a lease limited until the lessee commits some breach, is construed as a lease with a condition of re-entry, and relief given accordingly.

The only safe way of escaping the operation of the section is to grant merely a tenancy at will, and then to avoid doing anything which will convert the tenancy at will into a yearly tenancy: (see *Tudor L. C., Conv.*, 3rd ed. 22; *Woodfall*, 208). In some cases, where the lessor is also mortgagee, his position will be strengthened by the insertion in the mortgage deed of covenants which occur in the lease: see sects. 19, 20, iii.

It is not improbable that, where it is essential to the lessor to enforce the covenants of the lease, and where the lessee insists on some further security than a mere tenancy at will can give him, some attempt will be made to avoid this section by the lessor granting only a tenancy at will, but at the same time entering into a bond with the lessee in a substantial sum, the bond being conditioned to become void if the lessor permits the lessee to remain in possession until either years have elapsed, or there has been a breach or non-performance of the covenants by the lessee. Probably the covenants would be set out in the bond. For forms of bonds see *David*, vol. v. part ii. pp. 269, 279. We give no opinion as to the efficacy of such a plan.

As to substituting a license for a lease with a view to try and avoid sect. 14, see below.

Although this section will make, in general, very little alteration in the form of leases, it will greatly alter proceedings for forfeiture. The section applies to leases made before the Act, sect. 14 (9); and compare *Page v. Bennett* (2 Giff. 117; 29 L. J. 898, Ch.).

In an action for re-entry or forfeiture, the giving of the precedent notice required by sect. 14 (1) should be alleged in the statement of claim, and it should be stated that it was given in writing (sect. 67).

It will also probably affect actions for specific performance of an agreement for a lease, where the lessee has entered and has done or omitted something which would have caused a forfeiture had there been a lease. In such a case the court would not previously have granted the intended lessee a decree for specific performance (*Dart*, 5th ed. 1088; *Seton*, 1323). Probably, however, now the court would grant specific performance to the intended lessee on the same conditions as it would have granted relief to an actual one: *Prideaux*, 11th ed. p. 19; see, however, the definition of lease in sect. 14 (3), and compare sect. 18 (17).

It was not unusual, in leases containing provisions for re-entry on breach of covenant, to insert some provision for the protection of the lessee. Thus, in *David*, v. 189, will be found a proviso that the power of re-entry shall not, except in certain cases, be exercised without six months' notice: (compare *David*, v. 156, 392).

Now, however, provisions of this kind will seldom be really necessary, as in most cases the lessee will be sufficiently protected by the section: *Prideaux*, 11th ed. 64, note.

#### *Leases by Mortgage.*

A considerable difference will be made by the Act in leases by mortgagor where the mortgage is made after the 31st Dec., 1881, sect. 18 (16), unless there is some provision in the deed excluding or modifying the Act. A mortgagor in possession will have power to grant an agricultural or occupation lease for twenty-one years, and a building lease for ninety-nine years, sect. 18 (1). So that, in many cases, a valid lease may be made by the mortgagor alone without joining the mortgagee, which was formerly essential to the validity of the lease as against the mortgagee. For old forms, see *Davidson*, vol. v. 159; *Woodfall*, 852; *Prideaux*, 11th ed. 52.

Of course a lease, so made by a mortgagor alone, must strictly follow the requirements of the Act (sect. 18). And the mortgagor must, for his own safety, deliver the counterpart of the lease to the first mortgagee, sect. 18 (8) (11). Compare form of lease under a power (*David*, v. 166; *Prideaux*, 11th ed. 53); and leases under Settled Estates Act, 1877 (*Woodfall*, 858). Where the mortgage was made before 1st Jan., 1882, sect. 18 does not apply, unless there is an agreement "in writing" that it shall apply, sect. 18 (16). *Messrs. Wolstenholme and Turner* give a form of such an agreement (p. 181). Where the mortgage is by deed, it will be most prudent to have this agreement also under seal.

In cases where a considerable amount of land is likely to be leased, and the mortgagee has sufficient confidence in the mortgagor it will sometimes be found more convenient to incorporate the statutory leasing powers by such an agreement, than to make the mortgagee join in every lease. The statutory powers may be incorporated wholly or partially: sect. 18 (16).

#### *General Words.*

The general words may now usually be omitted from leases, made by deed, of land and houses, in reliance on sect. 6. The word "conveyance," used in that section, includes a lease under seal by virtue of sect. 2 (v.). "Land" bears the extended meaning given to the word by sect. 2 (ii.). In any case where, before the Act, there would have been special mention of any appurtenance or easement, such special mention should continue.

#### *Covenant for Quiet Enjoyment.*

This will be inserted as usual. Sect. 7 does not apply to leases at a rent: sect. 7 (5).

(To be continued.)

#### CLUBS AND THE OUTSIDE WORLD.

With the great extension of the club system the courts of law have been of late increasingly occupied with cases relating to the laws and regulations of clubs. The majority of club cases that have been brought before the courts recently deal with the relations of members of clubs *inter se*, particularly in regard to the power of expulsion—a power frequently exercised with more gusto than sense of justice. A smaller class of cases are those in which the club, as a whole, is brought into contact with the outside world, as, for instance, with the licensing laws. This week another branch of the subject, important in itself, and not without bearing on the licensing question, has been brought before the courts in the case of *Calcutt v. Ross*, heard before Mr. Justice Lopes and a jury on March 6. In this case the plaintiff, a butcher, brought an action against Mr. Ross and some other gentlemen, members of the committee of the Portland Club, to recover £90, the price of meat supplied to the club, and also £20 lent to the steward of the club, who had embezzled money and absconded. This steward, it appeared, had really been the caterer of the club. He had acted in the capacity known at Oxford as maniple—that is, he had undertaken to supply the members at a fixed tariff, he himself providing the supplies, and taking all the risk and

profit of the transaction. The only powers that the committee possessed were those of fixing the tariff and seeing that the contract made by the steward was carried out to the satisfaction of the members. Under these circumstances, it was clear that neither the committee nor the club were liable for the failure of the steward to pay for the provisions he had ordered. The club being, as all clubs are, a "ready-money concern," the individual members who had paid on the spot for the provisions they had eaten could not be expected to pay over again. The committee could not be personally liable for the goods which they had neither themselves ordered nor had authorised the steward to order on their credit. The £20 in question was lent by the plaintiff to cash the cheques for members, and was plainly a personal trust of the steward. The committee supplied the steward with £250 for that purpose, and he had no authority to exceed it. Upon this evidence, which was not disputed, a verdict was entered for the defendants.

It is to be observed that this case was a somewhat exceptional one. Owing to the arrangement with the steward the club was a quasi-proprietary club. In proprietary clubs it is distinctly understood by all parties that the club is a private speculation of the proprietor. He advances the money, and, if the club is successful, he repays himself out of the entrance fees and subscriptions; if unsuccessful he probably goes bankrupt, or compounds with his creditors, or, as in the present case, absconds. He is an independent person acting on his own behalf, and personally liable for all the expenses he incurs in purveying provisions or otherwise, with no right of contribution over against any persons who are members of the club or the committee, unless, of course, they have expressly lent their names and authority to obtain him credit. In a members' club the management is placed in the hands of a committee chosen by the members. They select and dismiss servants; order furniture, books, papers, and provisions to meet members' requirements; and generally are responsible for the domestic economy of the club. Ordinarily, therefore, the committee empower the steward to give orders for goods to be supplied to the club, and generally become personally liable for such orders. So far as regards provisions they have no right of contribution over against the members. For, as Lord St. Leonards said, in the *St. James's Club case*, 2 De G. M. & G. 388: "The member pays on the spot, and were he also liable to those supplying the articles he would pay twice over." This is well illustrated by the case of *Fleming v. Hector*, 6 Law J. Rep. Exch. 43, 2 M. & W. 172. A club called the Westminster Reform Club had been started, but was dissolved through want of support. The committee made a call on the members of 11 guineas apiece to meet the liabilities of the club. The defendants and other members, who had been dissatisfied with the management of the club, refused to pay. They were then sued by a tradesman for the price of wine and stores, knives, forks, &c., supplied to the club. One of the defendants had himself been on the committee, but he was not shown ever to have acted. The Lord Chief Baron, Lord Abinger, pointed out that, unless the rules of the club empowered the committee to pledge the credit of the club, the committee had no power to bind the members, nor even to bind themselves as a body. He decided that the case rested on the law of principal and agent, clubs being in no sense a partnership. If clubs were partnerships one member would have power to bind the others. But, not being so, the committee could only as agents bind the members as principals, if they had authority to do so. As members' clubs are on the ready-money system it is probable that in none have the committee power to pledge the credit of the club.

Even to charge the committee, as a whole, it is necessary for creditors of the club to establish agency on the part of those actually giving the order. It is, in fact, a question for the jury. Thus, in *Todd v. Emly*, 10 Law J. Rep. Exch. 262, M. & W. 505, the house steward ordered wine for the club by the authority of the

committee. Two members of the committee were sued for the price, and it was held that the question for the jury was not whether all the members of the committee had by their known course of dealing held themselves out as personally liable, but whether, as a question of principal and agent, the two members sued had individually given authority to the steward to order the wine in question. So, in *Delanay v. Stewart*, 2 Stark, 416, Stewart was sued for the price of plate supplied to the General Service Club, of which he and R. and another were the managing committee. R. had ordered the plate, being previously known to Delanay, and was debited in Delanay's books in his own name with the whole amount. The jury, however, found that credit was given to all three, and that they were jointly liable. Of course, as between themselves, if the one who actually paid could establish that he acted on the authority of the others, he would have a right to contribution over against them, even though, as regards the tradesman, credit was given to one alone. A club committee, should, therefore, be careful not to exceed their powers or pledge their credit beyond the funds in hand, or they may find themselves saddled with a heavy responsibility, owing to a failure of funds or an embezzling steward. On the other hand, it behoves tradesmen and others, who supply money or money's worth to a club, to ascertain that the servant, or other person giving the order, has authority to do so, or is himself a person of substance enough to meet a personal liability. It should be remembered that clubs are not partnerships or companies, but simply a conglomeration of individuals, whose relations are regulated entirely by their written contract—the rules by which they have agreed to bind themselves. The bearing of this result on the law of licensing perhaps requires explanation. A members' club, as was recently decided in *Graff v. Evans*, noted in this week's Notes of Cases, is not liable to penalties for a sale, because there is not a "sale" in respect of one's own property. But it may be asked, if the members of a club cannot ordinarily be sued on a contract for the supply of their wine, how can the wine be theirs when supplied? The answer is that, although they do not authorise their credit to be pledged, they do authorise goods to be purchased for them, and they provide money to pay for it. The goods when bought are, therefore, theirs. They are not partners, but joint owners of the property of the club.—*Law Journal*.

#### DISCHARGE OF JURY BEFORE VERDICT ON INDICTMENT.

The proceedings at the recent assizes holden at Hertford, before Mr. Justice Grove, were interrupted by a very peculiar and unusual incident. A prisoner was being tried pursuant to the statute, 9 Geo. IV., c. 69, s. 9, for being concerned with two other persons in taking game by night, armed with a gun. Suddenly, and whilst the case for the prosecution was still incomplete, one of the jury stood up and intimated that they were all agreed that there was no case made out against the prisoner. Mr. Justice Grove said: "If that is so we need not proceed further, but at the same time it would have been better, gentlemen, if you had waited until the case for the prosecution was closed." At this stage a juror stated he had not agreed to a verdict of not guilty, and had not authorised the other juror to make any statement to that effect. The juror who had first spoken then said, "I shall never convict the prisoner." Mr. Justice Grove, after some deliberation and reference to the authorities, said: "This is a most unfortunate incident. I shall discharge the jury, and take the defendant's own recognisance to come and take his trial at the next practicable assizes; that is, at the next assizes at which prisoners on bail are triable."

We think there can be no doubt that the learned judge was acting strictly in accordance with precedent in taking this course, spite of the authority of Sir Edward Coke, who wrote: "A jury sworn and charged in case of life or member, cannot be discharged by the

Court, or any other, but they ought to give their verdict:" (Co. Litt. 227 b). This passage seems to ignore the death or serious and sudden illness of a juror, so that we find a qualified statement by Blackstone, the words "except in case of evident necessity" being added.

The question came before the Court in *Reg. v. Charlesworth* (1 Best & Smith, 460), which was an information by the Attorney-General for bribery at an election for a member of Parliament. At the trial a material and necessary witness for the Crown refused to give evidence, and was committed for contempt, whereupon, on application of counsel on behalf of the Crown (the defendant objecting), the judge (Mr. Justice Hill) discharged the jury from giving any verdict. The defendant applied for leave to add a plea *puis darren continuance* to the record setting out the facts; this was refused upon the ground that there was a plea of "not guilty" already on the record, and that to grant the application would be to permit a violation of the rule of pleading as to duplicity. The Court, however, gave permission that the above facts as to the discharge of the jury should be placed on the record as part of the proceedings, and the matter then came before the Court on a rule to show cause why judgment should not be entered for the defendant *quod eat sine die*. The rule was discharged, the Court holding that, whether the judge had power to discharge the jury or not, the defendant could not claim final judgment, and that there ought to be a new trial, it being open to the defendant to take advantage of his objection by writ of error. In the course of the arguments, which are very lengthy and display a prodigious amount of learning, there was a great deal of extra-judicial opinion as to the power of a judge to discharge a jury, and the weight of opinion points to the conclusion that such power exists undoubtedly in law, and is limited only by the discretion of the judge. Reference was more than once made to an Irish case (*Reg. v. Conway and Lynch*, 7 Ir. L. Rep. 149), in which the majority of the judges of the Court of Queen's Bench in Ireland held that the discharge of the jury after they had been kept twenty-four hours in deliberation could not be justified, and that consequently the prisoner was not liable to be put a second time on his trial. From the judgment in this case Mr. Justice Crampton dissented, and in *Reg. v. Charlesworth* both Chief Justice Cockburn and Mr. Justice Blackburn said that, though the learned judge had failed to convince the majority of the judges in the Court of Queen's Bench in Ireland, he had entirely convinced them.

The whole matter came before the Court of Queen's Bench again in the year 1866 on a writ of error, the case being that of *Charlotte Winsor v. The Queen* (L. Rep. 1 Q. B. 289). Here the record of conviction was for felony (murder), and showing that, on the trial of the indictment, the jury being unable to agree, the judge discharged them; that the prisoner was given in charge of another jury at the next assizes, and a verdict of guilty returned and judgment and sentence passed. Held, that the judge had a discretion to discharge the jury, which a court of error could not review; that the discharge of the first jury without a verdict was not equivalent to an acquittal; that a second jury process might issue, and that there was no error on the record. This decision was subsequently affirmed in the Exchequer Chamber. Chief Justice Erle, in giving the judgment of the Court, said: "With reference to the facts on this record we hold that the judge at the first trial had by law power to discharge the jury before verdict, when a high degree of need for such discharge was made evident to his mind from the facts which he had ascertained. We cannot define the degree of need without some standard of comparison; we cannot approach nearer to precision than by describing the degree as a high degree, such as in the wider sense of the word might be denoted by necessity. We hold further that the judge alone had to decide when the "necessity" in this sense of the word for the discharge of the jury was made evident to him, and his decision

thereon is not made subject to review by any legal tribunal. It was his duty to exercise his discretion both in ascertaining the relevant facts and in determining their effect in making the necessity for the discharge evident to himself. The lawfulness of the discharge depended upon the result of this exercise of his discretion, and the statement of that result upon the record is, in our judgment, sufficient to establish that the order for the discharge in question was lawfully made, and that the subsequent proceedings to trial and conviction are not rendered erroneous thereby."—*Law Times*.

#### JUSTICES INTERESTED.

The question how far the interest of justices of the peace in the cases they dispose of unduly influences and warps their judgment seems to be one of constant recurrence, though the Legislature has endeavoured to put an end to some of the old objections that used to be raised on that account. The foundation of the illegality of a decision given under such an undue influence is not founded on any statute, but is the effect of the high tone of morality which is the accepted standard for justices as well as arbitrators, and all who exercise legal discretion and judgment. Though counsel at the bar are paid to think in a particular way, and may excuse themselves from being impartial, yet when a justice of the peace sits in the administration of justice he is expected to be free himself from all the influences which sway mankind and bend their disposition in one direction. It is not difficult to lay down a sweeping general principle, but when we come to details and particular instances it is by no means easy to say how the courts will apply that rule. The subject is one of great nicety, and from the uncertain sound of the dicta and their application nothing but a variety of illustrations can assist one to a fair appreciation of the difficulty in each case, as well as of the most likely mode of overcoming it. Indeed, the most experienced judges fail to supply anything like a key to the bewilderment which surrounds many of the cases. It is well to examine some that have been decided within the last fifteen years.

One case is frequently referred to, *R. v. Rand*, or *R. v. Justices of Bradford*, L. R. 1 Q. B. 280; 50 J. P. 298, which was a considered judgment of Blackburn, J., and was thought to have cleared up the matter at least for a time. In that case justices had power to certify the completion of a reservoir and its capacity to hold a certain quantity of water, whereupon the Corporation of Bradford were to get certain pecuniary advantages. Two justices so certifying were trustees of a provident society which had lent money to the corporation, and which money was charged on the corporation funds. The security therefore would be improved by the granting of the certificate, but the justices had no other interest whatever in the matter. The certificate of completing the reservoir was brought up by *certiorari* to be quashed on the ground of interest. The court held this interest was too remote, Blackburn, J., said "There is no doubt that any direct pecuniary interest, however small, in the subject of inquiry, does disqualify a person from acting as a judge in the matter, and if by any possibility these gentlemen, though mere trustees, could have been liable to costs or to any other pecuniary loss or gain in consequence of their being so, we should think the question different from what it is, for that might be held an interest." The court, however, held that there was nothing but a suspicion of favour in this case, and not a real bias, and so the *certiorari* was refused.

Ten years later another decision of the same judge was given in *R. v. Myers*, 1 Q. B. D. 178. One local board prosecuted another for polluting the river Lea, which was under the care of the prosecuting board, and one of the justices was the chairman of the prosecuting board, and an order to pay a sum of money was made against the other board. This order was sought to be quashed on the ground of interest in one of the justices,

namely, the chairman of the prosecuting board. Blackburn, J., said that in this case the chairman was substantially a litigant in a matter in which it was his interest that a conviction should be made. He was sitting as judge in a matter where he was a party, and therefore the judgment must be set aside.

This last case was used in a later case of *R. v. Alcock*, 87 L. T. N. S. 829, where one of the Essex justices had joined in convicting for malicious injury to some notice boards erected in Epping Forest. The ground of interest was said to be that the defendant was a commoner, having rights over the forest, and so was one of the justices, but that this justice had been mixed up with Chancery proceedings in which he was a witness on the side opposed to the defendant. But the Queen's Bench Division said it was preposterous to suppose that anyone in the position of a magistrate would be biased in his administration of justice by the mere expression of his views as to what was for the advantage of the commoners in such a case. So the conviction was held not open to objection.

The next case was that of *R. v. Milledge*, 4 Q. B. D. 332, and it turned to some extent on the Public Health Act, 1875, s. 258, which enacts as follows:—No justice of the peace shall be deemed incapable of acting in cases arising under this Act by reason of his being one of several ratepayers or one of any other class of persons liable in common with the others to contribute to or be benefited by any rate or fund out of which any expenses incurred by such authority are under this Act to be defrayed. In this case complaint had been made to the Local Government Board of a nuisance arising from a piece of water in Weymouth, and the Board thereupon required the town council of Weymouth, as the urban sanitary authority, to abate the nuisance. The town council passed a resolution that steps should be taken against the owners of the water for the abatement of the nuisance. Two justices of the borough, who were members of the town council, and who had taken an active part in discussions on the question were, with four other magistrates, on the bench of justices, when the summons against the owner of the water came on for hearing. They refused to retire, although the defendant objected to their sitting, on the ground that they were the prosecutors. At the hearing the defence was that the nuisance was caused by the town council themselves sending the drainage of the town into the water complained of. The defendant was convicted by a majority of four to two, the justices in question voting in the majority. The defendant applied for a *certiorari* to set aside that conviction. The Queen's Bench Division held that two justices, members of the town council, assumed the double role of prosecutors and judges in their own cause. If they had not sat and taken part in the hearing there would be nothing to complain of. The 258th section of the Public Health Act, 1875, does not warrant a person sitting as a judge in a case in which he is a prosecutor and which he has set on motion. The two justices need not have sat on the bench, or the sanitary authority might have allowed a private prosecutor to act, but the latter did not so think fit, and the two justices did not refrain from sitting. Therefore the conviction was bad.

A recent case of no small interest has occurred where the justices were adjudicating on a prosecution by the Society for the Prevention of Cruelty to Animals, to which society they were subscribers. In *Reg. v. Justices of Deal*, ante, p. 71, it appeared that the society is managed by a committee which meets in London and is elected at the annual meeting by the subscribers. The society employs officers stationed in various parts of England, who duly report to the secretary in London any cases of cruelty coming under their notice. Upon receiving their reports the secretary directs the agents to take proceedings, and when this is directed the district officer receives orders from the secretary alone, and is forbidden to take instructions from any other person. The sole objects of the local branches of the society are to disseminate the literature of the society, to report the conduct of local officers to the secretary,

and to collect funds and forward the same to the head office. No member of any local society has any power in the election of members of the committee of the London society, nor can they in any way interfere with or control the London society or its executive. Subscribers to the local societies are not thereby subscribers to the London society, nor are there any records in the London society's books showing who are the subscribers to the local society. The secretary never consults the local society or its officers as to any prosecutions ordered, nor are they informed of the facts relating thereto. There was a local or affiliated society at Deal, and two justices of Deal, Mr. Robert Lush and Mr. John Nethersole, were subscribers and members of the local committee. But they had no voice in the institution or conduct of any prosecution.

In this case the officer of the London society at Margate reported to the secretary in London certain facts, and a carter named George Curling was served with a summons for cruelty to a horse. The summons was heard by a bench of justices consisting of the Mayor of Deal, Edward Brown, Esq., and Mr. Lush, and Mr. Nethersole; and they convicted the defendant of cruelly ill-treating a mare by driving her whilst suffering from a sore place on her back, and fined him 15s. After the Mayor had delivered the decision of the bench he stated that he was a subscriber to the society, and so were Mr. Lush and Mr. Nethersole. He was not a member of the local committee; but the two justices last named were on the committee.

The Cruelty to Animals Prevention Act, 12 & 13 Vict., c. 92, s. 21, enacts that all pecuniary penalties which shall be recovered under the Act shall be respectively divided, paid, and distributed in the following manner:—One moiety thereof to the overseers of the poor of the parish, and the other moiety to the person who shall complain and prosecute for the same, or to such other person as to such justices shall seem fit and proper. No part of the penalty is ever received by the society, and the said two justices, Messrs. Lush and Nethersole, could not in any way benefit by the success of the prosecution in the present case. A rule for a *certiorari* to quash the conviction on account of the interest of the justices as subscribers was obtained and argued. The defendant's counsel contended that these justices had a pecuniary interest in this way, that they might have directed one moiety of the penalty to be paid to the officer of their society.

The Queen's Bench Division considered that the justices had not in this case the slightest control over the person who was the prosecutor and who was nominated by the secretary in London. They were not parties prosecuting, for they had nothing whatever to do with the prosecution. The utmost that could be said was that their being subscribers was reasonably calculated to produce in their minds a bias in favour of the prosecution. And in support of this proposition the cases of *R. v. Milledge* and *R. v. Myers* were relied upon. But the court held that this was at most a mere sentimental interest. As Cave, J., expressed it: "Why the taking an interest in the protection of animals from cruelty should make the justices convict a man who was innocent I cannot conceive. It is quite clear from the case of *R. v. Alcock*, that the expression of opinion upon the general subject matter out of which the prosecution arises, is not sufficient to disqualify the magistrate. The giving of a subscription is only one way of expressing an opinion with regard to the general subject matter—there may be more direct ways. But it would be very strange to say, that because a man took an interest in the laws relating to cleanliness he could not sit and adjudicate upon a prosecution for a nuisance. The mere suspicion of favour one way or the other ought not to oust the jurisdiction of the justices." So the *certiorari* was refused.

Another still more recent case is that of *R. v. Justices of Burnley*, ante, p. 119, where the justices who heard a summons for non-payment of the borough rate dismissed it on the ground that the prosecutor was an officer of the corporation, and one of the sitting magis-

trates was a member of the common council, and so he might be deemed interested. A rule for a *mandamus* was applied for, and it was shown that the local Act which imposed the rate contained a section similar to the Public Health Act, 1875, s. 258. There were three previous cases which were not quite in harmony, namely, *R. v. Huntingdon*, 4 Q. B. D. 528; *R. v. Gibbon*, 6 Q. B. D. 168; and *White v. Reafers*, 5 Q. B. D. 15, and the court were at liberty to exercise their own judgment. And their judgment was that the mere fact of the justices being members of the corporation did not amount to any substantial interest such as to create a bias. And so the justices were directed to hear and adjudicate.

These cases, and especially the last, show that there is still some difficulty in seeing what is or is not enough to create a bias, which must always be a question of degree. But whenever the justice is one of the body which prosecutes, or at least who takes some active part in directing the prosecution, that is a fatal objection. And whenever a pecuniary interest is shown such as in the enforcing of a borough rate, then it requires an enactment like section 258 of the Public Health Act to protect the justices from having their decisions treated as invalid by reason of interest.—*Justice of the Peace.*

## NOTES OF CASES.

### ASSIZES.

(Before LAWSON, J.)

#### MURTAGH v. MARQUIS OF BATH.

March 10, 11, 1882.—*Grand Jury Cess—L. & T. Act, 1870, s. 65—Sale of tenant-right subsequent to Act—Continuance of tenant's liability to pay the whole rates—Surrender by operation of law—Implied agreement in new tenancy.*

The circumstances of this case, heard at Monaghan, are stated in the judgment, which was as follows:—

LAWSON, J.—The plaintiff sought to recover a sum of 11s. 4d., half the county cess paid by him, relying on the 65th section of the Land Act of 1870, whereby with respect to tenancies created subsequently half the county rates are to be paid by the landlord. The question is one of general importance as affecting the sale of the tenant-right. It appears that in February, 1880, Woods, who was a tenant of a farm under the Marquis of Bath, applied to the office for leave to sell his farm to Murtagh, the plaintiff, for a sum of £70. The agent gave the permission, and the purchase money, £70, was paid into the office, according to the usual custom, and after deducting from it the half-year's rent due the balance was handed over to Woods, and the balliff of the estate went and put him into possession. It is relied on that this operates as a surrender of the old and the creation of a new tenancy, and that therefore the 65th section transferred the liability to half the rates to the landlord. It does operate, I think, in point of law, to create a new tenancy, but as the former tenant was bound to pay all the rates the new tenant is under the same obligation. The section relied on does not prevent the entering into an agreement which would render the tenant liable to all the rates, and in my opinion that is implied in his contract and is just as binding as if it had been expressly mentioned. It would be very injurious to the tenants themselves to hold that such a transaction did not give to the tenant all the rights which his predecessor had, and if he has the rights he also takes all the liabilities of his predecessor. I must therefore, dismiss the process.

(Before OMSBY, J.)

#### In re MOSTYN'S PRESENTMENT.

March 20, 1882.—*Presentment—Coroner—Salary—Expenses—44 & 45 Vic., c. 35—9 & 10 Vic., c. 37.*

The *Magdormot*, Q.C. (with him *O'Malley*), applied to his lordship to direct the Grand Jury at Ballina to allow to Mr. V. Mostyn, the coroner for Ballina, certain

charges which had been made connected with the discharge of his duty.

It appeared Mr. Mostyn for many years held inquests outside his own district, and in the district of Mr. Burke, whose health had been failing for a long time. Mr. Mostyn, in calculating the number of the inquests held by him for the last five years, as the basis of the annual salary in future to be paid to him as coroner, had included these in his estimate. He had also claimed for expenses a sum of £36 incurred by him during an inquest in the county which lasted fourteen days. The Act, it was contended, entitled him to charge sixpence a mile going to and returning from the place of the inquest, but as the distance was forty there and forty back, he remained at the place and claimed £36 for hotel and other expenses, instead of £40 for car hire.

*Sergeant Robinson*, Q.C., for the Grand Jury, contended that it was an absurd construction to put upon an Act of Parliament fixing the future salaries of coroners for separate districts—a reading which would leave one district entirely without a salary for the future coroner, when, as in this case, the coroner of a neighbouring district had for the last five years done the work of both. He, also, contended that the expenses mentioned in the 3rd section of 44 & 45 Vic., c. 35, were similar to those mentioned in Schedule C to 9 & 10 Vic., c. 37, and did not include hotel expenses.

OMSBY, J., decided that only those inquests held by a coroner in his own district should be included in the estimate of the five years' average in calculating his future salary, and also that the expenses mentioned in the 3rd section of the 44 & 45 Vic., c. 35, were those described in Schedule C to the 9 & 10 Vic., c. 37.

[NOTE.—The operation of 44 & 45 Vic., c. 35, was also brought under notice at Cork, before Dowse, B., on March 21st; when

Mr. W. R. Meade, a Grand Juror, said that while the new Act directed that a certain salary should be paid to the coroners, it did not give the Grand Jury power to present for the new sum at all, but merely directs the treasurer to pay it.

*Lawrence*, on behalf of the coroners, said that 44 & 45 Vic., c. 35, repealed so much of the old Act—9 & 10 Vic., c. 37—as related to the election of coroners and their payment, and the third section provided that on and after the 18th November, 1881, the coroners should receive a salary equal to the average fees payable to him for the previous five years, provided that the sum was not less than £3 for each inquest held, and that the treasurer of the county should pay out of the borough fund such salary half-yearly. The difficulty in the matter was that the Grand Jury were of opinion that the 1st section, in repealing so much of the old Act as related to the payment of coroners, took away their power to present; but he submitted that the new Act did not take away this power.

Baron Dowse said he sympathised with the Grand Jury in their difficulty, but he believed there must be this power of presenting, or the Act of Parliament would not be sense. Is it not a fact, Mr. Meade, that the treasurer would have no authority to pay unless the Grand Jury presented for it?

Mr. Meade replied that under the new Act the treasurer was obliged to pay, but he would have to pay it out of his own pocket. He might have sufficient balance at one time to pay the money, but he could not go on paying it.

Baron Dowse said the Grand Jury had acted properly in bringing the matter before him, but he was satisfied that they should present for the payment of the coroners' salaries, otherwise the Act would fail.]

(Before DEASY, L.J.)

#### In re LORD CLONCURRY'S PRESENTMENT.

March 20, 1882.—*Presentment—Malicious Injury—Fishing net—6 & 7 Will. IV., c. 116, s. 136.*

*Brady*, in support of this presentment (Co. Donegal), for compensation for the malicious destruction of a fish-



ing net argued that it came within section 135, of 6 & 7 Wm. IV., c. 116, for compensation as "other works."

Mr. Patrick Maxwell, solicitor, *contra*.

DEASY, L.J., held that the net did not come within the meaning of the Act.

#### COMMISSION OF OYER AND TEBMINER.

(Before MAY, C.J., and a Jury.)

R. v. POWELL.

Feb. 8, 1882.—*Criminal law—Jury—Juror sworn under wrong name, in mistake for another person.*

On the jury returning after considering their verdict, on the trial of this indictment,

The Foreman stated that Mr. James Ryan had been sworn and acted on the jury in mistake, as it was Mr. Denis Ryan's name appeared on the issue paper.

Keogh, for the traverser, said that as Mr. Denis Ryan was actually in court, and another juror was wrongfully sworn in his place under his name, the trial was abortive. If this were permitted, men of every sort might be smuggled into the jury box. He should, therefore, ask to have a *nolle prosequi* entered.

Murphy, Q.C., and W. O'Brien, Q.C., *contra*.

MAY, C.J., said that a case of felony had been tried in which two jurors were summoned whose surnames were the same but the initials were respectively J. T. and W. T. By mistake the latter was sworn on the jury instead of the former, and the prisoner was convicted. Next day the error was discovered and the verdict was appealed against. It was however, decided by the majority of the judges who tried the appeal, that the verdict was quite legal, and the prisoner had only the right of challenge in the case. He (his lordship) should, therefore, hold that the jury was legal.

The jury found a verdict of guilty; and his lordship declined to reserve the point raised.

#### TEXT-BOOK ADDENDA.

(Continued from page 127, ante.)

*Williams on Executors (8th Edition), 2,033.*

Where an executor has brought an action against his co-executor for the administration of his testator's estate, the Statute of Limitations does not cease to run against the simple contract creditors of the estate (*In re Greaves*, 50 Law J. Rep. Chanc. 817).

*Williams on Executors (8th Edition), 1,699.*

In an administration where, the personal estate being insufficient, the specialty debts were paid out of the realty, an executor was not allowed to retain a simple contract debt out of a fund in Court representing proceeds of personality (*Walters v. Walters*, 50 Law J. Rep. Chanc. 819).

*Robson on Bankruptcy (4th Edition), 653.*

After resolutions for a composition have been passed, a creditor, who is bound thereby, cannot effect a secret arrangement with the debtor to have his own debt paid in full (*Ex parte Barrow, in re Andrews*, 50 Law J. Rep. Chanc. 821)—C. A.

*Buckley on the Companies Acts (3rd Edition), 229.*

A shareholder, who is also the solicitor of the company, may set off his bill of costs against calls due from him (*In re Exchange Banking Company, Ranwell's Case*, 50 Law J. Rep. Chanc. 827).

(To be continued.)

*Holloway's Ointment and Pills.*—Outward infirmities.—Before the discovery of these remedies many cases of sores, ulcers, &c., were pronounced to be hopelessly incurable, because the treatment pursued tended to destroy the strength it was incompetent to preserve, and to exasperate the symptoms it was inadequate to remove. Holloway's Pills exert the most wholesome powers over the unhealthy flesh or skin, without debarring the patient from fresh air and exercise, and thus the constitutional vigour is husbanded while the most malignant ulcers, abscesses, and skin diseases are in process of cure. Both Ointment and Pills make the blood richer and purer, instead of permitting it to fall into that poor and watery state so fatal to many labouring under chronic ailments.

#### BOOKS RECEIVED.

*A Concise Exposition of the New Conveyancing Act and of the Solicitors' Remuneration Act: with Practical Hints, and an Appendix containing the Acts.* Second Edition. By ARTHUR UNDERHILL, LL.D., of Lincoln's Inn, Barrister-at-Law, &c.; assisted by HARRY LYNDSEY MANBY, M.A., of Lincoln's Inn, Barrister-at-Law. London: Richard Amer, Law Publisher, Bookseller and Binder, Lincoln's Inn Gate, Carey-street, W.C. 1882.

#### LAW STUDENT'S JOURNAL.

THE INCORPORATED LAW SOCIETY OF IRELAND.

TRINITY SITTINGS, 1882.

FINAL EXAMINATION.

NOTICE.

Candidates wishing to present themselves at the above Examination must lodge their papers, &c., on or before the first day of Easter Sittings, 1882.

By Order,

JOHN H. GODDARD, Secretary.

Solicitors' Hall, Four Courts, Dublin,  
3rd February, 1882.

#### COURT PAPERS.

LAND JUDGES.

Sittings for next Week so far as same are appointed.

Before the Rt. Hon. JUDGE FLANAGAN.

MONDAY.

IN CHAMBER.—F. W. Crofts, allocate.

IN COURT.—T. H. Crofts, to be mentioned.—M. W. Cooke, do.—Trustee Webb, do.—A. Breslin, from 13th.—Trustee Jane Elliott, examination of witness.—W. Rowland, from 20th.

Before EXAMINER (Mr. Kennedy).

E. M. Gannon, rental.

TUESDAY.

IN COURT.—A. Noble, final schedule.—T. Kennedy, do.—H. Conter, as to schedule.

SALES IN COURT.

W. Ohancy, 1 lot.

Before EXAMINER (Mr. Kennedy).

T. J. Daff, rental.

WEDNESDAY.

Before EXAMINER (Mr. Kennedy).

H. V. Baillie, rental.—J. Trueman, do.

THURSDAY.

IN COURT.—Trustee J. Elliott, examine witness.

Before EXAMINER (Mr. Kennedy).

J. Lennon, rental.—C. Martin, do.

FRIDAY.

Before EXAMINER (Mr. Kennedy).

S. Litchfield, rental.

WEDNESDAY.

Before EXAMINER (Mr. M'Donnell).  
M. Kelly, rental.—H. Fitzgerald, do.—J. M'Nea, do.—  
E. Turner, ditto.

THURSDAY.

In COURT.—T. Barnes, final schedule.—J. Fitzgerald, do.

FRIDAY.

Before EXAMINER (Mr. M'Donnell).  
Trustee Dublin Library, rental.—F. A. Echlin, do.—H. Coulter, vouch.

COURT OF BANKRUPTCY.

ADJUDICATIONS IN BANKRUPTCY.

The dates of Adjudications are first given, the Stittings follow in Italics.  
Rorke, Michael, of Elphin, in the county of Roscommon, draper and publican. April 4; *Tuesday, May 2, and Tuesday, May 16.* Peter Delany, solr.

Not long since an American attorney brought suit for killing stock by a railroad, occasioned by failure of the railroad company to fence the road as required by law. A judgment was rendered in the justice's court for the damages proven, and the company, as usual, appealed the case to the circuit court. In the course of time, and after repeated delays, the case came up for trial in the circuit court, when the attorney who brought the suit became satisfied that under a recent decision of the Supreme Court (rendered since the trial before the justice), the petition or complaint was defective; so the aforesaid attorney proceeded to address His Honor, the circuit judge, as follows:—"If your Honor please, I think I can prepare a suit for killing stock in this case. I know I brought this suit right when I commenced it before the justice. I am sure it was brought then according to the law as expounded by our august Supreme Court; but since then our highest court has rendered a decision changing the law, so I must, of necessity, dismiss this case and bring suit anew. If our Supreme Court could only keep still awhile, I am sure I can prepare a good complaint; I therefore dismiss this case in order to bring it to conform to the last decision of the Supreme Court!"

BIRTHS, MARRIAGES, AND DEATHS.

BIRTHS.

CLAY—April 12, at Anglesy, Killiney, the wife of Robert K. Clay, of a son.  
LYNCH—April 9, at Lower Leeson-street, Mrs. David Lynch, of a daughter.

MARRIAGES.

SHARPE and WORTHINGTON—At St. Catherine's Parish Church, by the Rev. A. E. Burton, M.A., Robert W. Sharpe, C.E., youngest son of the late James Sharpe, of Mount Down, to Mary Louisa, eldest daughter of the late Robert Shaw Worthington, Esq., barrister-at-law, of Salmon Pool, Island-bridge, Dublin.  
TRENCH and REEVES—April 13, at St. Stephen's Church, Dublin, by special licence, by his Grace the Archbishop of Dublin, assisted by the Rev. Canon Walsh and the Rev. Francis Chenevix Trench, Philip Francis Chenevix Trench, eldest son of Philip Charles Chenevix Trench, Esq., of Botley, Hampshire, to Frances Angel Reeves, only daughter of Robert Reeves, Esq., of Fitzwilliam-place, Dublin.

DEATHS.

CLAY—April 13, at Anglesy, Killiney, Robert Thomas, infant son of Robert K. and Florence Clay.  
MACCARTHY—April 7 (Good Friday), at Herbert-terrace, Blackrock, Dublin, Denis Florence MacCarthy, M.R.L.A., Esq., barrister-at-law.  
MULHALL—April 7, at his residence, Erin Lodge, Carlow, John Bernard Mulhall, Esq., solicitor, aged 64 years.

FUNERAL REQUISITES OF EVERY DESCRIPTION.

49, WALLER, 50,  
DENZILLE-STREET.

3-7

DUBLIN STOCK AND SHARE LIST.

DESCRIPTION OF STOCK	APRIL					
	Sat. 8	Mon. 10	Tues. 11	Wed. 12	Thur. 13	Fri. 14
*Paid Government.						
— 3 p c Consols ..	—	—	100	100	—	—
— New 3 p c Stock ..	—	—	100	100	100	100
INDIA STOCK						
4 p c Oct. 1858 Traffic at ..	—	—	104	104	104	—
3 1/2 p c Jan. 1861 Traffic at ..	—	—	104	104	104	—
Banks.						
100 Bank of Ireland ..	—	—	317	317	317	317
25 Hibernian Banking Co ..	—	—	35	—	—	—
20 London and W'minster, W'd ..	—	—	—	—	—	70
30 Munster Bank (Limited) ..	—	—	—	—	7	—
10 National Bank (Limited) ..	—	—	23	—	23	23
25 Provincial Bank ..	—	—	—	—	57	57
30 Do. New ..	—	—	—	—	23	—
10 Royal Bank ..	—	—	29	—	—	—
25 Standard of B. S. A., W'd ..	—	—	—	—	58	58
Steam.						
50 Dublin & Liverpool Steam Ship Building Co ..	—	—	—	—	—	53
Miscellaneous.						
10 Alliance & Dub. Com. Gas ..	—	—	—	—	x d	15
7 1/2 Dub. Drapery Wholesale, Ltd. ..	—	—	5	—	—	—
25 Ir. C. S. Building Society ..	—	—	6 1/2	—	—	—
10 M'Kenzie & Sons (ltd.) ..	—	—	58	—	—	—
25 National Assurance ..	—	—	—	—	—	—
4 National Discount, Ir., Ltd. ..	—	—	—	—	3	3
Tramways.						
10 Dublin United Tramways ..	—	—	—	—	10	—
9 Glasgow Tram & Bus, Hm. ..	—	—	—	—	—	16
10 L'ri Unt'd Tram & Bus Int ..	—	—	—	—	—	13
5 Tramways Union—limited ..	—	—	—	—	—	5
Railways.						
50 Belfast and County Down ..	—	—	—	—	43	43
100 Dublin, Wicklow, & W'ford ..	—	—	79	—	—	—
100 Great Northern (Ireland) ..	—	—	117	117	117	—
100 Gt. Southern and Western ..	—	—	112	112	—	113
100 Midland Gt. Western ..	—	—	84	—	84	—
50 Waterford and Limerick ..	—	—	8 1/2	32	—	32
Railway Preference						
100 Gt. N'th'n (Irlnd) g'd 4 p c ..	—	—	—	—	—	104
100 Do. 3 1/2 p c ..	—	—	—	—	87	87
100 Gt. South'n & West'n 4 p c ..	—	—	107	—	—	107
100 Mid. Great Western, 4 p c ..	—	—	100	—	—	101
Leased at Fixed Rentals						
100 Gt. Northern and Western ..	—	—	—	—	126	—
100 Londonderry & Enniskillen ..	—	—	—	—	—	126
Debenture Stocks.						
— Cork and Bandon, 4 p c ..	—	—	—	—	—	101
— Cork & Macroom, 4 p c ..	—	—	—	—	—	95
— Gt. Northern (Ireland) 5 p c ..	—	—	—	—	—	108
— Gt. South'n & West'n, 4 p c ..	—	—	—	—	—	109
— Midland Gt. West'n, 4 p c ..	—	—	—	—	—	105
— Do., 4 1/2 p c ..	—	—	—	—	—	—
— Do., 4 1/2 p c ..	—	—	—	—	—	113
Miscellaneous Debent.						
Alliance & Cons. Gas, 4 p c ..	—	—	100	—	—	99
City Deb. of £93 6s 3d, 4 p c ..	—	—	—	—	—	93
Dub. & Glas. S. P. Co. (1887) 5 p c ..	—	—	—	—	—	100

\* Shares not fully paid up are given in Italics.  
Bank Rate—1/2 Discount—6 per cent. 30th January, 1882  
Of Deposit—3 per cent. 30th January, 1882.  
Name Days—April 27th, and May 11th, 1882.  
Account Days—April 28th, and May 12th, 1882.  
Business commences at 1 30 p.m.

LEGAL POSTINGS:

In the HIGH COURT OF JUSTICE in IRELAND.

CHANCERY DIVISION.—LAND JUDGES.

SALE

On TUESDAY, the 2nd day of MAY, 1882.

COUNTY OF THE CITY OF DUBLIN.

In the Matter of the Estate of  
**THE VERY REV. AUGUSTUS WM. WEST,**  
Owner and Petitioner;  
Continued in the Names of CHARLES HENRY JAMES,  
LUCIUS HENRY DEERING, and THOMAS ROBERT,  
Official and Trade Assignees of the said Very Rev. A. W.  
WEST, the owner, as owners.

TO BE SOLD BY AUCTION,

In 24 Lots,  
Before the Right Hon. Judge ORMSBY,  
At his Court,  
In the High Court of Justice in Ireland,  
Chancery Division—Land Judges,  
Inns-quay, in the City of Dublin,  
On TUESDAY, the 2nd day of MAY, 1882,  
At the hour of 12 o'clock, noon.  
Lot 1 consists of the Business Houses known as Nos. 21 and 22  
Christchurch-place, in the Parish of St. Werburgh, and City of Dublin,

held in fee-simple, subject only to the yearly rent of 2s 6d, and a portion of the Yard at re-re of No. 21, held under lease, dated the 20th of July, 1786, for a term of 98 years, from the 25th of March, 1786, at the yearly rent of one peppercorn, if demanded, and producing a profit of £76 17s 7d per annum, less the usual taxes.

Lor 2, consisting of the Dwellinghouse and Premises, now known as Nos. 51 and 49 Mountjoy-square, in the Parish of St. George, Barony of Coolock, formerly in the County, but now in the City, of Dublin, held with Lots 3, 4, 5, 6, 7, 8, and 9, in the printed rental in this matter, and other premises (not for sale in this matter), under lease dated 10th day of March, 1790, for a term of 99 years, from the 25th day of March, 1789, at the yearly rent of £19, late currency, equivalent to £16 12s 3d present currency, which will be sold liable to the whole of said head rent, and bound to indemnify all the other premises in said lease against payment of said head rent, now producing the profit rent of £28 15s 4d.

Lor 3, consisting of the Dwellinghouse and Premises, now known as No. 46 Mountjoy-square, aforesaid; held under said lease of the 10th day of March, 1790, now producing the yearly rent of £42 9s 3d, less the usual taxes.

Lor 4, consisting of the Dwellinghouse and Premises, now known as No. 46 Mountjoy-square, aforesaid; held under said lease of the 10th day of March, 1790, and producing the annual profit rent of £37 13s 10d, less the usual taxes.

Lor 5, consisting of the Dwellinghouse and Premises, now known as No. 50 Mountjoy-square, aforesaid; held under said lease of 10th day of March, 1790, and now producing the yearly rent of £37 13s 10d.

Lor 6, consisting of the House and Premises, now known as No. 21 Middle Gardiner-street, in the Parish of St. George, Barony of Coolock, formerly in the County, but now in the City, of Dublin; held under said lease of 10th March, 1790, and now producing the yearly rent of £14 15s 4d.

Lor 7, consisting of the House and Premises, now known as No. 25 Middle Gardiner-street, aforesaid; held with Lots 8 and 9 under lease dated the 24th day of March, 1800, for a term of 98 years, from the 25th day of March, 1801, at the yearly rent of one peppercorn, if demanded, and now producing the yearly rent of £65, less the usual taxes.

Lor 8, consisting of the House and Premises, now known as No. 39 Middle Gardiner-street, aforesaid; held under said lease of the 24th day of March, 1800, and now producing the yearly rent of £65, less the usual taxes.

Lor 9, consisting of the House and Premises, now known as No. 37 Middle Gardiner-street, aforesaid; held under said lease of the 24th day of March, 1800, and now producing the yearly rent of £32, less the usual taxes.

Lor 10, consisting of the Dwellinghouses and Premises, now known as Nos. 1, 2, 3, 4, and 5 Mountjoy-place, in the Parish of St. George, Barony of Coolock, formerly in the County, but now in the City, of Dublin; held with Lots 11 to 28, both inclusive, in the printed rental in this matter, and other premises not for sale in this matter, under lease dated the 23rd day of June, 1791, for a term of 99 years, from the 25th day of March, 1791, subject to the yearly rent of £58, late currency, equivalent to £53 10s 9d, present currency, to payment of the whole of which this Lot will be sold, liable and bound to indemnify all other premises comprised in said lease against the entire of said head rent. This Lot now produces the yearly profit rent of £51 14s 8d, less the usual taxes.

Lor 11, consisting of the Dwellinghouse and Premises, No. 6 Mountjoy-place, aforesaid; held under said lease dated the 23rd day of June, 1791, and now producing the annual profit rent of £13 16s 11d, less the usual taxes.

Lor 12 consists of the Dwellinghouse and Premises, No. 7 Mountjoy-place, aforesaid; held under said lease of the 23rd day of June, 1791, and now producing the annual profit rent of £13 14s 9d, less the usual taxes.

Lor 13 consists of the Dwellinghouse and Premises, No. 8 Mountjoy-place, aforesaid; held under said lease of the 23rd day of June, 1791, and now producing the annual profit rent of £13 14s 9d, less the usual taxes.

Lor 14 consists of the Dwellinghouse and Premises, No. 9 Mountjoy-place, aforesaid; held under said lease of the 23rd day of June, 1791, and producing the estimated annual rent of £70, less the usual taxes.

Lor 15 consists of the Dwellinghouse and Premises, No. 10 Mountjoy-place, aforesaid; held under said lease of the 23rd day of June, 1791, and now producing the annual rent of £52, less the usual taxes.

Lor 16, consisting of the Dwellinghouse and Premises, now known as No. 32 Mountjoy-square, aforesaid; held under said lease of the 23rd day of June, 1791, and now producing the yearly rent of £46, less the usual taxes.

Lor 17, consisting of the Dwellinghouse and Premises, now known as No. 33 Mountjoy-square, aforesaid; held under said lease of the 23rd day of June, 1791, and now producing the yearly rent of £59, less the usual taxes.

Lor 18, consisting of the Dwellinghouse and Premises, No. 1 Great Charles-street, in the Parish of St. George, Barony of Coolock, formerly in the County, but now in the City, of Dublin; held under said lease of the 23rd day of June, 1791, and now producing the annual rent of £45, less taxes.

Lor 19 consists of the Dwellinghouse and Premises, No. 3 Great Charles-street, aforesaid; held under said lease of the 23rd day of June, 1791, and now producing the annual rent of £43, less the usual taxes.

Lor 20 consists of the Dwellinghouse and Premises, No. 3 Great Charles-street, aforesaid; held under said lease of the 23rd day of June, 1791, and of the estimated yearly letting value of £44.

Lor 21 consists of the Dwellinghouse and Premises, No. 4 Great Charles-street aforesaid; held under said lease of the 23rd day of June, 1791, and producing the annual profit rent of £33 2s, less the usual taxes.

Lor 22 consists of the Dwellinghouse and Premises, No. 5 Great Charles-street, aforesaid; held under said lease of the 23rd day of June, 1791, and producing the annual profit rent of £21, less the usual taxes.

Lor 23 consists of the Dwellinghouse and Premises, No. 6 Great Charles-street aforesaid; held under said lease of the 23rd day of June, 1791, producing the annual profit rent of £21, less the usual taxes.

Lor 24 consists of the Dwellinghouse and Premises, No. 7 Great Charles-street aforesaid; held under said lease of the 23rd day of June, 1791, and producing the annual profit rent of £9 4s 7d, less the usual taxes.

Lor 25 consists of the Dwellinghouse and Premises, No. 8 Great Charles-street, aforesaid; held under said lease of the 23rd day of June, 1791, and producing the annual profit rent of £25 17s, less the usual taxes.

Lor 26 consists of the Dwellinghouse and Premises, No. 9 Great Charles-street, aforesaid; held under said lease of the 23rd day of June, 1791, and producing the annual profit rent of £24, less the usual taxes.

Lor 27 consists of the Dwellinghouses and Premises, Nos 1 to 7 Mountjoy-court, in the Parish of St. George, Barony of Coolock, formerly in the County, but now in the City, of Dublin; held under said lease of the 23rd day of June, 1791, and producing the annual profit rent of £30, less the usual taxes.

Lor 28, consisting of the Dwellinghouse and Premises, Nos. 8 and 9 Mountjoy-court aforesaid; held under said lease of the 23rd day of June, 1791, lately producing the yearly rent of £28.

Lor 29 consists of the Dwellinghouse and Premises now known as No. 16 Middle Gardiner-street, the Houses and Premises, Nos. 1, 2, 3, 4, 5, and 6 Temple-court, and the Ground whereon the House No. 7 Lower Temple-street formerly stood, all situate in the Parish of St. George, and County of the City of Dublin; held partly under lease dated the 18th of January, 1786, for the term of 99 years from the 25th day of March, 1785, at the yearly rent of £9 2s, late, equal to £8 8s present, currency; and partly by lease dated 28th of September, 1792, for three lives renewable for ever, at the yearly rent of 2s 6d late, equal to 2s 3d present, currency, and a renewal fine of one peppercorn on the fall of each life, which will be converted into a grant in fee-farm, as particularised in statement of tenure, and producing the net yearly profit rent of £25.

Lor 30, consisting of the Dwellinghouse and Premises now known as No. 23 North Cumberland-street, in the Parish of St. Thomas, and County of the City of Dublin; held under lease dated the 24th day of March, 1774, for a term of 98 years from the 25th day of March, 1774, subject to the yearly rent of £5 late currency, equivalent to £7 7s 7d present currency, and 12d late currency, for every chief and 6d like currency for every under tenant, as a common fee or loet money, and now yielding the yearly profit rent of £22 12s 4d.

Lor 31, consisting of the Dwellinghouse and Premises now known as No. 24 North Cumberland-street, in the Parish of St. Thomas, and County of the City of Dublin; held under lease dated the 24th day of March, 1774, for a term of 98 years from the 25th day of March, 1774, subject to the yearly rent of £6 late currency, equivalent to £5 10s 9d present currency, and 12d late currency, for every chief and 6d like currency for every under tenant, as a common fee or loet money, and now yielding the yearly profit rent of £24 9s 3d.

Lor 32 consists of the valuable Business House and Premises now known No. 106 Grafton-street, in the Parish of St. Andrew, and City of Dublin; held under lease dated 6th day of June, 1781, for three lives renewable for 70 years from the 25th day of March, 1781, subject to the yearly rent of £18 late currency, equivalent to £16 12s 3d present currency, and one couple of fat oasons, or 5s late currency, equivalent to 4s 7d present currency, and renewal, dated the 19th day of April, 1852, for three lives, whereof two are in still existence, and now producing the yearly profit rent of £46 3s, less the usual taxes.

Lor 33 consists of the valuable Licensed House and Premises, now known as No. 4 North Earl-street, in the Parish of St. Thomas, and County of the City of Dublin; held under lease dated the 18th day of October, 1787, with tories quotes covenant for renewal during 900 years, from the 1st day of March, 1789, at the yearly rent of £28 8s 9d late, equivalent to £26 5s present, currency, with 6d for every chief or under tenant, and a renewal fine of one peppercorn, if demanded, and yielding a profit rent of £21 15s per annum, less the usual taxes.

Lor 34, consisting of the valuable Business House and Premises, now known as No. 5 North Earl-street, in the Parish of St. Thomas, and County of the City of Dublin; held under lease dated the 18th day of October, 1787, with tories quotes covenant for renewal during 900 years, from the 1st day of March, 1788, at the yearly rent of £24 8s 9d late currency, equivalent to £26 5s present currency, with 6d for every chief or under tenant, and a renewal fine of one peppercorn, if demanded, and yielding a profit rent of £19 18s 1d per annum, less the usual taxes.

Dated this 1st day of March, 1882.

IGNATIUS O'KEEFE, for Examiner.

Proposals for all or any part of the Lots will be received by the Solicitors having carriage of the Sale up to the 18th day of April, 1882, and submitted to the Judge for approval.

For Rentals and further particulars apply at the Office of the Clerk of Sales, Chancery Division, Land Judges' Court, Inns-quay, in the City of Dublin; or to

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# THE IRISH LAW TIMES AND SOLICITORS' JOURNAL.

VOL. XVI.

SATURDAY, APRIL 29, 1882.

No. 796

## EQUITABLE MORTGAGES BY DEPOSIT OF TITLE DEEDS.—I.

PREVIOUSLY to the establishment of the doctrine of equitable mortgage by deposit of title deeds, it was held that the mere possession of them gave the holder no interest in the estate, except collaterally, as in the instance put by Lord Eldon in *Ex p. Hooper*, 1 Mer. 7: see Coote, Mtge., 4th ed., 310. The foundation on which rests the now received doctrine was laid by Lord Thurlow, in *Russell v. Russell*, 1 Bro. C. C. 269. And notwithstanding the Statute of Frauds, it is now settled that the deposit of title deeds, even without verbal communication, is *per se* evidence of an agreement executed for a mortgage of the estate: *Ex p. Wright*, 19 Ves. 258. Such equitable mortgages may, then, be created with or without a memorandum in writing: *Russell v. Russell*, *ubi supra*; *Ex p. Langston*, 17 Ves. 230; *Ex p. Wright*, 19 *ib.* 258; *Ex p. Mountfort*, 14 *ib.* 606; *Parker v. Housefield*, 2 Myl. & K. 419; and if the deeds are deposited without any memorandum, parol evidence may be admitted to explain the nature of such deposit, while if the documents deposited were not all specified in the memorandum, the whole may still be deemed included: *Ferris v. Mullins*, 2 Sm. & G. 378; and the absence of a written memorandum does not take the mortgage out of the operation of Locke King's Act (17 & 18 Vic., c. 113): *Davis v. Davis*, 24 W. R. 962. This species of security, however, has excited much judicial disapprobation: *Ex p. Haigh*, 11 Ves. 403; *Norris v. Wilkinson*, 12 *id.* 192; *Ex p. Whitbread*, 19 *id.* 211; *Ex p. Hooper*, 1 Mer. 7. Lord Eldon, indeed, denounced the decisions by which the doctrine was established, as virtually repealing the Statute of Frauds: *Ex p. Whitbread*, *ubi supra*; and repeatedly declared his determination not to extend that doctrine, while expressing his surprise that it ever was admitted: *Featherstone v. Fenwick*, *Harford v. Carpenter*, 1 Bro. C. C. 270, n. And in Mackeson's edition of Coote on Mortgages it is said: "How far its existence in deterioration of the public revenue, by diminishing the amount of stamp duties, is of sufficient importance to attract the notice of the Legislature remains to be seen." And again: "On a review of the decided cases establishing this mode of mortgage security, it is perhaps to be regretted that the old law was not adhered to and the principle on which the Statute of Frauds was founded more respected. For although equity, by declaring the deposit itself to be evidence of an agreement executed, has contrived to evade the strict and literal wording of the statute, yet it is manifest that the door has been in some degree open to fraud and perjury; nor does a creditor seem to deserve much favour who will not be at the trouble of a few lines in writing (*Ex p. Whitbread*, *ubi supra*) if he is desirous to have a charge on his debtor's estate. If the debtor denies that the deposit was intended to cover future advances, as in *Ex p. Mountfort* (14 Ves. 606), or if he insist that the deeds were not delivered by way of deposit but with a different intent, resort must, in many cases, be had to parol evidence; and, as remarked by Lord Eldon (*ibid.*), 'the mischief of all these cases is, that the court is deciding upon parol evidence with regard to an interest in land within the Statute of Frauds.'" As regards future advances,

indeed, a person who has obtained a legal mortgage may be in a worse position than an equitable mortgagee, under the distinction which was made to avoid an extension of the doctrine acted upon in *Ex p. Langston*, 17 Ves. 227; and, as observed in Fisher on Mortgages, 3rd ed., "the result justifies the remark made in another case by Lord Eldon, that 'departing from the Statute (of Frauds), we have no rule to go by.'"

Lord Eldon himself, however, accepted the doctrine as settled law; and it has been held that, where the *lex loci rei sitæ* does not forbid, and the parties do not contract with reference to any other particular law, and the general law of the place is English, an equitable lien will be created upon land by a deposit of title deeds: *Varden Seth Sam v. Luckpathy Royjee Lallah*, 9 Moo. Ind. App. 303. In America, too, the English doctrine has been adopted: *Griffin v. Griffin*, 3 C. E. Green, 104; *Brewer v. Marshall*, 4 *ib.* 537; *Gale v. Morris*, 29 N. J. (Eq.) 222; *English v. M'Elroy*, 8 Rep. 13. As regards the nature and character of such a mortgage, Ball, C., observed, in *M'Kay v. M'Nally* (13 Ir. L. T. Rep. 130): "I do not know that this is anywhere better stated than by Lord Cottenham, in *Parker v. Housefield* (2 Myl. & K. 42), 4 L. J. Ch. 57). Speaking of the analogy between legal mortgages and mortgages by deposit, he says, 'To determine this it is material, in the first place, to consider in what light courts of equity view such equitable mortgages; and it appears that a deposit of title deeds has always been considered as an imperfect mortgage, which the mortgagee is entitled to have perfected, or rather as a contract for a mortgage, which, according to the well-known doctrine of courts of equity, would give to the party claiming the benefit of such contract all such rights as he would be entitled to if the contract had been completed.'" And see *Crone v. Hegarty*, 13 Ir. L. T. Rep. 86; *In re Girdwood's Estate*, 14 Ir. L. T. Dig. 9. Such a mortgage does not constitute a breach of a covenant not to "mortgage, sell, assign, or otherwise part with" an indenture of lease, or the premises thereby demised: *M'Kay v. M'Nally*, *ubi supra*. And such an equitable mortgagee will have preference over a subsequent purchaser or mortgagee of the legal estate, with notice of the charge by deposit: *Jones v. Williams*, 21 Beav. 27; *Leigh v. Lloyd*, 35 *ib.* 455; which notice will be implied from the nature of the transaction, as if the subsequent purchaser or mortgagee was informed that the creditor was in possession of the title deeds, and neglected to make inquiry for what purpose he held them: *Hiern v. Mill*, 13 Ves. 114; and so, even though the purchaser only had notice by a letter stating that the memorandum (unregistered) of deposit was "useless": *Christie v. Farr and Corkin*, 16 Ir. L. T. 105; see Coote, Mtgs., 4th ed., 779; 7 Ir. L. T. 29. But a purchaser who has notice that the title deeds of the property are deposited with a bank to secure a current account is not bound to inquire whether the bank has made fresh advances on the security of the vendor's lien for unpaid purchase-money, and the burden lies on the bank, if it makes such advances, to give notice to the purchaser: *The London and County Bank v. Ratcliffe*, 6 App. Cas. 722, 51 L. J. Ch. 28.

As regards the effect of an equitable mortgage by

deposit of title deeds, unaccompanied by any memorandum in writing, and unregistered under the Registry Act, 6 Anne (Ir.), c. 2, as against a *bonâ fide* purchaser without notice, under a subsequent registered conveyance for value, in *re Burke's Estate*, decided by the Court of Appeal in December last, has decided that the equitable mortgagee (with whom in that case an agreement for a lease had been deposited) is entitled to priority; following *Sumpter v. Cooper* (2 B. & A. 223) and *In re Stephens' Estate* (I. R. 10 Eq. 282, 10 Ir. L. T. Dig. 15), and overruling *In re M'Kinney's Estate* (6 Ir. L. T. Rep. 179, I. R. 6 Eq. 445). But, the fuller discussion of this important subject must be reserved for a subsequent paper.

#### THE LAMSON CASE.

The affidavits to mental disease on which the application of our Government to that of Great Britain in this case was founded, present, in a very different phase, the same underlying question which added so great a professional interest to the universal popular attention attracted by the case of Guiteau. A man conversant with narcotics, poisons, and antidotes, a physician by profession, gradually yields to an habitual indulgence in morphine, which originated in proper medical use for relief from pain, and becomes wholly unbinged from practical life, incapable for ordinary affairs alike when under the influence of the drug and when suffering the reaction from the disease of it. He presents to his friends the appearance not only of a dangerous situation for himself, but a man of dangerous powers by reason of the decay of his mind and of his self-restraint, while his familiarity and freedom in the use of deadly poisons increases. They caution each other not to let him prescribe or give medicine. They watch him lest he do himself or others mischief. He passes from one hospitable refuge to another, making the same warning impressions. At last, in the necessities in which his wasted life leave him, he recklessly uses on another the fatal drug he has so often used on himself. Few men of observation do not see around them parallels to the incipient stages of this course.

The question of criminal responsibility under such circumstances is doubtless a grave one, but if the sanctions of the criminal law do not protect the community, what shall take their place?—*New York Daily Register*.

#### THE SETTLED LAND BILL.

The Settled Land Bill, introduced by Lord Cairns, has now passed the third reading in the House of Lords. Its scope and object are explained by its promoter in a memorandum laid on the table of the House as being "to enable tenants for life or other limited owners to dispose of part or the whole of settled land," with proper provisions for securing the due application of the purchase-money and protecting the interests of remaindermen. It does, however, more than this, for it considerably extends the powers of limited owners to effect improvements on their estates, and simplifies the means by which they can do so. The policy of some such piece of legislation may well be admitted. There is a consensus of authority to the effect that the soil of England is less productive than it might be, by reason partly of the restrictions placed upon the ownership of land under wills and settlements, and the obstacles placed in the way of the free circulation of land as a marketable commodity. It is no answer to this finding of the special jury which has considered the matter to say that every tenant for life, under a properly drawn instrument, already enjoys a power of sale which enables him, or the trustees at his direction, to sell the land as freely as if he were absolute owner. The fact is as stated. But as the power is always coupled with provisions that the proceeds of the land sold shall be reinvested in the

purchase of lands, and that, until reinvestment, the same shall be invested in Consols or on mortgage, and the moneys held upon the same trusts as the land, the power practically remains unused, except for the purpose of rounding off estates. The difference between the 2½ and 8 per cent. on the value represented by the rents of land, and the 8 or at the utmost 5 per cent. to be got from the investment of the proceeds of sale, is not enough to induce a tenant for life to undergo the pangs of parting with ancestral acres and the worry and expense of a sale, unless under very special circumstances. The new bill holds out very different inducements to limited owners to sell.

After providing in section 1 that the Settled Land Act, 1882, is to come into operation from December 31 in the present year, it proceeds in section 2 to sweep into its folds all conceivable arrangements for tying up land whether made in the past or the future, or both. We may note in passing that sub-section (6) is perhaps not quite adequately expressed. In defining who are to be considered trustees of a settlement so as to come within the purview of the Act, it mentions, amongst others, "the persons, if any, for the time being, who are by the settlement declared to be trustees thereof for purposes of this Act." These words seem either superfluous or insufficient. They are superfluous if they only include trustees hereafter specifically named to act generally under the new Act, because they would necessarily have power to act thereunder as directed. They seem insufficient if intended to include persons named to perform some special functions mentioned in the Act, but not all of them. The insertion of the words "any of the" before "purposes" would make the meaning clearer. The bill may be broadly divided into three parts—those which deal with powers of sale, those which deal with powers of leasing, and those which deal with powers of improvement. The two last-named parts may, indeed, be regarded as merely subsidiary and auxiliary to the first, which would be incomplete without them; but as they are, of course, not concurrent with, but alternative to a sale, they must be treated separately. As regards sales, section 3 is the important substantive enactment of the bill. It makes a power of sale, exchange, and partition an inseparable incident of the estate of a tenant for life. The rest of the bill relating thereto consists of regulations and restrictions of the exercise of the power. Section 4 provides that it may be exercised in any way so long as "the best price that can reasonably be obtained" is obtained. Part IV. (or sections 7 to 15) makes powers of leasing a like incident, but for the terms only which are now commonly inserted in settlements—viz. for building, 99; for mining, 60; and for other purposes, 21 years. To the restriction of these terms considerable objection may be taken. For instance, in Lancashire and other parts of the country, 999 years are perhaps even more usual than the restricted terms for building or even mining leases; while the most improving landlords, such as Lord Leicester and Lord Portsmouth, grant agricultural leases for 31 years, with substantial security for renewal. It would seem wiser, therefore, not to impose any limitation of terms on any class of lease, but to leave limited owners the same power of giving security to their tenants as other owners. Otherwise, there will still be a necessity for the insertion of these powers in settlements, instead of their being treated as legal incidents thereof, and so becoming a matter of common knowledge, and left to the unrestricted operation of the law. For the same security will exist against an improvident disposition in the case of a long as of a short term. Section 16 imposes the most important restrictions in the Act, prohibiting the principal mansion-house, park, and "domain" land from being sold or leased without the consent of the trustees of the settlement, or an order of the Court. Section 17 extends to the tenant for life the powers possessed by the Chancery Division under sections 20 to 22 of the Settled Estates Act, 1877, of laying out streets, open spaces, drains, and the like, and dedicating them to public uses in connexion with the development of

building land. Section 18, in a similar way, gives the powers of section 16 of the same Act as regards a disposition of mines apart from the surface, and of surface apart from mines. Section 20 provides that a disposition by the tenant for life, in accordance with the Act, shall operate as a *pro tanto* release from the settlement, subject, of course, to any prior subsisting interests or incumbrances.

Parts VI. and VII., dealing with the application of the money to the improvements of settled estates, contain the inducements to the tenant for life to exercise the various powers conferred by the previous provisions of the bill. By section 21 money, in the nature of capital received on any sale, exchange, or fine on lease, &c., may be applied in any of eleven specified ways: (1) Investment in Government securities, or any securities authorised by the settlement or by law. This proviso does not go far enough. It would be much better to insert an investment clause with a wide range of investment, extending to shares of any company paying a dividend; because, as we have before pointed out, the difference between rents and interest on purchase-money is not sufficient to induce an embarrassed owner to sell when the investment is confined to Government stocks and mortgages on land, the usual mode prescribed by a settlement of real estate. The next two modes of application, however, considerably extend the present inducement to sell. For the money may be applied, by sub-section ii., in the "discharge, purchase, or redemption of any incumbrance affecting the inheritance of the settled land, or other the whole estate, the subject of the settlement," or of land tax, chief rents, quit rents, and the like; and, by sub-section iii., in payment for any improvement authorised by the Act. By sub-sections 5 and 6, the further power is added of acquiring the fee, or enfranchising in the case of leaseholds and copyholds. The other modes specified are merely those already adopted in settlements. The importance of sub-sections ii. and iii. can hardly be overestimated. They will tend to remove the chief objections to the present system of settlements. They will not, indeed, enable a tenant for life to sell the land to pay incumbrances created by himself, for to do so would be to make him absolute owner; but they will enable him, when encumbered by rent-charges and annuities to widows and children of former owners, to sell part of the land and relieve himself of the burden by paying them off with the proceeds, leaving him free to deal with the remainder unhampered. In view of the long list of improvements set out in section 25, the tenant for life will thus be enabled to play the part of an improving owner almost as readily as an absolute owner in fee-simple. "Almost," not quite; for, by section 26, he will be compelled to submit a scheme for the sanction of the Land (now the Tithe and Inclosure) Commissioners. This is, we cannot help thinking, a mistake. Red tape means delay and expense, and acts as a discouragement to improvements on the part of the landowners. It would be as well to make an application to the commissioners compulsory only in cases where the remainderman or the trustees objected to the proposed improvements, in the same way as by sections 88 to 48 powers of interference and of an appeal to the Court are given to the trustees in case of an improvident sale or lease, or an improper application of purchase-moneys. Section 51 makes the Act compulsory, and makes void all attempts to prevent its provisions being obligatory. This section is most important. The shortcomings of the Agricultural Holdings Act and of the Land Transfer Act, through want of compulsion, are sufficient evidence of its wisdom and necessity. It adds the coping-stone to a very effective piece of legislative work, well fitted to effect the purpose for which it is designed. It is, of course, too much to hope that the bill will please every one. The extreme of both sides who want to abolish settlements altogether, or to preserve them intact, will be dissatisfied with it. But to that large majority who wish to keep settlements, yet not to tie up the land, or render it insusceptible of improvement, the Settled

Land Bill will commend itself as a wise and well-considered effort of legislation.—*Law Journal*.

#### THE MARRIED WOMAN'S PROPERTY BILL.

Some weeks ago we called attention to the numerous mistakes made in the Acts of last session, and suggested the appointment of a Parliamentary Committee, including the original draftsman, who should revise the Bills when they approach a late stage. Of course the plan is not yet adopted, and so all we can do, to supply its place, is to endeavour to point out some of the salient defects, and more obvious difficulties, in the Bills of importance, when they are issued to the public and printed in an amended form.

The Bill before us might almost fairly be called "A Bill to abolish Married Women;" of course we mean by this to abolish their *status*, with its peculiar disabilities and special privileges. We propose to consider a few of the clauses in detail. By clause 1 (1) "A married woman shall be capable of acquiring, holding, and disposing, by will or otherwise, of any real or personal property, as her separate property, in the same manner as if she were a *feme sole*, without the intervention of any trustee." Clause 1 (2) declares that "a married woman shall be capable of entering into and rendering herself liable on any contract in respect of her separate property, and of suing and being sued, either in contract or in tort, or otherwise, in all respects as if she were a *feme sole* . . . and any damages or costs recovered against her in any such action or proceeding shall be payable out of her separate property, and not otherwise."

Is it intended by the words "render herself liable . . . as if she were a *feme sole*," to abolish the personal immunity of married women? Hitherto they have not been personally liable on their contracts binding their separate estate, it is only the separate estate that is liable. This distinction is pointed out in *Pike v. Fitzgibbon* (44 L. T. Rep. N. S. 562; L. Rep. 17 Ch. Div. 454), and in *Atwood v. Chichester* (L. Rep. 3 Q. B. Div. 722). The last words of clause 1 (2) suggest that the old rule is to be maintained, and this view is strengthened by the distinction drawn between a judgment "against the husband personally," and "against the wife as to her separate property," at the end of clause 14. *Sed quare*.

Clause 1 (3) declares that every contract entered into by a married woman shall *prima facie* be deemed entered into with respect to her separate property.

This is likely perhaps to relieve husbands, but will rather seriously affect tradesmen and others dealing with married women who have no separate property, unless it is decided that this provision does not apply to such cases. The meaning is not clear.

Clause 1 (4) provides that contracts shall bind after-acquired separate property.

By clause 1 (5) "Every married woman carrying on a separate trade shall, in respect of her separate property, be subject to the bankruptcy laws in the same way as if she were a *feme sole*."

We suppose by "separate trade" is meant "separate from her husband." It can hardly be intended to exclude the case of a married woman in partnership with some other person; but the serious question arises whether it is intended that the married woman shall personally become a bankrupt, and be personally liable to the bankruptcy laws "in the same way as if she were a *feme sole*," or only that her separate property can be attached by bankruptcy proceedings. Compare *Ex parte Jones* (40 L. T. Rep. N. S. 790; L. Rep. 13 Ch. Div. 484).

The third clause of the Bill seems well calculated to cause litigation: "Any money or other estate of the wife lent or entrusted by her to her husband for the purpose of any trade or business carried on by him, or otherwise, shall be treated as assets of her husband's estate in case of his bankruptcy;" subject, however, to the wife's claim to a dividend after all other creditors for value have been satisfied. We suppose this is not

intended to affect loans by the wife's trustees to the husband, nor yet money, entrusted to the husband by the wife herself for investment, which he wrongfully employs in trade. But what are the words "or otherwise" intended to cover? If she simply lends it to her husband for no especial purpose, does the clause apply? Or does it only apply to traders? Can the wife prove in the bankruptcy on a level with other creditors, if the money has been lent to the husband and spent over the household? These are questions which, if the Bill passes in its present form, will need judicial decision, and occasion great expense.

By clause 7 any married woman, or woman about to be married, may apply for transfers of money in the funds and shares in companies, or certain registered societies, to which she is entitled, into her name or intended name as a married woman for her separate use. And the proper officers are required to make the necessary entries in their books; and apparently, if the woman is only beneficially entitled, and shares are standing in the name of some other person, the legal owner need not join in the transfer. Surely this cannot be intended. Also there is no provision made for the transfer fees.

Clause 17, according to its marginal note, is a "saving of existing settlements and the power to make future settlements." The clause also affirms the validity of the "restraint upon anticipation," with certain exceptions. This rather important provision is ignored in the marginal note. The reference to "such woman," at the end of the clause itself, makes its meaning extremely vague. No doubt the main object of this Bill is the protection of married women; but at the same time a spirit of fairness requires that the interests of men should not altogether be overlooked. If wives are allowed by law, and without any special agreement, to enjoy and dispose of their property in the same way as if they were unmarried, it certainly seems unfair that the husband should be liable for the wife's torts committed after marriage. The Bill puts wrongs committed by the wife before marriage in the same position as ante-nuptial debts, and limits the husband's liability "to the extent of all property whatsoever belonging to the wife which he shall have acquired or become entitled to from or through his wife" (clause 13). Why should not post-nuptial torts be placed on the same footing, or the husband entirely relieved from all liability with regard to them? We have only been able in this article to examine a portion of the Bill; but we have shown that it requires most careful examination in the House of Commons before it is allowed to become law.—*Law Times*.

#### WOMEN'S PROPERTY IN FINLAND.

In its last session the Finland Diet discussed a petition requesting that married women should have the free disposal of their property arising either from their dowries or inheritances. The supporters of the motion showed that according to the law voted by the Diet in 1863 women become of age at twenty-five years, and that unmarried ladies have a right to do with their money anything they like, whilst married ladies were not able to do anything with what belongs to them except by the permission of their husbands, which was a grave anomaly. The opponents said that, marriage being only a moral union not falling under the laws, they thought that the petition ought to be set aside. In spite of a very able speech by Deputy Tavedberg, the petition was rejected by thirty-five votes to eighteen. The same Diet has also rejected the project to transform the Diet, with its separate orders, into a parliament, as in most countries on the Continent, and the admission of the peasants in it.—*Golos*.

At a meeting of the Presbyterian Association, Sackville Hall, on Thursday evening, a Reading of "As you like it" was given, in which Mr. Justice Lawson assumed the part of *Touchstone*, the Court Jester.

#### SIR FRANCIS S. REILLY, K.C.M.G.

Sir Francis S. Reilly, who has lately been appointed Counsel to the Speaker, as Queen's Counsel, and also has received the honour of being made a Knight Commander of St. Michael and St. George, is one of the two surviving sons of the late Mr. James Miles Reilly, of the Irish Bar, the other being Colonel Reilly, C.B., now commanding the Royal Artillery at Aldershot, was born in 1825, and was educated at Trinity College, Dublin, where he obtained a Foundation Scholarship, and other honours. He was called to the Bar at Lincoln's Inn, in 1851, and has had a large practice as a Parliamentary draftsman both in public and in private legislation. He acted as assessor to Lord Salisbury and Lord Cairns in the London, Chatham, and Dover Railway Arbitration, to Lord Cairns in the Albert Life Assurance Company Arbitration, and to Lord Westbury and Lord Romilly successively in the European Assurance Society Arbitration. On Lord Romilly's death, Sir F. Reilly was appointed arbitrator, subject to appeal, in the European Arbitration, which he brought to a conclusion. He has been a member of the Statute Law Committee from its first appointment, and has been much employed professionally by various Departments of Her Majesty's Government. As regards the Foreign and Colonial Offices, besides preparing and advising under many important Orders in Council regulating British jurisdiction in the Ottoman Dominions, China and Japan, and other countries, he has acted, for instance, in the San Juan and the Mosquito Coast Arbitrations, in the affairs of Cyprus, of the Western Pacific, and of the Suez Canal Company, and in relation to the International Courts in Egypt.

#### COUNTRY LAWYERS.

The country lawyer of good standing differs as much from the pettifogger as a field-marshal differs from a private of marines. He is the secret-holder of the most important families in the county; his advice is sought and followed by grandees, squires, and great ladies, and he is generally a wealthy man himself. One source of his influence is that he often has much more knowledge of his clients than they have of themselves. He knows exactly how much a year each of them has, which is more, in many cases, than they know themselves; he knows the acreage of their properties, the exact conditions under which they hold them, and what their lands would probably be worth if thrown upon the market. He often has complete charge of their affairs, and remembers precisely in what manner they have disposed of their properties in their wills—a thing that laymen are exceedingly apt to forget. He has only to ring for his clerk, and in two minutes he can have any of their deeds, settlements, wills, or estate accounts placed on his writing-desk for immediate study; while the chances are that they are themselves unaware of the very existence of some of these instruments, and know very little about the others. Moreover, when he looks at a poor fellow who is struggling hard to keep a wife and large family on three hundred a year, he may know that in one of his tin boxes there is a will which will some day entitle that man, if he lives, to two hundred thousand pounds; and when he looks at another who imagines himself to be the sole heir to an immense property, he may wonder what his feelings would be if he were aware that the said property is to be divided equally between himself and his nine cousins. Then those who seek the advice of lawyers are obliged to be confidential, and lay open before them the whole state of their affairs, with everything that bears upon them either directly or indirectly. The consequence of this is that a shrewd lawyer has many opportunities of acquiring information. What one client tells him of his own affairs has often an indirect bearing upon those of others. This, of course, is much more the case in the country—where many of the neighbours are either related to each other or have adjoining properties, and have similar or conflicting interests in the same



matters—than in large towns, where men do not know the names of the people who live next door to them, and where lawyers are frequently in utter ignorance of the family concerns of their clients. Idle people proverbially consider themselves the busiest; and a country gentleman, when he has nothing else to do, always imagines that he has urgent business necessitating a visit to his solicitor. A horse is therefore put into a dog-cart, and he starts off with an air of great importance for the county town, in order to confer with his legal adviser. After passing through one or two ante-rooms, occupied by clerks penned up in things resembling old-fashioned family pews with glass cases at the top, he is ushered into the presence of the great man. An open tin box is placed beside the lawyer, on which the name of the Duke of Cambria is printed in large capitals. Maps of large estates are hung over chairs or are lying on the ground; there is a profusion of parchments on the table, which may fairly be assumed to be the title-deeds of immense landed properties; bundles of letters, doubtless representing transactions of untold magnitude, lie about in all directions; and there is a general atmosphere of "land and capital" about the chamber of the oracle. The client has scarcely seated himself before a clerk brings in a telegram, which the solicitor opens, glances at, and tosses carelessly on his table, as if he were in the habit of receiving telegraphic communications every five minutes. We are far from saying that the matters which bring clients to lawyers are not often of an important character; but it is certain that the amount of absolute business transacted between a country gentleman and his lawyer at a single consultation is not uncommonly much as follows:—After the usual greetings, remarks about the weather, unbuttoning of gloves, finding places for hats, and taking off of great-coats, the client asks his legal adviser whether he has yet heard from Mr. Brown. The lawyer then replies that he has not yet heard from Mr. Brown; that he has been expecting to hear from him every day; that he cannot believe any great length of time can elapse before he will hear from him; and that, if he should not receive any communication from him by a certain date, he will certainly write again to him. Having transacted this most urgent piece of business, the client considers himself fairly entitled to a little gossip. He inquires whether this is true, and whether that is true, whether there are any grounds for such and such a rumour, and whether his solicitor has heard so and so. The lawyer tells him as much as he thinks right, and gets as much information out of his visitor in return as he can. Some country gentlemen, when out of humour, go, or are sent by their wives, to their lawyers to be put into a good temper again. A successful lawyer is generally a master in the art of improving people's tempers. His clients may enter his sanotum with gloomy faces, but will often come out smiling. He will tell them of a blunder committed by their bitterest enemy; or he will inform them that one or two people have been making inquiries about their unlet farms. He will shake his head and look incredulous about the supposed unlimited wealth of the neighbour of whom they are jealous, and he will hint in a mysterious way at troubles that are in store for that provoking family which always appears prosperous and happy. He has some pleasant little bits of gossip about the unpopularity of the parson, and the "high doings" that go on at the iron chapel of ease in the early mornings. There is a report, he says, that the Jesuits are about to buy one of the largest houses in the neighbourhood, and he has heard that there has been a grand quarrel between two leading members of the United Methodists. He is generally very strong upon the underhand doings of "those rascally dissenters," who, by the way, have an unholy habit of employing lawyers of their own. In most neighbourhoods there is an old maiden lady of eccentric habits, a gentleman of strongly pronounced religious opinions, a scapegrace on the verge of ruin, and a mau with a hobby. Of each of these the lawyer has a pleasant anecdote. A lawyer often acts also as a sort of confessor

and director to his clients. One will confess that he has lost his temper and insulted an acquaintance, and will want help in propitiating the injured person; another will accuse himself of having lost heavily on the turf, and will want to know how to raise money without the knowledge of his parents; this man will have made a foolish promise, from which he wishes to recede, and that man will have written a libellous letter, from the penalties of which he is naturally anxious to screen himself. Many clients will confess that they have been extravagant, and will seek to raise money on mortgage, while not a few will have exceeded their allowances and will require a temporary loan. It is needless to say that lawyers' visitors are not exclusively of the male sex. Most country solicitors have aged female clients who constantly call on them. The primary objects of their visits are usually to make codicils to their wills, leaving five pounds to some other antediluvian, or to inquire whether their legal advisers can recommend any perfectly safe investment that will make a return of 15 per cent.—a rate of interest which they hear is obtained by a relative living in the Republic of Venezuela. The secondary object of their consultation is to find out whether that odious Miss Higginbottom is really going to be married to Dr. Goodenough, or whether Ghostly Manor has actually been let to an East-End pawnbroker. It must not be supposed that the time of a lawyer is entirely spent in agreeable conversation or entertaining gossip. He occupies a position of great responsibility, and his life is one of considerable anxiety and not a little drudgery. He has to wade through long wordy deeds and documents, which have a dangerously soporific tendency while they require most shrewd and careful attention: One dull, and to lay eyes meaningless, sentence, among many dreary pages of a deed or settlement, may at some time or other lead to a Chancery suit, if it escapes his notice. As regards the profits of solicitors, although still very large, they are small in comparison with what they were when the principal lines of railway were being projected in England. Gossiping clients are often surprised at the length of their lawyer's bills; but, if they like to employ a professional man to spend his time in chattering to them, it seems but reasonable that they should pay for it. It would be hard, indeed, if a country lawyer should not earn some profits when the wide nature of his functions is taken into consideration; for he has sometimes to serve in each of the following capacities—conveyancer, law-stationer, land-agent, secretary, book-keeper, newsvendor, political agent, money-lender, railway agent, banker, and electioneering agent. Nor must it be forgotten that another cheerful occupation has lately been discovered for him—namely, that of serving long terms of imprisonment in her Majesty's gaols, when he has been executing what had hitherto been considered the recognised duties of a canvassing agent.—*Saturday Review*.

#### MALICIOUS INJURIES TO PROPERTY.

The exact effect and meaning of section 7 of the Malicious Injuries to Property Act (24 & 25 Vict., c. 97) has just formed the subject of an important judicial opinion in the case of *Reg. v. Harris and Atkins*, which was tried before Sir Henry Hawkins, at the Old Bailey, on the 16th ult. The indictment against the prisoners contained four counts: (a) wilfully and maliciously setting fire to a dwelling-house with intent to injure; (b) wilfully and maliciously setting fire to a dwelling-house, persons being therein; (c) wilfully and maliciously setting fire to a picture frame, under such circumstances that, if the building were thereby set fire to, the offence would amount to felony; (d) against Atkins only as an accessory after the fact. The facts were of the simplest kind, the evidence being that Harris was employed with other men to repair, paint, and decorate a dwelling-house at 108 Lancaster-gate, the property of Mr. Alcroft. On the premises was a very valuable painting, by Sydney Cooper, R.A., styled "The Monarch of the Meadows," which, for safety, had been placed in the

boudoir, covered with a cloth. The painting was seen safe on the evening of 12th Sept., the workmen being all supposed to leave at six o'clock; the next morning, at half-past six, the boudoir was found in flames so far as the floor was concerned, the smoke having filled the drawing-room and done damage to the extent of nearly £1,500.

The picture had been cut from the frame, and the evidence of the salvage man proved conclusively that three distinct fires had been lighted on the floor, by the aid of a large sheet torn into pieces, and the assistance of linseed oil or turps, no doubt with the object of destroying the frame and so concealing the larceny of the picture. Harris, whilst denying the charge of setting fire to the dwelling-house, admitted he was outside and received the picture from the hands of another man who he said had cut the picture from the frame, and subsequently was aiding Atkins to advertise and try and obtain the reward, when he was taken into custody on another charge. The evidence further showed that Harris was at work at 108 Lancaster-gate, all day on the 12th, and was supposed to leave about a quarter to six, but that there was abundant opportunity, if he desired to avail himself of it, of remaining on the premises; also that two maid servants slept in the house, and that the front door was not finally fastened until nine o'clock, the theory of the prosecution being that Harris remained behind after the other workmen left, cut the picture from the frame, then kindled three separate fires on the floor with the view of destroying all traces of the larceny. On the opening statement of counsel the learned judge said he should have stopped the case but for the third count, and upon that intimated that he did not think there was sufficient evidence to convict in point of law, propounding the novel doctrine that, in order to convict under the 7th section, it is necessary for the prosecution to show affirmatively that the incendiary intended, when setting fire to the things in the house, to set fire to the house itself. All we can say is that, if that be the proper reading of the section, it must necessarily become a dead letter for practical purposes. The learned counsel for the prosecution, however, declined to withdraw the case, and it accordingly proceeded. We are clearly of opinion that there was strong evidence on all the counts of the indictment. Wilfully to set fire to the floor of a house is as much arson as burning the whole house down. If the intention was to set fire to the frame, which was the property of the owner of the house, is not that an intent to injure? If it could even be rightly held that this is not so, then at any rate there must have been evidence for the jury on the second count, it being proved that persons were in the house, and the act being clearly wilful and malicious, from the fact of the existence of three distinct fires, it being unnecessary either to lay or prove any intent under the second section of the Act. Indeed, under sect 8 of 24 & 25 Vict., c. 97, it was decided in *Reg. v. Farrington* (R. & R. 207) that, on proof of a wilful and malicious setting fire to a dwelling-house, the intent to defraud or injure will be presumed, pursuant to the general rule of law, that a man must be presumed to intend the probable consequences of his act. Finally the case went to the jury against Harris only on the third count, and in reply to questions from the judge the jury found: (a) That Harris set fire to the house; (b) that the probable consequence of that act was to set fire to the house; (c) that Harris did not intend to set fire to the house; (d) that he was not, when he set fire to the frame, reckless whether he set fire to the house or not. The learned judge was understood to say that he left the last question to the jury only out of deference to the decision in *Reg. v. O'Neil* (L. Rep. 1 C. C. R. 808), and that if the jury found he was reckless he should still reserve the point if they were of opinion he did not intend to burn the house.

In the case we have quoted Mr. Justice Blackburn held that the true construction of 24 & 25 Vict., c. 97, s. 7, was not such as to make it felony maliciously to set fire to goods in a dwelling-house *per se*, but that if the

dwelling-house in which the goods were had caught fire from the burning goods the question whether the offence would have amounted to felony depended upon a further question—viz., whether such a setting fire to the dwelling-house would have been malicious and with intent to injure. In Harris's case the dwelling-house was set fire to and the floor burnt through, the act was clearly wilful and malicious, and persons being in the house the necessity to prove any intent was done away with. In *Reg. v. Batstone* (10 Cox, 80) the indictment was also under the 7th section, and the evidence was that the prisoner wilfully threw a lighted match into a post-office letter-box affixed to a dwelling-house with intent to burn the letters. Justice Williams said: "How can you support this indictment? From the evidence it appears that this act on the part of the prisoner was what is vulgarly called a lark, and that there was no intention to set fire to the house. No doubt, if it was intended that the fire should do its worst, they would be guilty; but if they only set fire to the letters, and it was contrary to their intention to burn the house, if the house had been burned they would not have been guilty, and I shall so leave the case to the jury." This case differs from that of Harris in a most important particular—viz., that the probable consequence of throwing a match into a letter-box is not to set fire to the house, whereas to light three fires with sheeting and linseed oil necessarily is.

We cannot pursue the subject further at present except to add that, in *Reg. v. Haseltine* (12 Cox, 404), it was held by Baron Pollock, after consulting Mr. Justice Archibald, that it is not necessary in a count in an indictment laid under sect. 7 to allege an intent to defraud, but that it is sufficient to follow the words of the section without substantively setting out the particular "circumstances" relied on as constituting the offence.—*Law Times*.

#### CALLS TO THE OUTER BAR.

The following gentlemen have been called to the Bar:—

Patrick Joseph M'Elroy, only son of James M'Elroy, Esq., of Mouteith-row, Glasgow, merchant.

Robert John Newell, eldest son of Robert Newell, late of 1 Wilmount-avenue, Kingstown, in the County of Dublin, Esq., deceased. Mr. Newell obtained a Scholarship in Common Law at the Middle Temple in Hilary Term, 1882.

#### THE CONVEYANCING AND LAW OF PROPERTY ACT, 1881. WHERE IT SHOULD BE ADOPTED, AND WHERE EXCLUDED.—XII.

(Continued from page 175, ante.)

##### SETTLEMENT OF LAND AS PERSONALTY.

###### Introductory.

The usual and proper mode of dealing with land intended for division among the children of a marriage, is to convey it to trustees upon trust for sale, and to declare trusts of the money proceeding from the sale. The declaration of trust should be by separate deed of even date. We shall consider the latter deed first.

###### Declaration of Trusts of Proceeds of Sale

With regard to this, it will not be desirable to attempt to save the recital of the conveyance to the trustees by declaring it "supplemental" (sect. 58), as the conveyance would usually be handed to the purchaser on the complete exercise of the trust for sale. We shall consider other recitals at the close of this article, as they bear upon covenants for title. It will be needless for us to repeat in detail what we have said as to the trusts of a similar settlement of personal property. The deed must contain the trusts of the proceeds of the sale, and of rents until sale. The "maintenance" and "accumulation" clauses may be omitted. See Article 9 of this series, *Law Times*, March 11, 1882, pages 328, 329. The power to appoint new trustees may be

greatly abbreviated, it being only necessary to state that the husband and wife and the survivor shall have, during their lifetime, power to appoint new trustees, and to give the trustees an indemnity for lending on leasehold securities, without production of lessor's title, or for otherwise lending on less than a marketable title. See *Law Times* (*ubi sup.*), page 329. If it is desired that trustees shall have power to settle questions and apportion funds among the beneficiaries, a power must be inserted. But sect. 37 renders any power to compound debts or compromise claims with stronger to the settlement needless; it may, however, be sometimes desirable to limit the operation of that section. See *Law Times*, March 18, page 346. Of course there will be no covenants for title.

For old forms of declaration of trust of this description, see David. iii. 862, 874; Conc. David. 2nd edit. 239. For new forms, see Conc. David. 12th edit. 893; Pridcaux, 11th edit. ii. 252.

#### *Conveyance upon Trust for Sale.*

In this deed some considerable abbreviations may be made. The "general words" and "all estate clause" may be omitted, in reliance upon sects. 6, 68. See *Law Times*, Jan. 7, 1882, page 167.

Instead of inserting a lengthy trust for sale, it will only be needful to state that a trust for sale is vested in the trustees or trustee for the time being, and that it is to be exercisable at the request of the husband and wife, and of the survivor, and after the death of the survivor at the discretion of the trustees. Then by sect. 38, the trustees can sell with the usual powers. The trusts of the proceeds of the sale, and of rents and profits until sale, must be declared as before, by reference made to the settlement of even date. For old form see David. iii. 858, and compare Bythewood, vii. 518. For short new form, see Pridcaux, 11th edit. ii. 260; Conc. David. 12th edit. 892. The trustees' receipt clause may be omitted (sect. 36). The usual power of leasing until sale must be inserted. For form, see David. iii. 859; Conc. David. 892.

A few words, giving the husband and wife, and the survivor, during their lives, the power to appoint new trustees should be added. Indemnity to trustees for accepting unmarketable title should be omitted. See *Law Times*, March 11, page 329. It only remains to be considered what covenants for title should be added, and how far the short phrases of sect. 7 may be used to imply covenants. We shall consider this under a separate heading.

#### *Covenants for Title.*

It has hitherto been the habit of many practitioners to insert in conveyances of land on trust for sale made for the purpose of settling the proceeds, the same covenants as the vendor would make upon a sale. Mr. Davidson says: "The husband, or other grantor of the estate, enters into the usual covenants for title as upon a sale, both because a settlement for valuable consideration, as a marriage settlement, is on the footing of an assurance to a purchaser, and in order that a vendee buying from the trustees may have the benefit of a proper chain of covenants up to the conveyance to them:" (David. iii. 59; see also David. i. 121.)

So in the precedents, David. iii. 860, 878; Bythewood, vii. 447, 495, it will be found that the intended husband enters into vendor's covenants. And the intended wife does the same on settlement of her freehold (Bythewood, vii. 504); see also Pridcaux, 10th edit. ii. 237, 262, where, however, it is not stated whether the settlor, when he takes under an ancestor or testator, should covenant with respect to them as a vendor would, or whether he should only covenant with respect to himself and those claiming under him.

Mr. Joshua Williams, in his work on Settlements, page 126, also states it to be the usual practice for the settlor to enter into vendor's covenants. It should be noticed that these covenants render the covenantor liable, if he has obtained the property by inheritance or will, for the incumbrances made by his ancestor or testator. This

seems to us very undesirable. We are unable to see the force of either of the reasons stated by Mr. Davidson in support of the practice. It is no doubt true that marriage is a "valuable consideration," but it is of an entirely different nature from a pecuniary one. A settlement partakes of the nature of a bounty as well as of a bargain. And it is of no advantage to the settlor or his trustees to give a purchaser from the trustees the settlor's covenants. It is of course an advantage to the purchaser, but he cannot object to the title on the ground that there are not proper covenants in the conveyance to the trustees: (Sug. V. & P. 14th edit. 574.)

Moreover it would probably be held that, in a conveyance for the purposes of a settlement, a covenant for further assurance was now a "proper" one. For the statutory covenant suggested by sect. 7 for "a conveyance by way of settlement," is only a limited one for further assurance; and this is the only covenant implied in the form given in Schedule IV. of the Act. And this covenant is declared "proper" by sect. 66, and as the common form covenant is rather wider than the statutory one, it would seem objection could not be raised to the former as being insufficient.

Messrs. Wolstenholme and Turner strongly deprecate the practice of making a settlor enter into vendor's covenants, and advise that, if he enters into any covenants at all, he should not do more than convey "as settlor," and thus imply the limited statutory one. No doubt the form in Schedule IV. is of a direct settlement of land, and not of a trust for sale of land for the purposes of a settlement. But we submit that the principle is the same, whether land is conveyed to trustees for sale, and the proceeds are to be settled, or a settlement is made with a power of sale. See definition of settlement in 40 & 41 Vict. c. 18, s. 2, and comment on similar definition in the 19 & 20 Vict. c. 120, s. 1, by Davidson, iii. 2; see also *Living's Trusts* (14 L. T. Rep. N. S. 57; L. Rep. 1 Eq. 416), and other cases cited in Seton, 1477, and Alphabetical Practice, 779. Similarly, Mr. Pridcaux now only makes the settlor convey "as settlor," which is a considerable modification of his former practice.

It will be well to compare Mr. Davidson's opinion with the testimony of Lord St. Leonards. In *Money-penny v. Money-penny* (9 H. L. C. 114, 133) his lordship said: "When a man marries and puts his estate in settlement he is never made to do more than covenant against his own acts and the acts of those claiming under him. If his title should prove infirm it is a family misfortune; but if he had warranted the title absolutely he would be called upon to pay the value of his estates at the very moment that the means of payment, the estates themselves, were taken from him." The practice thus to limit liability would, of course, apply still more forcibly in the case of a relative of the husband's bringing his estate into settlement.

The decision of the majority of the court was that, upon the construction of the particular deed, the settlor was personally liable, on it appearing that he had not a good title; but Lord St. Leonards dissented. His lordship's opinion as to the practice of conveyancers was cited, with approval, in *Thompson v. Thompson* (6 Ir. R. Eq. 118, 118). It will be noticed that Lord St. Leonards' reasons apply to a claim under an ancestor or testator, as well as to a claim by a complete stranger.

We consider, therefore, that it is unwise to insert vendor's covenants; and, of course, equally so to make the settlor convey "as beneficial owner," and by that means to imply vendor's covenants: sect. 7 (A).

If, however, in any instance vendor's covenants are desired, in most cases it will be safe to imply them by conveying "as beneficial owner." See *Law Times*, Jan. 7, p. 167. This plan is adapted in the precedent of conveyance in trust for sale for the purposes of a marriage settlement in *Concise David*, 12th edit. 891.

We prefer the ordinary express covenant for further assurance to the more limited one implied by the use of the words "as settlor." As we explained in our article last week, we can see no sufficient reason why the covenant should be limited to persons deriving title

under him *subsequent to the conveyance*. Moreover, as sect. 7 (E) uses the phrase "Conveyance by way of settlement," a doubt may be raised whether it includes a conveyance on trust for sale for the purposes of a settlement. But see above. It seems desirable that our readers should see the effect of the ordinary covenant.

*Effect of Covenant for further Assurance.*

A covenant for further assurance will be broken by a refusal to convey any interest acquired in the estate, even by purchase for valuable consideration; or to remove a judgment or other incumbrance; or to execute a duplicate of the conveyance if the original has been burnt; or (*semble*) handed over to a sub-purchaser of part of the estate; but, in such cases, either the conveyance should bear an indorsement expressing that it is a duplicate, or it should, upon the face of it, purport to be merely a deed of confirmation: (Dart. V. & P. 5th ed. 788; see also *King v. Jones*, 5 Taunt. 427; Platt on Covenants, 340.) The covenantor is only bound to convey any interest he has obtained by fair and honest means: (*Heath v. Crealock*, L. Rep. 10 Ch. App. 81; 31 L. T. Rep. N. S. 650.)

*Liability of Trustees for not proceeding on Covenants.*

Among the objections urged by Messrs. Wolstenholme and Turner against the insertion of any covenants for title in a marriage settlement, beyond the limited one for further assurance implied by the words "as settlor," is the liability incurred by trustees for not enforcing covenants. This, no doubt, might prove a great hardship. It is clear that trustees may be so liable: (*Macnamara v. Macnamara*, 1 Ir. Rep. Eq. 9.) Compare *Seton*, 406; *Lewin*, 789; and *Youde v. Cloude* (L. Rep. 18 Eq. 634). This can be avoided by the insertion of a clause to the effect that they shall not be liable for neglecting to enforce the covenant. A form can be easily framed by adapting the clause which exonerates trustees from seeing to the settlement of after-acquired property: (Wolst. and T. 141; David, iii. 784; Conc. David, 12th edit. 337.) But much the simplest way is to insert only the ordinary covenant for further assurance, or, if thought satisfactory, the words "as settlor," and then there will be no need for this additional caution.

*Recitals of Seisin and Agreement to settle.*

In immediate connexion with covenants for title, there arises the question whether such recitals should be inserted, as in several cases an attempt has been made to treat them as amounting to a covenant, or at least to a representation which the settlor was personally bound to make good. In *Money Penny v. Money Penny* (9 H. of L. Cas. 118), great stress was laid on such recitals, and the personal estate of the settlor was, on the construction of the whole deed, held liable. A like attempt was made unsuccessfully in two Irish cases—viz., *Thompson v. Thompson* (6 Ir. R. Eq. 113) and *Burrows v. Burrows* (Ibid. 369). See also *Heath v. Crealock* (*ubi sup.*).

On the other hand, the case of *Bolton v. London School Board* (88 L. T. Rep. N. S. 277; L. Rep. 7 Ch. Div. 766) shows the advantage to the title afforded by a recital of seisin. This case has been much doubted, and certainly a settlor should not run any risk for the sake of possibly saving some trouble on a sale. We think, therefore, that either recitals should be omitted, or if they are necessary that they should be very carefully worded.

*Summary.*

In marriage settlement of land as personalty insert common form covenant for further assurance. Where brevity is the great object, omit that covenant and let the settlor convey "as settlor." Avoid recitals of title and agreement to settle.

(To be continued.)

**TRADING RIGHTS IN NAMES.**—The tribunal of Commerce of the Seine, in the case of *La Banque Populaire v. La Banque Populaire d'Escompte*, has granted an injunction against the defendant using the words "Banque Populaire" in its title, on the ground that "a business name is the property of whoever first uses it."

NOTES OF CASES.

LAND COMMISSIONION.

(Before O'HAGAN, J., LITTON, Q.C., and J. E. VERNON, Esq.)

BONAR v. WILSON.

April 18, 1882.—*Land Law Act, 1881—Determination of fair rent—Tenant, who entitled to proceed for—Award of compensation on quitting holding—Fixing fair rent, whether ancillary to sale.*

Case stated by Sub-Commission No. 6, from their Donegal sittings, for the opinion of the Court.

It appeared that previous to May 1st, 1881, the landlord served a notice to quit, determining the tenancy on November 1st, 1881. At the June Land Sessions in 1881 the tenant was awarded £290 under the Act of 1870. This sum had not been paid or lodged in court. On November 3rd, 1881, notice to fix a fair rent was served. In January, 1882, at the Quarter Sessions a civil bill ejectment was brought by the landlord on the notice to quit. The chairman adjourned the hearing of this ejectment, the tenant's solicitor undertaking that the application to fix a fair rent should be heard before the April Sessions. At the hearing before the Sub-Commissioners, Mr. Gallagher, for the tenant, submitted that he was entitled to have a fair rent fixed, but refused to serve a notice to sell. Mr. Wilson (for the landlord) submitted that the tenant could not have a fair rent fixed as he had been allowed the value of his tenancy; and, if this was ruled against the landlord, the tenant could only apply to have a fair rent fixed for the purpose of sale. The Sub-Commissioners decided that the tenant was not barred by his application, under the Act of 1870, from having his fair rent fixed, inasmuch as although the amount had been awarded it had not yet been paid or lodged in court. They, also, decided that the tenant could only get a rent fixed for his holding for the purpose of sale; but Mr. Gallagher refusing to sell, the case was dismissed, and as the tenant would be ejected at the next sessions the Sub-Commissioners agreed to submit for the opinion of the Court the question—Is the applicant, having regard to the facts, entitled to have a fair rent fixed without serving notice of sale?

*Drummond*, for the tenant.

*Holmes*, Q.C., for the landlord.

O'HAGAN, J., in delivering judgment, said—Upon the hearing of this case two questions were argued on behalf of the landlord, being the same two questions which were argued below. The first was that, having regard to the fact that the tenant had obtained an award of £290 from the chairman as compensation upon quitting his holding he was not in a position to be considered a tenant entitled to have a fair rent fixed under the Act of 1881. The second point was that, even supposing that in any case he could be entitled to have such fair rent fixed, he was not entitled to do so save as ancillary to a sale of premises. Having considered the sections of the Act bearing on the questions, his lordship said a plaintiff proceeding to obtain compensation under the Act of 1870, and having actually obtained a decision of the chairman, could not in the opinion of the Court come in as a tenant to have a fair rent fixed. As soon as an adjudication was made by the County Court Judge mutual rights sprang up, the tenant was entitled to his money, and the landlord entitled to his land upon paying the money. The right of the landlord on one side was as strong as that of the tenant on the other. The Court could not hold that a simple delay from last June in lodging the compensation was such as to sweep away the rights of the landlord, and that being so, it was unnecessary to consider the second point. The Court was therefore of opinion on the first point that the dismissal below was right.

## COUNTY COURT.

(Before W. F. DARLEY, Q.C.)

BYRNE v. BYRNE.

April 18, 1882.—*Land Law Act, 1881—Valuer, employed under County Court—Expenses.*

Holding, situate at Arklow, containing 11 statute acres; present rent, £7 10s.

The JUDGE said this case came before him at last Land Sessions on the 21st January, and it was then agreed by both parties to leave the rent to be fixed upon the valuation of Mr. Bridgman, a professional valuer. Mr. Bridgman had gone over the land, and he gave, in the report which he had submitted, a very minute valuation of each field. He assessed the whole yearly value at £6 4s. 3d.; but as at present the tenant pays neither poor rate nor county cess, he thought a sum of about 15s. should be added to this amount, as the tenant's proportion of those charges, making the whole rent £6 19s. 3d.

[Mr. *Burkitt*, on behalf of the landlord, said the amount of poor rate and county cess, which the tenant ought to pay, was really £1 11s. 6d., and he thought that sum ought to be allowed.]

The JUDGE.—I shall abide by Mr. Bridgman's valuation, as it was agreed should be done, and shall fix the rent at £7. And now there comes a question what we are to do with regard to Mr. Bridgman's expenses. This is the first time I have called the services of a valuator into question under this Act, and I have a few observations to make, which I should wish to have reported. When I was here last January, in addressing the Grand Jury, I spoke of the great difficulty thrown upon County Court Judges with reference to the payment of valuers employed by their order, for which no provision is made in the Act. I stated that I had applied to the Government on the subject, but up to that time had received no reply. Since I left this county I have received a reply from the Government. That reply was this—that no provision had been made or could be made for the payment of valuers appointed by County Court Judges out of the public funds, but that if I were to apply to the Commission in Merrion-street probably they could give me a valuator, and if so his expenses would be payable from the public funds. In consequence of this I went to the office of the Commission in Merrion-street, and had an interview with the Secretary to the Commission, to whom I pointed out all these facts. He told me that in certain cases valuers were given to certain County Court Judges, and that their expenses would be paid from the public funds. I said that I was a County Court Judge of four counties, and that I wanted to know if they could give me a valuer whose expenses would be paid. He said they could not—that they had no valuer whose services could be appropriated to these counties. I said this was a very hard case, that lately a large number of cases—more than 70 in the district of Gorey alone—had been removed from my court into those of the Sub-Commissioners—the reason as far as I could discover being that the expenses of the valuer whom I had stated my intention to employ would fall upon the parties to the case, and that looking at this and the fact that the same judicial powers are vested in the County Court Judges, as in the Sub-Commissioners in land matters, I thought some provision should be made for the payment of a valuer whom they might deem it necessary to appoint. He said they had no power, but of course I was at liberty to write to the Treasury on the matter. Not being satisfied with this answer, I have since applied to the Commissioners and have received from them a similar reply. Now I consider—and I say it openly and publicly—that it is a very great hardship upon me, as a County Court Judge, that if I should consider it right to appoint a valuer I should have no means of providing for the payment of his expenses, except by putting them upon the parties in court. The Land Commissioners frequently appoint valuers, and the expenses of these valuers do not

fall upon the parties to the case. And in certain cases they have given valuers to the County Court Judges. Now I have no means of paying this valuer, except by throwing his expenses upon the parties to the suit, and in this case I must direct that the landlord and tenant each pay an equal share of the amount. Mr. Bridgman's expenses amount to £3 17s. 10d., so that each party will pay £1 19s.

DOYLE AND OTHERS v. BOLAND.

April 18, 1882.—*Land Law Act, 1881, s. 58 (2)—Town park, what constitutes—Town—Holding partly used for agricultural purposes.*

Applications for determination of judicial rents.

The JUDGE said these cases, in which the town-parks question was involved, came before him in Jan. last, one of them (Doyle's) being then fully argued by Mr. J. K. Toomey, for the tenant, and Mr. Johnson, with counsel, for the landlord. The four cases are all under similar circumstances, forming part of an estate, known as the Abbeylands, situated within a mile of the town of Arklow. They had been in the occupation of tenants who did not appear to have any residence at all upon them. The question was whether these lands were town-parks. The Act of Parliament gives a description of what is required to constitute a town-park. And he had come to the conclusion that these lands come within that description. They are in the vicinity of the town, they are occupied by tenants living in the town, and they bear an increased value as accommodation land. The valuer in Doyle's case stated that the present rent of £28 was a very high one, even for town-parks, and placed the value at £14. As to Arklow being a town within the meaning of the Act, he (the Judge) found, on examination, that there were over 5,000 persons living within it, and that it was governed under the Towns Improvement Act. The fact that the lands were partly used for the purposes of agriculture did not matter, and his decision would be that the lands were town-parks, and the applications would, therefore, be dismissed.

BURNS v. THE JUSTICES OF ENNISKERRY.

April 17, 1882.—*Assault witnessed by constable—Assaulted party refusing to prosecute—Summons by constable in his own name—24 & 25 Vic., c. 100—25 & 26 Vic., c. 50.*

The JUDGE, addressing Mr. Major, said there was an appeal before him at the last Quarter Sessions in which a point, involving the right of police constables to prosecute for assault under certain circumstances, was argued before him by Mr. Major and Mr. G. Perrin. He did not decide the case upon the point argued, but on another—the absence of the assaulted party in the hearing in the court below, which he held to be fatal to the prosecution. Since then, however, he had carefully looked into the Act and he had come to the conclusion that where a police constable witnesses an assault, and the assaulted party refuses in his presence to prosecute, the constable is perfectly justified in issuing a summons against the assaulter in his own name, without first coming before the magistrates at petty sessions to show that the person assaulted refused to proceed, and to obtain their authority for the action. The position taken by Mr. Major with reference to the amending power of the statute 25 & 26 Vic., c. 50, upon 24 & 25 Vic., c. 100, s. 42 (the Act relied upon by Mr. Perrin) was, therefore, in his opinion correct, but as the case was not decided upon that point of course the decision would not be affected.

*Holloway's Ointment and Pills.*—Ever Useful. The afflicted by illness should look their diseases fully in the face, and at once seek a remedy for them. A short sear it will convince the most sceptical that these noble medicaments have afforded ease, comfort, and oftentimes complete recovery, to the most tortured sufferers. The ointment will cure all descriptions of sores, wounds, bad legs, sprains, eruptions, erysipelas, rheumatism, gout, and skin affections. The Pills never fail in correcting and strengthening the stomach, and in restoring a deranged liver to a wholesome condition, in rousing torpid kidneys to increase their secretion, and in re-establishing the natural healthy activity of the bowels. Holloway's are the remedies for complaints of all classes of society.

## BENEFIT BUILDING SOCIETIES AND BANKS.

It is clear law that benefit building societies, established under the Act 6 & 7 Will. 4, c. 82, have no power to borrow money unless it has been conferred upon them by their certified rules. The books contain numerous decisions to that effect, the last of which (*Chapleo v. The Brunswick Building Society*) is reported 6 Q. B. Div. 711; 44 L. T. Rep. N. S. 449. In a case recently argued before the Chancellor in the Chancery Court of Lancashire, an ingenious attempt was made to evade this rule. A benefit building society had deposited all their deeds and writings with their bankers for safe custody. The society had no powers of borrowing, but, becoming indebted to the bank in considerable sums on an overdrawn account, a memorandum was signed by the solicitor and secretary of the society and handed to the bank. The document stated "that the deeds and writings enumerated in the mortgage book, and which are from time to time deposited in the bank, are so deposited, not only for safe custody, but also as a lien to secure the sum or sums of money which may from time to time be due from the society to the bank on balance of banking account." It was subsequently agreed that the overdraft was not to exceed £25,000. On the society subsequently going into liquidation, the bank refused to deliver up the deeds to the trustees, unless they were paid the balance due to them, on two grounds: (1) That their transactions with the society did not amount to a loan; (2) that as bankers they had a lien upon the deeds for the balance of their account. For the purposes of the Benefit Building Societies Act, the transaction between the society and the bank clearly amounted to a loan by the latter to the former, and was therefore *ultra vires* and void, and the bank could not maintain their claim to retain the deeds. The stringent rule of law forbidding building societies to borrow unless authorised by their rules would at once be evaded if it was held not to apply to banks, who could therefore allow an overdraft to any amount without fear of coming within the rule. It is in consequence of the existence of the rule of law that banks must not treat building societies on the same footing as other customers who are fettered by no such rule. What in the one case is clearly only an overdraft is as equally clearly a loan in the other. The second contention, however, advanced by the bank, namely, that they were entitled to retain the deeds until payment by virtue of their lien raises a more difficult question, in consequence of the decision in *Wilson's case* (L. Rep. 12 Eq. 521). If it were not for that case the rule of law applicable to the fact is as equally clear against the second contention of the bank as it is against the first. As stated by Lord Justice Baggallay in *Chapleo v. The Brunswick Building Society*, the rule is this: "Everyone who has dealings with a building society is bound to know that such a society has no power of borrowing, except such as is conferred upon it by its rules; and if in dealing with such a society they neglect or fail to ascertain whether it has the power of borrowing, or whether any limited power it may have has been exceeded, they must take the consequences of their carelessness." The decision in *Wilson's case* is undoubtedly to some extent in conflict with the principle thus enunciated by Lord Justice Baggallay. It may perhaps be distinguished on the ground that the Vice-Chancellor in his judgment states that the transaction in that case was one not likely to raise any suspicion in the mind of the man who lent the money. Was he not bound, however, to know the limited power of borrowing conferred upon the building society? From the judgment in *Chapleo v. The Brunswick Building Society* it would appear that he was, and though apparently the question has never been actually decided in any of the Superior Courts, the weight of authority certainly appears opposed to both contentions raised by the bank in the case in the Lancashire Chancery Court. If banks choose to allow building societies to overdraw, they must be content to be treated in the same way as other persons who advance moneys to them. They cannot either shelter themselves

under their lien, or contend that the overdraft is not in fact a loan.—*Law Times*.

## TEXT-BOOK ADDENDA.

[From the *Law Journal*.]

5 & 6 Wm. IV. c. 76, s. 57.

The mayor of a borough under the Municipal Corporations Act, 1835, which has no separate commission of the peace, is not a justice of the peace for the borough (*Wilson v. Strugnell*, 50 Law J. Rep. M. C. 145).

*Pollock on Contracts* (3rd Edition), 349.

Money received as security from the accused by his bail on a criminal charge can be recovered back before the bail has applied it in reimbursing himself for loss actually sustained (*Wilson v. Strugnell*, 50 Law J. Rep. M. C. 145).

*Robson on Bankruptcy* (4th Edition), 160.

A convict can be made bankrupt on a petition alleging that, for twenty-one days after service in prison with a debtor's summons, he has neglected to pay the debt (*In re Harris, ex parte Graves*, 51 Law J. Rep. Chanc. 1)—C. A.

*The Felons Act, 1870* (33 & 34 Vict. c. 25), s. 8.

The restraint on alienation imposed upon a felon by section 8 of the Act does not extend so far as to prevent him from paying his debts (*In re Harris, ex parte Graves*, 51 Law J. Rep. Chanc. 1)—C. A.

*Dart on Vendors and Purchasers* (5th Edition), 898.

*Davidson's Precedents*, iii. 670.

Limitations in a marriage settlement of personalty belonging to the wife in favour of her next-of-kin are irrevocable (*Paul v. Paul*, 50 Law J. Rep. Chanc. 14, not followed; *Paul v. Paul*, 51 Law J. Rep. Chanc. 5).

## OBITUARY.

## MR. SAMUEL GERRARD.

It is with deep regret we have to-day to record the death of one of the most esteemed and respected solicitors in Ireland. Mr. Samuel Gerrard died on the 22nd inst., at his residence, Bachelor Hall, Rathfarham. He was the son of Thomas Gerrard, J.P., of Liscaheen Castle, Co. Meath. The family, of Alsatian origin, settled in Lancashire in the early part of the fifteenth century, and a branch of it immigrated to this country early in the seventeenth century, and settled in the Co. Meath. The elder branch is now represented by Thomas Gerrard, J.P., of Gibbetstown, and Boyne Hill, Navan, Deputy Lieutenant, Co. Meath. Samuel Gerrard was born on the 17th of March, 1814, and came to Dublin at an early age, for the purpose of entering the legal profession. After serving his apprenticeship to the late Arthur Baker, Esq., solicitor, Mountjoy-square, he was admitted a solicitor in Hilary Term, 1848, and long enjoyed a large private practice. He took a deep interest in, and possessed a special knowledge of agricultural matters; and in 1862, in open competition, he carried off a prize given by the Agricultural Society of Ireland for the best essay upon the management of small farms in Ireland. By his honourable and upright conduct during a long professional career, Mr. Gerrard earned the respect of his professional brethren and of all with whom he came in contact; and many are the sincere friends who now lament the loss of one who was so deservedly popular. His eldest son, Thomas Gerrard, who succeeds to his business, is Crown Solicitor for the Queen's County and County Carlow, Solicitor to the Provincial Bank of Ireland, and enjoys a large private practice in the city. His second son, John N. Gerrard, is a well-known member of the junior bar, one of the Crown Counsel on the Home Circuit, and editor of the second edition of Carleton on Parliamentary Elections. And his third son is a Civil Engineer, in the Indian Civil Service.

**BOOKS RECEIVED.**

*The Nineteenth Century.* A Monthly Review, Edited by JAMES KNOWLES. No. 63. May, 1882. London: C. Kegan Paul & Co.

*Contemporary Review.* May, 1882. London: Strahan and Co., Limited, Paternoster-row.

*Cassell's History of England from the earliest period to the present time.* With about 2,000 Illustrations. Part 80. London, Paris, and New York: Cassell, Petter, and Galpin.

*Milton's Paradise Lost.* Illustrated by Gustave Doré. Edited, with Notes and a Life of Milton, by the late ROBERT VAUGHAN, D.D. London: Cassell, Petter, Galpin, & Co.

**CORRESPONDENCE.**

*Letters and communications intended for publication, and addressed to THE EDITOR, 33, Upper Sackville-street, Dublin, must be authenticated by the name of the writer, not necessarily for publication, but as a guarantee of good faith.*

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

**EQUITABLE MORTGAGES AND REGISTERED ASSURANCES.**

TO THE EDITOR OF THE IRISH LAW TIMES.  
Chambers, 26, Eustace-street,  
Dublin, 21st April, 1882.

SIR,—Will you kindly favour your readers with a short account of the judgment delivered by the Irish Court of Appeal on 20th December last in the case of Burke's Estate, involving an important question under the Irish Registry Act. The appeal was from a decision of Judge Flanagan, dated 30th February, 1881.

According to the reports in the daily newspapers, the Court of Appeal held unanimously that an unregistered equitable mortgage (without writing), by deposit of a mere agreement to convey lands, took priority over a subsequent duly registered conveyance of the same lands. If this be so, what protection has a *bond fide* purchaser who duly searches the Registry, and also gets in all the known title deeds, against a mortgage created by the deposit of a document, however informal, signed by his vendor, and amounting to an agreement to convey?

I am, Sir,  
Yours obediently,  
ARCHIBALD TUTTILL.

[We have much pleasure in complying, elsewhere, with our correspondent's suggestion.—Ed.]

**CIVIL BILL COURT PRACTICE.**

TO THE EDITOR OF THE IRISH LAW TIMES.

SIR,—It very often happens in the Civil Bill Court that processes are issued which the plaintiff never dreams will or can be defended. He duly attends Court at the hearing of "Undefended Civil Bills," and when his letter is reached his solicitor is calmly informed, on inquiring about the Civil Bill, that a "defence has been entered." A scheming debtor is, perhaps, invoking the Statute of Limitations, or setting up some other defence of more ingenuity than honesty, and the creditor, marvelling what defence will be set up, loses his day, and is told to come again on the day when defences in his letter will go on.

Now this could be very simply rectified by a rule requiring defendants to give notice of defence, and grounds thereof, a couple of days before sessions, so as

to enable a solicitor to meet the defence, and notice his client of its entry.

Could nothing be done to provide Equity Rules for the County Court? The present *missum gatherum* of Civil Bill Rules and "the enactments and practice relating to the Chancery Division," is very misleading.

Yours,  
D. CREE.

**LAW STUDENT'S JOURNAL.**

**THE INCORPORATED LAW SOCIETY OF IRELAND.**

FINAL EXAMINATION FOR APPRENTICES TO SOLICITORS, Pursuant to the Attorneys and Solicitors Act (Ireland), 1866.

**EASTER SITTINGS EXAMINATION, 1882.**

**PRACTICE OF THE COURT OF BANKRUPTCY.**

MR. NEILSON, Examiner.

1. Within what time must a Debtor Summons be served, and state the ways in which it may be served?
2. State what is necessary to obtain an Adjudication in Bankruptcy grounded upon a Debtor Summons distinguishing between a Trader and non-Trader, and the proceedings necessary to obtain the Debtor Summons?
3. What are the statements necessary to be contained in a charge filed by an Incumbrancer upon a Bankrupt's Estate?
4. What Debts are to be counted in the voting for an arrangement, and what in a Composition after bankruptcy?
5. What are the grounds upon which the Court may dismiss a Petition for arrangement filed by a Debtor?
6. When may a Certificate of Conformity be applied for by a Bankrupt? What are the grounds upon which the granting of same may be refused by the Court?

**THE INCORPORATED LAW SOCIETY OF IRELAND.**

**EASTER SITTINGS, 1882.**

At the Examination of Applicants seeking to become Apprentices to Solicitors, held on Monday the 4th, and Tuesday the 5th of April, 1882, the undernamed candidates were adjudged by the Court of Examiners to have passed said Examination, and their names were arranged in order of merit, viz. :—

- |                     |                    |
|---------------------|--------------------|
| 1. James Boyle      | 5. Samuel Morrison |
| 2. Edmund M. Hurley | 6. George Buchanan |
| 3. Michael Maguire  | 7. Cecil Miniken   |
| 4. Patrick M'Carthy |                    |

The first two candidates on the "admitted" list—namely, James Boyle and Edmund M. Hurley, are to be permitted to compete for the Society's Prize at next Michaelmas Sittings (1882) Prize Examination.

The other candidates on the list have been postponed.

**EASTER SITTINGS, 1882.**

At the Examination of Applicants seeking admission as Solicitors, held on Wednesday the 5th, and Thursday the 6th of April, 1882, the Court of Examiners decided that both the candidates who presented themselves should be allowed the Examination, and their names were arranged in the following order, viz. :—

- |                     |                      |
|---------------------|----------------------|
| 1. David J. Higgins | 2. David G. Lockhart |
|---------------------|----------------------|

HENRY J. P. WEST, Esq. (President), then distributed the following prizes awarded to candidates at last Hilary Sittings Final Examination, viz. :—A silver medal to Mr. Edward H. Macardie, Junr.; and special certificates to Messrs. William Ford, Junr.; and Thomas M'Minn, and James Mulcair.

THE INCORPORATED LAW SOCIETY OF IRELAND.

TRINITY SITTINGS, 1882.

NOTICE.

The PRELIMINARY EXAMINATION of Candidates for Apprenticeship will be held at the Solicitors' Hall, Four Courts, Dublin, on Thursday and Friday, the 18th and 19th days of May, 1882, at Eleven o'clock.

N.B.—All Papers to be lodged on or before Tuesday, 2nd May, 1882.

The FINAL EXAMINATION of Candidates seeking admission as Solicitors will be held at the same place, on Monday and Tuesday, the 22nd and 23rd days of May 1882, at the same hour.

By Order of the Council,  
JOHN H. GODDARD, Secretary.

Solicitors' Hall, Four Courts, Dublin.

N.B.—The decision of the Court of Examiners will be announced on Wednesday, the 14th of June, 1882, at Three o'clock, p.m.

Candidates residing in the country need not remain in town to hear decision, but can learn same from the Dublin Morning Papers of the day following the announcement.

COURT PAPERS.

LAND JUDGES.

Sittings for next Week so far as same are appointed. Before the Rt. Hon. JUDGE FLANAGAN.

MONDAY.

IN CHAMBER.—F. A. W. Ker, allocate.—H. Coulter, do.—E. B. Booth, from 24th.

IN COURT.—D. Bingham, payment by receiver.—D. Carleton, do.—H. E. Henderson, as to occupation rent.—J. W. Stanford, declaration of title.

Before EXAMINER (Mr. Kennedy).

D. O'Callaghan, rental.—M. Watson, do.—J. Fairbrother, vouch.

TUESDAY.

Before EXAMINER (Mr. Kennedy).

Trustee Blake, vouch.

THURSDAY.

IN COURT.—E. A. Peile, final schedule.—A. W. Travers, from 20th April.—Trustee T. F. Burke, from 27th April.—G. B. Low, do.

FRIDAY.

SALES IN COURT.

S. DAVIS, 3 lots.

Before the Rt. Hon. JUDGE ORMSBY.

MONDAY.

IN CHAMBER.—D. P. M'Carthy, confirm sale.

IN COURT.—Assignees D. W. Cruice, rehearing.—W. K. Burroughs, objection.—E. Morphy, receiver.

TUESDAY.

SALES IN COURT.

REV. A. W. WEST, 34 lots.

WEDNESDAY.

Before EXAMINER (Mr. M'Donnell).

F. R. Lambert, rental.—J. M'Nea, rental from 19th April.—M. Fox, from 28th April.

THURSDAY.

IN COURT.—W. Petrie, from 20th April.—S. Henderson, adjourned motion.—C. Langdale, retain funds.

FRIDAY.

Before EXAMINER (Mr. M'Donnell).

W. R. O'Byrne, rental.

COURT OF BANKRUPTCY.

ADJUDICATIONS IN BANKRUPTCY.

The dates of Adjudications are first given, the Sittings follow in Italics.

Charleton, Thomas James, of Magherafelt, in the county of Londonderry, grocer. April 14; *Friday, May 5, and Tuesday, May 28. J. C. White and W. J. Brett, solrs.*

Crawford, William, junior, and James Kennedy, late of 8, Rosemary-street, Belfast, in the county of Antrim, stock brokers, carrying on business and trading as "W. Crawford, junior, and Company." April 12; *Friday, May 5, and Tuesday, May 28. James Henry, solr.*

Murray, John, of Grenanstown, in the county of Tipperary, farmer. April 14; *Friday, May 12, and Friday, May 26. Jeremiah Perry, solr.*

M'Dermott, Edmond, late of Foynes, in the county of Limerick, and of Gardiner-street, in the city of Dublin, now of Lynch's Hotel, Dungarvan, in the county of Waterford, Esquire, late of the Royal Irish Constabulary April 14; *Tuesday, May 16, and Friday June 2. James Rose Byrne, solr.*

West, Georgianna Grove, of Ardenode, Brannockstown, in the county of Kildare, widow. April 18; *Tuesday, May 16, and Friday, June 2. Patrick Anna Smith, solr.*

Woodlock, Thomas, of 42, Dame-street, in the city of Dublin, stock broker and insurance agent, trading as Woodlock and Co. April 21; *Tuesday, May 16, and Friday, June 2. John Anthony Hogan, solr.*

Yorell, William, of Blackbull, Dunboyno, in the county of Meath, shopkeeper. April 18; *Tuesday, May 16, and Friday, June 2. Thomas O'Meara, solr.*

DUBLIN STOCK AND SHARE LIST.

DESCRIPTION OF STOCK	APRIL						
	Sat. 22	Mon. 24	Tues. 25	Wed. 26	Thur. 27	Fri. 28	Sat. 29
*Paid Government.							
— 3 p c Consols ..	100½	100½	100½	100½	100½	100½	100½
— New 3 p c STOCK ..	100½	100½	100½	100½	100½	100½	100½
INDIA STOCK.							
4 p c Oct. 1898 } Traffic at ..	104½	104½	104½	104½	104½	104½	104½
3½ p c Jan. 1881 } Bk. of Irel. ..	104½	104½	104½	104½	104½	104½	104½
BANKS.							
100 Bank of Ireland ..	318½	318½	317½	318½	318½	319	
20 London and County (Ld'rs) ..	—	—	—	—	75	—	
30 London and W'minster, W'd ..	70½	—	—	—	70½	—	
10 Do. New ..	—	60½	—	—	—	60½	
3½ Munster Bank (Limited) ..	7	7	7	7	7½	7½	
10 National Bank (Limited) ..	—	—	—	—	23½	23½	
10 National of Assoc'n (Ld'rs) ..	—	—	—	—	14	—	
15 Provincial Bank ..	—	—	—	—	56½	56	
10 Royal Bank ..	—	—	—	29½	—	—	
25 Standard of B. S. A., W'd ..	—	—	—	—	57½	57	
2½ Ulster Banking Co. ..	—	—	—	—	10½	—	
MISCELLANEOUS.							
10 Alliance & Dub. Com. Gas ..	15½	—	—	—	15½	—	
4 Arnott & Co., limited ..	—	—	6	—	—	—	
100 Grand Canal ..	—	—	—	—	46	—	
8 Goulding & Co., limited ..	—	—	—	—	8½	—	
4 National Discount, Irs., W'd ..	—	—	2½	2½	—	—	
9-4-7 Patriotic Assurance ..	—	—	—	10½	—	10½	
TRAMWAYS.							
10 Dublin United Tramways ..	—	—	—	10½	10½	10½	
10 L'pl Un'ed Tram & Bus'ld ..	—	—	—	—	12½	—	
RAILWAYS.							
10 Athenry and Tuam ..	—	—	—	—	3½	—	
50 Belfast and County Down ..	—	—	—	—	48½	—	
100 Great Northern (Ireland) ..	—	—	—	—	—	118½	
100 Gt. Southern and Western ..	—	113½	—	—	113½	—	
100 Midland Gt. Western ..	—	—	—	—	94½	—	
50 Waterford and Limerick ..	—	—	—	32½	—	32½	
RAILWAY PREFERENCE.							
100 Gt. N't'n (Ireland) 4 p c ..	—	—	—	—	—	106	
LEASED AT FIXED RENTALS.							
100 Dublin and Kingstown ..	—	—	—	233½	—	—	
DEBENTURE STOCKS.							
— Belfast & N't'n Coe, 4 p c ..	—	105	105	105	—	105	
— Dublin & Wicklow 4 p c ..	—	105	—	105½	—	—	
— Gt. Northern (Ireland) 4 p c ..	100	109	109	—	—	—	
— Do. 5 p c ..	—	—	—	—	—	128	
— Gt. South'n & West'n, 4 p c ..	109½	—	—	—	109½	109½	
— Midland Gt. West'n, 4 p c ..	—	—	105½	—	—	105½	
— Waterford & Central 5 p c ..	104	—	105	—	—	—	
MISCELLANEOUS DEBENT.							
Alliance & Cons. Gas, 4 p c ..	—	100	—	—	—	—	
City Deb. of 1892 6s 2d, 4 p c ..	—	93½	—	—	—	93½	
Do. Defd. of 1892 6s 2d, 4 p c ..	—	—	—	—	—	92	

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

Bank Rate—Of Discount—6 per cent., 30th January, 1882

Of Deposit—5 per cent., 30th January, 1882

Name Days—May 11th and 25th, 1882.

Account Days—May 12th and 26th, 1882.

Business commences at 1 30 p.m.



# THE IRISH LAW TIMES AND SOLICITORS' JOURNAL.

VOL. XVI.

SATURDAY, MAY 6, 1882.

No. 797

## EQUITABLE MORTGAGES BY DEPOSIT OF TITLE DEEDS.—II.

THE well-known and often canvassed decision of Judge Lynch in *Re M'Kinney's Estate* (6 Ir. L. T. Rep. 179), he had himself hoped would have been appealed from, as did a commentator in those pages (6 Ir. L. T. 609); but, perhaps because the amount of property involved was inconsiderable, that decision passed unchallenged. Previously, the point had, indeed, been regarded as settled law, to the opposite effect; but, as Law, C., observed in *Re Burke's Estate*, Judge Lynch was unfortunately misled by the imperfect report of the appellate decision in *The Agra Bank v. Barry* (1 R. 6 Eq. 128). Lord Justice Christian, also, animadverted on the misapprehension thus arising, in *Keilly v. Garnett* (L R. 7 Eq. 17); yet, he observed, undoubtedly *Re M'Kinney's Estate* "has placed the law upon this most reasonable footing, that registration is a protection against all secret and unregistered titles whatsoever, whether their absence from the Registry was because they were neglected to be placed there, or because they were incapable of being placed there. It is impossible to avoid being struck by the good sense of this, and of the reasons which were given for it." This was in 1872, while, so lately as in *Cleary v. Fitzgerald* (7 L. R. I. 265), we find Fitzgibbon, L.J., also remarking: "I foresee great danger in admitting that, by adopting irregular modes of charging lands by parol, the effect of the Registry Acts may be avoided." At last, however, after a most careful and elaborate examination of the authorities, this question, affecting such large and varied interests, has been set at rest; and it would be the merest supererogation on our part to discuss at large the many cases, and the train of reasoning founded upon them in connexion with the terms of the statute itself, that led the Court of Appeal to its unanimous conclusion. A parol deposit of title deeds does not come within the provisions of the Registry Acts—there is nothing to register; and as Fitzgibbon, L.J., remarked, "our decision may appear in some degree to weaken the security of a registered title, but, if this be so, it is because the lawful operation of a deposit of title deeds, though (to adopt Lord Hatherley's language in *Neve v. Pennell*, 2 H. & M. 187) it may introduce the mischief intended to be remedied by the Registry Acts in another form, does so in a form which the machinery furnished by the Acts cannot meet. It is only another instance in which an Act of Parliament, appearing when passed to be sufficient, has failed to meet every case which subsequent events, legal ingenuity, or the logical application of known principles, may raise to try its efficacy." We have seen that, in *M'Kay v. M'Nally* (13 Ir. L. T. Rep. 130), a security by deposit of title deeds had already been held not to constitute a "mortgage" within the terms of a covenant—although in three cases (which were not cited) it was held to constitute a charge "by way of mortgage," within Locke King's Act (even if by parol, according to *Davis v. Davis*, *ubi supra*); and though Tindal, C.J., observed, in *Warburton v. Ivis* (2 D. & C. 494), that every "deed by which any interest in lands or tenements is transferred, or any charge created thereon, should be registered," and favoured the construction forcing "all transfers and dispositions of every kind, by whomsoever made,

to be put upon the face of the register," yet certainly the Act of Anne, in its terms dealing only with "deeds or conveyances," while the word "disposition" in section 4 is controlled and limited by its context, seems hardly to embrace literally the case of parol equitable mortgages by deposit, which indeed were then unknown. In truth, there is nothing in the Act to show that it was intended to apply to all kinds of titles. As it was put by Sir E. Sullivan, M.R.: "Suppose a man marries a woman entitled to a term of years, or to a fee-simple or freehold estate, in each case an estate becomes vested in him by the marriage. Again, by the birth of a living child, an estate by the curtesy may become vested in the husband; none of these titles can be placed upon the Registry. Well, I suppose the extraordinary doctrine could not be contended for that if a wife, separated from her husband, suppressing the fact of marriage, makes a conveyance of the lands which belonged to her at the time of the marriage, the mere registration of such conveyance would defeat her husband's title; which would be the result if the statute applied to all titles, no matter how acquired, whether incapable of being put on the Registry or not." [Cf. the Australian case of *Fitzpatrick v. Barker*, 12 S. C. R., Eq., 83.] Limitations of this kind to the protection afforded by the Registry are, indeed, inseparable from any system of record or registration. As observed by Cooley, C.J., in a paper on the Recording Laws of the United States, read last year before a meeting of the American Bar Association, "it is impossible such records should be an entirely safe reliance, because many things that may affect a title either cannot be shown by them under any circumstances, or cannot be shown under any provisions of law as yet made for the purpose. Heirship is one of these. If the apparent owner of the record dies, whoever purchases of his supposed heirs must run all risks of error or misinformation in learning who they are. Provision has indeed been made in a few of the States for recording a certificate of the heirship from the court having jurisdiction of the estate of decedent; but these provisions are exceptional, and the certificate would of course be ineffectual to cut off the right of an actual heir, unless under provisions of law which require a judicial hearing and determination, after notice to all concerned. Questions of marital right in lands are also not to be settled by a mere inspection of the record; and not to mention other things which might defeat an apparently good title, it is sufficient for our present purpose to say that any deed in the chain of title may prove to be incorrectly recorded, or be forged, or be given by a minor, and therefore voidable, or by an insane person, and therefore wholly void." It should be observed that in *Re Burke's Estate* nothing turned on the nature of the particular subject-matter of the deposit (see 7 Ir. L. T. 29, 30). It was an agreement for a lease, or purchase, which would be clearly sufficient: *Unity, &c., Co. v. King*, 25 Beav. 72; *Allen v. Woodruff*, 96 Ill. (Amer.); *et cf. Ex p. Orrett*, 3 M. & A. 153; *Ex p. Smith*, 2 M. D. & De G. 544; and 4 Madd. 249.

Pressed by the obvious unreasonableness of having to ask the court to strain the language of the Acts so as to make them require the registration of this kind of security, for accomplishing which no machinery is fur-

nished, the respondent's counsel proceeded to impeach the policy of permitting mortgages by parol deposit at all. On this subject we have already supplied a good deal of additional materials for consideration; and references may be added to 2 Story, Eq. Jur. s. 1020, 4 Kent. Com. 151, observing, *inter alia*, that the disposition of the courts has been to restrict rather than enlarge the operation of the doctrine, and that it is not, therefore, ordinarily applied to enforce parol agreements to make a mortgage, or to make a deposit of title deeds for that purpose; and see, further, as to the extent of the reception of the doctrine in America, 1 Hil. Mtge. 599; Browne, Stat. of Frauds, s. 64; *Carter v. Wake*, 16 Am. L. Reg. 447. But, on the other side, we are surprised that Lord Abinger's vindication of the policy and reasonableness of the doctrine (in *Keys v. Williams*, 3 Y. & Coll. 60) was not quoted. However, as Sir E. Sullivan, M.R., observed: "It appears to me that we have now nothing to do with the policy of allowing securities to be taken by mere deposit—that is a matter for the Legislature—and we cannot be influenced by the fact that such securities only received their full development after the Registry Act was passed. The law allows of the security, and there is no means of placing it on the Registry; the provisions of the Act do not reach the case, and we here cannot make them do so. It is, too much, however, in any view to suggest, as has been done, that a deposit of deeds is entirely a secret disposition. The deeds are at all events a strong symbol of ownership; and if a person subsequently dealing with the owner, without deeds, makes no inquiry after them, and utterly neglects to ascertain how they are circumstanced, he must only take the consequences." "If any purchaser," observed Fitzgibbon, L.J., "chooses to accept a property without getting possession of those documents of title which have been well called the 'visible badge' of ownership—if he chooses to rest satisfied with any plausible excuse for the non-production of those documents—if he fails to verify the explanation given of their absence, he must take the risk; but the circumstances must be extraordinary, and the cases must be few indeed, in which a purchaser of ordinary caution can be prejudiced. It will in all cases be his plain interest, it will be the duty of his advisers, and it will be open to himself, to insist on getting up the documents of title, to verify the explanation of their absence, or to decline to complete the purchase; but in any case in which a conflict such as the present may arise, between a disposition by deposit and a conveyance by registered assurance, both being lawful and effective dealings, we have no right artificially to postpone either to the other, and the earlier must prevail." And no doubt these considerations do minimise the practical extent of the decision, as an infringement of the security of registered titles; but cases such as we have had often occasion to comment upon (see 6 Ir. L. T. 334, 7 *id.* 29, 11 *id.* 516) will still continue to recur from time to time; and in one point of view we rather think the effect of this decision is calculated to render equitable mortgages by deposit still more open to the objections that, as we have seen, have been so often advanced against that form of security. It gives an advantage to parol transactions; for, if there be a written memorandum, and it is unregistered (even though informal—a case, at all events, uncovered by the present decision, but see *Eyre v. M'Dowell*, 9 H. L. 652; *In re Hamilton*, 9 Ir. Ch. B. 512), its operation will be defeated; and as regards parol transactions it reintroduces the necessity of having recourse to statutable declarations, &c., and imposes on purchasers and incumbrancers all the burdens that the Registry Act was passed to obviate. Who could now, with any

degree of assurance, advise a trustee to take a second mortgage? (As to the necessity of inquiry when taking mortgages from trustees, see *Stroughill v. Anstey*, 1 D. M. & G. 635, 648.) What protection has a *bond fide* purchaser who duly searches the Registry, and gets in all the known title deeds? His own caution—which, perhaps, may best be exercised by his not becoming a purchaser at all. Still, as Judge Lynch had himself observed in *Re Driscoll's Estate* (I. R. 1 Eq. 288)—quoted by Deasy, L.J., in *Re Burke's Estate*—"if such a transaction creates an equitable security, it would seem rather hard to hold that, while it is incapable of receiving aid or protection from the Registry Act, it is liable to be defeated by their operation;" and the true remedy appears rather to lie with the Legislature. That, as it stands, this mode of security is open to objection there can be no doubt, as Law, C., allowed in *Re Burke's Estate*; and he then referred to the Irish Registration Act of 1850, and to Lord Westbury's Registry of Title Act, 1862; but, as several Commissions and Parliamentary Committees have already suggested specific amendments of the law on the assumption that, as existing, it does not afford adequate protection, it will suffice to point to *Re Burke's Estate* as a further illustration that amendment is indeed necessary. The old English notion was that the possession of the title deeds was the best evidence of title; the system of registry was to have supplied a substitute, under which any man might safely purchase, or safely accept incumbrances; but, the possession of the title deeds is now enough to defeat the purpose of the recording laws, and the protection afforded by the system of registry has been rendered completely deceptive or hap-hazard by the decision in *Re Burke's Estate*, which may, unfortunately, have the effect of not only further diminishing the credit-operations of capitalists in this country, but of still more alarming the English investor in our landed securities.

#### THE IRISH LAND COMMISSIONERS.

A Parliamentary return has just been issued giving particulars as to the Assistant-Commissioners under the Irish Land Act. There are four legal Assistant-Commissioners, holding office for seven years—namely, Messrs. Robert Romney Kane, Robert Reeves, Edward Grmer, and J. G. M'Carthy. The eight lay Commissioners appointed for the same period are—Mr. Thomas Baldwin, Superintendent of Agricultural Department, Board of National Education; Lieutenant-Colonel H. R. Bayly, Justice of the Peace and land agent; Mr. Richard Garland, Justice of the Peace and practical farmer; Mr. James Haughton, practical farmer; Mr. Cornelius O'Keefe, *ditto*; Mr. John J. O'Shaughnessy, Justice of the Peace, practical farmer, a landlord, and a tenant; Mr. John Rice, practical farmer and member of the Royal Agricultural Commission; Mr. James M. Ross, landlord, land agent, and practical farmer.

The following are legal Commissioners appointed for one year:—Messrs. Ulick Bourke, Gerald Fitzgerald, S. G. M'Devitt, Romney Foley, Francis G. Hodder, Thomas D. Bearden, Cecil R. Boche, J. O. Wylie, Michael T. Crean, Charles P. Hamilton, and Thomas Perry Lynch. The remaining twenty-five are lay Commissioners appointed for one year. Their names and qualifications are as follows:—Mr. Andrew Cwynn, Justice of the Peace, landed proprietor, and practical farmer; Mr. William Davidson, land agent; Mr. Pierre Mahony, Justice of the Peace and practical farmer; Mr. Edmund Murphy, Justice of the Peace, land-holder, and land agent; Mr. Edward William O'Brien, Justice of the Peace, Deputy-Lieutenant, and landed proprietor; Mr. Thomas Walpole, Justice of the Peace and practical farmer; Mr. James G. Barr, Justice of the Peace, landlord, and land agent; Mr. John F. Bomford, Justice of the Peace,

practical farmer, and land agent; Mr. John Cunningham, practical farmer and land agent; Mr. Laurence Doyle, barrister-at-law, landlord, and practical farmer; Mr. James Howlin, Justice of the Peace, grand juror, and landlord; Mr. George O. Kenny, barrister-at-law and practical farmer; Mr. M. P. Lynch, barrister-at-law, practical farmer, and land agent; Mr. Hugh R. Morrison, Justice of the Peace and practical farmer; Mr. Seymour Mowbray, practical farmer, and Secretary of Royal Agricultural Society of Ireland; Mr. John M. Weir, Justice of the Peace and practical farmer; Mr. Alexander W. Ellis, practical farmer; Mr. John Golding, practical farmer and land agent; Mr. Jerome J. Guiry, Justice of the Peace, landed proprietor, and practical farmer; Mr. John Headach, landed proprietor and practical farmer; Mr. Edward McCausland, Justice of the Peace and registrar to a sub-commission; Mr. Thomas Meek, practical farmer; Mr. Thomas Roche, ditto; Mr. Robert Sproule, Justice of the Peace, practical farmer, and landed proprietor; and Mr. Patrick Taffe, Justice of the Peace and practical farmer.

Each of the Legal Assistant-Commissioners receives a salary at the rate of £1,000 a year, with actual travelling expenses, and £1 1s. a night for hotel expenses.

Each of the Lay Assistant-Commissioners receives salary at the rate of £750 a year, with similar travelling and hotel allowances.

Gentlemen holding land agencies have been required to resign their agencies.

#### THE SETTLED LAND BILL.

This important Bill was presented to the House of Lords by Lord Cairns. A convenient summary of its provisions, as thus introduced, will be found in the *Law Times* of March 11th and 18th of the present year (pp. 330, 347), and the text of the Bill will be found in the *Weekly Notes* of the 4th March, 1882. It was brought from the Lords on the 30th March, and ordered to be printed on the following day. The importance of the Bill can hardly be over-estimated. It applies both to England and Ireland, and affects land the value of which can only be reckoned by millions; and, as it applies to wills, it affects all classes. It is indorsed with a very useful memorandum giving what the promoters intend to be the general effect of the clauses contained in the Bill. The first two paragraphs of the memorandum give the key to the whole: "1. The main object of this Bill is to enable a tenant for life—*which term is used to include generally the class of limited owners*—to dispose by sale, lease, or otherwise, of any part of the settled land, or even of the whole of it; proper provision being made for securing the purchase-money on a sale, and otherwise for protecting the interests of a remainderman and of others entitled to come in under the settlement. 2. The Bill is not confined in its operation to future settlements."

We may add that it contains a clause the object of which is "to nullify devices for depriving a tenant for life of the powers given to him under the Bill by means of forfeiture of property or otherwise." There are two main objects of a settlement of land: first, to secure a provision for the persons from time to time entitled under it; secondly, "to keep the land in the family." The Bill then proposes carefully to guard the first; and in a great measure to override the second, so as to render the alienation of land more general.

It is not our intention in the present article to discuss the wisdom or otherwise of the Bill, but to examine whether its professed objects are carried out in a satisfactory manner. The conclusion we arrive at is, that the plan of the Bill is susceptible of great improvement, and that it needs many modifications and corrections in detail. The second clause of the Bill contains seven sub-clauses. Each of the first six of these contains a definition, or explanation, of a word or phrase, and the seventh contains sub-sub-clauses, which comprise about twenty definitions. The mode of definition employed by the Bill is not always happy. Thus, clause 2 (5) ex-

plains who is tenant for life; but Part xiii. is headed "Limited owners generally," and clause 58, which is the first clause comprised in that part, declares that no less than nine classes of persons shall have the powers given by the Act to a tenant for life. Surely all this should have been placed at the commencement of the Bill. The powers, throughout almost the whole Bill, are given to "the tenant for life," and then they are extended to other limited owners by clause 58; but curiously enough, in clause 29 (6), we read of "tenant for life, or for any greater estate," and in clause 58 of "tenant for life or other limited owner." Why is this?

By clause 60, where an infant is "tenant for life," the powers given by the Bill to a "tenant for life" may be exercised by the trustees of the settlement. Now, clause 46 requires that, before any sale, &c., is made by "tenant for life," he must post a registered letter giving notice to the trustees. So apparently in this case the trustees must post letters to themselves. This should be altered. As we have mentioned the provisions relating to infants, we may add here that the Bill should expressly state that certain windfalls which "tenant for life may take for his own use" shall be held in trust for the infant.

The framers of the Bill seem to have forgotten that by the *Settled Estates Act, 1877*, ss. 46, 49, the guardians of infants have power to grant certain leases. The result is apparently that both guardians and trustees have concurrent powers. This seems clearly an oversight.

It is unfortunate that the definitions in the Bill do not coincide with those in the *Conveyancing Act*. Thus there are different definitions of "land," "mining purposes," and "will." The last definition is very wide: "Will includes codicil and other testamentary instrument and a writing in the nature of a will." It is no doubt correct to include "testamentary instrument" (*Re Savage*, L. Rep. 2 P. & M. 78), but the last words seem likely to mislead. But perhaps the most peculiar provision in the Bill, when taken in connexion with the *Conveyancing Act*, is clause 50, which is as follows: "The powers under this Act of a tenant for life are not capable of assignment or release, . . . but this section shall operate without prejudice to the rights of any person being an assignee for value of the estate or interest of the tenant for life. . . ." Also contracts not to exercise the powers are void, with the like exception. Now, by section 52 of the *Conveyancing Act*, "a person to whom any power, whether coupled with an interest or not, is given, may by deed release or contract not to exercise that power." If the Bill becomes law it clashes with this section of the *Conveyancing Act*. The effect of it is that, subject to the exception in favour of assignee for value of the "tenant for life," his powers are indestructible, and this exception is subject to a limitation. The tenant for life may grant leases for twenty-one, sixty, or ninety-nine years, according to the nature of the lease, provided he reserves the best rent without fine, and the lease is otherwise in conformity with the Act. And this applies to assignments before the Act. So that, although by the terms of a mortgage tenant for life is precluded from leasing, yet he is given the power by this Bill. No doubt this provision will greatly commend itself to limited owners, but we doubt its fairness to their incumbancers. And, in future, it will of course *pro tanto* diminish the security limited owners can give. It certainly will be a rather strange result of legislation that an owner in fee-simple who has incumbered may be deprived of leasing power, but the "limited owner" cannot. Of course this affects section 19 of the *Conveyancing Act*. The power of transferring incumbrances from one part of the settled land to another part, with consent of the incumbancer, seems insufficiently guarded. A second mortgage may be turned into a first, or a mortgage on leasehold into one on freeholds, to the disadvantage of the remainderman.

Clauses 7 to 15 relate to leases. They enable "tenant for life" to grant ordinary leases for twenty-one years, and building and mining leases for sixty and ninety-nine years respectively. They enable the "tenant for

life" to take a fine. We cannot refrain from expressing surprise at this provision, which is of a retrograde nature. It is contrary to the principles of most recent statutes, and also to the general practice of the profession. It is true that, where "tenant for life" has incumbered, he will not be able to take a fine without the consent of the incumbrancer (see clause 50) and the remainderman is protected by the provisions requiring that the fine be treated as capital (clause 21). In all probability the power to take a fine will very seldom be used. On the other hand, building leases for ninety-nine years are thought by many to be injurious to the public as encouraging defective building. It is very general in the North of England to grant leases for 600 or 999 years, and certainly this ought to be permitted, without the necessity of any application to the Court under clause 11. A rather strange power is given by clause 7. It enables tenant for life, although impeachable for waste, to give leases "involving waste." This seems inconsistent. However, in case of a mining lease, protection to the remainderman is given by clause 12. In clause 7 (4) execution of a lease is to be "evidence" of the execution and delivery of the counterpart, and by clause 9 (4) a certain statement is also made "evidence" of certain matters. It should be stated whether *prima facie* or conclusive evidence is intended. We presume the former (see clause 54), but it should be expressly stated. Clause 9, which regulates the building leases the "tenant for life" may make, seems to contain a mistake. It declares, "Every building lease shall be made partly in consideration of the lessee, or some person by whose direction the lease is granted, or some other person, having erected or agreeing to erect buildings . . ." Does this really mean to enable a tenant for life to grant a building lease (ninety-nine years) because "some other person," perhaps the settlor, or a previous "limited owner" under the settlement, has erected buildings? A building lease is granted because the lessee has built, or agrees to build. This must be altered. By clause 14 "tenant for life" may accept a surrender and take any money consideration for it for his own use. This seems inconsistent with the idea of making him a trustee for the benefit of all persons entitled under the settlement (see clause 53). It would be better to compel the tenant for life to treat it as capital.

A more serious point arises in connexion with clause 20, which directs the mode of conveyance under the Act. The conveyance by deed of the tenant for life is to pass the land conveyed free from the estates and powers of the settlement, but subject to (i.) All estates, interests, and charges having priority to the settlement; (ii.) "All such other, if any, estates, interests, and charges as have been conveyed or created for securing money actually raised at the date of the deed;" (iii.) Certain leases and grants "made for value in money or money's worth, or agreed so to be, before the date of the deed." Apparently, then, if a mortgage is made to A., and afterwards another to B., A.'s security would lose priority, unless A.'s money were actually paid before the conveyance to B., although it was paid after notice of the mortgage to B. Also a marriage settlement made by tenant for life, out of his own estate, would be set aside by subsequent conveyance for money value. But this view does not agree with clause 50 (8). Which is to prevail? We propose to discuss other clauses of the Bill in a future article.—*Law Times*

#### THE MARRIED WOMEN'S PROPERTY BILL.

There is probably no part of the law of England at the present day which presents more inconsistencies and absurdities, or which is less in accordance with civilised opinion, than that relating to the property of married women. The rigorous simplicity of the common law, which deprived a woman during marriage of all property, was long ago mitigated by the distinctions and exceptions introduced by equity, and has since been materially modified by statute; particularly by the Married Women's Property Act, 1870. The result is a complexity and uncertainty of law and practice

which may be fairly gauged by the fact that some thirty double-column pages of the new "Digest of the Law Reports" are taken up with cases relating to this subject. The hardships and wrongs not only to married women, but to creditors, produced by the present state of things are matters of every-day experience. The bill before us is an application of the policy of "thorough" to this state of things. It aims at abolishing the old law altogether, and placing married women on the same footing with regard to rights and liabilities of property as unmarried women, or as men.

As originally introduced in the House of Lords it consisted of nineteen clauses, which were practically identical with the bill for the same purpose introduced by Mr. Hinde Palmer in the House of Commons last year. It echoed last year's bill so exactly as to provide that the commencement of the Act should be January 1, 1882, thus making it to some extent retrospective. But numerous amendments were introduced in committee, and as the bill now stands it is to begin on January 1, 1883, though it is still, owing to some slip, to be called the Married Women's Property Act, 1881. The first two sections contain the substantial part of the bill; the rest dealing with matters of detail. By clause 1 (i.) a married woman "shall be capable of acquiring, holding, and disposing by will or otherwise, of any real or personal property as her separate property, in the same manner as if she were a *feme sole*, without the intervention of any trustee." The next sub-clause gives her power to contract, and to sue and be sued, as if she were a *feme sole*, and without her husband being joined; thus sweeping away the absurdity established by *Hancocks v. Lobbache*, 47 Law J. Rep. C. P. 514; L. R. 3 C. P. Div. 197, that notwithstanding the Judicature and Married Women's Property Acts, in an action to charge the wife's separate estate, acquired as earnings or wages, it was still necessary to make the husband a co-defendant. Sub-clause (iii.) establishes a presumption that every contract by a married woman is intended to bind her separate property unless the contrary be shown. Sub-clause (iv.) abolishes the rule laid down in *Pike v. Fitzgibbon*, 50 Law J. Rep. Chanc. 394; L. R. 17 Chanc. Div. 454, and makes after-acquired property liable to previous contracts. Sub-clause (v.) says that every "married woman carrying on a separate trade shall, in respect of her separate property, be subject to the bankruptcy laws in the same way as if she were a *feme sole*." This section reverses the case of *Ex parte Jones, In re Grisell*, 48 Law J. Rep. Bankr. 169; L. R. 12 Chanc. Div. 484, in which the Court of Appeal held that a married woman could never be made bankrupt. But it is hardly explicit enough. A doubt has been suggested; whether the specification of separate trade would not by implication prevent the bankruptcy law from being applied in other cases. It would seem better to omit the words "carrying on a separate trade." There is no reason why a woman, like a man, should not be made bankrupt in respect of private as well as of trade debts; and, if she is actually in partnership with her husband in trade, there is no reason why she should not be equally liable to bankruptcy as if she were carrying on a separate trade. Clause 8 would protect her, as it would anyone else, if she merely lent money to the husband to be employed in trade, and the question of partner or no partner would not be necessarily more difficult to settle in the case of husband and wife than of strangers. That clause (8) provides that if a wife's separate money is lent to the husband, she shall be entitled to prove as a creditor for the amount, in case of his bankruptcy; but shall be postponed to other creditors. Clause 2 embodies the Married Women's Property Act, 1870, ss. 1, 7, 8, but extends it by declaring that a woman who marries after the Act, shall "be entitled to have and hold as her separate property, and to dispose of, in manner aforesaid, all real and personal property which shall belong to her at the time of marriage, or shall be acquired by her or devolve on her after marriage," including any wages, &c. It seems unnecessary to add this last

clause, if she is to be entitled to any property which shall be acquired by her; but perhaps, by way of avoiding the extraordinary results that are sometimes arrived at by comparing repealed with existing statutes, it may be as well to insert it *ex abundanti cautela*. But it is to be regretted that Acts of Parliament should be defaced, and sometimes made a dead letter, owing to too great anxiety to specify particulars.

Clause 4 extends to women married before the Act similar rights to those conferred on women married after the Act, in relation to all property the title to which accrues after the Act. As it specifically includes contingent and reversionary property, it emphasises the supercession of Malins's Act, which is not, however, repealed by this Act. This is, however, done by Lord Cairns's Conveyancing Bill, in discussing which we said that the clauses relating to married women's property (clauses 6-9) could be better treated in connexion with the present bill. Clause 8 of that bill gives a married woman, with the concurrence of her husband, power, by deed, to "dispose of any present or future or reversionary interest, vested or contingent, in any property," and to release or extinguish any power given her, or any equity to a settlement, or to dispose of any property accruing to her by or under any instrument made before or after the Act; but special exemption is made (as in clause 17 of the present Act) of any property subject to a restraint on anticipation, and of any property subject to her marriage settlement. It is to be observed that, in the main, these provisions coincide with the present Act, but are of greater retrospective force, since they apply not only to cases where the title accrues after the commencement of the Act, but to all cases; while, on the other hand, such disposition can only be made jointly with her husband. Clause 9 of the Conveyancing Bill gives limited powers of binding separate estates as compared with the present bill, but equally overrules *Pike v. Fitzgibbon*. Clause 6 sweeps away all necessity for the acknowledgments of deeds or for examinations of married women and the offices of commissioner to take those acknowledgments and to record them. Taken simply in view of the Conveyancing Bill, this provision is certainly open to grave objections. As some of our correspondents have pointed out, it would remove a safeguard to married women, which experience has shown to be necessary and beneficial. But, if the Married Women's Property Bill passes, those objections would be to a great extent removed. At present it may very well happen that the examination conveys the first and only information to the wife that she is to sign away property belonging, or which may belong, to herself. But under the new law it will be a fact well known to every woman that her property is really her property; and that, if she is asked to sign a deed, it must be for the purpose of dealing with something to which she must have a right. The present examination is not, and cannot be, a protection against violence or pressure on the part of the husband, but only against his fraud or the ignorance of the wife. In future that ignorance cannot exist; and the fraud will, therefore, be barely possible. Against both fraud and violence, too, she is protected by section 11 of the bill, which gives her power to protect her property by proceedings against anyone, including her husband, as if she were a *feme sole*; and by section 16, which gives power to apply to the High Court or a County Court, in a summary way, in any questions affecting property between herself and her husband. The provisions of section 6 of the Conveyancing Bill may well be transferred to this bill, and the acknowledgments of deeds and examinations abolished. Clauses 8 and 9 of the Conveyancing Bill would be superfluous, and better omitted. But the retrospective effect of clause 8 might usefully be given to section 4 of this bill. Seeing that the separate estate already acquired under the Married Women's Property Act will—as to power of suing and being sued, and, indeed, as to dealing with it generally—be retrospectively affected by the Act, it is worth grave consideration whether it would not be better to make the Act

retrospective generally. The Settled Land Bill, which is an enlarging bill, is retrospective in its operation, as are many of the provisions of the Conveyancing Act, 1881, and of the Conveyancing Bill, 1882. It would greatly contribute to symmetry and simplicity, to the saving of doubts and litigation, and would, if the bill be just, not inflict injustice on anyone, to make this bill also retrospective. The rest of the bill is chiefly auxiliary and administrative. Clauses 5 to 10 are mainly repetitions, with improvements in detail, of sections 2 to 6 and section 10 of the Married Women's Property Act, 1870, relating to the manner by which various kinds of property can be legally vested in, or transferred to, married women. The elaborate provisions in section 10 for the appointment of new trustees of policies are unnecessary, in view of the trustee clauses of the Conveyancing Act, 1881.

In any change in the law of married women's property, two dangers have to be guarded against, and two sets of separate, and often conflicting, interests as far as possible preserved. On the one hand, you have to prevent the husband being unduly saddled with liabilities imposed on him by his wife; and, on the other, to prevent husband and wife combining to evade their liabilities altogether, and defraud their separate or joint creditors. Both these objects are aimed at in the bill, and apparently with success. Clauses 12 and 13 protect the husband against the antenuptial debts or wrongs of his wife, except to the extent of assets coming to him from her, as in the amendments made in 1874 to the Act of 1870. The wife is liable to be sued for them, and her separate estate is primarily liable thereto; but, to prevent such difficulties as were felt by creditors in *Mercier v. Williams*, clause 14 provides that one may be sued alone, or both may be sued together, in which case judgment is given against either or both, according as the facts turn out to be. By clause 15 the husband is protected against criminal acts on the part of the wife, as the wife is against such acts on the part of the husband; and clause 16 gives them power to apply to the Courts for summary orders in civil matters relating to property, the one against the other. Clause 17 preserves existing and future settlements, and the restraint on anticipation, as a protection against the husband; but henceforth a woman will only be able to settle her own property, as against creditors, in the same way that a man can settle his. One point in the bill is not made sufficiently clear for the protection of creditors—that is, whether there is any personal liability imposed on married women; whether, that is, a judgment can be given and executed against her personally, or only against her separate estate. The former seems to be pointed at by the provision that she is to sue and be sued, and by the power of making her bankrupt, as if she were a *feme sole*; but the latter seems to be implied in clause 14, where joint judgment is to go against the husband personally so far as liable, and the separate judgment, not against the married woman personally, but against her separate estate. As there can no longer under the bill be any reason for making proceedings against a married woman differ from those against an unmarried woman or a man, it would be as well that the doubts should be cleared up by express words to that effect.—*Law Journal*.

#### CRIMINAL LIABILITY OF AVOWTHERERS.

We are strongly of opinion that it is eminently desirable to amend the criminal law making it felony in an avowterer to be concerned with the wife in taking and carrying away the goods of the husband. The law as it now exists is thus summarised by Mr. Justice Stephen in his "Digest of the Criminal Law," p. 213: "A married woman cannot commit theft upon things belonging to her husband. If any other person assist a married woman in dealing with things belonging to her husband in a manner which would amount to theft in the case of other persons, such dealing is not theft, unless the person so assisting commits or intends to commit adultery with the woman; in such case he, but not she,

commits theft. But this exception does not apply to the case of an adulterer or person intending to commit adultery, who assists a married woman to carry away her own wearing apparel only from her husband." This latter exception was established by the decision of the Court in *Reg. v. Fitch* (D. & B. 187), overruling *Reg. v. Tollett* (C. & M. 112), in which case Mr. Justice Coleridge had told the jury that "If the prisoner elopes with an adulteress, and they take her clothes with them, it is larceny to steal her clothes, just as much as it would be larceny to steal her husband's wearing apparel, or anything else that was his property." Mr. Justice Coleridge took part in the decision in *Reg. v. Fitch*, but oddly enough his previous decision in *Reg. v. Tollett* was not referred to; but, as observed by the late Mr. Greaves in his notes on these cases, there can be no doubt as to the propriety of the decision in *Reg. v. Fitch*, because, where the wearing apparel alone is taken, the necessity for which it is taken furnishes the motive, and negates the *animus furandi*. Where the prisoner does not take away the goods in company with the wife, but she joins him and subsequently commits adultery, and no distinct possession of the goods on the part of the prisoner is shown, he cannot be convicted. This was distinctly decided in *Reg. v. Rosenberg* (1 C. & K. 238) by Lord Chief Justice Deaman and Baron Parke. There is one case, that of *Reg. v. Deer* (1 L. & Q. 240), which seems to be authority for the proposition that an avowterer can be found guilty of "receiving" property stolen from the husband when the evidence is not sufficient to show he either stole it himself or assisted the wife in doing so. The report of this case is a very indifferent one and is clearly wrong, for the conviction should have been for larceny and not receiving, for a wife cannot steal from her husband; and so, if there was no participation by the avowterer in the "taking and carrying away," there could be no larceny, and therefore no receiving stolen property by him.

One need hardly say we have no sympathy with the class of men who amuse themselves by running away with other people's wives, regardless of the misery and ruin occasioned by their selfish conduct, and we should be very pleased if such an act were made an offence and punished by imprisonment with hard labour; at the same time the law as to larceny by an avowterer enables private malice to be gratified at the expense of the proper administration of the criminal law, and we think that a condition precedent to the institution of any such prosecution should be either the consent of the Public Prosecutor or the fiat of the Attorney-General. An excellent illustration of the necessity for this reform has been afforded by the case of *Reg. v. Frank Turner*, in which the grand jury ignored the bill at the assizes held last week at Newcastle. Mr. Turner, who was a lieutenant in the King's Own Borderers, eloped on the 12th ult. with a Mrs. Weddell, the wife of a solicitor residing at Berwick, where the prisoner and his regiment had been stationed. On his return to Berwick two days later Mr. Turner was arrested on a charge of stealing a lady's travelling-trunk and a portmanteau, value 50s., the property of Mr. Weddell, and subsequently there was a further charge in respect of four silver salt-cellars, four silver spoons, and six silver teaspoons, proved by the police officer to have been found in one of Mrs. Weddell's trunks. Now, there seems to be no possible doubt that, as an avowterer cannot, since *Reg. v. Fitch*, be convicted for stealing the wife's necessary wearing apparel, the same argument would apply to the trunks in which such wearing apparel was placed. As to the silver, Mr. Turner was clearly not a party to the original taking, because the evidence showed that Mrs. Weddell met him at a place called Magdalene Fields, whence they drove to Ayton Station on the North British Railway. If, however, it could have been shown that she took it by pre-arrangement with him, and that he adopted her act, and received it into his possession, that would have amounted to larceny; but there was not a particle of evidence to this effect, or that he had the remotest idea the silver was in the trunk at all. Nevertheless, a bench of

magistrates committed the case for trial to the next quarter sessions; however, the accused very wisely rendered himself into custody, and so the bill of indictment was preferred before the grand jury at the gaol delivery at Newcastle. We have not before us the charge of the learned judge (Mr. Justice Watkin Williams), but, as he subsequently refused to allow the costs of the prosecution, and concurred in a presentment of the grand jury that the prosecution ought never to have been instituted, we presume he charged them strongly to throw out the bill. No one can doubt that such was a fitting termination of an attempt to make use of the criminal law for motives of private vengeance, particularly as the prosecutor in this case was a solicitor, who must or ought to have known that his proper remedy was to take proceedings in the Divorce Court, and so obtain compensation in the shape of damages for the injury inflicted on his reputation and the dishonour brought upon his home.—*Law Times*.

#### OVERDUE CHEQUES.

The headnote to the case of *The London and County Bank v. Grooms*, reported in the April number of the *Law Journal Reports*, was probably read with some surprise. In it we are informed that a cheque eight days old is not necessarily taken subject to the equities attached to it; but that it is a question of fact for a jury whether the holder took it under such circumstances as ought to have aroused his suspicions. The mind is accustomed to look upon a cheque as a short-lived bill of exchange. Overdue bills of exchange, payable at a fixed date, it is well known, are taken subject to the equities, whether the holder has or has not notice of them. The legitimate life of a bill of exchange is the interval between its creation and its maturity. After the date at which it is payable, nothing remains except duty to pay it. At that date it is a dead thing, and anyone who chooses to treat it as alive must do so at his own risk. It has lost its power of negotiability in the sense of its starting afresh at every new transfer, and carrying a better title to a new holder than belonged to the person from whom it came. If this is true with regard to a bill of exchange, at first sight it would seem even more appropriate to the evanescent life of a cheque, which, in general, exists only for one day more than that on which it is brought into being. A cheque given to-day to a person in the same town as the banker ought to be presented to-morrow, otherwise the holder will lose his money, if the banker become insolvent. Reflection, however, and a study of the judgment of Mr. Justice Field, show that these considerations by no means exhaust the matter. A cheque, in fact, more closely resembles, in regard to the title it confers, a bill of exchange or promissory note payable on demand. With regard to these instruments no period has been assigned after which their vitality must be considered spent. The rule has only been applied to instruments payable at a fixed future date. With regard to bills and notes payable on demand, it cannot be contended that they are held subject to the equities at any definite date from their making. These documents are intended to be negotiated; but a cheque is different. The negotiability of a cheque has not been much favoured by the law, and the present decision is one of the few which gives security to the holder of a cheque, and, therefore, must be considered as of no small importance.

The facts of the case were of a familiar type. On August 21, 1880, Grooms, the defendant, drew a cheque for £98 on the National Bank, payable to bearer. At that time the defendant received a bill for discount from one Colls, to whom he gave the cheque as security, and upon a promise by Colls that he would not part with it until the defendant procured discount of the bill. The defendant was unable to discount the bill, and gave notice to Colls, who, notwithstanding, paid the cheque to his bankers, the plaintiffs, who gave consideration for it. Questions were raised on the pleadings as to notice in fact and want of consideration from the

plaintiffs, but these were all abandoned, and the case narrowed itself into the question of law whether a cheque eight days old is taken subject to equities such as that which was undoubtedly attached to the cheque in this case in favour of the defendant. The defendant's counsel relied entirely on the case of *Down v. Halling*, 4 B. & C. 330; while the plaintiffs' counsel relied mainly on *Rothschild v. Corney*, 9 B. & C. 388. In the former case, the plaintiff was the drawer of the cheque, which had been paid to the defendant by the bankers. Six days after the cheque was drawn it was handed to the defendant by a woman unknown to him, who bought goods in his shop, paying for them with the cheque, and receiving change. The plaintiff produced no evidence showing how the cheque had left his hands, and the defendant claimed a non-suit. Lord Tenterden, who tried the case, did not non-suit the plaintiff, but left to the jury the question whether the defendant had taken the cheque under circumstances which ought to have excited his suspicion; on which direction the jury found for the plaintiff. So far the case does not support the position that a cheque is like an overdue bill. It is rather the other way. On a motion, however, for a new trial, Mr. Justice Bayley is reported to have said: "If a bill, note, or cheque, be taken after it is due, the party taking it can have no better title to it than the party from whom he takes it." This dictum from a judge of high authority, supported as it was by Mr. Justice Holroyd, and to the extent of throwing the onus of proof of title on the defendant by the third judge (the Chief Justice), is the foundation for the proposition contended for. On the other hand, in *Rothschild v. Corney*, the plaintiff, the drawer of a cheque, sued the defendant, who had cashed it at the bankers', on the ground that the cheque had been obtained from the plaintiff by the fraud of one Brady, and handed to the defendant five days after date. The judge directed the jury in the same terms as Lord Tenterden in the previous case. The jury found for the defendant; and, on a motion for a new trial—in the course of which *Down v. Halling* was cited—Lord Tenterden laid down that it could not be held, as a matter of law, that a person taking a cheque after any fixed time from its date does so at his peril.

The dictum of Mr. Justice Bayley did not, therefore, obtain the support of the subsequent case, and must stand or fall on its own merits. If the learned judge be accurately reported, the expression used is not of the most exact. "Bills, notes, and cheques" are placed in the same category, as if all kinds of bills and notes, as well as cheques, were subject to the same rule. The learned judge can hardly have said advisedly that a promissory note, payable on demand, is absolutely subject to equities when overdue. When, in fact, is such a note overdue? Practically, it must be always overdue, because the person to whom it was offered could never know whether the demand had been made; whereas, in the case of a note payable at a future date, the note speaks for itself. The fact that bills and notes are involved indiscriminately with cheques seems to detract from the weight of Mr. Justice Bayley's opinion, as showing that the subject had hardly been sufficiently considered. Still, it may be that cheques stand on a different footing from bills and notes payable on demand. With regard to such bills and notes we are left in doubt at what date Mr. Justice Bayley meant that they were overdue. With regard to cheques there can be no such doubt. If they are ever overdue, they are always overdue. If Mr. Justice Bayley's view be correct, a cheque cannot be utilised as a negotiable instrument. We see no reason why the utility of cheques should be so restricted. The only reason for such restriction is the inconvenience it may be to the drawer to have a cheque afloat in the world for any considerable period. Most men like to see all the cheques drawn down to the last few days returned to them with their passbook; and to keep a cheque for more than a day or so without presenting it is not considered a businesslike proceeding. The negotiability of cheques, for these reasons, is never likely to be very extended; but there is no reason why

persons having no banking account, or for other reasons should not be allowed to negotiate them. The man who takes a cheque many days old will, according to the ruling of Mr. Justice Field, still be liable to have his conduct scrutinised by a jury of business men, who will largely be governed by the view taken of the position of cheques by the community. It may, therefore, be safely taken that Mr. Justice Field's decision is sound in policy as well as law, and in accordance with the ideas of the day, which lean greatly in favour of freedom of negotiability.—*Law Journal*.

#### THE WORKING OF THE LAND LAW ACT.

A Parliamentary return of proceedings under the Land Act up to the 15th ult. has been published, from which it appears that the total number of applications to have fair rents fixed up to that date was 76,889, and agreements to fix fair rents 4,917, making a total of 81,806 cases brought under the notice of the Land Commission. Of these, in 4,449 cases rents were fixed, 664 applications were dismissed or struck out, and 469 applications were withdrawn, the 4,917 agreements to fix fair rents being also adjusted, making a total of 70,499 fair rent cases decided. The applications to have leases declared void were 1,434, of which 73 were declared void, 406 applications were dismissed or struck out, and 195 applications were withdrawn or compromised—a total number of 673 lease cases disposed of. The number of miscellaneous originating notices received was 84, of which five were disposed of. The number of appeals lodged in the matter of fair rent is 1,428, of which 195 have been heard and 52 withdrawn.

#### LAND LAW (IRELAND) ACT, 1881.

*RULES in further continuation of those issued by Irish Land Commission, 1st October, 1881.*

5th day of January, 1882.

141. It is ordered that from and after this date, in lieu of so much of Rule 22 as provides that the Court may at all times extend the time prescribed by their rules for serving notices, or doing any other act, the following rule be substituted:—

The Court shall have power to enlarge or abridge the time appointed by the rules, or fixed by any order enlarging time, for doing any act or taking any proceeding, upon such terms (if any) as the case may require, and any such enlargement may be ordered, although the application for the same is not made until after the expiration of the time appointed or allowed.

14th day of March, 1882.

142. It is this day ordered by the Irish Land Commission, that when any application is made for advances under Part V. of the Act, if it shall appear to the Commission necessary to make preliminary inquiries in respect of the application, they may before entertaining it require the applicant to lodge such a sum as they may consider sufficient to cover the reasonable expenses of the inquiries; and in the event of the transaction being carried out, credit shall be given for such sum out of the percentages chargeable by the Commission for expenses in relation to purchases.

22nd day of April, 1882.

*Agreements to refer amount of fair rent to valuer named by Commission.*

It is ordered by the Land Commission as follows:—

143. The landlord and tenant of a holding desirous of entering into an agreement and declaration as to the fair rent of the holding, to be filed in the Court of the Land Commission, but not agreed as to the amount of such fair rent, and whether an originating notice to fix a fair rent has been previously served or not, may consent that the fair rent to be stated in such agreement and declaration may be referred to and determined

by a valuer to be named by the Land Commission for that purpose, such valuer being aided, where he shall deem it necessary, by the decision of the Land Commission upon any disputed question or questions of law or fact.

144. Such reference shall be signed on the part of the landlord by himself, his land agent, or his solicitor, and on the part of the tenant by himself or his solicitor, and shall be accompanied by the sheet of the Ordnance Map showing the holding or holdings.

The Land Commission may thereupon name a valuer who shall proceed to value the holding.

145. If the valuer, before making his award, desire to have any disputed question or questions of law or fact decided by the Land Commission he may submit the same for such decision by a special report which may be according to Form No. 70, and the Land Commission shall thereupon consider such question or questions, and transmit their decision thereon to the valuer.

146. When the valuer has signed his award the landlord and tenant shall thereupon sign the declaration and agreement fixing the amount so awarded as the fair rent of the holding, the tenant's signature being witnessed as provided by Rules 100 and 101.

147. The reference, the appointment of valuer, and his award, and the agreement and declaration fixing the fair rent may be all according to Form No. 69.

148. Rules 102, 103, 104, and 105 shall be applicable to such agreement and declaration, save that the filing and lodgment shall be in the Court of the Land Commission, and with this addition that not only the agreement and declaration, but the reference, the appointment, and the award shall be likewise lodged and filed.

149. A certificate given pursuant to the above Rule No. 148 or to Rule No. 102, need not henceforth be sealed with the seal of the Land Commission, but may instead, where deemed convenient, bear the signature of the Secretary.

150. Where an originating notice to fix a fair rent has been served by the tenant in any case in which the Poor Law valuation of the holding shall not be under £10, the landlord may demand from the tenant the particulars of any improvements intended to be relied upon by the tenant as having been made by him or his predecessor in title with the dates at which the same were made, and in case of neglect or refusal to comply with such demand within a reasonable time, the landlord may apply to the Court for an order that such particulars be given. The Court may, on special grounds, make an order that particulars shall be given when the valuation is under £10, or shall be given by either landlord or tenant in any other case not provided for by any rule of Court.

151. Rule 64 of the rules of the 1st October, 1881, is rescinded, and the following substituted:—

Every order of the Land Commission or any member or members thereof shall bear the signature of the Registrar or an Assistant Registrar of the Court of the Land Commission.

Every order of a Sub-Commission shall be signed by the members of such Sub-Commission.

Every order of the Land Commission or of any member or members thereof or of any Sub-Commission shall bear date as of the day on which such order was actually pronounced.

152. Every application made for the purpose of transferring proceedings from the Civil Bill Court to the Court of the Land Commission shall be supported by an Affidavit that such application is not made for the purpose of delay, and the Court may upon such application impose such terms upon either party as to the Court may appear just or reasonable.

153. An application to the Land Commission to transfer a case from the Civil Bill Court to the Land Commission may be made not only at the time men-

tioned in Rule 62, but may be made at any time not later than three weeks before the first day of any adjourned Sessions, or the first day of the Sitting of the Court for Civil business at any subsequent Sessions, so that such adjourned or subsequent Sessions be held before the hearing of the case has actually commenced.

#### BARRISTERS' FEES.

During the week a lay newspaper has, in a paragraph headed "Barristers' Fees," pronounced in severe terms against a practice which it alleges obtains at the Parliamentary Bar. This practice may be explained by stating a hypothetical case. Opposition Bills for the construction of separate lines to run over much the same ground, are before the Commons, promoted by separate existing railway companies. The parliamentary agents of one company retained a well-known parliamentary leader, but upon calling soon afterwards at the leader's chambers his clerk told the parliamentary agent that his principal had been offered a retainer by the other railway company, but which was of course refused, seeing that the two Bills were competing schemes, but the leader's clerk added that the subsequent offer of retainer by the other company involved the first comer in paying double fees on the first and last day that the Bill would be before the committee. Our contemporary assures us that these double fees were actually paid. We are not prepared to adopt the severe language made use of in the newspaper paragraph before us, but we do on behalf of solicitors enter a respectful protest against this, as it appears to us, indefensible practice. Sir Edmund Beckett was, when in practice, in the front ranks of the Parliamentary Bar, and after his vigorous assault upon the existing system by which insurance offices pay commissions, we feel quite sure that this custom of the Parliamentary Bar is one which Sir Edmund never could have recognised or sanctioned. It is manifest that such a system as that of requiring double fees where a retainer has been offered, as in the case here stated, opens the door to irregularities; for a parliamentary agent's clerk would only have to go and offer a retainer to a particular leader, whom he had heard was likely to be retained on the other side, to stand a very good chance of compelling his opponent to pay double counsel's fees.—*Law Times*.

#### PRACTICE UNDER THE CONVEYANCING ACT.

The 39th section of the Conveyancing and Law of Property Act, 1881, seems not unlikely to occasion some difference of practice among the different judges of the Chancery Division. At all events the decision of Mr. Justice Fry in *Hodges v. Hodges*, on the 3rd ult., does not appear to be dictated by quite the same spirit as that which prompted the observations of Vice-Chancellor Hall in *Tumplin v. Miller*, on the 17th March, to which we recently took occasion to advert. The case is one in which it is perhaps unavoidable that there should be some difference of practice, since it is hardly to be expected that every judge will take the same view of what is for the benefit of a married woman, and applications under the section are not likely to come frequently before the Court of Appeal. Vice-Chancellor Hall said that he should require very strong reasons before he consented to exercise the discretion conferred upon him by the Act, and that it was by no means enough for a married woman to come to the court and say that she wanted to use the property on which the restraint on anticipation was imposed. Yet, in substance, the application in *Hodges v. Hodges* amounted to little more than this. In that case a fund in court was settled on a lady married to a French subject, and domiciled in France, for life, then, in default of children (which happened), she had a general power of appointment by will, and in default of appointment the fund went to her absolutely. Mr. Justice Fry considered that, since the lady had the interest of the fund for life, and on her



death, whether she exercised the power or not, it passed subject to her debts, it was for her benefit that a portion of the fund should be sold and the proceeds handed over to her for payment of debts, which harassed and annoyed her greatly. The annoyance was occasioned in great measure by the fact that the French creditors knew of their debtor being entitled to a large fund in England, and could not understand the restraint on anticipation; that not existing in the law of France. No doubt there is much to be said for the view that a fund intended to constitute an inalienable possession for a married woman should not be lightly allowed to be alienated; but when a lady is practically the only person interested in a fund, when that fund must, under any circumstances, be liable to payment of her debts, and when those debts harass and surround her with sordid cares, it can scarcely be doubted that it is more for her interest that the debts should be paid out of the fund while she is still living, than after her death, possibly hastened by anxieties, when the payment is not for her relief, but for that of those who come after her.—*Law Times*.

#### A DEAD MAN COMING TO LIFE AGAIN.

Mr. Justice HARRISON, with a city common jury, had before him on Thursday an extraordinary case. It arose out of an interpleader issue in reference to the ownership of certain property seized in March last under an execution at the suit of Christopher Nowlan against Thomas Kelly. The plaintiff carries on the business of a victualler in Camden-street, and the defendant was a farmer residing in the County Dublin. It appeared that Nowlan had lent a sum of £50 to Kelly, and the latter failing to repay the debt had proceedings taken against him. A notice to the effect that Kelly was dead was served on Nowlan, but the latter, believing the statement to be untrue, continued the action, and having obtained a decree seized the defendant's property. The defendant's son-in-law, Patrick Nowlan, however, claimed the goods seized, alleging that he had purchased them. The present issue was consequently directed to try the ownership in the property.

Mr. Teeling, in stating the case for P. Nowlan, said that there were only two points involved in the case—firstly, whether Patrick Nowlan had, as alleged, purchased the property, and whether Thomas Kelly was dead at the time these proceedings were commenced. The plaintiff alleged that Thomas Kelly was then and is still alive, and he denied that there was any *bona fide* purchase by Patrick Nowlan. Counsel said it would be proved by several witnesses that Thomas Kelly's death took place on the 1st of January in the present year, that he was afterwards buried in a graveyard at Glencullen, and that a number of persons living in the district attended his funeral.

The Plaintiff was examined, and deposed that he purchased the goods for £16, and he also stated that he was aware Thomas Kelly was dead. He attended the wake, and saw the corpse, which was afterwards buried at Glencullen.

Thomas Mannin also gave evidence as to the purchase of the goods by the plaintiff. He knew an undertaker in Winetavern-street from whom they purchased a coffin for deceased for £1 12s. Witness got 1s. commission on the transaction from the undertaker. The coffin had a breastplate, with the name of the deceased and his age, "72 years," engraved on it.

Margaret Kelly, widow of the "deceased," deposed that her husband died very suddenly, as she believed from bronchitis. He had not been visited by any doctor.

This closed the plaintiff's case.

Mr. Murphy, Q.C., stated the defendant's case, and characterized the case made for the plaintiff as a conspiracy and fraud. It would be shown that Thomas Kelly was still a living man. He was forcibly reminded by this case of one of Lever's novels, in which it was stated that a gentleman who was in distressed circumstances, fearing that his person would be seized, got it reported that he was dead, and went through a mock

funeral to escape his creditors. (Laughter.) One of the earliest cases Lord St. Leonards had to decide when he came to this country as Lord Chancellor was an administration suit of a gentleman who was supposed to have died intestate. The case lasted several days. Witnesses had proved the man's death, but towards the close of the case a gentleman in court got up and asked permission to make a statement. Lord St. Leonards asked who dared to disturb the court? The gentleman replied, "My lord, I am the intestate." (Laughter.) That case still remains in the books, but there had been no decision yet on the point as to whether or not an intestate had a right to appear in his own behalf. (Continued laughter.) He would produce evidence for the jury to prove beyond all doubt that Thomas Kelly was still a living man.

Dr. Mackey, registrar of the district in which Kelly resides, gave evidence to the effect that Kelly's wife offered him £2 for a certificate of her husband's death, which, of course, he refused to give.

The Rev. Mr. Boland proved that Mrs. Kelly called on him, and insisted on getting a certificate of her marriage, which occurred 42 years ago, the object being to have it described in the certificate that she was a widow, and that her husband was now dead. He refused to give her the certificate.

Mrs. Donnelly, wife of an undertaker in Winetavern-street, stated that Mrs. Kelly and her son had purchased a coffin and breastplate, on which the name of the "deceased," the date of his death, and his age were inscribed.

A witness named O'Connell swore that he saw the supposed deceased alive a few weeks since at a place called Oldtown, in the County Meath.

Other witnesses also deposed to the fact that deceased was still alive.

Mr. Justice HARRISON, at this stage, said he felt bound to ask plaintiff's counsel whether they hoped to succeed, and if they intended to push the case further?

Mr. Teeling, after some consultation, said that having regard to the evidence which had been adduced, he thought it was hopeless to continue the proceedings.

The jury then found a verdict for Christopher Nowlan on all the issues raised.

#### THE CONVEYANCING AND LAW OF PROPERTY ACT, 1881. WHERE IT SHOULD BE ADOPTED, AND WHERE EXCLUDED.—XIII.

(Continued from page 192, ante.)

##### SETTLEMENT OF LAND ON MARRIAGE, THE CHILDREN TAKING AS TENANTS IN COMMON IN TAIL.

###### Introductory.

When Lord Cairns introduced into the House of Lords the Bills which became the Conveyancing Act, 1881, and the Solicitors' Remuneration Act, 1881, he also introduced a Settled Land Bill, one object of which was to shorten and simplify settlements. The Liberal Government, however, opposed the Settled Land Bill, which was accordingly dropped. It has this session been again introduced by Lord Cairns. For account of this Bill see *Law Times*, March 11, p. 390; and *Weekly Notes*, March 4, p. 7. Thus it was not intended that the Conveyancing Act should make any great changes in settlements of land; nevertheless settlements of real, as well as of personal, estate can often be considerably abbreviated by reliance upon the Act.

The first example that we shall take will be a marriage settlement. The more usual and approved method of settling land upon the children of a marriage is to convey the land to trustees for sale, and to settle the proceeds. This mode of settlement is described and discussed in our last article (*Law Times*, April 1, p. 382), but the present plan is sometimes adopted. For old forms see *Bythewood* vii. 399; *Barton* vii. 309, 457; *David*, iii. 1234; *Concise David*, 2nd edit. 225; *Key & Elphinstone*, 1150. For new form see *Conc. David*, 12th edit. 377.

*Recitals.*

Recitals of title and of agreement to settle should be avoided where reasonably practicable, lest a covenant for, or representation of, title should be implied (see *Law Times*, April 1, p. 383). But of course this is not in any way affected by the Act.

*The Limitations.*

The life estates of the husband and wife, and the powers of appointment to the children will be inserted as usual: (David. iii. 1236; Conc. David. 12th edit. 878).

The next limitation, "To the use of all the children of the said intended marriage, and the heirs of their respective bodies in equal shares as tenants in common," may now be abbreviated by virtue of sect. 51, and will run, "To the use of all the children of the said intended marriage as tenants in tail in common in equal shares."

*The Accruer Clause.*

Mr. M. G. Davidson (Conc. David. 12th edit. 379) omits the accruer clause, and instead, after the words "equal shares," adds "with cross-remainders between or among them."

Mr. Stephen, in the last edition of his Commentaries (book ii. pt. 1, c. 8, p. 351), states the law with regard to cross-remainders to be as follows: "In a deed they can be given only by express limitation, and shall never be implied; though it is otherwise with respect to wills, which are here again expounded more liberally, with a view to the presumable intent of the donor. Hence, in these cross-remainders may be raised not only by actual limitation, but by any expression from which the design to create them can reasonably be inferred."

No doubt this simple mode of dealing with accruing shares was valid in wills. For form in will see Hayes & Jarman, 8th edit. 190; Pridcaux, 11th edit. 498. But there is a great distinction between wills and deeds with regard to the creation of cross-remainders. It is laid down by the authorities that in deeds, when the limitations are legal, they can only be created by express words: (Butler's note to Co. Litt. 195 b; Leading Cases Conveyancing, 3rd edit. 658, see cases there cited. Compare Preston on Estates, i. 94, 115; Shepp. Touch. by Atherley, 8th edit. 442). So it has been held that cross-remainders can only be raised by proper words of limitation, and that plain intention is not sufficient: (*Doe v. Fequet v. Worsley*, 1 East, 416). In the last-mentioned case Lawrence, J., said that an express declaration "that there shall be cross-remainders," was insufficient in a deed; and so Pollock, C.B., stated, in *Doe v. Clift v. Birkhead* (4 Ex. 110, 124), that if the deed contained an express clause that in case one of two tenants in common in tail should die without heirs of the body, his moiety should go over to the other by way of cross-remainder in tail, the intention could not be carried into effect for want of the words "heirs of the body" connected with the gift over by way of cross-remainder, and that this could not be done by any words except the words "heirs of the body."

This strict rule arises from the fact that a cross-remainder in tail is an actual estate. Each child has a vested estate tail in his own original share, and also a vested estate tail in remainder expectant on the decease and failure of issue of every other child in a share (according to the number of children) of the share of every other child. Hence in limiting a cross-remainder as in limiting every other estate tail, the words "heirs of the body" were essential in a deed. The nature of cross-remainders will be found more fully explained in Williams on Settlements, 204; Elphinstone, 2nd. edit. 898.

We have now to consider whether any alteration has been made by the Act. It should be observed that sect. 51 of the Act never makes express mention of cross-remainders, but that it permits substitution of the words "in tail" for "heirs of the body," &c. It does not declare that any informal words which would

be efficacious in a will shall have like effect in a deed. But in the form of settlement given in Schedule IV. to the statute, it will be seen that this short mode of limitation of cross-remainders is employed. This does not distinctly affect the question, because sect. 57 only declares the sufficiency of the forms "in relation to the provisions of this Act," so that if these cross-remainders are not validated by sect. 51, they are not assisted by sect. 57. But it can hardly be doubted that the courts will hold this short mode sufficient. In *Doe v. Clift v. Birkhead* (4 Ex. 110) it was held that the intention of the deed prevailed to show what interests passed if only the deed contained the proper words of limitation. It should be noticed, therefore, that the words "in tail" are essential.

On the other hand, it may be objected that the short limitation "with cross-remainders in tail between or among them," is only equivalent to "with cross-remainders between or among them and the heirs of their bodies," and that this was not the usual form previously to the Act, and possibly is insufficient.

On the whole, as the Act contains no express sanction of this short mode of limitation, we should be inclined, for the present to limit them in the old way, with the exception of employing the words "in tail." The limitation will accordingly read thus: "To the use of all the children of the said intended marriage as tenants in tail in common in equal shares; and if and so often as any such child shall die without issue, then, as well as to his or her original share, as also as to the share or shares that shall have survived or accrued to him or her, or to the heirs of his or her body, to the use of the others of such children in tail as tenants in common in equal shares."

Of course, if one of the children has died leaving heirs of the body—when the issue of another child fails—the accruing share will pass to the heirs of the body of the deceased child. But the estate is correctly limited to the children in tail.

(To be continued.)

### THE PRESERVATION OF PARISH REGISTERS.

A Bill prepared and brought in by Mr. Boriase, Mr. Bryce, Mr. Cochrane Patriok, and Mr. Mellor, to make provision for the better preservation of ancient parochial registers, was published during the late week. In its present form it applies only to England and Wales, but it is a sign of the increased interest that is being manifested of late years by the nation in the matter of historical documents or records of the past. Would that such interest was manifested in Ireland long since, and many a valuable and interesting record would have been saved. During the civil wars in this country, and through the destruction of our ecclesiastical institutions, a very great number of records or MSS. perished, while comparatively few escaped. Some were hid or stowed away in places where they were forgotten till ruin overtook them; others were appropriated by the spoliators of our national monuments, and some were carried off by ecclesiastics to the Continent, and found their way into libraries, where they remained almost unknown and unconsulted till a quite recent date. Although mere parish registers are not of great public value in the passing century to which they belong, it is otherwise when a century or two have passed by. Then they become materials for the local historian, and their perusal reflects many side-lights of modes of thought and usages obtaining in the age to which they belong. Under the provisions of the bill alluded to every existing register which shall have been kept in any parish prior to the 1st of July, 1837, and every transcript thereof now existing in the registries of the various dioceses of England and Wales, shall, from and after the passing of this Act, be under the charge and control of the Master of the Rolls, on behalf of her Majesty, and shall be removed to the Record Office; and as regards all bishops' transcripts of a date prior to that above-mentioned, and such of the registers as

were made and entered prior to January 1st, 1818, the Master of the Rolls shall issue warrants to the several persons having the care of them, ordering such persons to allow the same to be removed from their present places of custody, and deposited in the Record Office. Such registers as were made and entered from January 1st, 1818, to June 30th, 1837, inclusive, shall remain, it is provided, in the custody of their present legal custodians for a period of twenty years from the passing of the Act, after that time to be transmitted to the Record Office. The provisions of this Act will apply to registers of baptisms, marriages, and burials of cathedral and collegiate churches, and chapels of colleges and hospitals, and the burial registers belonging thereto, and to the ministers officiating therein. The Act provides for the proper keeping and indexing of the registers, and fixes the fees for searching the same; with other provisions. The title of the Act is "The Parochial Registers Preservation Act, 1832."—*Irish Builder*.

#### TEXT-BOOK ADDENDA.

[From the *Law Journal*.]

*Buckley on the Companies Acts (3rd Edition)*, 353.

The holders of policies in mutual societies are not liable to contribute to the society's debts (*In re Great Britain Mutual Life Assurance Society*, 51 Law J. Rep. Chanc. 10)—C. A.

*Coote on Mortgage (4th Edition)*, 826.

The principle of *Hepkinson v. Roll* extends to a purchaser as well as to a subsequent mortgagee; and, where the security is for a debt and further advances, the vendor's lien for unpaid purchase money is not affected as against the purchaser by advances made after the contract of sale (*London and County Bank v. Ratcliffe*, 51 Law J. Rep. Chanc. 28)—H. L.

*Coote on Mortgage (4th Edition)*, 314.

A purchaser, with notice of deposit of title-deeds with a bank to secure a current account, is not bound to inquire whether fresh advances have been made by the bank on the security of the vendor's lien; the bank must give notice of such advances to the purchaser (*London and County Bank v. Ratcliffe*, 51 Law J. Rep. Chanc. 28)—H. L.

*Coote on Mortgage (4th Edition)*, 1,133.

The rule in Clayton's case applies in favour of the purchaser of property mortgaged to a bank, to secure a current account, where the bank has notice of the sale (*London and County Bank v. Ratcliffe*, 51 Law J. Rep. Chanc. 28)—H. L.

*Dart on Vendors and Purchasers (5th Edition)*, 169.

Affidavit by lessee that, to the best of his belief, the covenants had been performed, held *prima facie* evidence on purchase, although ejectment pending (*Ringer to Thompson*, 51 Law J. Rep. Chanc. 42).

#### BOOKS RECEIVED.

*Procedure on Elegit and Equitable Execution, with Forms.* By FREDERICK STONE, Solicitor, and Clement's Inn Prizeman. London: Richard Amer, Law Bookseller and Publisher, Lincoln's-inn Gate, Carey-street, W.C. 1882.

If the Conveyancing Bill, which is soon to come on in the Commons for second reading, passes into law in its present form, the occupation of perpetual commissioners for taking the acknowledgments of deeds by married women will be at an end. In view of the terms of the bill in question, solicitors will do well by not applying, just at the present time, for such a commission, the stamp on which is £1.—*Public Opinion*.

#### LAW STUDENTS' JOURNAL.

KING'S INNS.

EASTER TERM, 1882.

The following gentlemen have been admitted by the Benchers as Students of Law:—

Patrick James Nolan, Student, London University, third son of James Nolan, of the City of Limerick, Merchant.

Peter Maurice Staunton, Student, T.C.D., only son of Michael John Staunton, late of Ballysimon, in the County of Limerick, Esq., deceased.

John Edward Spread Morgan, LL.B., University of Dublin, only son of Edmond Moore Mulcahy, late of Garranlea, in the County of Tipperary, Esq., deceased.

John Wakely, Student, T.C.D., eldest son of John Wakely, of Ballyburly, Edenderry, in King's County, Esq., D.L.

James O'Donnell M'Laughlin, Student, Queen's College, Galway, fifth son of William M'Laughlin, of Drumfries, in the County of Donegal, Gentleman.

William Conlan, Student, T.C.D., eldest son of William Joseph Conlan, late of Ellerslie, Lancashire, Esq., deceased.

#### THE INCORPORATED LAW SOCIETY OF IRELAND.

FINAL EXAMINATION FOR APPRENTICES TO SOLICITORS, Pursuant to the Attorneys and Solicitors Act (Ireland), 1866.

DUBLIN, EASTER SITTINGS, 1882.

[Every answer is to be accompanied by reasons concisely stated.]

#### COMMON LAW.

1. What is the distinction between *express* and *implied* contracts? Give some instances of those of the latter description.

2. To what extent are common Carriers liable at Common Law for the safety of goods conveyed? How has this liability (as to Carriers by land) been modified by Statute?

3. To what extent does the maxim *Caveat emptor* prevail in reference to the goodness of that which is purchased? Refer to some of the leading cases upon this point.

4. If, while goods are in bailment, a third person should become possessed of them, and should wrongfully convert them to his own use, the right to recover possession will, in some degree, depend on the nature of the bailment. Explain and illustrate this proposition.

5. "There can be no such thing as an Estate for life in personal property." What apparent exception to the above rule has long been established? Explain the legal doctrine on the subject.

6. What is a "Patent." On what Statute may the modern law with respect to Patents be said to be founded?

7. To the validity of what contracts is a Deed essential? To the validity of what contracts is writing essential?

8. What is the difference in the provisions of the 4th and 17th sections of the Statute of Frauds, with regard to contracts falling within these sections.

9. Define a particular custom, and give instances of customs superseding the general law.

10. "A" being about to arrange with his creditors, offered a composition of 5s. in the pound. "B" a creditor refused to accept it unless A paid him £50, and gave him a Bill of Exchange for £100. The money being paid and the bill handed over, B executed the

Composition Deed. Could B recover the amount of the bill from A, or could A recover back the £50 from B?

11. State as accurately as you can in general terms, what will be the question for the jury in a case where the doctrine of contributory negligence is involved.

12. What are the rights of the Plaintiff in an action for breach of contract to deliver specific goods under the Mercantile Law Amendment Act?

#### REAL PROPERTY, EQUITY AND CONVEYANCING.

1. Give an account of the successive changes in the law as regards the right to devise lands by will.

2. State accurately the distinction between executed and executory trusts, and between trusts executory in marriage articles and trusts executory in wills.

3. Explain the distinction between a vested and contingent remainder; between a contingent remainder and an executory interest.

4. What is the distinction, and the reason of it, between the liability of a Trustee and an Executor who joins in the receipt for purchase-money, which is in fact received and misapplied by his Co-Trustee or Co-Executor?

5. If lands were given before the Statute *de donis* to a man and the heirs of his body, under what circumstances could he alienate these lands? Explain the operation and effect of that Statute.

6. On what principle is it that a Court of Equity will support a family compromise, although the parties may have misunderstood their position and mistaken their rights? What elements are essential to the validity of such a compromise?

7. Explain and illustrate the doctrine of *Election*. Does the same principle apply in the case of electing to take against, as in electing to take under the instrument?

8. Illustrate the doctrine that the Court will effectuate the general intention of the donor of a power, if the particular intention fail.

9. What Estate does "A" take under the following limitations, if contained in a Deed?

"To him and his heirs male."

"To him and the heirs of his body."

"To him and his seed."

"To him and the issue of his body."

"To him for ever."

"To him and his assigns for ever."

Is there any, and what, difference if contained in a will?

10. Give a short explanation of the former law of "forfeiture" and "escheat," and say what changes have been made by a recent Statute.

11. Terms of years may practically be considered as of two kinds. What are they? How were satisfied terms of years formerly kept on foot, and why was this done?

12. Draft a Mortgage of an Estate for life in freeholds, and a Policy of Assurance.

#### THE INCORPORATED LAW SOCIETY OF IRELAND.

MICHAELMAS SITTINGS, 1882.

#### FINAL EXAMINATION.

##### NOTICE.

Candidates wishing to present themselves at the above Examination must lodge their papers, &c., on or before the first day of Trinity Sittings, 1882.

By Order,

JOHN H. GODDARD, *Secretary.*

Solicitors' Hall, Four Courts, Dublin,  
25th April, 1882.

#### COURT PAPERS.

##### LAND JUDGES.

Sittings for next Week so far as same are appointed  
Before the Rt. Hon. JUDGE FLANAGAN.

##### MONDAY.

IN CHAMBER.—W. H. Scott, explain delay.—M. Corcoran, liberty to bring action.

IN COURT.—D. Luby, as to petition.—R. Bolton, payment by receiver.—W. Anketell, do.—D. Bingham, payment from Ist.—D. Carleton, do.—Assignees J. Cuneen, as to letting.—J. O'Callaghan, payment.

Before EXAMINER (Mr. Kennedy).

J. M'Manus, rental.—M. Watson, do.

##### TUESDAY.

IN COURT.—R. E. Fox, to appoint receiver.—A. Elliott, from 25th April.

##### THURSDAY.

IN COURT.—G. B. Low, receiver from 5th.

Before EXAMINER (Mr. Kennedy).

G. Jackson, rental.

Before the Rt. Hon. JUDGE ORMSBY.

##### MONDAY.

IN CHAMBER.—C. A. Carroll, repairing lease.—T. Manley, explain delay.

IN COURT.—Trustees Roche, final schedule.—Sir J. St. George, payment.

##### TUESDAY.

##### SALES IN COURT.

S. E. GOODWIN, - - - 1 lot.

##### WEDNESDAY.

Before EXAMINER (Mr. M'Donnell).

Administrator M. Montgomery, rental.—W. M'Kinlay, do.—F. R. Lambert, do. from 3rd.

##### THURSDAY.

IN COURT.—T. S. Nolan, final schedule.—T. Colclough, ditto.

##### FRIDAY.

Before EXAMINER (Mr. M'Donnell).

H. M. Meredyth, rental.—J. P. Taaffe, do.

#### COURT OF BANKRUPTCY.

##### ADJUDICATIONS IN BANKRUPTCY.

*The dates of Adjudications are first given. The Sittings follow in Italics.*

Hyland, Patrick Joseph, of Castlecomer, in the county of Kilkenny, draper. April 22; *Friday, May 19, and Tuesday, June 6.* Bennett Thompson, solr.

Kelly, John, of Ballycressane, in the county of Galway, commercial agent. April 18; *Friday, May 19, and Tuesday, June 6.* John L. and W. Scallan, solrs.

Newell, Pierce Barron, of Johnshill, in the county of Waterford, Esq. April 21; *Friday, May 19, and Tuesday, June 6.* Joseph W. Howard, solr.

# THE IRISH LAW TIMES AND SOLICITORS' JOURNAL.

VOL. XVI.

SATURDAY, MAY 13, 1882.

No. 798

## EQUITABLE MORTGAGES BY DEPOSIT OF TITLE DEEDS.—III.

It is not in Ireland alone that the doctrine of *Re Burke's Estate*, carrying such serious consequences, prevails. So far back as 1831, a similar decision was arrived at in England, under 7 Anne, c. 2: *Sumpter v. Cooper*, 2 B. & Ad. 223. That, too, was a case of parol equitable deposit, and Lord Tenterden said, "As to the statute of Anne, we think it cannot be held to apply to the case of an equitable mortgage: it refers only to the registration of deeds, and where there is merely a lien or equitable mortgage created by the deposit of deeds, there is no instrument to register." Yet, notwithstanding the words "conveyance" and "deeds" in the Act, equitable incumbrances, instruments not under seal, a memorandum of further charge, and agreements for a mortgage, have been held to require registration: *Moore v. Culverhouse*, 27 Beav. 639; *Neve v. Pennell*, 2 H. & M. 170, 33 L. J. Ch. 19; *Re Wight's Mortgage Trust*, L. R. 16 Eq. 41; *Credland v. Potter*, 18 ib. 350; *In re Hamilton's Estate*, 9 Ir. Ch. Rep. 512; and see *Mack v. Bayliss*, 31 L. J. Ch. 448; *Copland v. Davies*, L. R. 5 H. L. 358; *Brigham v. Morton*, 4 New Zea. Jur. N. S. 6. But, while *Russell v. Russell* (1 Bro. C. C. 269), the foundation on which the doctrine of equitable mortgages by deposit rests, was acted on by the House of Lords so recently as in *The London and County Bank v. Ratcliffe* (51 L. J. Ch. 28), so *Sumpter v. Cooper*, establishing one of the most startling consequences of that doctrine, was not only followed in this country by the late case of *Re Burke's Estate*, *inter alia*, as well as by Lord Hatherley in *Neve v. Pennell*, *ubi supra*, in England, but has there, too, been approved by Fry, J., so recently as January last, in *Kettlewell v. Watson* (which we find reported in the *Law Journal*, 51 Ch. 281), subsequent to the decision in *Re Burke's Estate*, which, however, was not referred to, while for that very reason *Kettlewell v. Watson* is the more remarkable as an authority on this question.

The Registration Act applying to Yorkshire requires the registration of every deed and will, and declares that an unregistered deed shall be deemed fraudulent and void; and it was this Act that was in question in *Kettlewell v. Watson*. "It has been said," observed Fry, J., "that whenever you are in a register county, and whenever you could evidence your lien or equitable mortgage by writing, you are bound so to do, and that, if you do not do so, you lose your lien or equitable mortgage as against every person who puts his deed on the register. I cannot come to any such conclusion. The Act is plain. It does not apply to interests in land which, I think very unfortunately, the courts of equity have allowed to be created without writing. It applies only in terms to deeds and wills. It has been held by parity of reasoning to apply to writings; but, more than fifty years ago, it was determined (*Sumpter v. Cooper*, 2 B. & Ad. 223) it did not apply to an equitable mortgage created by deposit. That case has, I believe, governed a very large number of transactions, and, as far as my knowledge and belief go, it has always been considered to be the law, and I find, in a text-book so much used as Mr. Dart's work on Vendors and Purchasers, the law is laid down as perfectly plain on the authority of that case. I, there-

fore, cannot shake what I believe to be the established law by any conclusion of my own as to what may be expedient." "The case, as I have observed, is one in which the registered conveyances of the defendants are asserted to give a good title as against a vendor's lien, which is not a registered title. It is not a case of two instruments both capable of registration. That must be borne in mind throughout the whole case." So, in *O'Connor v. Stephen's* (13 Ir. C. L. Rep. 63), Pigot, C.B., observed: "I think the 5th section of the Registry Act must be construed as only applying to a condition of things in which a conflict arises between two deeds, of which that which is to be postponed only by reason of the registry of the other, and which, but for that registry, must have priority, is capable of being registered, so as to have its priority maintained." And so, in *Re Stephen's Estate (ubi supra)*, Ormsby, J., said, "In my opinion the Registry Act is only applicable to a case in which there is a conflict between instruments capable of registration." Flanagan, J., also, whose decision was the subject of appeal in *Re Burke's Estate*, had acted on the same view, which was upheld by the Court of Appeal; but the appellate tribunal was rightly unable to concur with the view he took of the comparative equities of the parties, inducing him to decide in favour of the registered deed against the deposit, by reason of its being left open to another person to take a subsequent security, which could be and was registered. "In my opinion," said Sir E. Sullivan, M.R., "that view rests upon a fallacy; there is no such state of facts, no equity whatever to be raised or laid hold of; such a view as an abstract proposition would lead to this extraordinary result, that although registration being a creature of statute, and not applicable to a case of the kind, yet an equity is to be derived out of the law of registration, by reason of the fact that the man who took the security in the first instance took one which was not capable of being registered, but which the law allowed him to take, and gave him no means of registering. It is right to state that the case of *Phillips v. Phillips* (4 De G. F. & J. 208), in which Lord Westbury explains what constitutes a superior equity, was not cited before Judge Flanagan; and if it had been, I cannot but think he would have seen the fallacy upon which, in my opinion, this part of his judgment rests." And we shall but add that *Phillips v. Phillips* was, also, applied by Fry, J., in *Kettlewell v. Watson*.

"Whatever may be the ultimate decision in this case," remarked Fry, J., in commencing his judgment, "it is impossible to listen to it without great pain, because it exhibits in a very forcible manner the dangers to which purchasers of small plots of land are exposed;" and, as we have seen, he, too, like so many other judges, considered it unfortunate that the doctrine of equitable mortgages by deposit had ever been introduced. In New Zealand it has been enacted, by s. 42 of the Conveyancing Ordinance, 1842, that "no land shall be charged or affected by way of equitable mortgage or otherwise by reason of any deposit of title deeds relating thereto, whether or not such deposit shall be accompanied by a written memorandum of the intent with which the same shall have been made" (which, however, does not disentitle a pledgee to hold the deeds until payment: *Hare v. Tiffen*, 2 N. Z. Jur. N. S. 263). But, whatever may be thought to be the proper remedy

for the state of the law we have discussed, we think it unquestionable that, more than ever, as regards registration, in the words of Christian, L.J., in *Reilly v. Garnett*, "the law upon this point is now in an unsatisfactory condition."

#### THE PHOENIX PARK ASSASSINATIONS.

ANOTHER page in the annals of our time has been written in blood. A new policy of conciliation had been inaugurated; order and contentment, it had seemed, were about to resume their halcyon reign; the law was again to live in the land—and it was to be tempered with mercy. Lawlessness without mercy spurned the olive branch; and within seven hours after the arrival of the new Viceroy and Chief Secretary, while yet echoed the acclamations that greeted the heralds of a generous and trustful policy already harbingered by the opening of the prison doors, the knife of the assassin flashed in the fair light of a May evening, and the Chief Secretary and Under-Secretary for Ireland lay dead in the pleasure-ground of the citizens of Dublin, within view of the palace of the Viceroy.

No place in the whole broad expanse of the Phoenix Park could have been more aptly chosen by a conspiracy. Was it deliberately selected, or did chance alone ordain that there the gore of the murdered was to lie in indelible remembrance? This question seems to us of primary importance. If pre-selected (directly fronting, as it did, the Viceroyal Lodge), another demonstration is afforded that the crime was perpetrated, not from motives of private malice or revenge, but in consequence of some political instigation, or in order to avenge some political act, as, of course, the victims chosen would also indicate. Again, the purely fortuitous meeting of both the victims could hardly have been had in the contemplation of their ruthless slayers; and of the two it must have been the Under-Secretary, in every probability, whose life was more intentionally aimed at. Moreover, while such preselection would in itself prove the deliberacy of the atrocity, and the murder, if actuated politically, may probably be ascribed to the conspiracy of not a few, other preparations in connexion with the place should be supposed to have been made. Towards what would those preparations have been directed? Firstly, towards the consummation of the act, for which purpose spies (not only on the victims, but, perhaps, on the assassins) would have been posted, and assistance, if needed, would be rendered available near at hand; secondly, the escape of the murderers, for which purpose (in case flight otherwise became impossible) accessories might be posted in the adjoining thickets, so as to provide the means of changing dress, or by suffering their own arrest, or giving deceptive information, to turn aside pursuit; thirdly, the defeat of justice, for which purpose partisans might be posted about to receive and make away with the apparatus and other tangible evidence of the crime, and in order to bear false witness. Preparations of this description, if such were made by the conspirators, may have been actively ready for lengthened periods previously, and may have attracted some notice, more or less slight. A few days before the occurrence, a member of the bar, chancing to cross the roadway at the very spot and hour where and when the murder was accomplished, struck across the park grass and through the thicket adjoining the spot. In the thicket was sitting an elderly woman—if the sex may have been such—of a fierce and repulsive aspect; the hag did not speak, but turned her head aside, and placed her hand over her mouth—as if (it even then seemed to him) to avoid recognition. And some distance off was a young man (whom he did not

particularly notice), who moved still further away, and then stood, remaining still laired in the thicket, which is close to the roadway. It is only the after-event, of course, that could make one inquire who were they, and why were they there; but it is an actual fact that, so suspicious did the circumstance seem even then, and such was the involuntary antipathy and indefinable apprehension inspired in a beholder by no means timid on occasions of real danger, he vowed never again to risk such an encounter by passing beyond the public footpaths of the park. The matter may indeed be scarcely worth observation; but, it serves to illustrate that which we would impress. Inquiry should take a broader range; it should be assumed as highly probable that the identical scene of the murder was long pre-determined, and efforts towards detection should not be too exclusively devoted to the apprehension of the actual perpetrators; while now especially it behoves the authorities to beware of possible false witness.

An outrage so malignant that it has moved every civilised people to mingle in the cry for vengeance, has not failed to evoke a feeling of the utmost horror in the legal profession of this country—a feeling which we deeply share. On Monday last a meeting of the Judges was held for the purpose of considering whether it would not be becoming to adjourn the sittings of the respective courts in token of respect to the memories of the victims. And in the Court of Appeal, the Lord Chancellor said: "Before we resume business this morning it is right for me to say that we do so not without full appreciation of the circumstances in which we are placed. The Judges of the Supreme Court have met and considered whether we should all adjourn to-day in token of respect for those who have been foully murdered, and to mark our detestation of so atrocious a crime. It has, however, been thought that we shall best do this by steadily holding on in our course for the due administration of justice." On the same day, in consequence of the horrible event, the sittings of the Land Sub-Commission at Kilmainham was adjourned; and the Dublin Grand Jury, at the Quarter Sessions Court, delivered a presentment forcibly expressing their detestation of the diabolical crime. The meeting of the Law Students' Debating Society was, also, adjourned, as was that of the Associated Law Clerks on Tuesday; and elsewhere we report the proceedings at the meeting of the Incorporated Law Society, who adopted a strong resolution on the occasion. But, all outward demonstrations are still inadequate to express the universal sense of horror and detestation of an atrocity so savage and abnormal that it has been hitherto unexampled, unless it be by some butchery committed by that hideous Asiatic tribe which has bequeathed to our language their own name of Assassins.

#### THE NEW TREASURY REMEMBRANCER.

We understand that Mr. Robert W. Arbuthnot Holmes, M.A., has been appointed to the office of Treasury Remembrancer for Ireland. Mr. Holmes, who was called to the bar in Trinity Term, 1876, was secretary to Lord Chancellor Ball, and in April, 1880, was appointed Clerk of the Crown and Hanaper. Of his affable and courteous disposition everyone brought into contact with him has had pleasing experience, while the capacity he has already displayed augurs well for the future fulfilment of the duties of a position so important and responsible as that to which he has been now promoted.

We understand that a debate is commenced by the "Family Parliament" in the current issue of *Cassell's Family Magazine*, entitled, "Ought Trial by Jury to be Abolished?" in which the various arguments for and against the system are clearly set forth.

## A COURT OF CRIMINAL APPEAL.

The Lamson case has brought once more to the front the oft-mooted question of a Court of Criminal Appeal. In view of the persistent pressure which it is now the custom to bring to bear upon the Home Secretary on behalf of persons convicted on a capital charge, especially if the convict holds a so-called respectable position, the desirableness, if not the necessity, of some better method of determining whether a sentence of death should be carried out is becoming patent. Under the present system the Home Secretary is really a Court of Appeal to review the trial, and revise, if necessary, the sentences, in every case of murder; while there is a growing tendency to invoke his aid on behalf of those convicted of lesser crimes, especially if tried by county magistrates. Even now an appeal is permitted on questions of law—whether such and such an act constitutes embezzlement or larceny within the provisions of a statute, or an assault within the common law, or under the authority of decided cases, or the like—to the Court for Crown Cases Reserved. But though points of law, owing to the haphazard way in which the chief criminal statutes were passed, are unhappily too numerous, yet they are not very numerous even now. They serve mainly to get off on technical grounds some lucky or crafty criminal who richly deserves to be punished. With the passing of a criminal code such cases would almost disappear. Of the power of appeal which exists by proceedings in error on grounds of informality, it is enough to quote Lord Justice Holker's statement to the House of Commons, when he was Attorney-General, that "even the lawyers would, if they could only bring themselves to be perfectly honest, admit that the subject is almost a sealed book." Nor do these proceedings touch the real grievance, the want of an appeal on matters of fact, of which Sir John Holker said, on introducing the Criminal Code Bill in 1878: "At present, though a convicted person may get his conviction reversed on the ground of error in law, he has, in the great majority of cases, no remedy for mistake in fact; the jury may take an unduly adverse view of the evidence; they may consider circumstances which are really consistent with innocence strongly indicative of guilt; and they may, and perhaps not unfrequently (sometimes even in accordance with the view expressed by the presiding judge), come to a wrong verdict. . . . It is indeed startling to consider that at present, whereas a man who has been mulcted in £25 damages in a civil action can obtain a new trial if the verdict was against the weight of evidence, a man who is convicted of murder by an erroneous verdict, and consequently condemned to death, has no such remedy. He can appeal to the clemency of the Crown, and the Home Secretary, whose office it is to advise the Crown, does his best to investigate the matter and discover the error, if error there be; but he has not the proper means of doing so, for he cannot sift the evidence as it can be sifted in a public court; and even if he takes a view favourable to the condemned, the remission of the sentence, even if complete, which he advises her Majesty to make, does not wipe out the stain of conviction and the degradation—lifelong degradation—which is entailed thereby." He can, in fact, only grant a pardon for an offence which has not been committed, or lessen a sentence, because the evidence is not sufficient to convict of the full charge—a sufficient absurdity in either case. It may be perfectly true that, as Sergeant Ballantine says in his experience, a really innocent person is rarely convicted; but it undoubtedly does happen sometimes even on capital charges; and still oftener on lesser charges, when the amount of care and attention bestowed by every one concerned is less; while in one large class of cases, offences against women, all observers are agreed that the proportion of wrong convictions is considerable. It is only necessary to mention the cases of Edmund Galley and Habron on trials for murder, and of Clowes and Johnson for a lesser offence, to show that mistakes do occur, which in all probability would not have happened if there had been

a possibility of an open rehearing. On the other hand, the case of Dr Smethurst's pardon in 1859 is a remarkable instance of the absurdity of the present system of rehearing by the Home Secretary. It was a poisoning case, and after hearing scientific evidence on both sides, the jury convicted, but eventually, owing to the statement by Sir Benjamin Brodie, to whom the Home Secretary referred the matter, that a doubt existed in his mind a free pardon was given; so that, as Sir James Stephen put it, "the private opinion of a single eminent surgeon who might have been and was not called as a witness at the trial—who heard no witnesses, no counsel, no summing up—was allowed to overrule the verdict of a jury who had enjoyed all those advantages." The remedy appears to lie in allowing an appeal to a court of criminal appeal on questions of fact as well as law, as proposed by the Criminal Code, by way of a motion for a new trial on the ground that the verdict was against the weight of evidence. On appeal any new evidence might be brought forward and fairly sifted in open court; and the court would have power either to affirm the conviction, to order an acquittal, or to send the case back for a new trial, if necessary. No doubt the latter result is open in some degree to Sir James Stephen's objection, in his book on Criminal Law (published in 1863), that the case should go back to a second jury fore-determined by the judgment of the Appeal Court on the verdict of the first jury. But if the Appeal Court is given power to affirm or reverse the conviction, the case would only go back if further evidence had been discovered of sufficient importance to demand the judgment of a second jury. The experience of civil cases, notably *Smitherman v. The South-Eastern Railway Company*, shows that, notwithstanding the decision of a court above, the verdict of a second jury is by no means necessarily at variance with that of the first. However, as Sir James Stephen drew the Criminal Code, and was one of the commission which considered it in 1878, he may be taken to have given up the objections he entertained in 1863. The provisions for a new trial have been approved by Lord Blackburn, Lord Justice Lush, Lord Justice Holker, and are adopted both by Mr. Gorst and Mr. Hopwood, almost *verbatim* from the Code, in their Bills now before the House of Commons to amend the criminal law. Such a consensus of authorities ought to carry conviction that the proposed change is required.

But, as the Lord Chancellor pointed out to the House of Lords on Monday, there would still remain cases in which it might be desirable to exercise the prerogative of mercy on grounds of which a regular court of law could not take cognisance. It may be questioned whether such cases ought to occur, but, if they do, a useful provision was embodied in the Criminal Code which was originally suggested by Sir James Stephen, and has been adopted in Mr. Hopwood's, though not in Mr. Gorst's Bill. This is to give the Home Secretary power to refer the whole case to three judges nominated by him, who should "for this purpose not be bound by the ordinary legal rules, but may call for and receive such evidence as they may deem fit to enable them to decide." The adoption of this provision would relieve the Home Secretary of a very onerous responsibility, and substitute for a hearing *in camera* before a possibly incompetent tribunal a public trial before men accustomed to deal with evidence, and not subject to pressure from without.

As the giving an appeal in criminal cases is quite separable from reforms in the criminal code or criminal procedure in general, it will be a misfortune if another session passed by without the settlement of this very pressing and urgent question.—*Law Times*.

Mr. Morgan Butler Kavanagh, Seville Lodge, County Kilkenny, and 20, Merriou-square, Barrister-at-Law, has been appointed by the Lord Chancellor to the Commission of the Peace for the County Kilkenny.

The Chinese Government has just issued a handsome edition of the Code Napoleon in Chinese.

## DISTRESS AMENDMENT.

*A Bill to amend the Law of Distress.*

Whereas it is expedient to amend the law of distress and to provide, amongst other things, that live stock and agricultural and other machinery, not being the property of the tenant, should in certain cases be exempted from distress for rent in arrear:

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. *Short title.*—This Act may be cited for all purposes as "The Distress Amendment Act, 1882."

2. *Interpretation of terms.*—In this Act—

"Court of summary jurisdiction" means, as regards England, a court of summary jurisdiction as defined in section 50 of the Summary Jurisdiction Act, 1879, and, as regards Ireland, any justice of the peace, metropolitan police magistrate, stipendiary police magistrate, or other magistrate or officer, by whatever name called, who is capable of exercising jurisdiction in summary proceedings for the recovery of penalties.

3. *Live stock and agricultural and other machinery exempted from distress.*—From and after the passing of this Act the things hereinafter enumerated shall no longer be liable to distress for rent in arrear:

(a.) Live stock of all kinds whatsoever being the *bona fide* property of a person other than the tenant, and being on the land or premises of the tenant under a *bona fide* agreement with him for the agistment or feeding thereof, of which agreement notice in writing shall, within four days after the making thereof, have been given by the owner of such live stock to the landlord or his agent. Such notice shall contain a statement of the number of such live stock of each kind, and of the owner's marks thereon, and shall also state an address to which notices given by the landlord to such owner in pursuance of this Act may be sent; and if after such notice has been given by the owner, any alteration shall be made by exchange or otherwise in such live stock, a fresh notice shall forthwith be given as aforesaid stating such alteration and the number and marks of the new stock, if any, sent upon the land or premises of the tenant; and until such fresh notice has been sent to the landlord or his agent, the new stock so sent upon the said land or premises shall not be entitled to exemption from distress under this Act. The owner shall also give notice in writing to the landlord or his agent of any alteration in the address to which notices may be sent by the landlord under this Act:

(b.) Male stock of all kinds being the *bona fide* property of a person other than the tenant, and either hired by the tenant or in his temporary possession solely for purposes of breeding:

(c.) Agricultural machinery being the *bona fide* property of a person other than the tenant and being on the land or premises of the tenant under a *bona fide* agreement with him for the hire or use thereof by him in the conduct of his business, unless such machinery shall have been on the said land or premises for any period exceeding six calendar months, or unless such agreement shall be for any period exceeding six calendar months.

(d.) Machinery being the *bona fide* property of a person other than the tenant, and being on the land or premises of tenant under a *bona fide* agreement with him for the hire or use thereof by him in the way of his trade or handicraft, unless such machinery shall have been on the said land or premises for any period exceeding twelve calendar months, or unless such agreement shall be for any period exceeding twelve calendar months.

4. *Payment by owner of live stock to landlord of arrears of rent or removal of stock.*—In the case of live stock included under sub-sections (a) and (b) of section 3, it shall

be lawful for the landlord from time to time by notice in writing signed by him or his agent to the owner of the live stock, stating the amount of rent then in arrear from the tenant in respect of the said land or premises, to require such owner of live stock, within four days after delivery of such notice, to pay to such landlord or his agent the said amount, or to remove his live stock from the land or premises, within the said four days; and if within such period the arrears be not paid by the said owner, or his live stock removed from the said land or premises, the said stock shall not be entitled to exemption from distress under this Act.

Provided always, that it shall not be competent to the landlord to demand payment of an amount in excess of the rent which is actually in arrear and for which he might have distrained at the time of making such demand.

5. *Amount paid by owner recoverable from tenant.*—Any amount paid by the owner to the landlord or his agent in respect of arrears of rent as aforesaid may be by him deducted from or set off against any sum which is or may become due from him to the tenant in respect of agistment or feeding or hiring of such live stock, or may be recovered as a debt due to him from the tenant.

6. *Removal of stock determines owner's agreement with tenant.*—If in pursuance of such notice as aforesaid from the landlord the owner removes his live stock from the said land or premises, such removal shall be deemed and taken to be a legal determination of his agreement with the tenant for the agistment or feeding or hiring thereof, subject, however, to any rights or claims which may have arisen under the agreement before such determination thereof.

7. *Remedy if distress proceeded with.*—Where any distress has been levied upon any live stock or agricultural or other machinery exempted by this Act from distress, a court of summary jurisdiction may, on complaint made by the owner thereof, make against the person or persons levying or causing to be levied any such distress, and against the person or persons on whose behalf such distress is levied or any of them, a summary order for restoration of the live stock or things seized, or for payment of the real value thereof, and respecting costs, as to the court seems just; and any sum of money so ordered to be paid, whether as real value or costs, shall be a civil debt recoverable summarily.

8. *Appeal to Quarter Sessions.*—If any party thinks himself aggrieved by any order of adjudication of a court of summary jurisdiction under this Act, or by dismissal of his complaint by any such court, he may appeal therefrom, subject, as regards England, to the conditions and regulations contained in sect. 31 of the Summary Jurisdiction Act, 1879, and as regards Ireland, to the conditions and regulations following; (that is to say.)

(1.) The appeal shall be made to some court of general or quarter sessions for the county or place in which the cause of appeal arises, holden not less than fifteen days, and (unless adjourned by the Court of Appeal) not more than four months after the decision of the court of summary jurisdiction.

(2.) The appellant shall, within seven days after the cause of appeal has arisen, give notice in writing to the other party and to the court of summary jurisdiction of his intention to appeal, and the ground thereof.

(3.) The appellant shall immediately after such notice enter into a recognisance before a justice of the peace, with two sufficient sureties, conditioned personally to try such appeal, and to abide the judgment of the court thereon, and to pay such costs as may be awarded by the court, or give such other security, by deposit of money or otherwise, as the justice thinks fit to allow.

9. *Exclusion of certiorari.*—No order or conviction of a court of summary jurisdiction under this Act shall be quashed for want of form, or be removed by *certiorari* or otherwise into any superior court.

10. *Limitation of landlord's power to distrain.*—After the 31st Dec., 1882, no arrears of rent shall be recovered by



any distress, but within two years after the same shall have become due.

11. *Extent of Act*—This Act shall not extend to Scotland.

#### AGRICULTURAL HOLDINGS (LAW OF DISTRESS.)

*A Bill to Abolish the Law of Distress for the Rent of Agricultural Holdings.*

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same as follows:

1. *Landlord not to take distress for rent after 31st Dec., 1882.*—It shall not be lawful for any landlord or other person entitled heretofore to take distress for rent due in respect of any farm, market garden, or land used for agriculture or pasture, or partly for agriculture and partly for pasture, to take or cause to be taken any distress for rent due in respect of any such farm, market garden, or land used for agriculture or pasture, or partly for agriculture and partly for pasture, after the 31st day of Dec., 1882.

2. *Extension of Act*—This Act shall not extend to Scotland.

3. *Short title.*—This Act may be cited as "The Distress Act, 1882."

#### THE SETTLED LAND BILL.

In our article of last week upon this Bill we chiefly discussed the clauses which gave various powers to the tenant for life, or other limited owner, of settled land. We now proceed to consider the checks on his powers provided by the Bill, and the practical working of the whole Bill on both present and future settlements.

In paragraph 7 of the memorandum annexed to the Bill we are informed that "special protection is provided for the mansion house and park. In proper cases they may be sold, but not by the tenant for life alone; he must get the consent of the trustees, or an order of the court (clause 16)." Now the Bill applies, not only to land included in what are known to the public, as well as to the Profession, as "settlements," but also to land devised by will. Thus it applies to a devise of a few cottages to a widow for life and after her death to her children. We believe that the public do not understand this, otherwise the Bill would command much more attention. But the phrase "settled land" seems to suggest a Bill relating to large estates, and the reference to "mansion house and park," which is thus conspicuous in the memorandum, is not likely to guide them aright. On referring to clause 16 we find the protection is given to "the principal mansion house on any settled land, and any park or domain land usually occupied therewith. . . ." If we take "mansion house" in its legal sense of "dwelling-house," this clause protects, in such a devise as that which we have mentioned, the best cottage and its garden, at least if that was the home of the testator and his family. Now in many wills of this description a power of sale has been given, not to the tenant for life, but to trustees. But the Bill, by clause 56, appears to require that the consent of "tenant for life" shall be necessary to sale by the trustees, so that in such a case an additional difficulty in alienating has been created. This could hardly have been intended, and is probably due to a familiarity with large properties, rather than with the small holdings of the artisan and lower middle classes. Of course in settlements and wills, made after the Bill becomes law, details like some of those we have considered can easily be remedied by the draftsman, but the principal danger may be apprehended in the case of documents which have already been drawn, and of wills prepared without professional advice. Also no doubt difficulties will arise from persons acting on the letter of the will, or deed, under which they are interested, without being aware that this Bill annexes these

various powers to the estate of "tenant for life," notwithstanding the settlement or will (clause 56). Here then we should advise that the protection as to the "principal mansion house" should be withdrawn; or at least that it should be so worded as to apply only to houses of large value. Probably the simplest plan would be to say that when the consideration money exceeded £10,000 consent of trustees or court must be obtained, unless the "settlement" otherwise ordered.

The Bill properly protects the remainderman by requiring that, on a sale, the purchase money be paid either to the trustees or into court (clause 22); and gives powers of investment, which include numerous modes of application of the purchase money for the improvement of the settled land (clause 21). In one instance we find a difficulty. It may be applied "in discharge . . . of incumbrances affecting the inheritance of the settled land or other the whole estate the subject of the settlement . . ." (clause 21, ii.). We assume that the word "estate" is used in the technical sense, and as opposed to "the inheritance." Does this mean that if the settled land includes freeholds, and leaseholds which have (say) only twenty years to run, and which are subject to an incumbrance, the tenant for life may sell part of the freeholds and employ the purchase money in paying off the incumbrance on the leaseholds?

Another mode of application of purchase moneys is planting (clauses 21, iii., 25, ix.). This is done with the consent of the Land Commissioners (clause 26). When trees are once planted as an improvement under the Act the tenant for life and his successors cannot cut them down, or knowingly permit them to be cut down, except in proper thinning. This restriction may lead to some inconvenience, and there should be some power to remove it. Clause 30 enables "tenant for life and each of his successors in title" to enter on the land to execute any improvements authorised by the Act, and to get stone and cut timber for purposes connected with such improvements. Surely some express provision ought to be inserted for the protection of tenants.

Another question, of great importance with regard to the scope and effect of the Bill, arises with regard to settlements made by a conveyance of land upon trust for sale and settlement of the proceeds, with trusts of rents and profits until sale. Is such a settlement within the Bill? From clauses 2 (1) (5), 58 (ix.), we infer that it is, but it ought to be clearly stated in the second clause. If it is not, it affords a ready means of evasion; if it is, it leads to difficulties tending to fetter alienation. Clause 56 (2) declares that, where the settlement gives power of sale to trustees the consent of tenant for life shall be necessary, notwithstanding the settlement. If this clause does not apply to a "trust" for sale, we have the possibility of trustees and tenant for life making concurrent sales; if it does apply, we have the consent of tenant for life made necessary to the sale, and thus a new fetter placed on alienation. In some settlements this may be serious, as the position of "tenant for life" may be filled by persons in old age or abroad, or by several persons.

With regard to land belonging in fee to an infant the powers of clauses 59 and 60 seem together to clash with the powers of leasing which, it is believed, belong to his guardian under sect. 41 of the Conveyancing Act, combined with sects. 46 and 49 of the Settled Estates Act, 1877.

So far we have discussed rather the details of clauses than the principle of the Bill. It remains for us to consider how far it really gives that power of alienation which we believe the Legislature desires to give. We think it does not entirely succeed in this. It gives power to make certain dispositions only, instead of giving the limited owner a general power of disposition, and simply securing the consideration money when it partakes of the nature of capital. The partial protection given to the purchaser under clauses 46 (2) and 54 is insufficient.

The object of the Bill will fail if purchasers' legal advisers are to be in any way concerned as to the

propriety or regularity of the sale. Also there is a vagueness about the power to rescind contracts given to the court by clause 32 (3), which seems likely to cause difficulties, especially when read in connexion with clauses 44 and 45, which enable the trustees to make applications to the court respecting the exercise by the "tenant for life" of any of the powers of the Bill.

The Bill does not deal clearly with a case which is not at all unlikely to occur frequently: "Tenant for life" desires to sell land near a town, value, say £1,000. The sale will be perfectly fair as between vendor and purchaser, but if the land is retained for a few years it will, in all probability, fetch a very much higher price. What is the position of the purchaser (1) if the trustees promptly make application to the court; (2) if they do nothing, and some time afterwards, the remainderman applies? The tenant for life is declared to be a trustee for all parties entitled under the settlement (clause 53), and the purchaser of course has notice of this, and of the facts. We think that, if the trustees took action before fourteen days elapsed (clause 46), they would, if the sale was improper as regards the parties interested under the settlement, be able to prevent the sale, but if they let the fourteen days pass, and an actual contract be made, it is not quite clear. The best plan would be to declare sales or other transactions between "tenant for life" and "purchaser" shall, except in the case of bad faith on the part of the purchaser, be as valid as if the tenant for life were absolute owner. And though the provision of clause 46 requiring tenant for life to give fourteen days' notice to the trustees before any transaction should be retained, it should be definitely stated that if no application to the court is made within a specified time no question could be afterwards raised as to the propriety of the sale. The remainderman should have his remedies afterwards against tenant for life in damages.

Clause 42 purports to protect trustees from liability for abstaining to make applications and for not interfering with the sales or purchases of "tenant for life." It does not, however, state whether they are liable if they have probable reason to believe that the transaction is improper, or if they have express notice to that effect. This should be stated. In conclusion, then, we must express a hope that this Bill will pass, but that it should be carefully considered in committee and considerable amendments made.—*Law Times*.

#### TITLE OBTAINED IN MARKET OVERT

The case of *Walker v. Mathews*, reported in the *Law Journal Reports* for April, suggests some curious questions, arising out of the well-known rule of law that the property in stolen goods sold in market overt vests in the purchaser, subject, however, to the necessity of restoring the goods to their original owner should he succeed in prosecuting the thief to conviction. The interval between the sale in market overt and the conviction is a country not, as yet, surveyed and mapped, although its confines have several times been approached, as in the case just reported. A voyage of discovery within it is of interest, and not without some practical importance. But little imagination is required to suggest a series of questions which might arise. If the thing stolen were a barrel of oysters, could the buyer eat them? If it were a case of champagne—which, in London, might conceivably be sold in market overt—could he drink the wine? If it were a cow in calf, could he keep the calf and sell the milk? All these questions appear to turn on the consideration whether the right of property, although subject to be divested in certain events, is not absolute, so long as it lasts.

The newly reported case arose in such a way as to make it singularly ineffectual in deciding the main point. On June 7, 1880, two cows in calf were stolen from the plaintiff, and on the 11th of the same month they were sold in market overt to a cattle dealer, who sold them to the defendant. While in his possession, the cows calved and gave milk. On April 5, 1881, the thief was convicted and sentenced. Thereupon the

original owner of the cows sued the defendant for them in the Huntingdon County Court. The student of law will regret that the defendant, for reasons doubtless satisfactory to himself, did not thereupon raise the legal question so neatly presented, and take to the High Court the question whether the calves were not his. Instead of so doing, he, in a most disappointing manner, entered a counter-claim for the keep of the animals; and, when the County Court judge decided against him, took his counter-claim to the High Court. This was a sad playing into the hands of the enemy from the scientific point of view. The parts of the original owner and the purchaser thereupon became reversed, like the combatants in Macanlay's allegory who each turned into the other. We find the purchaser's counsel arguing that his client was a sort of bailee of the cows and the calves, and might even be sued for the milk. Had he claimed for his client the absolute property in the purchase until the conviction, the counter-claim would at once have been overthrown by the epigram that he was wanting to be paid for the keep of his own cattle. But legal science was avenged in the result. Mr. Justice Grove and Mr. Justice Lopes disallowed the counter-claim, thus maintaining so far as the decision went, the position that while it lasted the defendant's property was absolute. If the property in the stolen cattle vested by the sale absolutely in the purchaser, the milk and the calves would belong, upon the principle that all accretions go to the owner, not to the original owner, but to the defendant, who bought from the purchaser in market overt; but if a sale in market overt gives merely a right of possession, and only suspends the right of the original owner until the conviction of the thief, then, as the purchaser is not absolute owner, the increase of the stolen goods would belong to the plaintiff, whose goods were carried off by the thief.

By the common law a sale in market overt passed the property indefeasibly to the buyer; but this was found to be so inconvenient that the statute 21 Hen. VIII., c. 11, was passed. This Act provided that, upon the conviction of the thief, "the owner should be restored to his money, goods, and chattels." The terms of this provision are remarkable. The reader would expect the goods to be restored to the owner, rather than the owner to the goods. It is not impossible that the phrase was used advisedly. If so, it would tend to show that there was no intermediate property in the purchaser. His being "restored to his goods" sounds rather as if he were restored to his original position. But this Act was repealed by 7 & 8 Geo. IV., c. 27—a statute, in its turn, repealed by 24 & 25 Vict., c. 96, upon the words of which statute the matter now turns. Section 100 provides as follows: "If any person guilty of any such felony or misdemeanour, as is mentioned in this Act, in stealing, taking, obtaining, extorting, embezzling, converting, or disposing of, or in knowingly receiving any chattel, money, valuable security, or other property whatsoever, shall be indicted for such offence by or on behalf of the owner of the property, or his executor or administrator, and convicted thereof, in such case the property shall be restored to the owner or his representatives." The phrase, therefore, in the statute of Henry VIII. must now be taken to be merely clumsy or antique English, and the property is now, by the modern statute, to be restored to its owner. As, however, the previously existing rule as to market overt is left untouched, that rule is in full force until there is a conviction. It is not that the old rule is abrogated, and the possession of the goods restored on conviction, but that the old rule remains in force until a conviction, when the new rule operates. There is, we believe, no authority in the books controverting this position. In *Scattergood v. Sylvester*, 19 Law J. Rep. Q. B. 447, referred to by the defendant's counsel in the case under discussion, the plaintiff sued the defendant in trover for a cow and a calf and 200 gallons of milk, the cow while in calf having been stolen and sold to the defendant in market overt. But neither the calf nor the milk gave rise to the question before us. The calf, it is true, was born after the sale, and before the

conviction of the thief, but it took the law into its own hands and died directly after its birth; and the milk was all drawn from the cow after the date of the conviction. Judgment was given for the plaintiff; but the only question argued was, whether the statute of Geo. IV. (which is, in terms, similar to the more recent statute) did not make an order for restitution a condition precedent to the restoration of the cow; and the decision of the judges was on that point alone, it being impossible to argue that the plaintiff was entitled to anything in respect of the dead calf.

The case of *Lindsay v. Cundy*, 45 Law J. Rep. Q. B. 381, though reversed on appeal upon another point, decides, as was recognised by the late Lord Chief Justice in *Moyes v. Newington*, 48 Law J. Rep. Q. B. 125, that the time when the property reverts in the original owner is the date of the conviction of the thief, and does not relate back to the original wrongful taking; though this was not always thought to be so, as will be seen from Lord Kenyon's judgment in *Horwood v. Smith*, 2 T. R. 950. The effect of these decisions appears to be this, that it is possible for a man to be deprived by the wrongful act of another of the property in a chattel, and that though he may recover his right by the conviction of the thief, yet he will nevertheless have lost all claim from the time of its purchase in market overt until the conviction. This appears to be the only statutory limitation to the absolute right of property gained at common law by the man who buys in market overt. If this be a correct view of the law, it will follow that if there be produce in the interval it will belong to the purchaser—a right which may sometimes be a matter of serious consideration. A., let us say, owns a valuable shorthorn cow within three months of calving; B. steals her and sells her in market overt to C., who purchases her *bona fide* for £70. Six months afterwards B. is caught, tried, and convicted, and the right to the cow is again absolutely vested in A.; but the three months' old calf, having been born between the purchase and conviction, belongs to C., who thereby obtains an animal which may, perhaps, eventually turn out to be worth £500 or £600. Similarly it can hardly be doubted that, supposing C. had sold the calf previously to the date of the conviction of B., A. would have had no right against C., nor would C.'s purchaser have been able to make any claim against him, for he could make a good title to the animal; and the fact that the original owner can recover the cow, not by virtue of any revival of his previous right, but by the commencement of an entirely new title, cannot give him any claim to the calf which has come into existence while he was not clothed with a right of property in the cow. The result is, of course, not intentional; but anomalies like this occur frequently in a system of law which grows by legislation piled on common law, and further legislation upon that. It would have been better for the uniformity of the law in this, as in other instances, if the Legislature had gone to the root of the matter, and repealed altogether the doctrine of title by purchase in market overt. The doctrine itself offers facilities for the disposal of stolen goods, while the condition on which it has been modified—namely, that the owner shall convict the thief—throws on private persons a duty which properly belongs to the public.—*Law Journal*.

#### THE CONVEYANCING AND LAW OF PROPERTY ACT, 1881. WHERE IT SHOULD BE ADOPTED, AND WHERE EXCLUDED.—XIV.

(Continued from page 206, ante.)

##### SETTLEMENT OF LAND ON MARRIAGE, THE CHILDREN TAKING AS TENANTS IN COMMON IN TAIL.

*Provision for Management and Application of Rents and Profits during Minority.—Sect. 42.*

It will not be safe to rely upon the powers given by sect. 42; for that section applies only to "land" to which the infant is beneficially entitled; and although "land" includes an undivided share in land (sect. 2, ii.) it would not, in a case where one of the children entitled

under the settlement is an infant, and another or others of them of age, enable the trustees to exercise the powers of the section over the whole land. They might, however, join with the children who were of age in exercising those powers, sect. 42 (6), but that would not be a very convenient arrangement. Moreover, the power of the trustees does not extend to land, or to a share in land, to which an infant married woman is entitled.

The statutory power does not enable the trustees to open new mines, though they may work old ones. For form of power to work new mines see David. iii. 1126. This will of course seldom be needed. Messrs. Clerke and Brett observe (2nd ed. p. 155), that the power given by this section to fell timber is not extended to "other trees" as in sect. 19 (i. iv.). It, however, expressly includes "underwood," and will in most cases be found sufficient. As to ornamental timber, see David. iii. 229; *Baker v. Sebright* (41 L. T. Rep. N. S. 614; L. Rep. 13 Ch. Div. 179), and *Garth v. Cotton* (1 L. C. Eq. 697). As to what is timber, see Dart. V. & P. 138; Stephen's Comm. iii. 420; Williams on Settlements, 228.

The trustees' power to cut timber, &c., given by the Act does not exceed that which the infant would have possessed had he been of full age.

The statutory power (sect. 42, iv.) to apply the income (sect. 2, iii.) for the infant's benefit is amply sufficient, and expressly empowers payment to the "parent," which is a convenient provision not always found in the forms. But the accumulation clause requires some supplement.

It will be proper to declare trusts of the fund arising from accumulation of income where the infant dies before he or she becomes entitled. If no trusts are declared the accumulation would pass, apparently, to the personal representatives of the infant, sect. 42 (5, iii.). This would be unsatisfactory, as administration would have to be taken out. A form of supplement will be found in Conc. David. 12th edit. 380. (In future we shall refer to this edition unless we state otherwise). This form declares, in effect, that the powers of management conferred by sect. 42 shall be exercisable by the trustees; and that accumulations of income, in case the person being tenant in tail by purchase under the settlement dies while an infant, and being a woman without ever having been married, shall be held on the same trusts as the produce of sales under the power of sale.

It will be seen that this form does not in any way attempt to overcome the difficulty as to management when some of the children are of age and others infants, or when one of them is a female infant and yet married. Compare also the form in *Prideaux*, 11th edit. ii. 309.

Yet it does not seem necessary to insert the old full form, and entirely to ignore the statute. The following form is suggested as supplementing the deficiencies of the Act:

"It is hereby declared that the trustees or trustee hereof are hereby appointed to exercise the powers of sect. 42 of the Conveyancing and Law of Property Act, 1881, and further that the said trustees or trustee shall have the powers of management conferred by the said section with respect to the entirety of the said premises, so long as any child of the said intended marriage shall be an infant, as though the entirety of the said premises were vested in infants, notwithstanding some other child or children of the said intended marriage shall have attained twenty-one, or being female have married under that age; but the said trustees or trustee shall pay to such of the children of the said intended marriage as shall for the time being have attained twenty-one his, her, or their share or respective shares out of the net rents and profits."

"And it is also hereby declared that in case any child of the said intended marriage dies during infancy, and if a woman without having married, the accumulated fund referred to in sect. 42 (5) (iii.) of the said Act shall be held upon the trusts, and subject to the powers and provisions applicable to the moneys arising from the

power of sale hereinbefore contained, and the investments thereof."

It should not be forgotten that the powers of the section extend during the entire existence of the entail; they are not limited to the lifetime of tenants in tail by purchase, as in the common form, except the trust for accumulation, sect. 42 (5, iii.).

Before the Act such a wide power would probably have been invalid.

For old form before the Act, see David. iii. 999.

#### *Power of Leasing.*

By sect. 46 of the Settled Estates Act, 1877 (40 & 41 Vict., c. 18), the tenants for life have power to grant a lease for twenty-one years of any of the land comprised in the settlement, "except the principal mansion house and the demesnes thereof, and other lands usually occupied therewith." This exception will often be found inconvenient. It is usually the best plan to give an express power of leasing to the tenants for life, as well as to the trustees during the minority of any of the children, and to let the power extend to all the land in settlement.

Previous to the Conveyancing Act, it is probable that the guardians of the children, if left infants at the death of the tenants for life, would have had power to lease for twenty-one years without any application to the court, by virtue of the combined operation of sects. 46, 49, of the Settled Estates Act, 1877. But it has been doubted whether sect. 42, giving power to the trustees to take possession of and to manage the land, does not prevent the infant from being a person entitled within the meaning of sect. 41 of the Settled Estates Act, and therefore deprives the guardians of the power of leasing: (see Conc. David. 454).

It certainly cannot have been the intention of the framers of the Conveyancing Act to take away the power from the guardians, as they have not given it by sect. 42 to the trustees, and the whole scope of the Act shows an intention that, as far as possible, all land shall be capable of being leased (see sects. 18, 41). But, however this may be, an express power should always be inserted. For forms of power to lease for twenty-one years, see Conc. David. 383; Wolst. & T. 143; Pridaux, 311. Where a power to grant building or mining leases is desired, it should in every case be inserted to save the expense of application to the court under the Settled Estates Act.

#### *Power of Sale and Exchange.—Sect. 35.*

It should be noticed that the statute does not supply a power of sale and exchange if nothing is said in the settlement. But by 23 & 24 Vict., c. 145 (Lord Cranworth's Act, Part I.), where a settlement expressly declares that trustees shall have a power of sale and exchange, various subsidiary powers and provisions are annexed, so as to enable the trustees to exercise the power in a satisfactory manner. And the powers of Lord Cranworth's Act are somewhat enlarged by sect. 85 of the Conveyancing Act. The earlier statutory provision is fully discussed in David. iii. 560, 1014; and Sugden on Powers, 8th edit. 878; Lewin, 6th edit. 883, &c. It is not repealed by the Conveyancing Act, although other portions of Lord Cranworth's Act are repealed by sect. 71 of the recent statute.

For form declaring that the trustees shall have a power of sale and exchange, and thus incorporating the statutory powers, see Conc. David. 389, and compare form previous to the recent Act in David. iii. 1014, note. It will usually be well to declare that the power shall be exercisable with the consent of the husband, if he is the settlor, during his life, and then of the wife during her life, and afterwards at the discretion of the trustees. See, however, 23 & 24 Vict., c. 145, s. 10.

It is clear that in simple settlements of the description before us it will be quite safe, when the land comprised in the settlement is freehold, to rely on the statutory powers incorporated in the manner indicated: (Conc. David. 66, 883).

Indeed, this was often done even before the extended

powers given by the recent Act: (David. iii. 569; compare Pridaux, ii. 204; and Elphinstone, 412).

It may be noticed that 23 & 24 Vict., c. 145, s. 5, and the Conveyancing Act, s. 85 (1), enable the trustees on a sale to deal with incumbrances and charges.

It is usually considered that the earlier Act applies to leaseholds (David. iii. 560); the later one obviously does so (see definition of "property," sect. 2, i.). On the other hand, sect. 85 of the Conveyancing Act applies to sales only and not to exchanges, while the former Act applies to both. But this is of little consequence.

The earlier Act gives no power to the trustees to expend any part of the purchase money in the enfranchisement of copyholds (David. iii. 566), or in renewing copyholds for lives (Ibid. 668), nor, apparently, does it enable them in the case of a manor being comprised in the settlement to buy up the copyholders' interests, also it gives them no power to dispose of land with a reservation of minerals. The Confirmation of Sales Act (25 & 26 Vict., c. 108), which gave retrospective validity to sales from which minerals were excepted, does indeed enable the trustees in future settlements to sell with a reservation of minerals, but the sanction of the court is necessary under that Act. See also Settled Estates Act, 1877, sect. 19; and Seton, 1259.

It was therefore usual, in appropriate cases, to insert, in settlements, a power to sell minerals and easements apart from the surface: (Dart. V. & P. 69; David. iii. 579; for forms see David. iii. 1019; Lewin, 382, note). It will be advisable to retain this provision where it would have been used before the new Act, notwithstanding that sect. 85 (1) permits the sale of "any part of the property," and the wide definition of "property" contained in sect. 2 (i.). In the same way, if ever required, a power to sell the estate apart from the timber (where the tenant for life is without impeachment of waste) should be inserted. See Dart. 68; David. iii. 295; Lewin, 382; Williams on Settlements, 232; and compare 22 & 23 Vict., c. 85, s. 13. For form of power to trustees to cut timber, see David. iii. 1159; but this will often be sufficiently supplied by sect. 42 (2).

It should be noticed that the statutory powers are not entirely satisfactory in the case of property comprising either a manor with copyholds held thereof, or copyholds themselves.

For forms of powers of sale and exchange independent of the statutes, see Conc. David. 383; David. iii. 1011, 1212; Pridaux, ii. 316.

(To be continued.)

### THE INCORPORATED LAW SOCIETY OF IRELAND.

The general half-yearly meeting of this Society was held, on Tuesday, in the Solicitors' Hall, Four Courts—

Mr. HENRY J. P. WEST, President, in the chair.

The following gentlemen were present:—

Messrs. James Atkinson, Thomas R. Bailie Gage, Arthur L. Barlee, Frank W. R. Browne, Wm. Croker, Francis R. M. Crozier, C. H. Dillon, Henry T. Dix, John B. Eaton, Wm. Flindlater, M.P.; Thomas C. Franka, H. B. Falkiner, John Galloway, Hanbury C. Geoghegan, Frederick Gifford, Keith H. Hallows, J. T. Hamerton, Townley B. C. Hardman, Wm. Milward Jones, M. Larkin, Robert O. Longfield, Richard A. Macnamara, Henry F. Martley, Jehu Mathewa, Patrick Maxwell, Henry S. Mecreedy, Thomas B. Middleton, Henry C. Nelson, John Noble, John H. Nunn, Thomas F. O'Connell, Michael P. G. O'Meara, Richard H. M. Orpen, Frederick R. Finn, Wm. Rees, R. S. Reeves, Archibald H. Robinson, jun.; Wm. B. Stanley, C. G. Stanwell, Edward F. Stapleton, Shapland M. Tandy, Archibald Tisdall, Henry A. Dillon, and Patrick K. Whyte.

Mr. JOHN H. GODDARD (Secretary) having read the notice summoning the meeting,

The CHAIRMAN said—Gentlemen, there would have been abundant reasons for adjournment, and in all probability, owing to the terrible and calamitous event which has taken place in this city, we should have proposed to you that this meeting to-day should have been adjourned, were it not for the fact that the business is of a purely formal nature. However, a resolution on the subject will be submitted to you after

the formal portion has concluded. It is my duty to formally submit to you the names of the gentlemen for election as Auditors of this Society's accounts, pursuant to the 28th general rule—viz., Messrs. George Hill Major, John Weldon, Joseph Galloway, John C. Smith, and George C. Stapleton. It is also my duty to submit to you the names of the following gentlemen to act as scrutineers of ballot for Council of the Society, to be held on the 21st November, 1882—Messrs. John Weldon, Joseph Burke, George Wm. Shannon, Abraham Belas, and Robert K. Clay.

The resolutions were unanimously adopted.

Mr. EDWARD T. STAPLETON, Vice-President, then moved as follows:—

“Resolved—That we desire to record our sentiments of horror and detestation at the recent murder of the Chief Secretary and Under-Secretary, by which shame and disgrace have been cast upon our country, and to express our earnest hope that the perpetrators of that brutal and dastardly outrage may speedily be brought to justice. And we desire also to express our respectful sympathy with the bereaved relatives of the unfortunate victims.”

He said it was with very great pain and regret he had to propose this resolution, which not only expressed the unanimous feeling of their profession, but also that of the public at large. It would not require any words of his to commend it to them. He was sure they all sympathised with those who had suffered, and deplored the frightful and horrible murder which had lately taken place in their city.

Mr. CHARLES H. DILLON said he begged to second the resolution. He did not think any words of his were required to cause the resolution to be adopted by them, as it fully expressed their feelings on the matter.

Mr. HENRY T. DIX supported the resolution, and said he would have been inclined to give a silent vote on this question, as no person could but sympathise with the subject of the resolution. They had been all aghast at the terrible announcement received on Saturday evening, and the whole city had been in a state of horror ever since. He felt that it scarcely represented his own feelings on the matter. It appeared to his mind that this fearful murder seemed to be the climax of several other frightful crimes committed in their land. His sympathy and abhorrence were not confined to the case of those gentlemen killed on Saturday. He also felt the same horror and detestation of the series of crimes of which this seemed to be the climax. He also condemned the barbarous butchery and murder on the hillside, and the brutal murder of an innocent lady, who had been assassinated in the same way. He also desired that they should express their sympathy and abhorrence of the frightful crimes which had been committed, of which they had had so many instances during the past twelve months.

The CHAIRMAN said he was sure all agreed with Mr. Dix in his remarks upon the transactions.

The resolution then passed, and the meeting terminated.

#### THE LAW OF TREASON.

Remote as may be all chances of general political disturbance or disaffection at the present day, public attention has been rightly called by one of the magazines to the eccentricities displayed by that branch of our law which relates to treason. No statutes cry for codification more emphatically than those treating of this important crime. There are now in force two totally distinct sets of enactments, both of them dealing for the most part with precisely the same offences. There is, first, the old law of high treason, originally enacted in 1350 (25 Edw. 3, stat. 5, c. 2), and, after some fifty years of abeyance—from 1795 to 1848—revived by an Act of the present reign, together with all the judicial interpretations of constructive treason and the like, so familiar to the readers of Hallam. There is,

secondly, the modern legislation of 1848 (11 & 12 Vict., c. 12), whereby the new crime of treason-felony was created and defined. In this Act are enumerated most of the offences known as treason under the old law, but the penalty attached to them is mitigated, penal servitude being substituted for death. Practically, therefore, a particular group of offences against the State is dealt with twice over in the Statute-book, and in many cases it is optional whether a crime be treated as treason or as treason-felony, although the punishment and mode of procedure differ in the two cases. Such an arrangement can scarcely be called scientific or artistic. But further, there are all the subtle distinctions and intricate details of constructive treason, as laid down in the course of five centuries, to be unravelled and digested; and to decide which of them would be recognised and acted upon at the present time is a task requiring the utmost care and discrimination.—*Law Times*.

#### CONSTRUCTIVE SELF-DEFENCE.

B. may be killed by A.—

I. To save A.'s life.

II. To save the life of A.'s wife, husband, child, parent, master, or servant.

III. To save the life of a stranger.

IV. To save the life of A.'s brother, sister, or other collateral relative.

Justification in the first and second cases, grows out of the right of self-defence; in the third, it rests upon the ground of public duty; but how is the killing justified in the fourth instance?

It is not a little singular that a person should be allowed by law to defend the life of a servant upon a more liberal principle than that of a brother or sister, and yet this seems to be the settled doctrine.

Homicide in self-defence takes place when a man, in defence of his person, habitation or property, kills another who manifestly intends and endeavours by violence or surprise, to commit a forcible or atrocious felony upon either; and “under this excuse of self-defence, the principal civil and domestic relations are comprehended; therefore master and servant, parent and child, husband and wife, killing an assailant in the necessary defence of each, respectively, are excused, the act of the relation being construed the same as the act of the party himself.” 4 Bl. Com. 186; 1 Hale, P. C. 484. Neither brother nor sister is mentioned here, nor in any other statement of the doctrine that I have seen, except a single instance to be noticed presently. But are we, therefore, to conclude that collateral relations have no right of mutual assistance and protection, even in cases of imminent personal danger?

This question will be now considered.

It is said to be the duty of every citizen to prevent the commission of a felony actually occurring in his presence, by promptly arresting the offender; and if the felony be attempted with violence and with evident and imminent peril to the life of another, the felon may be lawfully killed. And it is laid down by Hale, that “if A., B. and C. be of a company and walking together in a field, C. assaults B. who flies, C. pursues him and is in danger to kill him, unless present help, A. thereupon kills C., in defence of the life of B., this occasion of C. by A. is in nature *se defendendo*. But then it must appear that the imminent danger of the life of B. be apparent and evident. And the reason seems to be because every man is bound to use all possible means to prevent a felony as well as to take the felon.” 1 Hale, P. C. 484. Therefore if A. may lawfully kill the assailant of his brother or sister, he is justified not upon the ground of the relationship, but because of the duty he owes to the public.

But practically does it make any difference whether we refer the justification to either the one or the other of these two grounds? For if a parent or master may lawfully slay an assailant only in the necessary defence of a child or servant, how does the supposed privilege of relationship differ in effect from the duty which the

law in such a case would impose upon the parent or master, if the person assaulted were not a child or servant? Would a parent be justified in killing another to save the life of a child, under circumstances of less urgent peril, than would excuse such killing to save the life of a stranger? In all these cases, the danger must be imminent and evident, whether the homicide be in self-defence or to prevent a felony, and if there be no such pressing and apparent danger, the killing would not be excusable.

Still there is a marked diversity between the two classes of cases, and it arises from the different principles upon which they are founded. "It is laid down by writers on this subject," says Mr. Davis, "that in those cases in which the party whose person or property is attacked, might himself justify homicide committed in its defence, any person present may lawfully interpose to prevent the crime; and if death ensue, the party so interposing will be justified. No difference is said to exist in this respect between the authority of the person assaulted and those who come to his aid. The ground of justification, however, is not the same in the latter as in the former case. In the former case it is the natural right of self-defence; in the latter the alleged right and duty of all persons to prevent the felony about to be committed. And as the latter ground does not appear to be as well established as the former, nor entitled to as much indulgence, it is proper that it should be more cautiously acted upon." Davis Cr. L. 71, 72.

Let us now inquire what persons are included within the principle of constructive self-defence and thus entitled to the greater indulgence, which Mr. Davis very properly claims for them.

Hale, Blackstone and other writers, as we have seen, expressly mention master and servant, husband and wife, parent and child, but no others. Hale does indeed intimate an extension of the principle to a person standing in the relation of a friend or even a companion, but he takes care to accompany the statement with a doubt, "Therefore," he says, "if B. and C. be at strife, A., a bystander, is to use all lawful means that he may, without hazard to himself, to part them, and the very relation of acquaintance and mutual society between A. B. and C." (previously supposed to be together in a field) "seems to excuse the fact of A., in the necessary safeguard of the life of B., from the crime of simple homicide, *tamen quere.*"

Mr. Bishop states the law as follows:—"The general doctrine here is that whatever one may do for himself he may do for another. The common case indeed is when a father, son, brother, husband, servant, or the like, protects by the stronger arm the feebler." 2 Bish. Cr. L. 877 (6th ed.).

Is a brother included? I have examined every authority cited by the learned author, and not one of them sustains him on this point.

In *Rez v. Bourne*, 5 C. & P. 120, the defendant was fighting with his brother, and stabbed Lightfoot who interposed to stop the combat. Mr. Bishop was evidently misled by a too hurried glance at the syllabus in this case.

*Stoneman's case*, 25 Gratt. 877, did not present the question. Judge Staples said:—"The excuse given by the prisoner for the homicide is that the deceased had threatened to kill members of the family and burn the house, and the prisoner feared he was there for that purpose. . . . At the time of the shooting the deceased was sitting quietly in the bushes, unarmed, unresisting, not only making no attack or demonstration of a hostile character, but so situated as to be incapable of making it had he desired."

*Pond v. The People*, 8 Mich. 150, was a homicide in defence of one's self and his servant. The Court said: "The only variety of excusable homicide (as contradistinguished from justifiable homicide at common law) which we need advert to, is that which is technically termed homicide *se aut sua defendendo*, and which embraces the defence of one's own life or that of his family or dependents within those relations, where the

law permits the defence of the others as of one's self. . . . A man may defend his family, his servants, or his master, whenever he may defend himself. How much further this mutual right extends it is unnecessary in this case to consider. 4 Bl. Com. 184.

*Staten v. The State*, 30 Miss. 619, was a killing in defence of a wife, and the statute of Mississippi expressly limited the principle to husband and wife, parent and child, master and servant.

*United States v. Wiltberger*, 3 Wash. C. C. 515, was strictly a case of self-defence. Washington, J., said: "As to this the law is that a man may oppose force to force in defence of his person, his family or property against one who manifestly endeavours by surprise or violence to commit a felony, as murder, robbery, or the like."

In *Sharp v. The State*, 19 Ohio, 379, a father wantonly made an assault on another, and the son, coming to the aid of the father, was held, under the circumstances, not to be justified on the ground of the relationship.

In *Patten v. The People*, 18 Mich. 814, the accused was living with his parents, and killed one of a number of rioters who had assembled about the dwelling, and were so acting, it was claimed, as to endanger the life of the mother who was in delicate health.

In *Parker v. The State*, 31 Tex. 182, the prisoner, a negro, shot Green for beating a woman with whom Parker was living in a state of illicit cohabitation.

*Dupree v. The State*, 33 Ala. 380, was a case of alleged self-defence, and the homicide was sought to be justified upon the ground of threats against the prisoner.

In *Bristow's case*, 15 Gratt. 624, the accused inflicted a mortal wound on the deceased, who was engaged at the time in a fight with Bristow's father, and a conviction was sustained by reason of evidence which showed malice in the son.

In *Rez v. Harrington*, 10 Cox, C. C. 870, a father inflicted a fatal blow on the husband of his daughter, on seeing her violently beaten by him.

It thus appears that Mr. Bishop is mistaken, if he has no other foundation for the statement under consideration than the authorities here presented; and doubtless no such authority can be produced. The indulgence of the law in allowing the doctrine of constructive self-defence is a concession to the infirmity, or rather to the strength of human feelings, and is wisely limited, with one exception, to those relationships which constitute the closest ties of mutual duty and affection. A line must be drawn somewhere, though a brother be excluded, and a servant admitted. For if a brother might claim this privilege, so might any other collateral relative, and then an intimate friend, and then a bare acquaintance or a casual companion, and the consequence would be that what was intended primarily for indulgence would too often become license, and the violence of unrestrained passion would be invoked to palliate what forbearance and self-control, with little effort, might avoid.

What the law prescribes, however, is one thing; what a verdict will be, is quite another; and, therefore, it may very reasonably be hoped that a jury would find out some way by which a person on trial for slaying the murderous assailant of his brother, would get the benefit of all the indulgence that could be afforded by the doctrine of constructive self-defence.—SAMUEL D. DAVIES, Richmond College, Va., Dec., 1881.

In connexion with Prof. Davies' article on Constructive Self-defence, *ante*, 187, attention is called to *Ross v. State*, 10 Tex. Ct. App. 455, holding that one may justify resistance to an unlawful arrest of his brother, opposing force to force, to any necessary extent, even to killing. The Court say:—"As to the right of Alonzo Ross to act in the protection of the life, liberty, and property of his brother William, there can be no question." The question was more carefully examined in *Alfred v. State*, 8 id. 545, where the Court, referring to *Tooley's case*, 2 Ld. Ryam. 1296, holding that killing in resistance to unlawful arrest is manslaughter, say that the "case has received much adverse criticism, notably

from Foster, in his Discourses; but these criticisms relate chiefly to the power of interference by entire strangers in behalf of a prisoner already in confinement, and concede the lawfulness of such interference by a fellow-servant, friend, or brother of the prisoner incarcerated." It must be noted, however, that the Texas Criminal Code provides that resistance may be made "either by the person about to be injured, or by some person in his behalf."—*Albany Law Journal*.

#### WOMAN BEATERS.

It must be admitted that the ill-treatment of women, now so rife in many parts of the country, demands some drastic remedy, but it is highly improbable that the measure introduced by Mr. T. D. Sullivan, and three other Irish members, for this purpose, will be accepted in its integrity. The opening clauses indeed reascitate a punishment so obsolete and impracticable, that some doubt will be felt whether the authors of the Bill are in earnest in proposing it. They would provide that any male of the age of fifteen or upwards, convicted of unlawfully beating or wounding any female, may be exposed for a period not exceeding four hours in a public pillory, or some similar contrivance. This erection is to be set up in some place of public resort, and over the offender's head is to be exhibited in large letters his name, and the words "woman-beater" or "wife-beater." It is needless at the present day to recapitulate the objections to which the public exposure of delinquents is liable, or the inefficacy of all punishments whose principal effect is ignominy and disgrace. The subject, it is well known, was fully ventilated some fifty years ago, and the result is to be seen in the statute of 1837 (1 Vict., c. 23), whereby the pillory was formally abolished. The similar forms of punishment, such as the French *carcan*, once in vogue in other European countries, have also, it is believed, been long since universally withdrawn. Upon the remaining provision of the Bill, however, a more favourable judgment may be pronounced. On conviction of a second offence within three years, the offender is to be once, twice, or thrice, privately whipped, as the court may direct, provided only that the number of strokes on each occasion shall not exceed fifty. With the purport of this provision we entirely concur. For violent assaults of all kinds no more appropriate remedy can be devised than the corporeal punishment of the delinquent; and especially in this case, where, as in woman-beating, cowardice is combined with violence. We believe, moreover, that similar measures have been adopted with most beneficial results in more than one of the United States. We fail, however, to see sufficient reason for reserving this punishment until the second offence; nor do we understand why Scotland and Ireland should be excluded from the Act. If conjugal disagreements are unknown in those countries, the operation of the Act will not affect them; but if it is otherwise, surely bad specimens of Scotch and Irish husbands deserve suppression as much as any others.—*Law Times*.

#### A REVISED STATUTE.

We read in the Revised Statutes of Manitoba, c. 8, s. 97, the following interesting enactment: "Any person using *obscure* language, or being disorderly, or being drunk while on any of the public ferries, shall incur a penalty for each offence not exceeding five dollars, on the complaint of any person within three months from the committing of the offence, and the penalty shall be paid to the use of the Crown." It is a little difficult to understand why obscure language on a public ferry should be regarded as any more culpable than obscure language off a public ferry. However, this may be the result of a compromise. It is, of course, very gratifying to know that in a new country generally supposed to contain many characters of questionable respectability, there is no necessity to provide against the use of *obscure* language, so common, unhappily, under like circumstances in other countries.—*Canada Law Journal*.

#### MISREPRESENTATIONS LEADING TO CONTRACTS.

We reported not long ago an interesting case on specific performance, decided by the Court of Appeal at Lincoln's-inn, which arose out of an advertisement that appeared in our columns two years since, and the result of which should be to induce advertisers to be more careful as to the character of the statements which they set before the public (*Redgrave v. Hurd*, 45 L. T. Rep. N. S. 485). It will also, no doubt, be frequently referred to for the valuable statement by the Master of the Rolls of the law as to the avoidance of contracts which have been entered into after representations which are inaccurate, though not, strictly speaking, fraudulent. The material part of the advertisement was as follows:—

"**LAW PARTNERSHIP.**—An elderly solicitor of moderate practice, with extensive connection in a very populous town in a Midland county, contemplates shortly retiring, and having no successor, would first take as partner an efficient lawyer and advocate, about forty, who would not object to purchase advertiser's suburban residence, suitable for a family, value £1,600."

The defendant in the action answered the advertisement, and according to his own evidence (though this was contradicted by the plaintiff), he was informed by the advertiser, at an interview which he had with him, that his practice had amounted to from £300 to £400 a year. Accounts were produced in reply to a request for further particulars, but they only showed a sum of £200 a year as the outside gross earnings of the practice. The defendant accordingly asked by a letter (to which, however, Mr. Justice Fry gave a somewhat different construction) how this discrepancy was accounted for, and the reply to this inquiry, given at a second interview, was a reference to a mass of papers which, according to the plaintiff, contained the details of work done which had not yet gone into the accounts. The defendant was satisfied with this explanation, and signed the contract; but it proved that the papers in question did not represent more than £5 or £6 beyond that which had been shown in the accounts. He afterwards declined to complete the purchase; and Mr. Justice Fry, before whom the case came in the first instance, while holding that there had been a misrepresentation as to a material fact, was of opinion that the defendant having had it put in his power to ascertain the real facts of the case, and having neglected to ascertain them, was not entitled to rescind the contract. The Court of Appeal reversed this decision, and held that where a misstatement of a material fact has been made, whether intentionally or not, by way of inducement to enter into a contract, it lies on the party who made the misstatement to prove that the party who entered into contract with him did not in fact rely upon the misstatement, but upon his own investigation into the facts of the case. Otherwise, according to the principles which formerly prevailed in the Court of Equity, and which are now, by virtue of the Judicature Act, prevalent in all the courts, the party who made the misrepresentation will fail in an action for specific performance, and the party to whom it was made will be entitled to a rescission of the contract.

Mr. Justice Fry, in his judgment, referred to the case of *Attwood v. Small*, in the House of Lords (6 Cl. & Fin. 232), as supporting the view which he took, that the defendant, having had the opportunity of testing the statements made to him, could not, in the absence of fraud, avail himself of their incorrectness. The Master of the Rolls, in his judgment, showed that this case did not bear out the proposition deduced from it by the learned judge, and which, it may be observed, is also contained in the head-note to the report. That case arose out of the sale by the appellant Attwood to the British Iron Company of a valuable iron and coal mining property in Staffordshire for the sum of £550,000, and was remarkable alike for the great length of time which it occupied,—being heard for forty-six days in the

House of Lords alone,—by the numerous points of practice and pleading which it involved, and by the difference of opinion between the learned lords who took part in the hearing of it. In the result, Lords Lyndhurst and Wynford were of opinion that a case of fraudulent misstatement had been made out against the vendor, such as to disentitle him to specific performance of the contract. On the other hand, Lords Cottenham, Brougham, and Devon, were of opinion that specific performance must be decreed, notwithstanding that some of the statements made by the plaintiff proved to be incorrect; but the reasons assigned by them for this conclusion were, as the Master of the Rolls pointed out, somewhat different. However, his Lordship was of opinion that they might be summed up in these three: (1) That there was no fraud, (2) that the company were aware of the facts, and (3) that they did not rely upon the statements of the vendor, but solely upon their own investigations. His Lordship laid down the law resulting from that case, and illustrated in many of the cases on misstatement in prospectuses substantially as we have stated it above. He also referred to the statement of the law on the subject made by Lord Cairns in the case of *Reese River Silver Mining Company v. Smith* (L. Rep. 4 E. & I. App. 64): "If persons take upon themselves to make assertions as to which they are ignorant whether they are true or untrue, they must, in a civil point of view, be held as responsible as if they had asserted that which they knew to be untrue." This, as was observed by the Master of the Rolls, is a somewhat wider doctrine than has been laid down in the cases at common law, but is now, of course, of universal application.—*Law Times*.

#### TEXT-BOOK ADDENDA.

[From the *Law Journal*.]

*Theobald on Wills* (2nd Edition), 505.

Held, that the words "survivor or survivors" could not be construed as "other or others" in a will (*In re Horner's Estate, Pomfret v. Graham*, 51 Law J. Rep. Chanc. 48).

*Order II., Rule 3.*

*Lely and Foulkes on the Judicature Acts* (3rd Edition), 185.

A writ of summons, issued after the cause of action accrued, but on the same day, is good (*Clarks v. Bradlaugh*, 51 Law J. Rep. Q. B. 1).

*Lodgers' Protection Act, 1871* (34 & 35 Vict., c. 79).

*Woodfall on Landlord and Tenant* (12th Edition), 416.

To constitute a lodger under the Lodgers' Protection Act there must be a personal relation between the landlord and tenant, giving the landlord by himself, or his servants, a dominion over the house (*Morton v. Palmer*, 51 Law J. Rep. Q. B. 7)—C. A.

*Judicature Act, 1875*, s. 49.

*Lely and Foulkes on the Judicature Acts* (3rd Edition), 44.

The rule that no order of Court as to costs only is appealable applies to interpleader proceedings (*Hartmont v. Foster*, 51 Law J. Rep. Q. B. 12)—C. A.

*Order XLV., Rule 6.*

*Lely and Foulkes on the Judicature Acts* (3rd Edition), 235.

Where, in garnishee proceedings, there is reasonable suspicion that money sought to be attached does not belong to the judgment debtor, the judge (even though no suggestion is made that the money belongs to some third person) can order an issue to determine whether or not the money is trust money (*Roberts v. Death*, 51 Law J. Rep. Q. B. 15)—C. A.

*Public Health Act, 1875* (38 & 39 Vict., c. 55),  
Schedule 2, Rule 70.

A member of a board who is concerned in a contract with the board, and who afterwards acts as such member,

is liable to the penalty under rule 70 "as disabled from acting" (*Fletcher v. Hudson*, 51 Law J. Rep. Q. B. 48)—C. A.

*The Solicitors Act, 1874*, (37 & 38 Vict., c. 68), s. 12.  
*Cordery on Solicitors*, 117.

A person not a solicitor cannot recover the amount of Court fees paid by him in a County Court action on behalf of the defendant, or for remuneration for services rendered in or out of Court (*Verlander v. Eddolls*, 51 Law J. Rep. Q. B. 55).

*Hodges on Railways* (6th Edition), 601.

A railway company, carrying goods at "owners risk rate" on condition that they shall not be liable "in respect of loss or detention," are liable for an intentional refusal to deliver in virtue of a claim of lien (*Gordon v. Great Western Railway Company*, 51 Law J. Rep. Q. B. 58).

*Order XXXIII., Rule 10.*

*Lely and Foulkes on the Judicature Acts* (3rd Edition), 193.

The writer of a letter unable to recollect its contents held not bound to answer further (*Dalrymple v. Leslie*, 51 Law J. Rep. Q. B. 61).

*Bills of Sale Act, 1878* (41 & 42 Vict., c. 31), s. 8.

An affidavit of attestation of a bill of sale stating that the name written under the attestation clause was the signature of the solicitor whose name it purported to be, is insufficient (*Sharp v. Birch*, 51 Law J. Rep. Q. B. 64).

#### LAW STUDENTS' JOURNAL.

#### THE INCORPORATED LAW SOCIETY OF IRELAND.

MICHAELMAS SITTINGS, 1882.

#### FINAL EXAMINATION.

#### NOTICE.

Candidates wishing to present themselves at the above Examination must lodge their papers, &c., on or before the first day of Trinity Sittings, 1882.

By Order,

JOHN H. GODDARD, Secretary.

Solicitors' Hall, Four Courts, Dublin,  
25th April, 1882.

It was not to be supposed that an occurrence which has so affected men's minds as the Dublin murders should escape the coincidence-hunters. One of these gentlemen, Mr. R. H. Mason, has ferreted out the fact that Chief Justice Cavendish, whom he calls the first distinguished member of the Devonshire family, was murdered by the rebels during Wat Tyler's insurrection, in June, 1351. The crime was perpetrated in the market-place of Bury St. Edmund's, after the rising had extended into the East Anglian counties.—*The Globe*.

WOMEN LAWYERS IN AMERICA.—The Supreme Court of Massachusetts having decided that only men were entitled to practice in the Courts of that State, the Legislature is to be appealed to, and a Bill has been introduced to admit women on equal terms with men. It may be added, that they are so admitted already in Illinois, Iowa, Kansas, Maine, Michigan, Minnesota, North Carolina, Ohio, and Wisconsin. Further, by an Act of Congress passed in 1879, those women who have been for three years members of the Bar of the highest Court of any State or territory, or of the Supreme Court of the District of Columbia, may be admitted to practice in the United States Supreme Court.



COURT PAPERS.

LAND JUDGES.

Sittings for next Week so far as same are appointed.

Before the Rt. Hon. JUDGE FLANAGAN.

MONDAY.

IN CHAMBER.—G. H. Mayes, to confirm sale.—H. G. Smith, allocation.

IN COURT.—P. J. Kennedy, from 11th.

Before EXAMINER (Mr. Kennedy).

C. W. L. O'Gilby, rental.—H. Leader, do.—J. E. O'Sullivan, vouch.

TUESDAY.

IN COURT.—G. B. Low, from 11th.

WEDNESDAY.

Before EXAMINER (Mr. Kennedy).

J. Kenny, rental.

Before the Rt. Hon. JUDGE ORMSBY.

MONDAY.

IN COURT.—Sir J. St. George, from 8th.—H. Leader, adjourned motion.—S. Henderson, do.—J. Callaghan, final schedule.

Before EXAMINER (Mr. M'Donnell).

T. J. Nolan, vouch.—T. Colclough, do.

WEDNESDAY.

Before EXAMINER (Mr. M'Donnell).

T. J. Nolan, vouch.—T. W. Browne, for deeds.

THURSDAY.

IN COURT.—T. Barklie, from 20th ult.

COURT OF BANKRUPTCY.

ADJUDICATIONS IN BANKRUPTCY.

The dates of Adjudications are first given, the Sittings follow in Italics.

Cairnes, Alexander, of 11 and 15 Great Edward-street, Belfast, in the county of Antrim, publican. May 1; *Tuesday, May 23, and Friday, June 9.* Henry T. Stewart, solr.

Foley, Mathew, of 19 Charlotte-street, in the city of Dublin, tobacconist. May 1; *Friday, May 26, and Tuesday, June 18.* Casey & Clay, solrs.

Moore, James F., of Carrick-on-Shannon, in the county of Leitrim, provision dealer. May 8; *Friday, May 26, and Tuesday, June 18.* Hamilton & Craig, solrs.

Ryan, Honoria, of Doon, in the county of Limerick, widow and draper. April 28; *Friday, May 26, and Tuesday, June 18.* H. F. Leachman, solr.

Stewart, George, of Ballymena, in the county of Antrim, draper. May 5; *Friday, May 26, and Tuesday, June 13.* Richard Davoren, solr.

Walsh, David, of 8 and 9 Orr's Cottages, Church-road, in the city of Dublin, houseowner. April 25; *Tuesday, May 23, and Tuesday, June 6.* Wm. Mooney, solr.

Holloway's Pills.—No Mystery.—Whenever the blood is impure or the general health is impaired the human body is predisposed to attacks of any prevailing epidemic. The first indications of faulty action, the first sensations of deranged or diminished power, should be rectified by these purifying Pills, which will cleanse all corrupt and reduce all erring functions to order. These Pills counteract the subtle poisons in decaying animal or vegetable matter, and remove all tendency to bowel complaints, biliousness, and the host of annoying symptoms arising from foul stomachs. The fruit season is especially prone to produce irritation of the bowels and disorders of the digestive organs; both of which dangerous conditions can be completely removed by Holloway's corrective medicines.

DUBLIN STOCK AND SHARE LIST.

DESCRIPTION OF STOCK	MAY						
	Sat 6	Mon 8	Tues 9	Wed 10	Thur 11	Fri 12	
*Paid Government.							
— 3 p c Consols ..	—	—	100½	101	100½	100½	100½
— New 3 p c Stock ..	100—	100	100—	100½	100½	100½	100½
INDIA STOCK.							
4 p c Oct. 1898 } Traffic at ..	—	104½	104	104	104	104½	104½
3½ p c Jan. 1891 } Bk. of Irel. ..	101½	101½	—	—	—	—	101½
Banks.							
100 Bank of Ireland ..	—	318½	319	320	—	—	—
35 Elberhian Banking Co ..	—	—	—	—	—	—	—
20 London and County (Ld'd.) ..	—	—	—	—	—	—	—
15 London Joint Stock ..	—	—	—	54½	—	—	—
20 London and W'minster, Ltd ..	—	—	—	—	—	70½	—
10 Do. New ..	—	—	—	—	—	—	—
10 Munster Bank (Limited) ..	—	—	7½	—	—	—	7½
10 National Bank (Limited) ..	23½	—	—	23½	23½	23½	—
10 National of Liverpool (Ld'd.) ..	—	—	—	—	—	—	—
35 Provincial Bank ..	—	—	—	—	—	—	—
10 Royal Bank ..	—	29½	—	—	—	—	—
Steam.							
50 British and Irish ..	—	—	—	—	—	—	—
100 City of Dublin ..	—	—	—	107½	106½	—	—
50 Dublin & Liverpool Steam Ship Building Co. ..	—	—	—	58	—	—	—
10 Dundalk (Limited) ..	—	—	—	—	—	—	—
Mines.							
4½ Berahaven (Limited) ..	—	—	—	—	—	—	—
1 Killaloe Slate Co. (Ld'd) ..	—	—	—	—	—	—	—
7 Mining Co. of Ireland (Ld'd) ..	—	—	—	—	—	—	—
Miscellaneous.							
10 Alliance & Dub. Cons. Gas ..	—	—	—	—	—	—	—
4 Arnot & Co., Limited ..	—	—	—	—	6	6	—
7½ Dub. Drapery Warehouse, Ltd. ..	4½	—	—	—	—	—	—
100 Grand Canal ..	—	46	—	—	—	—	—
8 Guiding & Co., Limited ..	—	—	—	—	—	—	—
35 Ir. C. S. Building Society ..	—	—	—	—	—	—	41½
4 National Discount, Frs., Ltd. ..	—	—	—	—	—	—	—
9-4-7 Patriotic Assurance ..	—	—	—	—	—	—	10½
Tramways.							
10 Dublin United Tramways ..	—	10½	—	—	10½	10½	—
10 Edinburgh Street Trams ..	—	—	—	—	—	—	—
10 L'pl' Unt'd Tram & Bus l'td ..	—	—	—	—	12½	—	—
10 Leeds Trams ..	—	—	—	—	—	—	—
10 N'th Metr. Tramway, Lond. ..	—	—	—	—	—	—	—
10 Provincial Trams, lim. ..	—	—	—	—	—	—	—
5 Tramways Union—limited ..	—	—	—	—	—	—	—
Railways.							
10 Athenry and Tuam ..	—	—	—	—	—	—	—
50 Belfast and County Down ..	—	43½	—	—	—	—	—
50 Belfast and Northern Cos. ..	—	—	—	—	50½	—	—
100 Dublin, W'klow, & W'ford ..	—	—	—	—	—	—	—
100 Great Northern (Ireland) ..	—	—	—	—	—	—	119—
100 Gt. Southern and Western ..	113½	114	—	—	—	—	113½
100 Midland Gt. Western ..	—	—	—	—	—	—	—
50 Waterford and Limerick ..	—	—	32½	—	—	—	—
Railway Preference.							
100 Belfast & N'th'n Cos. 4 p c ..	—	100½	—	—	—	—	—
100 Gt. N'th'n (Irlnd) gr'd 4 p c ..	—	—	—	—	—	—	—
100 Gt. South'n & West'n 4 p c ..	—	—	—	107	—	—	106½
100 Mid. Great Western. 4 p c ..	—	—	—	—	—	—	—
Debenture Stocks.							
— Belfast & N'th'n Cos. 4 p c ..	—	—	—	—	—	—	—
— Dublin & W'klow 4 p c ..	—	—	105½	105½	—	—	—
— Gt. Northern (Ireland) 4 p c ..	—	—	—	—	—	—	—
— Do., 4½ p c ..	—	—	—	112	—	—	—
— Do. 5 p c ..	—	—	—	—	—	—	—
— Gt. South'n & West'n. 4 p c ..	109½	109½	—	—	109½	—	109
— Midland Gt. West'n. 4 p c ..	106	—	—	—	—	—	106
— Do., 4½ p c ..	—	—	114½	—	—	—	—
— Waterford & Central 5 p c ..	—	—	—	—	—	—	—
— Waterf'd & Limerick 4 p c ..	—	104½	—	—	—	—	—
Miscellaneous Debent.							
Alliance & Cons. Gas, 4 p c ..	—	—	—	—	—	—	—
Ballast Office Deb. £92 6s 2d, 4 p c ..	—	—	—	—	—	—	—
City Deb. of £92 6s 2d, 4 p c ..	—	—	—	93	93	—	—
Do. Defd. of £92 6s 2d 4 p c ..	—	—	—	—	—	—	—
Dub. Port & Docks, 4½ p c ..	—	—	—	—	—	—	100½
(1848) Rathm. & Pem. M. Drain, 4 p c ..	—	—	—	—	—	—	—

\* Shares not fully paid up are given in Italics. † x d  
 Bank Rate—If Discounts—6 per cent., 30th January, 1882  
 Of Deposits—3 per cent., 30th January, 1882  
 Name Days—May 25th, and June 13th, 1882.  
 Account Days—May 26th, and June 14th, 1882.  
 Business commences at 1 30 p.m.

BIRTHS, MARRIAGES, AND DEATHS.

DEATHS.  
 THOMPSON—May 6, at Leeson Park, the infant daughter of Bennett Thompson, Esq., solicitor, aged 7 months.

FUNERAL REQUISITES OF EVERY DESCRIPTION.

49. WALLER, 50, DENZILLE-STREET.

## NEW FORMS UNDER THE LAND ACT.

FORM

67. Fee-farm Grant from Landlord to Tenant . . . . . 3d. each.  
 68. Mortgage from Tenant to Landlord, to secure one-fourth, or  
 other balance, of Purchase Money . . . . . 3d. ,,  
 69. Reference to Valuer to be named by Land Commission . . . . . 1d. ,,  
 70. Special Report of Valuer . . . . . 1d. ,,

JOHN FALCONER, 53 UPPER SACKVILLE-STREET, DUBLIN.

### PUBLIC NOTICES:

#### IRISH LAND COMMISSION.

The Irish Land Commissioners have, in conformity with Rule 104 of the Rules made pursuant to the Land Law (Ireland) Act, 1881, ordered a schedule of Agreements fixing Fair Rents to be inserted in the "Dublin Gazette" of May 12<sup>th</sup>, 1882. A copy of this schedule, in which are entered all Agreements lodged during the month of March, 1882, will be sent to any person applying for the same to the Secretary, Irish Land Commission, 24 Upper Merrion-street, Dublin.

By Order,  
DENIS GODLEY.

Irish Land Commission,  
11<sup>th</sup> May, 1882.

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ESTABLISHED 1851.

#### BIRKBECK BANK.—

Southampton Buildings, Chancery Lane.

Current Accounts opened according to the usual practice of other Bankers, and interest allowed on the minimum monthly balances when not drawn below £25. No commission charged for keeping Accounts, excepting under exceptional circumstances.

The Bank also receives money on Deposit at Three per cent. interest, repayable on demand.

The Bank undertakes for its Customers, free of charge, the custody of Deeds, Writings, and other Securities and Valuables; the collection of Bills of Exchange, Dividends and Coupons; and the purchase and sale of Stocks, Shares, and Annuities.

Letters of Credit and Circular Notes issued.

A Pamphlet, with full particulars, on application.

FRANCIS RAVENSCROFT, Manager.

63

THE BIRKBECK BUILDING SOCIETY'S ANNUAL RECEIPTS EXCEED  
FIVE MILLIONS.

**HOW TO PURCHASE A HOUSE FOR TWO GUINEAS PER MONTH.** with immediate possession and no rent to pay. Apply at the office of the BIRKBECK BUILDING SOCIETY.

**HOW TO PURCHASE A PLOT OF LAND FOR FIVE SHILLINGS PER MONTH,** with immediate possession, either for building or gardening purposes. Apply at the office of the BIRKBECK FREEHOLD LAND SOCIETY.

A Pamphlet, with full particulars, on application.

FRANCIS RAVENSCROFT, Manager.

Southampton Buildings, Chancery Lane.

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#### PATENT OFFICE, DUBLIN.

**J. K. FAHIE & SON,** Consulting Engineers and Patent Agents, 2, Nassau-street, Dublin, and 323, High Holborn.

London, transact every description of business relating to Patents for Inventions, Registration of Designs, Copyrights, and Trade Marks. Authors of "Hand-book on British and Foreign Patent Law." A paper on the Law of Copyright &c., to be had on application, price Sixpence.

31

**WANTED—Waste Paper, Old Account Books, Old Lead, Zinc, Tailors' Cuttings, Printing Shavings.** A quantity of Newspapers and Brown Lapping Paper always in stock, sold by the pound or cwt., at 7, Britain-lane. Address—**PATRICK HANRATTY,** 28, FISHER'S-LANE.

978

**WATCHES.—JEWELL'S RY.**—Before you buy a watch or jewellery, send for the Midland Counties Watch Company's Catalogue, beautifully illustrated with over 500 copper-plate engravings, and sent gratis and post free on application. Address—**A. PERCY,** Manager, Vyse-street, Birmingham.

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### PUBLIC NOTICES:

**EVERY MAN WHO SMOKES**  
Should invest 24 stamps for the  
NEW PERFECTED



The Best  
Selected Briars  
only.

**JENINGS & CO.,** Inventors, 97, NEWGATE-STREET.  
The most Perfect Pipe invented since Smoking began.

*Prospectus Free.*

61

**D. W. CARROLL,**  
44, LOWER SACKVILLE-STREET, DUBLIN,  
Wishes to call attention to his large  
STOCK OF NOTE PAPERS AND ENVELOPES,  
Direct in every instance from the Makers  
They are Sold to the Public at Wholesale Prices.

His large Stock of  
**LEATHER GOODS,**  
Comprising Bags, Purses, Wallets, Pocket Books, Metallic Memorandum Books, Blotters, Writing Cases,  
With every article connected with Stationery,  
Are sold much under usual charges.  
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# THE IRISH LAW TIMES AND SOLICITORS' JOURNAL.

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## CONTRACTS OF CARRIERS OF GOODS.—I.

THE liability of carriers of goods so frequently comes into question both in the superior and inferior courts, that, although we have dealt with the subject on some previous occasions (14 Ir. L. T. 368, 379, 387, 401, 15 ib. 367, 381), it is desirable to keep our readers *au courant* with the latest decisions, embracing two Irish and two English cases, and one Canadian case.

In *M'Indoe v. M. G. W. (of Ir.) Ry. Co.* (16 Ir. L. T. Rep.), we find it held by May, C.J., on a civil bill appeal, that a railway company, carrying live animals, are not insurers thereof, and, in the absence of any evidence of negligence or proof of the cause of injury to the animals, will not be liable to damages for such injury—a useful affirmation of a rather important principle, which would seem to be sustained by *Blower v. G. W. Ry. Co.* (L. R. 7 C. P. 655), *Kendall v. L. & S. W. Ry. Co.* (L. R. 7 Ex. 373), and other cases collected in 14 Ir. L. T. 368, both English and American; but in most of the States such carriers are held to be common carriers, and to be insurers to the same extent as if engaged in carrying general merchandise, subject to exemption in respect of damage caused by the animals to themselves and to each other (see 4 Stm. L. R. 464). Not content, however, with this limitation to their liability—a question only debated in modern times, for the transportation of living animals was unknown to the era of the formation of the common law—such carriers habitually endeavour to diminish their liability by special contracts, perhaps too readily entered into by consignors who trust, in case of loss, to the ingenuity of counsel to show in some way or other that the conditions imposed are not just or reasonable. *Moore v. Great Northern Ry. Co.*, decided by the Queen's Bench Division in March last, was a case of this kind, as observed by Fitzgerald, J., and should next be noticed.

There it appeared that the plaintiff delivered a horse to the defendant company, for carriage under a special contract, containing a condition that, in case of animals for which a contract note with two rates of carriage should be offered to the customer, the defendants would give him the alternative of carrying at either rate; that at the full rate, which would be charged when the contrary was not expressed, the defendants would undertake the ordinary duties of carriage subject to the conditions in the said contract note and their statutory rights; but, that at the reduced rate the defendants would carry "at owner's risk," exempt from all liability not occasioned by the wilful misconduct of the servants acting within the scope of their authority; while by a further condition they were to be exempted "in all cases from liability for injuries caused by fear or restiveness of animals." The plaintiff elected to have the horse carried at the lower rate, and the horse having been injured in consequence of a platform having been rendered unfit for the transit of the horse along it, by reason of its being crowded at the time with goods, the action was brought to recover damages for negligence. At the trial, May, C.J., held that the last quoted condition was unreasonable, and, as it formed an integral portion of the alternative offered to the plaintiff, he determined that the whole was inoperative. On a new trial motion, Fitzgerald, J.,

said: "If the true interpretation of that provision is, that it embraces every case in which injury immediately flowed from the fear or restiveness of the animal, although the state of fear or restiveness was directly caused by some act of negligence, or want of care on the part of the defendants, we should be inclined to adopt the view of the Lord Chief Justice; for it would seem not just or reasonable to say we accept at the higher rate the risks of carriers for hire, but we limit that liability by excepting from it losses arising in certain cases from our own neglect or default. *E. gr.*: a collision occurs, arising from the misconduct or negligence of the defendants, not directly occasioning injury to the animal, but creating a condition of 'fear,' excited by which the animal injures itself. If the term in question was to protect the defendants from liability as carriers at the higher rate for hire, we should be inclined to come to the conclusion that an alternative embracing such a condition was unreasonable." In the opinion of the Court, however, the provision in question should not be construed in a sense so large, but covered only "all cases in which the injury arises from the fear or restiveness created by transit in (*sic*) its ordinary accompaniments, and without any negligence or default on the part of the defendants; such, for instance, as contiguity to the engine, noise of the engine, or whistle, shunting, passing trains, &c. Taken in that limited sense, we are of opinion that the condition was not unreasonable. The case of *Gill v. Manchester Ry. Co.* (L. R. 8 Q. B. 186), decided in 1873, seems to bear out this view of the construction of the condition." See, further, as to the construction of such contracts, and as to their not exempting from liability in respect of even the excepted perils where the defendants' negligence has contributed to the loss, the English and American cases collected in 15 Ir. L. T. 367, 381. As regards the particular negligence in question in *Moore's* case, we think *Rooth v. N. E. Ry. Co.* (L. R. 2 Ex. 173, 36 L. J. Ex. 83) more in point than any of the cases that were cited; and see *Rhodes v. Louisville Ry. Co.*, 9 Bush. 686; *Hawkins v. G. W. Ry. Co.*, 17 Mich. 57, 18 ib. 427. The case of *Grand Trunk Ry. Co. of Canada v. Fitzgerald* (13 Can. L. T. 266, 1 Can. L. T. 449), decided by the Supreme Court, Ontario (June, 1881), touches the same question, and may here be mentioned.

There, the plaintiffs (respondents) sued the defendants (appellants) for breach of a contract to carry a quantity of petroleum in covered cars from London (Can.) to Halifax, alleging that they so negligently carried the same upon open platform cars, whereby the barrels in which the oil was, were exposed to the sun and weather and were destroyed. At the trial a verbal contract between the plaintiffs and the defendants' agent at London was proved, whereby the defendants agreed to carry the oil of the plaintiffs in covered cars with quick despatch. The oil was forwarded in open cars, and delayed at different places on the journey and in consequence of which a large quantity was lost. On the delivery of the oil the plaintiffs signed a receipt note, which said nothing about covered cars, and which stated that the goods were subject to conditions endorsed thereon, amongst which were—*viz.*, "That the defendants would not be liable for leakage or delays, and that oil was carried at owners' risk." It was held

by Sir W. J. Ritchie, C.J., and Fournier and Henry, JJ., that the loss did not result from any risks by the contract imposed on the owners, but that the loss arose from the wrongful act of the defendants in placing these goods on open cars, which act was inconsistent with the contract they had entered into and in contravention as well of the undertaking as of their duty as carriers. While Strong, Fournier, Henry and Gwynne, JJ., were of opinion—affirming the judgment of the Court of Common Pleas—that the verbal evidence was admissible to prove a contract to carry in covered cars, which contract the agent at London was authorised to enter into, and which must be incorporated with the writing, so as to make the whole contract one for carriage in covered cars, and therefore defendants were liable.

#### SAVAGERY AND CIVILISATION.

We are so often asked to contemplate with delight and self-satisfaction the amazing rate at which progress of all kinds, moral and physical, is going on around us, that it is wholesome to look from time to time at drawbacks and shortcomings which are not far to seek. The old recipe for due abasement of spirit was to moralise over a grisly skull, to visit the tombs, or to read something about the brevity of life. Grisly skulls are not always to hand, and there is much to be said against graveyards as places for promenading; but there is a preservative against undue self-satisfaction which is quite as effectual and usually more accessible. When people are in peril of being inflated with pride by the study of flattering statistics respecting the advance of education, the growth of temperance, the multiplication of churches, and the victories of science, they may easily find correcting and chastening reflections by entering one of our criminal courts, or by reading their daily records. They will there see how superficial are the effects of these vaunted triumphs, how strong and perennial are the old causes of vice. It would, indeed, be unfortunate for the good name of this country if it were to be judged by the complexion of the cases which are presented before the Assize Courts. All that is worst in the national character there comes to light. The strong passions of the race, the proneness to intemperance, the tendency to high-handed action are painfully visible in the gloomy records of every assize. Englishmen do not lurk in dark corners and stab their enemies. They do not shoot their creditors from behind hedges after the manner of the finest peasantry in the world. They are rarely guilty of that malignant ingenuity in crime which proceeds from premeditated malice and a feeling that to taste vengeance is the sweetest gratification. But brutality towards the weak, and gross disregard of the rights of women and children and inferiors, are far too common. The trial of Osmond Brand at Leeds for the murder of William Papper, an apprentice, is a case in point. The lad was the victim of and died from cruelties which one had thought were obsolete on shipboard. The Merchant Shipping Acts regulate the most minute acts of masters of ships. They cannot move a finger without finding that they are coming in contact with some enactment. The Board of Trade acts as a sort of earthly Providence to seamen. Endless pains are taken to protect apprentices on shipboard. And yet on the Hull smack, where this miserable lad was apprenticed, he was subjected to brutalities which could not have been surpassed in pre-philanthropic days, before the Legislature had looked into the fore-castle, and when the captain's word was law to all before the mast. The evidence showed that Papper was beaten repeatedly; that buckets of water were thrown over him; that the captain kicked him with his heavy boots, jumped upon him, and dragged him along the deck; and that in the depth of winter, while the vessel was in the North Sea, the lad was compelled to stand in the stern for hours. From the time that the smack left the Hamber the prisoner practised

a system of brutality towards Papper, as to which the strangest fact is that the crew seem to have allowed the captain to do as he liked towards his victim without much remonstrance. In the end the lad died under this prolonged savagery, and the body was thrown overboard in the North Sea; the captain on his return circulating the story that Papper had been knocked overboard by the foresail sheet. The cruelties which occurred in times when a captain was admitted to be privileged to do to his crew on his own ship what he liked were committed in an aggravated manner on board this smack. The jury took a very unfavourable view of the prisoner's conduct, and they could not well do otherwise. He was found guilty of murder and sentenced to death, and we cannot say that the punishment is excessive for the crime. A captain has, and always must have, by reason of his office, large authority. Discipline must be preserved, and to secure this object he must be free, when occasion calls for it, to chastise his crew or put them in irons. He may do a multitude of things which no one on shore is permitted to do. To prevent this power becoming a hideous tyranny, it is of supreme importance that when grave abuses are discovered they should be punished sternly. If ever there was a case which called for the exercise of severity, it was that which was tried at Leeds yesterday. Many a man who has paid for an act of passion by forfeiting his life was a Christian hero in comparison with this Hull skipper, and we say so notwithstanding the fact that his appearance struck every one who saw him as prepossessing and respectable.

In the evidence which was given in the trial at the Central Criminal Court of Baker, who is charged with having murdered his partner in a burglary committed at Finchley, one gets glimpses of a state of life to which the boasted appliances and agencies of our civilisation do not reach. Baker is accused of having murdered his companion in a wood at Finchley, about the 2nd of March. It becomes essential to ascertain minutely what were the prisoner's haunts and movements and companions about that date. The evidence as to this is a curious commentary on the imperfections of our civilisation. It reveals a society at our door in which men and women do not think of marrying, in which relations lightly formed are lightly broken, in which theft is the recognised mode of livelihood, and a drunken orgy the most approved recreation. It is all very well to examine minutely the customs of savage tribes in Australia or Africa, and to go as far as Thibet, or farther, to detect quaint social practices. In the Borough are savage communities with habits as curious as those which Mr. Mc'Lennon or Mr. Morgan has investigated. Hard by our churches, schools, and museums, live people who are as much outside the range of these institutions as a besotted Papuan. The old civilisations fell by reason of the barbarians who came from without. Were they more formidable than the barbarians who dwell within, and seem bred by, our modern civilisations?

As a contrast to the multitude of criminals whose tale is the monotonous record of ignorance and mental weakness, the history of Thomas Fury, who was convicted on his own confession about a week ago at Durham for the murder of a woman, is worth studying. He belongs to a very small class of criminals. The Eugene Aram of fiction, the man of high feelings and education who stains his hands with crime, is very rare in reality. Thomas Fury came as near to this type as any person one is ever likely to see in a dock. The statement which he drew up of the causes which had brought him to ruin shows that he was educated, that he had read much, that he had at least dipped intelligently into abstruse books, and that he had worked out a rough philosophical system of pessimism. It is not often a prisoner convicted of a foul murder can quote "the judicious Hooker," or cite Sir William Hamilton as an authority for an argument. Fury's thesis is old and familiar. It is the well-worn theme that intemperance feeds crime, that society makes criminals, and that the gale in which it immures them are places in which they are made worse, not better. All this is trite enough, but

from him it comes with new force. One feels that this man, who had so keen a sense of duty that he must give himself up to justice for a crime committed thirteen years ago, ought, in a better organised society, to have been no criminal at all.—*Times*.

#### CONVEYANCING BILL.

The Bill has passed the House of Lords, and is printed by order of the House of Commons, so that it is now time for us to discuss its principle and details. The Bill contains clauses substantially the same as those which were contained in the Bill which became the Conveyancing Act, 1881, but were dropped out at the end of the session. It also contains an additional clause (14) which amends the "long term" section (65) of that Act. The Bill, as introduced this session, is printed in the "Weekly Notes" of the 4th March, and a summary is given in the *Law Times* of the same date, page 312. The clauses as contained in the former Conveyancing Bill will be found in Wolstenholme and Turner, pp. 217-226; and in Rubinstein, 3rd edit., Appendix, p. 1.

It is worth while to examine the dropped clauses, because they are numbered with reference to their original position in the old Bill, and therefore indicate to some extent in what connexion it was intended that they should be read.

The Bill gives several definitions, and we are surprised to find that the definition of "property" is in terms wider than that in the Conveyancing Act, 1881, a 2 (l). "Person" ought to be defined. It has different definitions in the Conveyancing Act and Solicitors' Remuneration Act, and none at all here. Clause 2 enables the solicitor of a "purchaser" to dispense with investigation of title if the title has been investigated and accepted on behalf of a previous "purchaser" through whom the title has been deduced. Apparently, in consequence of the wide definition of the word "purchaser," an intending mortgagee's solicitor may accept without inquiry a title which was investigated on a sale, and *vice versa*. But it should be expressly stated whether this is intended, as a title may be accepted on a mortgage and rejected on a sale and *vice versa*, the objects of a buyer and a lender not being precisely similar. It also should definitely state that the previous investigation must have been made by a solicitor or counsel, and also it should be made clear whether it will suffice if it has been made under special conditions. We suppose that the clause would apply in cases where, on the previous transaction, sect. 3 of the Conveyancing Act had not been excluded.

Clause 3 provides for official searches for entries made in the central office of the Supreme Court under any Act described in Part I. of the first schedule to the Conveyancing Act, 1881, or any other Act. It will be remembered that Part I. of the first schedule was left in the Act by mistake when the clauses connected with it were dropped. It would be more convenient to repeat it here than to send the reader away to another statute for information.

A more important question is raised by clause 4, which is as follows:—

"(1) A purchaser shall not be prejudicially affected by notice of any instrument, fact, or thing unless (i.) it is within his own knowledge; or (ii.) it has come to the knowledge of his counsel, as such, or of his solicitor, or other agent as such; or (iii.) it would have come to the knowledge of the purchaser, or of his solicitor, or other agent as such, if such inquiries and inspections had been made as ought reasonably to have been made by them or one of them."

But by sub-clause 2 this shall not exempt a purchaser from any liability or obligation under "any instrument under which his title is derived mediately or immediately." This necessary sub-clause was not in the Conveyancing Act as originally drawn (Wolst. & T. 219), and its omission would have led to very serious consequences; so that the delay has certainly had a beneficial effect in giving time for reconsideration.

It will be observed that the clause recognises the employment of "agents" other than solicitors. This is necessary, for it would be obviously unjust to protect transactions through "agents" which would not be protected if conducted through a solicitor's office. But it would be well to add some words to show that this was in no way to authorise the employment of non-professional persons in conveyancing matters.

The special importance of the clause will be seen if sub-clause (1, iii.) is read with sects. 8 and 66 of the Conveyancing Act, for by sect. 66 a solicitor is protected for not excluding sect. 3, which implies various conditions of sale in contracts. This protection to the solicitor will be by clause 4 (1, iii.) extended to the client but with the very important exception contained in sub-clause (2). Apparently it will not therefore relieve a purchaser from the consequences of, e.g., not investigating lessor's title, and thus will still maintain, as regards deeds forming the direct chain of title, the rule laid down in *Patman v. Harland* (44 L. T. Rep. N. S. 728; L. Rep. 17 Ch. Div. 853).

The clause is likely to be beneficial as an attempt both to define and limit the doctrine of constructive notice, which, as Lord Justice Brett said in *Allen v. Seckham* (L. Rep. 11 Ch. Div. 790), "depends on a fiction." It assumes notice where no notice exists. We think, however, it would be much improved if it dealt also with searches. They are costly and troublesome. Mr. Dart declares "that as a rule, subject of course, as every rule is, to occasional exceptions, the searches advised by counsel are theoretically imperfect and practically useless." (Dart. V. & P. 5th ed. 491.) The question has obtained increased importance in consequence of the decision in *Ford v. Hill* (40 L. T. Rep. N. S. 41; L. Rep. 10 Ch. Div. 266), since which solicitors have commonly refused to answer a general inquiry as to incumbrances. The Bill (clause 8) does facilitate searches, but some further provision would be beneficial. We shall consider the other clauses of this short, but very important, Bill in another article.—*Law Times*.

#### "LAW JOURNAL REPORTS" FOR MAY.

The monthly number of the *Law Journal Reports* for May contains pages 305 to 406 of the Chancery Division, pages 257 to 312 of the Queen's Bench Division, and pages 41 to 56 of the Magistrates' Cases. In all forty-three cases are reported, of which twenty-two are from the Chancery Division, sixteen from the Queen's Bench Division, and five are Magistrates' Cases.

The Chancery cases are remarkable for the number of decisions in the Court of Appeal, all, with but one exception, overruling the decision below. There are two interesting cases of specific performance turning on the sufficiency of the agreement. There are three company cases of interest, and two cases of direct interest to solicitors (*Burden v. Carte* and *Schjott v. Schjott*). A second solicitors' case (*In re Horton*) will be found in the Queen's Bench Division. The first case in the Chancery Division (*Berrington v. The Metropolitan District Railway Company*) decides that the special powers given to railway companies with regard to minerals do not prevent their compulsorily purchasing the minerals as well as the surface of land required for the undertaking. In the case of *In re Baker, Collins v. Rhodes*, it was held by the Court of Appeal, if decision were necessary, that a specialty creditor does not prejudice his right to sue by allowing eighteen years to elapse. In *Hobbs v. The Midland Railway Company* Mr. Justice Manisty decided that the unauthorised sale of land by one railway company to another was not conclusive proof that the land was superfluous. In *Marshall v. Berridge* it was held by the Court of Appeal that an agreement for a lease which bore a date, but which did not specify the date for the beginning of the term, did not satisfy the Statute of Frauds, and specific performance was refused. In the case of *In re Robson, Emly v. Davidson*, the Court of Appeal allowed, in spite of the Mortmain Act, a claim on an estate consisting of an equitable mortgage on leaseholds arising out of a

series of assurances executed the same day—namely, a deed by which A., whose estate was being administered, covenanted to pay to trustees £20,000 on such trusts after the death of A. and M., as M. should appoint by will; a will by which M. appointed the fund to the trusts of a deed poll, after paying legacies; and thirdly, a deed poll by which the fund was directed to be applied to charitable uses. In the case of *In re the Padstow Total Loss and Collision Assurance Association, ex parte Bryant*, a mutual marine insurance association, consisting of more than twenty members, was held to be for the "acquisition of gain," so that, not being registered, it could not be wound up. In *Shardlow v. Cotterill* "property purchased at Sun Inn, Pinxton, March 29, Mr. G. Cotterill, owner," was considered by the Court of Appeal a sufficient description in a contract of sale. In the case of *In re Tulbot* it was held that an application for a *supersedeas* of a lunacy commission ordered in Ireland, and registered in England, must be made in Ireland. In *The Scottish Widows' Fund v. Craig* the holder of a rent-charge on glebe land was held by Vice-Chancellor Hall, to be entitled to a sale, although the Act creating the charge contained only special powers of distress and entry. In the case of *In re Latham, ex parte Gregg*, a trustee of a liquidating debtor, having a lease with power to remove fixtures, removed the fixtures and disclaimed the lease. His act was held wrongful, as the disclaimer amounts to a surrender at the date of the appointment of the trustee. *Schjott v. Schjott*, an action by a married woman through her next friend, was dismissed with costs against the solicitor, on the failure of the next friend, to produce a written authority from the wife. In *Enden v. Carte* a solicitor of a bankrupt was allowed a charge under the Solicitors Act on money paid into Court in the alternative, but not in respect of costs incurred in resisting a successful claim of the trustee to the money. In *Blake v. Blake* the signature to a will, which was not signed in the presence of the attesting witnesses, and was covered over with a piece of blotting paper when they signed, was held not to be duly acknowledged. The attestation clause was in due form; and, except for some erasures, probate would have been granted in common form, but the witnesses were unable to swear that they saw the signature. These facts illustrate, what is tolerably well known, that wills not duly attested, but good on the face of them, are constantly admitted to probate. In *Ex parte Nesbit, in re Garrod*, the clause in a building agreement, forfeiting the materials to the building owner on failure in the contract, was held by the Court of Appeal not to make the agreement a bill of sale, because it did not "secure a debt." *Williams v. Williams* is the case in which Mr. Justice Kay held that a testator could not leave his body to a particular person to be buried. It has already been commented on. In the case of *In re The Fren Colliery Company* a judgment creditor was not allowed to proceed with an execution against the goods of a liquidating debtor, although the creditor was said to have postponed his action through the representations of the company. In *Harlock v. Ashberry* the taking of rent by a mortgagee in possession was held not a payment by the mortgagor so as to prevent the time for foreclosure from running. In the case of *In re Russell, Russell v. Chell*, a bequest of "all my share in a partnership" was held to pass the whole partnership, although, at the time of the will, the testator had only a third. In *The New London and Brazilian Bank v. Brocklebank*, Vice-Chancellor Bacon decided that shares held in a bank, subject under the articles to a lien in respect of the debts of the shareholders to the company, were subject to the lien, although the shareholders were trustees. In the case of *In re Atkins, ex parte Edmonds*, the trustees of a friendly society were held, under the Acts, entitled to a preferential payment on the bankruptcy of the treasurer. In *Earl De la Warr's Settled Estates* authority was given, on petition, to the trustees to pay costs incurred by the tenant for life in resisting claims to rights of common.

Of the Queen's Bench cases, *The York Tramways*

*Company v. Willows*, in the Court of Appeal, deals with the question of the validity of the appointment of a director, so as to make him liable for calls on qualifying shares. In *Ferguson v. Davison* the Court of Appeal upheld the view that, where an action is referred by consent, the costs to abide the event, the plaintiff recovering less than £20 in contract does not obtain costs without an order. *Hicks v. Faulkner* decides that it is good ground for reasonable and probable cause in an action of malicious prosecution, if the defendant, trusting his own memory, *bona fide* believed a fact, justifying the prosecution, to have happened, although it did not in fact happen. Mr. Justice Hawkins elaborately examines the law on the subject. In *Waller v. Lock* the Court of Appeal held that information given by a mendicity society to inquirers is privileged in an action of libel. In *Keen v. The Millwall Dock Company* the Court of Appeal upheld the necessity for a written notice giving particulars as a condition precedent to an action under the Employers' Liability Act. To refer to particulars given to the defendants by their superintendent is not enough. In *Fear v. Castle* it was held that where the first of two actions brought against husband and wife for the debt of the wife contracted before marriage is satisfied, and exhausts the property acquired from the wife, the second action is "subsequent" within the Married Woman's Property Act, although commenced before the judgment in the first. In *Toke v. Andrews* we are introduced to a new creation of the Judicature Acts—viz., a "counter-claim upon a counter-claim." The action was for arrears of rent; the defendant counter-claimed for money due on a valuation on going out; and the plaintiff was allowed to reply, claiming rent due since the writ. In *Patten and The Corporation of Liverpool* it was held that the three months allowed by section 23 of the Lands Clauses Act, for an umpire to make his award, is to be calculated from the date of his appointment, and not from the time when the awarding power of the arbitrators came to an end. In *Morgan v. Thomas* it was held that land devised to L. for life, "and after his decease to his lawful issues and their heirs for ever if any," and, if L. should die without leaving any children born in wedlock, to E. and his heirs for ever, conferred on L. an estate for life, and not in tail. In *Young & Co v. The Corporation of Leamington* it was held in the Court of Appeal that even where an urban sanitary authority has had the benefit of a contract, it cannot be enforced against the authority unless the terms of the Public Health Act as to contracts are complied with. In *Coomber v. The Justices of Berke* it was held that Assize Courts do not pay property tax. In *Regina v. The Judge of the City of London Court* a collision between ships in an artificial dock not subject to the tide is pronounced within Admiralty jurisdiction, and capable of being entertained in the county having Admiralty jurisdiction in the district in which the dock is. In *Morton v. Palmer* it was held that where costs are ordered to be paid as part of an order, there is no stay of proceedings without a substantive direction to that effect. In the case of *Re Horton* a solicitor who once taxed a bill in London was held not to carry on business in London for stamp purposes. In *Lilley v. Donnelly* a defendant who had contracted to warehouse goods in one place was held liable when he warehoused them in another and they were burned.

Of the Magistrates' Cases in the case of *The Duke of Bedford v. St. Paul's, Covent Garden*, already commented on in these columns, the duke was held liable to be rated in respect of tolls taken in parts of Covent Garden devoted by his Act of Parliament to the sale of special produce, such tolls being in the nature of stallage tolls, and arising out of the enjoyment of land. In *Regina v. Barclay and Another* it was held that the rating authority may exercise a discretion as to rating small tenements on the owner, but when it does so the amount must be one-half of the rateable value. In *Pool and Forden Highway Board v. Gunning* it was decided that the six months within which summary

proceedings under the Highways and Locomotives Act may be taken for recovery of expenses for damage caused by extraordinary traffic, are to be computed from the certificate of the surveyor. In *Regina v. Rowland* the Court for the Consideration of Crown Cases Reserved decided that a man, although there have been no bankruptcy proceedings, may be guilty of removing property to avoid a judgment debt, under section 15, sub-section B, of the Debtors' Act. In *Galloway v. Marids* it was held that a wooden box on which the defendant stood for betting purposes, in the ring of a racecourse, was a "place" within the meaning of the Betting Act. It will be seen that the cases reported this month are of more than usual interest.—*Law Journal*.

#### AN IRISH SALMON FISHERY CASE.

On Monday the House of Lords adjourned the further hearing of an appeal from an Irish decision in favour of the Duke of Devonshire's right to an exclusive fishery on one side of a navigable reach of the river Blackwater. The arguments of the counsel for the appellants, who claim to be entitled as members of the public to capture salmon by drift-nets, are concluded. Before selecting the points upon which the law lords desire to hear the counsel for the Duke, they wish to consider the very voluminous evidence for themselves. A natural instinct may have weighed with them not to disturb the solemnity of national grief which environs the honoured House of Cavendish at the present moment by associations with the conduct of worldly business. But the suit is in itself sufficiently intricate and involved to have excused the delay. For the past thirteen years it has been the subject of perpetual litigation in Ireland, with various fortunes. In 1869 a trial of seventeen days, before Chief Baron Pigott, terminated in a verdict for the various persons accused of trespasses. Another action was then brought, and in 1873 the Duke was again defeated. In 1874, an order having been obtained for a new trial, the jury disagreed. A fresh action was commenced in 1875 against the ostensible appellants, who are a fish-dealer and a fisherman. In this action the Duke obtained a verdict, though the verdict was subsequently set aside on the ground of the reception of improper evidence. Once more the case came on for trial before Chief Baron Pigott's successor, and the jury once more disagreed. For the seventh time the Duke returned to the charge; and in 1878, before Mr. Justice Lawson, he succeeded. A motion was made by the appellants before Chief Baron Pules and Barons Fitzgerald and Dowse for a new trial, and was refused. Lord Chancellor Bull and the Master of the Rolls affirmed the refusal, against the Lord Chief Justice, who differed from the ruling of Mr. Justice Lawson. Should, indeed, the present appeal be dismissed, the conflict will at length be ended. If the law lords accept the view of the appellants, their decision will not close the controversy. The whole will then be remitted to Ireland for a fresh series of trials and appeals for new trials, which may take another dozen years.

This protraction of litigation through an infinite succession of trials, and applications for new trials and appeals at every turn; is the scandal of British law. Justice even in the abstract is not advanced by the inordinate multiplication of inquiries. Whatever the result of the present stage of the pending action, ultimate certainty will not have been attained by it more than had the matter been peremptorily wound up by the verdict before Chief Baron Pigott. If, however, a system authorizing and almost inviting ten several contentions before Courts of Law could ever be admitted to be in accordance with the principles of common sense, the claim of the Duke of Devonshire to a several fishery in these seven miles of the Blackwater might be allowed to constitute an exception. The mere history of the case ranges through six centuries and a half. The Duke's first muniment of title is dated July, 1215; and that itself is only of importance as presupposing a

higher antiquity. Magna Charta was signed a month before. Since the Great Charter the Crown can make no binding grant of an exclusive fishery in a navigable river like the Blackwater. But the Courts have held that Royal grants of subsequent date, if accompanied by possession, and without evidence of resistance, may be adduced in proof that an exclusive fishery had been created previously, and was by the grants only confirmed. It is the opinion of Mr. Justice Lawson, and of other Irish Judges who have supported his direction to the jury of 1878, that the presumption of a very early appropriation by the sovereign power of a thing of such recognized value as the salmon fishery of the Blackwater is strong and manifest. Although the fishery is not particularly mentioned in these original grants to the Duke's predecessors in title, they infer that it was meant to pass, and did pass. In the grants much more was comprised than the fishery now in dispute. The whole region formed part of the vast domain of the Earls of Desmond. On their overthrow in the reign of Elizabeth, Sir Walter Raleigh obtained a share of their spoils. To him, among other possessions, fell, partly by grant from the Crown and partly by private arrangement with the Bishop of Lismore and Waterford, the bed of a reach of the Blackwater opposite the manor of Stracally. Sir Richard Boyle, in part by purchase from Raleigh, and in part by grant from James I. on Raleigh's attainder, acquired Raleigh's rights in the manor and in the waters which washed it. From the family of Boyle by a marriage with its heiress the Cavendishes have inherited them. A remnant of the Desmond estates remained to a younger branch of that house, now represented by Mr. Villiers-Stuart of Dromana. In 1688 this family and the Boyles disputed with each other their respective rights to the fishery. The Boyles claimed, under their Royal grant, a monopoly of the entire fishery. The Villiers family asserted that it was entitled to the fishery along the Dromana bank and to the middle of the stream. The Villiers of the period was extremely indignant at finding rights attacked which had existed, his answer in Chancery alleged, "long before the complainant or any of his ancestors had any estate in Ireland." His contention prevailed; and the Boyles were forbidden to interfere with the fishery on the Dromana side. The circumstances of that defeat are now relied upon by the ducal representative of the Boyles as positive evidence of the appropriation by private persons as against the public of exclusive fishery rights in the waters over against Stracally, and as presumptive evidence of the rights claimed by the Duke of Devonshire on his side. If the salmon fishery were lawfully appropriated, as the Decree in Chancery of 1683 implies, in one half of the Stracally reach of the Blackwater, it is argued for the Duke that it is inconceivable it should not have been appropriated in the other half. If it were appropriated, the benefit of the appropriation, he may assume, belongs to him. His opponents deny that he has established the initial fact of an operative Royal grant of an exclusive fishery, or of any grant at all of such a privilege, whether operative or inoperative. They concede that the land on the banks was granted and the bed of the river itself. They do not concede that the fishery either could be or was granted. In respect of the proceedings of 1688 the Lord Chief Justice of Ireland concurs with their view that a litigation between two private owners is incapable of barring the right of the public, which was no party to the proceedings. They urge, moreover, that a rejection by a Court of the claim of the Boyles to a fishery on the Dromana shore cannot be deemed equivalent to an affirmation by the Court of the title of the Boyles to a fishery on the Stracally shore. If the Duke or his predecessors ever had a title, the appellants assert that they have lost it now, since the manor of Stracally has passed away from them by sale through the Encumbered Estates Court. In truth, however, the Duke and his ancestors, and they from whom this title is traced, never, according to the appellants, set up their present pretension until a few

years ago, when the salmon fishery became valuable. At the utmost they took proceedings against the construction of weirs which were an interference with the bed of the river, their undoubted property. Although they were aware, as was the whole country, that forty or sixty cotmen plied their nets and caught and sold salmon freely, they never stirred to prevent them. They did not stop them because they knew they could not. To these arguments the Duke is able to make a reply, in which, as his adversaries may boast the assent of the Irish Chief Justice of the Queen's Bench Division, he has the countenance of the Irish Exchequer Division and a majority of the Irish Court of Appeal. As against the public he is able to argue, and some eminent Judges support him, that in cases involving a general right a judgment, as was the judgment of 1883, upon the matter directly in issue between other parties is evidence of the state of facts and usage at that time. Further, the Irish Court of Chancery, he contends, took for granted, in curtailing the excess of the claim of the owner of Stranally against the owner of Dromana, that the former was entitled so far as the latter was not. On the point of adverse possession and exercise of the monopoly, he argues that the appropriation by his predecessors of weirs and their resistance to the attempts of others to construct fresh weirs amounted to the maintenance of a fishing monopoly, and to the prohibition of any public liberty of fishing. So long as the attacks upon the right were confined to the industry of poor cotmen a great proprietor may well have scrupled to interpose. Fishing by drift-nets, though the claim shelters itself under the supposed prescription of cot fishing, is a practice essentially different. These drift-nets are described in the judgment of the Irish Master of the Rolls as of enormous dimensions, spanning the whole extent of the river, and each longer than the nets of forty pairs of cots. Enjoyment of a paramount right to a salmon fishery in the Blackwater might co-exist with cot fishery; obviously drift-net fishing is incompatible with any advantage from it.

When the evidence in a suit commences with King John, and after being summed up in one volume of 863 pages, requires to be supplemented by additional documents which cover 300 more, it is scarcely to be anticipated that the decision, whatever it may be, will carry conviction to all minds. Disputes swell to this huge mass, and demand this enormous accumulation of evidence and discussion, because in their own nature they admit of little or no certainty. Right and practice were not necessarily in unison in the ages which the history of this suit covers. Nobles and courtiers often sought grants from kings which they cared to assert in action principally against the grantors. On the other hand, tenants and subordinates not rarely abstained from resisting claims of their superiors which were simple usurpations. Neither is the absence of evidence that alleged rights under Royal grants were habitually put in operation to inhibit the occupation of fishermen conclusive against the reality of the rights, nor is the willingness of fishermen to ply their industry with the consent of the powerful lord of the locality rather than against it absolute testimony that they pursued their vocation only by sufferance. Judges in inquiries like this cannot do more than balance probabilities. As for the public, although the appellants assume to represent it, fortunately it can regard with philosophic indifference the issue, whatever it may be. Ducal claimants of fishery monopolies cannot, it is true, expect popular sympathy with their attempts to enforce them; but from the point of view of national concern in the multiplication of salmon and in the prudent management of salmon streams, it may be questioned whether the venerable lord of Lismore Castle be not at least as genuine a champion of public interests as the worthy fish-dealer of Youghal and fisherman of Dromore.—*Times*.

**NEW STATUTES.**—During the present Session only 13 Acts of Parliament have been passed, seven public and six local.

#### THE LATE MR. J. N. DARBY.

The late Mr. John Nelson Darby, formerly a barrister-at-law, of Dublin, who died at Bournemouth, on the 29th ult., in the eightieth year of his age, was the youngest son of the late Mr. John Darby, of Markley, Sussex, and of Leap Castle, King's County, and a nephew of the late Admiral Sir Henry Darby, who commanded the *Bellerophon* in the battle of the Nile. Mr. Darby was born in London in 1800, and was educated at Westminster School, whence he proceeded to Trinity College, Dublin, where he graduated in 1819 as gold medalist. He was called to the Irish bar about the year 1825, but subsequently took holy orders. Afterwards deploring the divisions of Christendom, he joined a movement for religious fellowship upon a broader basis than orthodox communions ordinarily present. Dublin was at first the centre of the "Brethren;" but their views quickly found expression in England, notably at Plymouth, hence their usual designation.—*Law Times*.

#### LIABILITY OF ATTORNEYS.

The Supreme Court of Indiana has recently rendered an interesting opinion upon the liability of an attorney: *Hillegress v. Bender*, 1 Am. Law Mag. 7. The facts of the case were these: A. obtained a judgment against B. After the entry of the judgment, the defendant gave to D., his attorney in the case, the money to pay this judgment. D. gave it to the Clerk of the Court, who satisfied the judgment of record, but did not deliver the money to the plaintiff A. After the death of the Clerk and of D., B. brought suit against D.'s administrator for the money delivered by him to D. The Court held that the general power of an attorney for a defendant ceases upon the entry of a judgment finally terminating litigation; that "it is no part of the duty of a defendant's attorney, in the capacity of an attorney, to pay a judgment entered against his client, although furnished with the money for that purpose. It may be in such a case, his duty as an agent to pay the money to the creditor; but ordinarily, attorneys are not bound to hunt up and pay judgment creditors;" and that "when the duty ends the liability ceases." The Court was not lenient, however, in prescribing an attorney's duties. It said:—

"A lawyer is liable for a negligent omission to perform a plain duty. Upon this ground rests the decision in *State v. Harrison*, 73 Ind. 17. In that case the duty was a plain one—there was no doubtful questions of law for decision, nor any conflicting mode of procedure to embarrass or to mislead. A lawyer is not liable for every mistake. He is not liable for a mistake committed in matters where the law is doubtful and uncertain. 'God forbid,' said C. J. Abbott, 'that it should be imagined that an attorney or a counsel, or even a Judge, is bound to know all the law. Nor is the lawyer bound to bring to the practice of his profession the highest skill and learning. He is bound to possess and exercise competent skill; and if he undertakes the management of a law affair, and neither possesses nor exercises reasonable knowledge and skill, he is liable for all loss which his lack of capacity or negligence may bring upon his client.' 'What an attorney does profess and undertake, and all that he professes and undertakes is, first, that he possesses the knowledge and skill common to the members of his profession; and, second, that he will exercise in his client's business an ordinary degree of attention, prudence, and skill;' *Shearman & Red. Neg.*, sec. 212; *Riley v. Cavanaugh*, 29 Ind. 435; *Carale v. McQueen*, 128 Mass. 574. The man who professes to act as a lawyer must be acquainted with the settled rules of law, and the practice of the Courts prevailing in the locality wherein he practices. 'For this purpose,' to borrow the language of a late writer, 'there must be a familiarity with the adjudicated local law as well as the statute bearing on the particular point, and there must be a knowledge of the legal machinery necessary for the application of this law.



To undertake the management of a case without such knowledge is negligence, which makes the lawyer liable for any loss which his client may incur: Whart. Neg., sec. 749. Another author thus states the rule: 'The law requires an attorney to be acquainted with the practice of his Court, with ordinary rules of pleading and evidence, the existence of statutes, and the rules of Court, and in cases free from doubt, with their construction also.' Weeks on Attorneys, 474, sec. 285.

"It is the duty of a lawyer to know whether public matters, such as the duties of the officers connected with the Court in which he practices, are regulated by statute. A lawyer who does not know whether the duties of the clerk of the Court in which his professional duties are performed are or are not defined by statute, cannot be deemed to possess competent skill. It is a lawyer's duty to know the elementary rules of law upon familiar matters of practice, as well as the settled rules governing matters which spring out of the ordinary transactions of every-day life, and which are of frequent application. A rudimentary knowledge of the law would have acquainted the appellant's intestate with the elementary rule that payment must be made to the creditor or to some one duly authorized to act for him. A rule so long settled and so familiar ought to be known to all who assume the character of lawyers. A knowledge of the statute would have shown the intestate that there was in them no provision changing the familiar and long established rule. It must be held that if the intestate was appellant's attorney when he paid the money to Eidsall, and paid it as his attorney, a right of action accrued to the appellee, because competent skill was either not possessed or was not exercised."—*Pacific Coast Law Journal*.

#### FRACTIONS OF A DAY.

The wisdom of our ancestors has transmitted to us a good many maxims in the law which we are often ashamed to accept, and has too often involved us in no end of difficulties in order to reconcile these with common sense. Yet the courts deal tenderly with all the obsolete doctrines which pass through their hands, because one of the theories is, that the courts can or once could do no wrong, and hence all their practices were accepted as the perfection of reason. Whatever a judge once decided was taken at once for something very near infallibility, and the successors of that judge were grieved in spirit to question its authority. One of the troubles attending this inheritance of legal wisdom is the maxim that anything done on a certain day is taken to be done at the first moment of that day. Probably our ancestors were a little put about for time-pieces, and hence the short and easy way in which they dealt with minute points of time, yet which now-a-days we often seem to think so important. Some phases of this maxim have of late perplexed justices not a little, and the points dealt with by the courts are well worth bearing in mind, for there can be little doubt that as we live in an age when time and punctuality are of the essence of all kinds of business, we will depart more and more from the old-world theory of dating acts done from the hour of midnight preceding them.

Some years ago a novel difficulty of this description arose out of the not uncommon occurrence of dog licenses being taken out a little too late, and people being detected in an apparent illegality, though probably they had no serious intention of defrauding the revenue. As we all know a decree has gone forth that those who keep dogs shall pay for the luxury by giving to the revenue a yearly contribution. The Revenue Act, 30 Vict., c. 5, s. 5, enacted that a license to keep a dog shall commence on the day on which the same shall be granted, and if a person shall keep a dog without having in force a license authorising him to do so he shall incur a penalty of £5. Accordingly, the form of license bore a date of the day of its issue, though it did not occur to the officials to insert the

hour of the day on which such document may have been issued.

In the case of *Campbell, appellant, v. Strangeways, respondent*, 3 C. P. D. 105, it appeared that one day at 12 40 p.m. it was discovered by the Inland Revenue officials that the respondent Strangeways had a dog for which no license was in force. But at 1 10 p.m. of the same day the respondent took out a license in the usual form bearing date of that day. The officer took out a summons against the respondent for keeping the dog without a license, the time, of course, being only about half an hour, and the magistrate was asked to impose a penalty for that bad half hour. The magistrate was of opinion that the license produced was an answer to the information, and dismissed the charge, whereon the official demanded a case for the opinion of the court. In the hearing of the case some of the learning of the subject was referred to. A case before Lord Mansfield was cited where two actions of debt had been brought against a person for the same act, and the question arose whether the second could be gone on with. And the judge said he did not see why they should not inquire into the hour of the day so as to discover which was first and which was second. In another case an execution issued against a man on the day he died, and the question raised was whether he was alive or dead when the execution issued. There also the court held that the hour of the day might be inquired into. And again, the same thing was said when a *feri facias* issued against a man, and he was also made bankrupt on the same day. The magistrate had thought that these being questions in civil actions the rule that the act done related back to the first hour of the day might well be departed from, but not so in a criminal offence such as this proceeding was for a penalty for want of a dog license. But the Common Pleas Division reversed the judgment of the magistrate, and held that as the dog license had not been taken out till after the offence had been committed, the maxim did not apply, and that inquiry might properly be made as to the precise hour of the day. As Lindley, J., expressed it: The provision of the Act that the license shall commence on the day it bears must mean that it did not commence at any previous day. It is going too far to say that a license taken out in any hour of the day covers the whole day. The two sections of the Act may be reconciled by reading "on the day" to mean "at and from the time when the license was obtained." So the court held that as the dog was kept without a license for half an hour before the license was taken out, the penalty had been incurred, and was not wiped out by the subsequent taking out of the license.

The next question that arose was one of no small interest and nicety, and seemed to be decided differently though a different reason no doubt existed. In *Tomlinson v. Bullock*, 4 Q. B. D. 230, an Act of Parliament altering the law of bastardy had been passed on the 10th of August, 1872, and it declared that the new law should apply to any bastard child born after the passing of the Act. It so happened that a bastard child was born on the same 10th of August, 1872. And it is needless to say that though the Act recognised the old law as still applicable to children born before 10th August, 1872, it said not a word about the children that might be born on the 10th August. The justices heard an application of the mother of the bastard child, and came to the conclusion that as the child was born on the 10th August, it could not be treated as born after the 10th, and so was not within the new law introduced on that day. The old cases were again cited on this question, but the court to which a case had been sent for opinion reversed the decision of the justices, and held that the Act of Parliament came into operation at the midnight preceding the 10th August, and therefore that everything that happened during that day, including the birth of the child, happened after the passing of the Act.

The reason of this last decision was somewhat recondite. The court said that at common law it was

the ancient maxim that all the statutes passed during one session of Parliament were deemed to have been made on the first day of the session. This maxim, as may be supposed, was productive in many instances of the most serious consequences. And accordingly an Act of Parliament of 28 Geo. 3: was passed which required the clerk of the Parliament to indorse on every Act the day, month, and year when the same received the Royal assent, and enacted that such indorsement should be the date of its commencement where no other commencement was provided. The only point of time which this Act made material was the day on which the Royal assent was given. It thus recognised the well-known maxim that the law takes no notice of fractions of a day, and except in cases where there are conflicting rights between subject and subject for the determination of which it is necessary to ascertain the actual priority, such was the universal rule. An Act of Parliament accordingly, which comes into operation on a given day, becomes law as soon as the day commences, and every event which occurred during that day was, in contemplation of law, an event which took place after the passing of the Act.

Such was the reasoning of the court as to the commencement of an Act of Parliament, and it will be observed that part of it is mere assumption, namely, that because a very foolish rule once existed of making Acts of Parliament date back several months at a time it must be assumed that when a new Act declared that that rule should no longer apply, the court will nevertheless retain a small part of the same foolish rule, namely, that of dating the Act, which probably passed at about 2 p.m. from a time preceding its real passing by fourteen hours. This mode of reasoning, it is true, has a certain air of conformity to the established method. The new Act demolished the old rule as it existed on a large scale of months; but it saved the old rule as it existed on the smaller scale of one day. The rule was bad as regarded weeks and months but it is sound for at least one day. Whether the logic of the decision was right or wrong it is at present to be treated as the law, and hence we must now consider it as settled, that when an Act of Parliament passes on a stated day it means the first moment of that day, namely, the moment after the preceding midnight. When a rule indeed is once settled, it matters very little what was the reason given for it or whether that reason bears strict scrutiny. It is enough that it is settled and can be easily understood and followed.

The late case of *Clarke v. Bradlaugh*; L. R., ante, p. 278, is a very natural sequel to the security and attending the old maxim notwithstanding the above two recent decisions. The point was of great nicety. Mr. Bradlaugh had on a certain day sat and voted in the House of Commons without having taken the statutory oath, and thereby incurred a penalty. There were persons watching his proceeding, and on the next day for the cause of action, and one gentleman named Clarke was so zealous in the cause as a champion of orthodoxy, that he drove at once to his solicitors, and on the very same day issued a writ of summons in an action to recover the penalty. The difficulty raised was whether the plaintiff had not been rather premature in what he did, and whether he had not actually issued the writ before the cause of action accrued, that is, before the defendant had voted in the House of Commons. The defence was raised by demurrer that the statement of claim disclosed no cause of action, inasmuch as it alleged that the defendant sat and voted in the House of Commons on the day on which the writ was issued. This point was argued, and the Queen's Bench Division gave judgment for the plaintiff, holding that the court could inquire into the hour of the day in which the respective acts were done, namely, the voting and the issuing of the writ. The defendant appealed to the Court of Appeal, and again the learning of the subject as embodied in the old cases was discussed and reviewed.

The question turned in the judgment of the court on whether the issuing of the writ of summons was a

judicial act or the act of the party. The court assumed that for most of the purposes of justice the hour of the day might be inquired into. It also assumed that there was a general rule that judicial acts related back to the beginning of the day on which such act was done. Therefore if the court was satisfied that the writ of summons was the act of the party and not a judgment of a court then the fraction of a day might be considered, and if so, the plaintiff would succeed. Accordingly the court came without much difficulty to the conclusion that the issuing of a writ of summons was in no sense a judicial act. Anybody could go at any moment of any day, and, on paying a fee, issue a writ on any cause or alleged cause of action, which he thought fit to assert, or assume, or invent. If so, this surely could not be deemed a judicial act. The court could not originate it, nor could it refuse the issuing of the writ when it was asked for. The consequence, therefore, followed that the plaintiff was deemed to have competently brought this action, it being assumed for the purpose of the decision that the writ was not issued till after the hour of day when the illegal act was done.

These cases show that while the law still deems an Act of Parliament passed and a judgment of a court pronounced on the first moment of the day, there is in other cases no objection to looking at the fraction of a day. Yet possibly there will still be difficulties in applying these maxims to the cases that will arise from time to time.—*Justices of the Peace.*

#### THE CONVEYANCING AND LAW OF PROPERTY ACT, 1881. WHERE IT SHOULD BE ADOPTED, AND WHERE EXCLUDED.—XV.

SETTLEMENT OF ESTATE ON MARRIAGE; THE CHILDREN TAKING AS TENANTS IN COMMON IN TAIL.

(Continued from page 216, ante.)

##### Trustee Clauses.

The clauses relating to the appointment of trustees and their indemnity will be in the same form as those inserted in settlements of personality (David, iii. 1239, 720). They have already been discussed under that heading in the *Law Times* of the 11th March, p. 329, and the 18th March, p. 346. It will be seen that our view is that the settlement should supplement the statute by vesting the power of appointing new trustees in the tenants for life during their lifetime; after the death of both of them the statutory power given by sect. 31 will suffice. Also the settlement should indemnify the trustees for investing upon property held with less than a marketable title. We suggested the following form:—"And it is hereby agreed that the said [husband] and [wife] during their joint lives, and the survivor of them during his or her life, shall have power to appoint new trustees of these presents, and the trustees or trustee may dispense with investigation or production of the lessor's title on lending money on leasehold securities, or otherwise may lend on any security with less than a marketable title, and shall not be responsible for any loss thereby occasioned."

Compare old common form, David, iii. 721; form supplementing Lord Cranworth's Act, *ibid.* 720; form supplementing new Act, *Conc. David*, 329; *Prideaux*, 11th edit. 221.

The trustees' receipt clause may be omitted, in reliance on sect. 36, and it will not be needful to insert any power to compound or compromise debts or claims (sect. 37). Possibly it may sometimes be necessary to exclude the wide powers of sect. 37. See *Law Times*, March 18, p. 346.

##### Covenants for Title.—Sect. 7.

We think it best that the settlor should not be expressed to convey either "as settlor," or as "beneficial owner," but that the ordinary covenant for further assurance should be inserted. For form compare David, iii. 1027, 1029; *Conc. David*, 2nd ed. 235; *Prideaux*, 10th ed. vol. ii. 310. It is slightly different from the form of covenant used when the land is

conveyed on trust for sale. We are of opinion that the covenant (sect. 7, E.) implied by statute if the settlor conveys "as settlor," is rather too limited, as apparently it would not apply to cases where the settlor himself incumbers previously to the conveyance. As to this see our articles, *Law Times*, March 25, p. 365; and April 1, p. 382.

On the other hand, we think, notwithstanding the high authority of Mr. Davidson and others, that the insertion of the words "as beneficial owner," and the consequent implication of the covenants in sect. 7 (A), which are substantially the same as vendor's covenants, more objectionable, as placing too great a burden on the settlor. See *Law Times*, April 1, p. 382.

If, however, brevity is a great object, covenants for title should be omitted, and the words "as settlor" inserted in the conveying part.

Of course the possible doubt whether sect. 7 (B) applies to the case of a conveyance of land upon trust for sale for the purposes of settlement, could not be raised in the case before us. For this is clearly "a conveyance by way of settlement." In the form of marriage settlements given as No. 4 of Schedule IV. to the statute the words "as settlor" are used, and covenants for title omitted; and although that form is one of a settlement on first and other sons in tail, &c., and not exactly of the same description as the settlement under discussion, in this respect the principle is the same. Under these circumstances, although we prefer the ordinary covenant for further assurance, we should not hesitate, where brevity is a great object, to use the words "as settlor" instead. As to the authority of the forms at the end of the Act, see sects. 57, 66. We may mention that Mr. Pridaoux, in his most recent edition, employs the phrase "as settlor" in a settlement of real estate, and omits covenants for title.

Before leaving this subject it will be well to notice that there is another difference between the covenant of sect. 7 (E.) and the ordinary one for further assurance (*ubi sup.*). In the ordinary one the covenant is made with the trustees, and the benefit of the covenant will be distributed by the Statute of Uses to the persons who from time to time become entitled under the settlement (Third Report of Real Property Commissioners, cited in David, i. 138; Dart, 5th edit. 778; Sug, V. & P. 14th edit. 578; Notes to *Spencer's case*, 1 Smith L. C. 82.); and it is to the effect that the settlor will further assure the property to the uses declared in the settlement.

The statutory one is made with the "persons to whom the conveyance is made," sect. 2 (1). We suppose this means the trustees, who are the grantees to uses, and not the persons to whom the Statute of Uses vests the legal estate. Then by the Statute of Uses, as mentioned above, or by sect. 7 (A), the benefit of the covenants will be distributed to the persons entitled. So far then the statutory and ordinary covenants agree. It is to the matter of the covenant that they seem to differ. The ordinary covenant is that the settlor will further assure the property to the uses declared in the settlement; while the statutory one is that the settlor will assure the property "to the persons to whom the conveyance is made and those deriving title under them, subject as, if so expressed, and in the manner in which the conveyance is expressed to be made, as by them or any of them shall be reasonably required."

We have seen above that "the persons to whom the conveyance is made" are the trustees. It can hardly be said with accuracy that the person in whose favour uses are declared "derive title under" the trustees. Nor can the conveyance be said to be made "subject" to the uses. The word "subject" would rather refer to any mortgage or charge affecting the property than to the uses to which it is conveyed. There remains, however, the phrase "in the manner in which the conveyance is expressed to be made." The effect of this is, that any conveyance, made under this implied covenant for further assurance, must be made to the trustees, but it must be made to uses, just as the

original conveyance was. The difference then is that, under the ordinary covenant, the "further assurance" will be made to the uses, but in the statutory one it will be made to the trustees. But the statutory covenant to make the further assurance may be enforced by the persons in whom the use is vested, sect. 7 (6). Practically, then, in the settlement before us, the difference is of little consequence.

#### Summary.

It will be convenient here to summarise the results of our two previous articles on this description of settlement, contained in the *Law Times* of April 8, page 401, and April 15, pages 419, 420:—

The limitations to the children, and the accuser clause, may be slightly abbreviated by use of the phrase "tenant in tail" instead of the old limitation to the children and the heirs of their bodies; but, at present, we should not advise that the very short mode of limiting cross remainders usual and proper in wills should be adopted in deeds. See *Law Times*, p. 401.

We think that partial reliance may be placed on sect. 42 as to provision for management of the land and application of its income during the minority of any of the children. Power of leasing should be inserted. In simple settlements it will only be necessary to state that the trustees shall have a power of sale and exchange, and to declare with what consent it shall be exercisable. Lord Cranworth's Act, and the Conveyancing Act, 1881, will supply the details (*Law Times*, pp. 419, 420). A short trustee clause will be necessary, and the ordinary covenant for further assurance should usually be inserted. See above in the present article. Of course the general words and all estate clause may usually be omitted, in reliance upon sects. 6, 63. See *Law Times*, Jan. 7, p. 167. The above remarks apply to settlements of freeholds only.

(To be continued)

#### LAW REFORM.

In closing his answer to Mr. Ewart's argument before the Senate Judiciary Committee against the Civil Code, Mr. Field said:—"Finally, I have devoted a quarter of a century to the amelioration of the laws of this Imperial State. When I came to the bar I found that justice was two-fold in its first great divisions, and seven-fold in one of these divisions. I saw suitors turned out of a court of law into a court of equity, and then back again from equity to law; and I knew a plaintiff defeated in the highest court of the State, not because he lacked a good case, but because his attorney had brought his suit in the *equiv* instead of the *debit*. All this was believed by ninety-nine hundredths of the most conservative of professions to be the outcome of 'the wisdom of ages,' the expressions of 'those eternal principles of justice that existed before legislators ever saw'—I resolved in my soul, my fanaticism, if you please, to break up this system. Some brave friends joined me. We smote the idol, and its broken limbs lie scattered on the banks of the Hudson and the Mississippi, the Thames and the Ganges. The gentleman laughed at the Code. Then, as now, facetious, he proposed a feast to a jovial and admiring company of his professional brethren, 'Jack Cade and Jack Code.' Well, the Jack Code that the gentleman derided has grown to be a man and a gentleman; he has marched over land and sea, entered the old judicial halls of England, and taken his seat upon the woolsack, a few years ago, being in the Southern hemisphere, I read under the Southern cross, in the statutes of that land, words written here in Albany thirty winters before, and I felt a pride which the gentleman, it appears, can neither feel nor understand. And when last year I went into Westminster Hall, the Hall of William Rufus, the scene of so many tragedies and so many glories, and looked from the steps at the upper end down upon the rooms, over the doors of which were written Court of Chancery, Court of Queen's Bench, Court of Common Pleas, and Court of Exchequer, I

said to myself, 'Old things have passed away and all things have become new,' and I could not but think that possibly in some future time a place may be found in the hall for the escutcheon of New York with her proud motto 'Excelsior,' to remind the visitor of the daughter beyond the sea, and of the contribution made by this daughter to the simplification of the laws of the mother-land."—*Albany Law Journal*.

#### THE ASSISTANT UNDER-SECRETARY.

We are happy to be in a position to state that the allegation of the *Daily Chronicle* to the effect that Dr. Kaye, Q.C., had received a threatening letter, is without foundation.

#### ALLEGED POLICE PROTECTION OF THE IRISH JUDGES.

The Press Association says:—All the judges and officials in Dublin are now guarded by policemen in plain clothes. Detectives are placed at the law and other public courts, and at the private residences of the judges.

#### TEXT-BOOK ADDENDA.

[From the *Law Journal*.]

30 & 31 Vict., c. 142, s. 10.

There is no appeal without leave to the Court of Appeal in a High Court action remitted to the County Court under 30 & 31 Vict., c. 142, s. 10, such action becoming a County Court action (*Bowles v. Drake & Co.*, 51 Law J. Rep Q. B. 66)—C. A.

*Fry on Specific Performance (2nd Edition)*, 530.

Particulars of sale contained a misstatement of the length of a term for which a tenant of the vendor held a portion of the property; another portion was described as producing a rental which at the time the particulars were issued was not produced, but which, before the day of sale, owing to repairs done, was raised to the stated amount. Held, there was no such misrepresentation as would enable a purchaser to resist specific performance (*Goddard v. Jeffreys*, 51 Law J. Rep. Chanc. 57).

*Daniell's Chancery Practice (6th Edition)*, 1162.

In a sale of property by solicitors under an order of the Court, it is the duty of the solicitors having conduct of the sale to pay the deposit into Court for the auctioneer; and, therefore, where an auctioneer sent the deposit to the solicitors, and it was misappropriated by a member of the firm, the innocent members were held liable for the default (*Biggs v. Bree*, 51 Law J. Rep. Chanc. 64).

*Robson on Bankruptcy (4th Edition)*, 603.

A trustee in bankruptcy cannot sell his debtor's estate to his partner, nor anyone through whom he may derive benefit (*In re Moore, ex parte Moore*, 51 Law J. Rep. Chanc. 72).

*Jarman on Wills (4th Edition)*, ii., 306.  
*Theobald on Wills (3rd Edition)*, 387.

A bequest of an annuity to B. S. charged on two specified real estates, with usual powers of distress and entry in case of arrears, was held a legal limitation of a rent charge, so that the personal estate was exonerated therefrom (*Patching v. Barnett*, 51 Law J. Rep. Chanc. 74)—C. A.

*Morgan on Costs*, 117.

In an administration of real and personal estate, costs exclusively occasioned by the real estate must be borne by the same, the general costs being borne by the personal estate; and the judge should make the appointment. [*Semble, In re Middleton; Thompson v. Harris*, 50 Law J. Rep. Chanc. 525 (noted L. J. 1881, p. 335), overruled] (*Patching v. Barnett*, 51 Law J. Rep. Chanc. 74)—C. A.

#### THE ADMINISTRATION OF JUSTICE IN IRELAND.

At a meeting of the Judges on Thursday, the following resolution was passed unanimously:—"That, in the opinion of the Judges of the Superior Courts, the imposition upon them of the duty proposed by the Prevention of Crime (Ireland) Bill would seriously impair the public confidence in the administration of justice in Ireland." All the Judges attended save the Lord Chancellor, Chief Justice Morris (who is away), Baron Dowse (who is ill), Mr. Justice Lawson (who is away), and the Judges of the Bankruptcy and Admiralty Courts.

#### APPOINTMENTS AND PROMOTIONS.

*NOTA BENE*.—Information intended for publication under the above heading should reach us not later than Friday morning in each week, as publication is otherwise delayed.

Mr. James W. McLaughlin, Barrister-at-Law, of the North-West Circuit, has been appointed a Junior Crown Prosecutor for the County of Cavan.

Mr. John Crockett, Ulster House, Castlederg, has been appointed Clerk of Petty Sessions for Castlederg (County Tyrone) Petty Sessions district.

#### LAW STUDENTS' JOURNAL.

##### KING'S INNS.

##### HONOR EXAMINATION, OCTOBER, 1882.

The Benchers of the King's Inns in Ireland have approved of the following Rules for the Honor Examination of Law Students:—

"An honor examination, to be conducted by members of the Bench and the Professors at the King's Inns, shall be held in October in each year, commencing in October, 1880. The honor examination shall be in the following subjects, viz.:—1. The History of Law, Constitutional Law, and Criminal Law. 2. Jurisprudence, Civil Law, and International Law. 3. The Law of Real Property. 4. The Law of Personal Property. The rules as to the time, place, and subjects of examination, shall be published by the Education Committee at least six months before each honor examination.

"Every student who shall, within the three years preceding the examination, have kept at least eight of the Terms' Commons, and attended the two continuous Courses of Lectures necessary to qualify him for admission to the Irish Bar, shall be qualified to compete at an honor examination on entering his name at the Under Treasurer's Office, seven clear days, at the least, before the day of holding such examination, but no student may compete at more than one honor examination.

"The 'John Brooke Scholarship' of fifty pounds per annum, to continue for three years, shall be conferred on the most distinguished student at each honor examination, and an exhibition of twenty-one pounds per annum, to continue for three years, shall be conferred on the student obtaining the second place at each honor examination. Each student obtaining a scholarship or exhibition, may, if so recommended by the Education Committee, be excused from keeping two Terms' Commons in the Dining Hall of the Society, and from attending two Terms of Lectures, which would be otherwise required for his admission to the Bar. A prize of twenty-one pounds shall be conferred on the student obtaining the third place at each honor examination, and any such student may also, if so recommended by the Education Committee, be excused from keeping one Terms' Commons in the Dining Hall of the Society, and from attending one Term of Lectures, which would be otherwise required for his admission to the Bar.

"Each scholarship and exhibition shall be tenable for the three years next following the holder's call to the Irish Bar, provided such call shall take place not later than in the Hilary Sittings after his election, otherwise the period of three years shall be computed from the call day of such

Sittings, but the payment shall not accrue until the date of the holder's call to the Bar, and shall if necessary be apportioned.

"Each scholarship and exhibition shall continue so long only as the holder shall remain a practising member of the Irish Bar, and shall retain the personal benefit of such scholarship or exhibition. The Benchers reserve to themselves the power to deprive the holder of any scholarship or exhibition for what shall appear to the Bench to be sufficient cause.

"The Benchers reserve to themselves a discretion of withholding a scholarship, exhibition, or prize, in case the Education Committee report that they do not consider the answering sufficiently meritorious. The Benchers may give certificates of honor to students failing to obtain the first, second, or third places, where the Education Committee report that the answering merits such distinction.

"A list, arranged in order of merit, of all the students obtaining scholarships, exhibitions, prizes, or certificates at each honor examination, stating the distinctions conferred, shall be placed in the Hall of the Four Courts, in the Law Library of the Four Courts, the Library of the Society in Henrietta-street, and in the Lecture Room of the King's Inns.

"At any call to the Bar, those students who have obtained scholarships, exhibitions, or prizes, shall take rank in seniority over all other students who shall be called on the same day, and those who have obtained scholarships, exhibitions, or prizes, shall take rank in seniority among themselves, according to the rank and date of the distinctions obtained by them."

*Rules for the Honor Examination of Students for "The John Brooke Scholarship," Exhibitions, Prizes, and Certificates.*

An honor examination will be held immediately before the Michaelmas Sittings, 1882, at which any qualified student of the King's Inns, who is desirous of becoming a candidate for "The John Brooke Scholarship," an exhibition, or prize, or certificate of honor, shall be entitled to present himself.

Each student proposing to submit himself for examination is required to enter his name at the Under Treasurer's Office, King's Inns, Henrietta-street, on or before Tuesday, the 17th day of October, 1882.

The examination will be held on Tuesday, the 24th, and Wednesday, the 25th days of October, 1882.

It will take place in the Hall of the King's Inns, and the doors will be opened half an hour previous to the hour, and closed at the hour appointed for the examination, and no student can be admitted after the doors have been closed.

The examinations will be conducted by members of the Bench, and will be in the following order:—

On Tuesday, the 24th of October, from the hour of 10 o'clock, a.m., till 12 o'clock, noon, on History of Law, Constitutional Law, and Criminal Law; and from 2 o'clock to 4 o'clock, p.m., on Jurisprudence, and Civil and International Law.

On Wednesday, the 25th of October, from the hour of 10 o'clock, a.m., to 12 o'clock, noon, on the Law of Real Property; and from 2 o'clock to 4 o'clock, p.m., on the Law of Personal Property.

*Subjects of Examination.*

1st.—History of Law, Constitutional Law, and Criminal Law.

I. and II. History of Law and Constitutional Law, during the following period—

From the Restoration to the Accession of George I.

III. Criminal Law.

The Law relating to Conspiracy.

2nd.—Jurisprudence, Civil, and International Law.

The Contract of Mandate, in Roman Law, with its Analogies in French and English Law.

3rd.—Law of Real Property.

The Law of Mortgage of Real Estate.

4th.—The Law of Personal Property.

The Law of Bills of Exchange and Promissory Notes.

By Order of the Education Committee,  
JOHN D. O'HANLON, Under Treasurer.

KING'S INNS, 22nd April, 1882.

THE INCORPORATED LAW SOCIETY  
OF IRELAND.

MICHAELMAS SITTINGS, 1882.

FINAL EXAMINATION.

NOTICE.

Candidates wishing to present themselves at the above Examination must lodge their papers, &c., on or before the first day of Trinity Sittings, 1882.

By Order,

JOHN H. GODDARD, Secretary.

Solicitors' Hall, Four Courts, Dublin,  
25th April, 1882.

COURT PAPERS.

LAND JUDGES' COURT.

EXTENSIVE SALE OF HOUSE PROPERTY IN THE CITY OF DUBLIN.

Before the Right Hon. JUDGE OMBEY,

On Tuesday, the 2nd May.

Estate of the Very Rev. Augustus William West,  
owner and petitioner.

Lot 1.—The Houses, Nos. 21 and 22 Christchurch-place, held in fee, subject to the yearly rent of 2s. 5d., and a portion of the yard at-rear of No. 21, held under lease for 98 years from 1786, at the yearly rent of one peppercorn; profit of 275 17s. 7d. per annum, less the usual taxes. Sold to William Burke for 2340.

Lot 2.—The Houses and Premises, Nos. 48 and 49 Mountjoy-square, held, with other premises, under lease of 10th March, 1790, for a term of 999 years, at the yearly rent of 218, late currency, which will be sold liable to the whole of the said head rent, and bound to indemnify all the other premises in said lease against payment of said head rent; now producing the profit rent of 238 15s. 4d. Sold to Mrs. Nugent for 2830.

Lot 3.—The Houses and Premises, Nos. 51 and 52 Mountjoy-square, held under said lease of the 10th day of March, 1790, producing the profit rent of 242 9s. 2d., less the usual taxes. Sold for 2720.

Lot 4.—The House and Premises, No. 46 Mountjoy-square, held under said lease of the 10th day of March, 1790, and producing the annual profit rent of 227 13s. 10d., less the usual taxes. Sold to W. J. Tyndall for 2540.

Lot 5.—The House and Premises, No. 50 Mountjoy-square aforesaid, held under said lease of 10th day of March, 1790, and now producing the yearly rent of 227 13s. 10d. Sold to Mr. Tyndall for 2560.

Lot 6.—The House and Premises, No. 21 Middle Gardiner-street, held under said lease of 10th March, 1790, and now producing the yearly rent of 214 15s. 4d. Sold to C. G. Westropp for 2240.

Lot 7.—The House and Premises, No. 25 Middle Gardiner-street, held, with lots 8 and 9, under lease dated the 24th day of March, 1800, for a term of 998 years from 1801, at the yearly rent of one peppercorn, and now producing the yearly rent of 265, less the usual taxes. Sold to John Flynn for 2510.

Lot 8.—The House and Premises, No. 26 Middle Gardiner-street aforesaid, held under said lease of the 24th day of March, 1800, and now producing the yearly rent of 265, less the usual taxes. Sold to Mr. Flynn for 2510.

Lot 9.—The House and Premises, No. 27 Middle Gardiner-street, aforesaid, held under said lease of the 24th day of March, 1800, and now producing the yearly rent of 232, less the usual taxes. Sold to Mr. Flynn for 2360.

Lot 10.—The Houses and Premises, Nos. 1, 2, 3, 4,

and 5 Mountjoy-place, held, with lots 11 to 28, both inclusive, and other premises, under lease dated the 23rd day of June, 1791, for a term of 999 years from 1791, subject to the yearly rent of £58, late currency, to payment of the whole of which this lot is sold, liable and bound to indemnify all other premises comprised in said lease against the entire of said head rent; this lot now produces the yearly profit rent of £51 14s. 8½d., less the usual taxes. Sold to Mr. Flynn for £690.

Lot 11.—The House and Premises, No. 6 Mountjoy-place, aforesaid, held under said lease dated the 23rd day of June, 1791, and now producing the annual profit rent of £18 16s. 11d., less the usual taxes. Sold to A. Dillon for £275.

Lot 12.—The House and Premises, No. 7 Mountjoy-place, aforesaid, held under said lease of the 23rd day of June, 1791, and now producing the annual profit rent of £12 14s. 9d., less the usual taxes. Sold to C. G. Westropp for £225.

Lot 13.—The House and Premises, No. 8 Mountjoy-place, aforesaid, held under said lease of the 23rd day of June, 1791, and now producing the annual profit rent of £22 14s. 9d., less the usual taxes. Sold to Mr. Westropp for £220.

Lot 14.—The House and Premises, No. 9 Mountjoy-place, aforesaid, held under said lease of the 23rd day of June, 1791, and producing the estimated annual rent of £70, less the usual taxes. Sold to T. A. MacMahon for £570.

Lot 15.—The House and Premises, No. 10 Mountjoy-place, aforesaid, held under said lease of the 23rd day of June, 1791, and now producing the annual rent of £52, less the usual taxes. Sold to John Flynn for £500.

Lot 16.—The House and Premises, No. 32 Mountjoy-square, aforesaid, held under said lease of the 23rd day of June, 1791, and now producing the yearly rent of £46, less the usual taxes. Sold to W. J. Tyndall for £620.

Lot 17.—The House and Premises, No. 33 Mountjoy-square, aforesaid, held under said lease of the 23rd day of June, 1791, and now producing the yearly rent of £59, less the usual taxes. Sold to G. J. Wells for £660.

Lot 18.—The House and Premises, No. 1 Great Charles-street, held under said lease of the 23rd day of June, 1791, and now producing the annual rent of £44, less taxes. Sold to Mr. Wells for £360.

Lot 19.—The House and Premises, No. 2 Great Charles-street, aforesaid, held under said lease of the 23rd day of June, 1791, and now producing the annual rent of £43, less the usual taxes. Sold to George Tickell for £365.

Lot 20.—The House and Premises, No. 3 Great Charles-street, aforesaid, held under said lease of the 23rd day of June, 1791, and of the estimated yearly letting value of £45. Sold to John Flynn for £370.

Lot 21.—The House and Premises, No. 4 Great Charles-street, held under said lease of the 23rd day of June, 1791, and producing the annual profit rent of £23 2s., less the usual taxes. Sold to Thomas Brunker for £355.

Lot 22.—The House and Premises, No. 5 Great Charles-street, aforesaid, held under said lease of the 23rd day of June, 1791, and producing the annual profit rent of £21, less the usual taxes. Sold to Mr. Brunker for £320.

Lot 23.—The House and Premises, No. 6 Great Charles-street, aforesaid, held under said lease of the 23rd day of June, 1791, producing the annual profit rent of £21, less the usual taxes. Sold to Mr. Brunker for £325.

Lot 24.—The House and Premises, No. 7 Great Charles-street, aforesaid, held under said lease of the 23rd day of June, 1791, and producing the annual profit rent of £9 4s. 7½d., less the usual taxes. Sold to Mr. Whitton, in trust, for £180.

Lot 25.—The House and Premises, No. 8 Great Charles-street, aforesaid, held under said lease of the 23rd day of June, 1791, and producing the annual profit rent of £25 17s., less the usual taxes. Sold to R. Johnston for £350.

Lot 26.—The House and Premises, No. 9 Great Charles-street, aforesaid, held under said lease of the 23rd day of June, 1791, and producing the annual profit rent of £24, less the usual taxes. Sold to the Hon. F. de Montmorency for £340.

Lot 27.—The Houses and Premises, Nos. 1 to 7 Mountjoy-court, held under said lease of the 23rd day of June, 1791, and producing the annual profit rent of £30, less the usual taxes. Sold to G. J. Wells for £235.

Lot 28.—The House and Premises, Nos. 8 and 9 Mountjoy-court, aforesaid, held under said lease of the 23rd day of June, 1791, lately producing the yearly rent of £28. Sold to Mr. Wells for £115.

Lot 29.—The House and Premises, No. 15 Middle Gardiner-street, the Houses and Premises, Nos. 1, 2, 3, 4, 5, and 6 Temple-court, and the Ground whereon the House No. 7 Lower Temple-street formerly stood, held partly under lease dated the 18th of January, 1780, for the term of 999 years, at the yearly rent of £8 8s., present currency, and partly by lease dated 26th of September, 1792, for three lives, renewable for ever, at the yearly rent of 2s. 8½d. present currency, and a renewal fine of one peppercorn on the fall of each life, and producing the net yearly profit rent of £25. Sold to Mr. Wells for £330.

Lot 30.—The House and Premises, No. 23 North Cumberland-street, held under lease dated the 24th day of March, 1774, for a term of 997 years, subject to the yearly rent of £7 7s. 7½d., present currency, and 12d., late currency, for every chief, and 6d., late currency, for every under tenant, as a common fee or leet money, and now yielding the yearly profit rent of £22 12s. 4½d. Sold to J. F. Clinch for £150.

Lot 31.—The House and Premises, No. 24 North Cumberland-street, held under lease dated the 24th day of March, 1774, for a term of 997 years, subject to the yearly rent of £5 10s. 9d., present currency, and 12d., late currency, for every chief, and 6d. late currency for every under tenant, as a common fee or leet money, and now yielding the yearly profit rent of £24 9s. 8d. Sold to T. V. Ryan for £210.

Lot 32.—The House and Premises, No. 108 Grafton-street, held under lease dated 6th day of June, 1781, for three lives, renewable for 70 years from the 25th day of March, 1781, subject to the yearly rent of £16 12s. 8½d., present currency, and one couple of fat capons, or 4s 7½d., present currency, and renewal dated the 19th day of April, 1852, for three lives, whereof two are still in existence, and now producing the yearly profit rent of £46 3s., less the usual taxes. Sold to H. J. P. West for £500.

Lot 33.—The Licensed House and Premises, No. 4 North Earl-street, held under lease dated the 18th day of October, 1787, with toties quoties covenant for renewal during 900 years, at the yearly rent of £26 5s., present currency, with 6d. for every chief or under tenant, and a renewal fine of one peppercorn, if demanded, and yielding a profit rent of £21 15s. per annum, less the usual taxes. Sold to Mr. West for £475.

Lot 34.—The House and Premises, No. 5 North Earl-street, held under lease dated the 18th day of October, 1787, with toties quoties covenant for renewal during 900 years, at the yearly rent of £26 5s., present currency, with 6d. for every chief or under tenant, and a renewal fine of one peppercorn, if demanded, and yielding a profit rent of £19 18s. 1d. per annum, less the usual taxes. Sold to Mr. Whitton, in trust, for £320.

Solicitors: Messrs. Chomley & St. George.

A GOVERNMENT BY LAWYERS.—The *New York Sun* publishes an analysis showing the professions of the members of both Houses of Congress in the United States. The result is that it is seen that the legal profession has an overwhelming predominance. In the Senate, out of 80 members, no less than 57 are lawyers; while in the House of Representatives there are no less than 195 lawyers, although here the proportion is smaller, the total number of members being 361.

DUBLIN STOCK AND SHARE LIST.

Table with columns: DESCRIPTION OF STOCK, Sat. 13, Mon. 15, Tues. 16, Wed. 17, Thur. 18, Fri. 19. Rows include Government, India Stock, Banks, Mines, Tramways, and Leased at Fixed Rentals.

BIRTHS, MARRIAGES, AND DEATHS.

BIRTHS.
BARLEE—May 18, at Florence House, Merrion, the wife of Arthur Lee Barlee, Esq., solicitor, of a daughter.
MARRIAGES.
O'RORKE and MULLAN—May 11, by special permission of his Eminence Cardinal Manning, at the Church of Corpus Christi, Strand, London, by the Rev. Alfred Roche, Alexander O'Rorke, junr., Esq., solicitor, to Alice Mary Mullan, both of Ballymena, County Antrim.
DEATHS.
O'LEARY—May 18, suddenly, of heart disease, at Hanover-square, London, Joseph Patrick French, eldest son of the late John O'Leary, Esq., barrister at law, in his 70th year.

FUNERAL REQUISITES OF EVERY DESCRIPTION.
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Table with columns: FORMS UNDER THE JUDICATURE ACT. Rows include Writ of Summons, Affidavit of Debt, Affidavit of Service of Writ of Summons, etc.

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**NEW FORMS UNDER THE LAND ACT.**

FORM

- 67. Fee-farm Grant from Landlord to Tenant . . . . . 3d. each.
- 68. Mortgage from Tenant to Landlord, to secure one-fourth, or other balance, of Purchase Money . . . . . 3d. „
- 69. Reference to Valuer to be named by Land Commission . . . . . 1d. „
- 70. Special Report of Valuer . . . . . 1d. „

**JOHN FALCONER, 53 UPPER SACKVILLE-STREET, DUBLIN.**

**PUBLIC NOTICES:**

**SUMMER TOURS IN SCOTLAND.**

**GLASGOW AND THE HIGHLANDS.**  
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Royal Mail Steamer COLUMBA or IONA, from GLASGOW DAILY, at 7 a.m., from GREENOCK at 9 a.m., conveying in connexion with his West Highland Steamers passengers for Oban, Fort William, Inverness, Lochawe, Skye, Gairloch, Staffa, Iona, Glencoe, Stornoway, &c. Official Guide, 3d.; Illustrated, 6d. and 1s. Time Bill with Map and Fares free, at CARSON BROS., 7 Grafton-street, Dublin; or by post from the owner, DAVID MACBRATNE, 119 Hope-street, Glasgow. 79

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**IRISH LAW TIMES.**

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**LEGAL POSTINGS:**

**HIGH COURT OF JUSTICE IN IRELAND. CHANCERY DIVISION.—LAND JUDGES.**

**SALE**  
On FRIDAY, the 9th day of JUNE, 1882.

In the Matter of the Estate of **OWEN CONNOLLY,** Owner; Continued in the names of the Assignees of the said **OWEN CONNOLLY,** (Owners); **THE MUNSTER BANK, Limited,** Petitioners.

**TO BE SOLD BY PUBLIC AUCTION,** In Three Lots, Before the Right Honourable Judge Flanagan, At his Court, Inns-quay, in the City of Dublin, On FRIDAY, the 9th day of JUNE, 1882.

Lot 1 consists of the Dwelling-house and Warehouse at the rear known as No. 21 Mary's Abbey, in the Parish of St. Mary, in the CITY OF DUBLIN, held under Lease for 100 years, from the 25th December, 1857, subject to rent of £45, and producing an estimated profit rent of £45. The purchaser can have immediate possession.

Lot 2, consisting of the Anglesea Fruit Market, with the tolls and customs thereof, having two large Gate Entrances opening into said market, on the West from Little Green-street, and a large and small Gate Entrance from the East, from Anglesea-row, and the Markets, usually held on said premises, and the tolls, customs, rents, profits, and emoluments thereof, and the right of passage for foot passengers through Archibald-place, in the Parish of St. Michan, and City of Dublin, held under Lease for 30 years from 1st July, 1875, at rent of £245, and estimated to produce a profit rent of £176 15s 4d.

Lot 3 consists of Parts of the Lands of Hazelhatch, known as the Commons of Hazelhatch, containing 18a 0r 4p statute measure, lying on the North side of the Grand Canal, held on Lease for 200 years, from 25th March, 1869, subject to the yearly rent of £37.

Also that part of said Lands, containing 27a 3r 28p like measure, lying on the South side of said Canal, held under Lease for 200 years from 25th March, 1869, subject to the yearly rent of £37.

Also that Part of the Lands of Newcastle called Hazelhatch and Commons, containing 7a 0r 16p like measure, held on Lease for 31 years from the 25th March, 1872, subject to the yearly rent of £15. All said Lands being situate in the Barony of Newcastle, and COUNTY OF DUBLIN, and producing a net profit rent of £101 9s. 6d.

Dated this 12th day of May, 1882. J. M. KENNEDY, Examiner.

Proposals for all or any of the Lots will be received by the Solicitors having charge of the Sale up to the 1st day of June, 1882, and if approved of, submitted to the Judge for approval.

For Rentals and further particulars apply at the Office of the Clerk of Sales, Chancery Division, Land Judges' Court, Inns-quay, Dublin; to

**HENRY A. COFFEY, Esq.,** Solicitor for Receiver, 25 Westland-row; or to **MAXWELL and WELDON,** Solicitors having charge of Sale, 37, North Great George's-street, Dublin. 78

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# THE IRISH LAW TIMES AND SOLICITORS' JOURNAL.

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## CONTRACTS OF CARRIERS OF GOODS.—II.

ANOTHER condition in *Moore v. The Great Northern Ry. Co.* was, that no claims in respect of "goods" would be allowed unless made within three days after delivery. This it was, also, contended was unreasonable; but, no cases on the subject seem to have been referred to in argument. "We incline to think," said Fitzgerald, J., "that this condition applies to inanimate goods and not to cattle, and that it is not unreasonable; and further, we desire to point out that the conditions which the court or judge is to determine to be just and reasonable under the statute are, 'with respect to the receiving, forwarding, and delivering of animals, goods or things.' The 8th condition relates to something to occur after delivery." We may add that in *Simons v. G. W. Ry. Co.* (18 C. B. 805, 26 L. J. C. P. 25) a condition was held reasonable that "no claim for deficiency, damage, or detention shall be allowed unless made within three days after delivery of the goods, nor for loss, unless made within seven days after the time when they should have been delivered;" and so in *Lewis v. G. W. Ry. Co.* (5 H. & N. 867, 29 L. J. Ex. 425); but, see *per Cookburn, C.J., Garton v. Bristol, &c., Ry. Co.* (1 B. & S. 112). In the United States the weight of authority appears, on the whole, to preponderate in favour of sustaining regulations relating to the time and manner of presenting claims for damages; but in all, or nearly all, the cases the time limited was about 30 days. The following may be consulted in support of the reasonableness of such conditions:—*U. S. Express Co. v. Harris*, 51 Ind. 127; *Weir v. Express Co.*, 5 Phila. 355; *Express Co. v. Caldwell*, 21 Wall. 264; *Southern Express Co. v. Hunnicutt*, 54 Miss. 566. But, on the other hand, see *Capehart v. Seaboard & Roanoke Ry. Co.*, 81 N. C. 438; *Adams Express Co. v. Reagan*, 29 Ind. 21; *Southern Express Co. v. Caperton*, 44 Ala. 101; *Place v. Union Ex. Co.*, 2 Hilt. 19. A stipulation, in a contract of shipment of live animals, that no claim for loss or damage will be allowed unless made "before or at the time the stock is unloaded" (not to be deemed limited to the identical moment), was held reasonable in *Goggin v. Kansas, &c., Ry. Co.*, 12 Kas. 416; and see *Rice v. Kansas, &c., Ry. Co.*, 63 Mo. 314; and *Ozley v. St. Louis, &c., Ry. Co.*, 65 *ib.* 629, where, in reference to a provision that the claim for damages should be made to the general freight agent in writing "within three days" from the time the stock was unloaded, the Court said, "we are not prepared to say that the failure of the plaintiff to make this claim in the manner and within the time specified would on that account alone deprive him of his right of action." Non-delivery of the goods themselves was held not to be "loss" or "damage" within the meaning of such clauses in *Porter v. Southern Express Co.*, 4 S. C. 135. A condition in a bill of lading that all claims for damages should be made before the article was taken away from the station was held to be reasonable, except as to latent defects, in *Capehart v. Seaboard, &c., Ry. Co.*, 77 N. C. 315; but in a subsequent case of the same name (81 N. C. 438) a precisely similar provision was held, by the same court, to be unreasonable.

Again, it was conditioned, in *Moore's* case, that all goods were received subject to the company's "general

lien," both for carriage thereof and all other charges against the customer; and this was argued to be unreasonable, as giving them a general instead of only a particular lien confined to the freight and charges on each particular parcel of goods. "We do not," said Fitzgerald, J., "interpret the 9th condition in that light, nor do we think it unfair, or a condition coming within the statute." The common law right is a specific lien: *Butler v. Woolcott*, 2 B. & P. 64; and the right to a general lien can only be supported by proof of general usage, special agreement, or mode of dealing, supporting such a claim: *Rushforth v. Hadfield*, 6 East. 519; *Wright v. Snell*, 5 B. & Ald. 350; and see *Wiltshire Iron Co. v. G. W. Ry. Co.*, L. R. 6 Q. B. 776. *Gordon v. G. W. Ry. Co.* (8 Q. B. D. 44, 51 L. J. Q. B. 58, 45 L. T. N. S. 509), which seems not to have been cited in *Moore's* case, arose out of a detention of goods on the ground that the company had a lien which did not in fact exist, and may next be noticed.

There, it appeared that the plaintiff delivered to the defendants at W. some cattle to be carried to G., and there delivered to his agents. The cattle were consigned, and the carriage prepaid, at a reduced rate known as "owners' risk rate," to which it was a condition that the defendants should "not be liable in respect of loss or detention of, or injury to, the said animals or any of them, in the receiving, forwarding, and delivery thereof, except upon proof that such loss, detention, or injury arose from the wilful misconduct of the company or its servants." On arrival at G. the cattle were unloaded and placed in cattle-pens by the defendants' servants, but, in consequence of the clerk at W. having negligently omitted to enter the cattle on the consignment note as "carriage paid" the defendants refused to deliver them to the plaintiff until two days afterwards, alleging that the carriage had not been paid, and claiming a lien accordingly. Without actually deciding whether, under each circumstance there was evidence of "wilful misconduct" (see *Goldsmith v. G. E. Ry. Co.*, 44 L. T. N. S. 181, commented on in 15 Ir. L. T. 381, which case was not cited), it was held that the defendants were liable, as the "detention" contemplated in the condition did not cover the case of an unjustifiable refusal to deliver at the proper time on arrival. "If it included a case like the present," said Grove, J., "the company would virtually be protected from loss however occasioned, and the condition would be highly unreasonable." There was no casual detention, no detention occasioned by some act on the part of the company's servants which had delayed the transit or delivery of the cattle, but an intentional detention of the cattle for reasons entirely without foundation, and not in the course of "delivery thereof." See further, as to delay in delivery, and warehousing of goods, 14 Ir. L. T. 245, 255; *Bryant v. South Western Ry. Co.*, 66 Geo. (Amer.).

*Brown v. The Manchester, &c., Ry. Co.* (46 L. T. N. S. 390), the last of the recent cases to be here noticed, also arose in consequence of delay in delivery. The plaintiff had signed a "risk note," by which the defendants were to be free "from all liability for loss or damage by delay in transit, or from whatever other cause arising," in consideration of which the defendants agreed that the rates charged were to be "one-fifth lower than where no such undertaking is granted,"

freeing them from their liability as common carriers. Was this a just and reasonable condition? "Whether it is so," said Cave, J., "must depend upon what the sender gets in exchange for the liability of the company that he gives up. If, for instance, there was only one rate, and a condition that the company was not answerable at all, I should hold that it was unjust and unreasonable; but, that is not this case. Here they offered a reduction of one-fifth the ordinary rate to free the company from liability." And accordingly, as the plaintiff had an alternative open to him under which the defendants would have undertaken the carriage, at the ordinary rate, subject to all the liability of common carriers, it was held that the condition, which the sender had accepted for his own convenience and advantage, was reasonable. He "knew what the ordinary rates were," it is to be observed, as Mathew, J., remarked; but, as he mentioned, a "difficulty" had presented itself at the outset, "that the evidence did not disclose what the other rates referred to were," which, however, was removed by an admission of the counsel. And this brings us back to *Moore v. G. N. Ry. Co.*, as to which we have to mention, in conclusion, that, it having been urged that the two alternative rates should appear in figures on the face of the contract note, whereas only the lower rate was specified, Fitzgerald, J., said: "We see no ground for this contention, and observe that the conditions refer to the company's tariff, in which all the rates to and from each particular station are specified, and which we have no doubt were well known to the plaintiff." Perhaps this is not too violent a presumption, as the plaintiff was a "professional owner of horses" (*sic*), and it was not the first time he had signed such contracts; but, we cannot help thinking that it would have been more satisfactory if the court had some more decisive grounds for imputing knowledge to the plaintiff, as well as of its extent and nature, especially if the English decision (reported alone in 10 Ir. L. T. 128) of *Bradbury v. The G. W. Ry. Co.*, be correct, that, had the full parliamentary toll been in fact exacted under the quasi-lower rate, also, such conditions would offer no *bond fide* alternative (and see *Gallagher v. G. W. Ry. Co.*, 8 Ir. L. T. Dig. 26.)

#### THE CONVEYANCING BILL.

One of the most important portions of this Bill is clause 6, which abolishes "the acknowledgment of deeds by married women under any Act of Parliament, and the examination of married women in Court or otherwise prescribed by the Settled Estates Act, 1877." It should be observed that this does not abolish the examination of married women entirely, but only that which was necessary under the Settled Estates Act, so that where the Court makes a decree or order directing payment, transfer, or application of property in respect of which a married woman has an equity to a settlement, separate examination will still be available. The married woman may also be separately examined where an application is made to deal with purchase money of real estate belonging to her. However, by clause 7, she has power to dispose of her equity to a settlement, and, with certain exceptions, her property generally, by deed made with the concurrence of her husband. The result is that the separate examination, though still existing, will seldom be used. When the concurrence of the husband cannot be obtained by reason of his insanity, &c., section 91 of the Fines and Recoveries Act is to apply, clause 7 (2), and an order of the Court can be obtained dispensing with the husband's concurrence. In such case there would even now be no need for acknowledgment: *Goodchild v. Dougal*, L. Rep. 3 Ch. Div. 650. It would be better to set out in the Act so much of section 91 of the Fines and Recoveries Act as may

be necessary instead of incorporating it by reference, especially as this Bill repeals several sections of that Act.

The provisions with regard to copyholds are incomplete. By clause 6 (2), surrender by husband and wife of equitable estates of the wife, or of her and her husband in her right, in "copyholds" will be effectual, without separate examination, which is abolished with reference to surrenders, "but this provision does not affect the custom of any manor relative to surrender or admittance." These last words need explanation. Also customary freeholds should be expressly included. The Bill contains no definition of the word "copyhold." And why does not the Bill expressly mention legal interests in copyholds? Surely it cannot be intended to retain separate examination on their alienation by married women, nor yet to enable their disposition under clause 7 without any surrender.

Clause 7 will enable a married woman, by deed, made with the concurrence therein of the husband, to dispose of all her property and every interest therein, including equity of settlement, except (i.) property which she is restrained from affecting by alienation, anticipation, or otherwise; or (ii.) property settled on her by settlement, or agreement for settlement, made on her marriage. "Agreement for settlement" should be defined. Does it include a post-nuptial settlement made in pursuance of a previous parol agreement in cases where there has been no part performance beyond the marriage so as to take the case out of the Statute of Frauds? Such a settlement would seem to rank only as a voluntary one: *Warden v. Jones*, 23 Beav. 487; *Trowell v. Shenton*, 38 L. T. Rep. N. S. 369; L. Rep. 8 Ch. Div. 318. Will it include like settlements where there has been such part performance, so that the settlement is one for valuable consideration? What will happen in the case of a post-nuptial settlement made to fulfil prior representations? Doubtless, if the Bill is left in its present form, the Courts will be able to give decisions on these questions; but why should Parliament leave them open? The phrase seems to have been taken, with verbal variation, from section 4 of Malins' Act (20 & 21 Vict. c. 57), as to which see *Clarke v. Green*, 13 L. T. Rep. N. S. 38; 2 H. & M. 474.

Clause 8 enables a married woman, by covenant, bond, or obligation under seal, or "other contract in writing," to bind her then present and future separate estate so as to create a debt recoverable thereout against her and her representatives taking her separate estate. This clause only applies so far as she is not restrained from anticipation. This will in part overrule *Pike v. Fitzgibbon*, 44 L. T. Rep. N. S. 562; L. Rep. 17 Ch. Div. 454; so far as it decided that a general engagement of a married woman could not be enforced against separate estate (not restrained) to which she became entitled after the time of the engagement. But is it intended to overrule the same case as to separate estate to which she was entitled at the time of the engagement subject to restraint on anticipation, but which is held free from such restraint at the time when a judgment is given in an action brought to enforce the engagement? Also, if a married woman makes an engagement, and afterwards property is given her for her separate use, it is clear that the clause will make it liable; but what will be the case if the property is given her after she has become a widow? Can it rightly be called "separate property?" And yet it seems strange if in one case the property is to be liable and not the other. This should be made clear. It should be noticed that the effect of the clause will be to make a debt payable out of future separate estate, but it will not, apparently, give the married woman the status of a debtor: *Atwood v. Chester*, 28 L. T. Rep. N. S. 48; L. Rep. 8 Q. B. Div. 722; *Pike v. Fitzgibbon*, *ubi sup.* This certainly does not seem to agree with clause 1 of the Married Women's Property Bill, which was issued in an amended form at the end of last week. The clause of the Bill before us applies to covenants implied by virtue of the Conveyancing Act, 1881. No doubt this points especially to section 7 (3) of that Act. But the first difficulty is to discover what

section 7 (3) means. If husband and wife each conveys as "beneficial owner," Messrs Wolstenholme and Turner state the three following covenants will be implied: (1) by the wife, as beneficial owner, binding her separate estate (see *Tullett v. Armstrong*, 4 Beav. 323, per M.R.); (2) by the husband as beneficial owner; and (3) by the husband in the same terms as the covenant implied by the wife—i.e., in effect, that notwithstanding any act or default by her, or by anyone through whom she derives title otherwise than, &c. Messrs. Clarke and Brett (2nd edit. 56) suggest that a fourth covenant is implied, but we cannot concur in that view.

The result of this new clause will be to make it perfectly clear that covenant No. 1 does bind the separate estate, and to extend it to future separate estate. It does not appear that it will personally bind a married woman to execute a deed for further assurance in accordance with her covenants, only her separate estate will be liable in damages. There seems no reason why a married woman should not be called upon specifically to perform a covenant for further assurance under the same conditions as an ordinary vendor: see *Sug. V. & P.* 612. It makes the anomaly the greater that, under covenant No. 3, if we rightly interpret it, after the husband's death his representatives may be liable for the consequences of the wife's refusal to perform her covenant, while she, if she has no "separate estate," will escape. This surely is capable of remedy. We may remind our readers that the Married Woman's Property Bill, which is also on its way through Parliament, and is undergoing alterations, affects in an important way some of the clauses of this Bill. We shall discuss these in a future article, but meanwhile we must express an earnest hope that the various changes taking place in that Bill will be carefully considered in relation to the clauses affecting married women in the Bill before us.—*Law Times*.

#### COUNTER-CLAIM ON COUNTER-CLAIM.

A main portion of the science of procedure resolves itself into the problem where to draw the line. A proceeding may seem from many points of view to be reasonable and just, and yet it may not be permissible as a rule of procedure, which must be governed by rules at once the strictest, and framed according to the most general considerations. We are inclined to think that the necessity for drawing the line so as to run in a manner most convenient to the average of cases has not been sufficiently dwelt upon in the decision of *Toke v. Andrews*, reported in the May number of the *Law Journal Reports*. The action was for rent due at Midsummer, 1861. The writ was issued on August 26, the statement of claim delivered on November 29, and the statement of defence on December 22. The tenancy subsisted until Michaelmas Day, and the defendant alleged that he was entitled to an outgoing valuation, which he accordingly claimed by way of counter-claim, although it had accrued since the issuing of the writ. On the same day, however, the plaintiff would be entitled to another instalment of rent. He accordingly proceeded to claim this sum by means of a counter-claim to the defendant's counter-claim—a new and hitherto unheard-of proceeding, which, however, has now received the sanction of Mr. Justice Field and Baron Huddleston. If this decision be right, there is no end to the vitality of an action under reasonably favourable circumstances. There is, let us suppose, a twenty-one years' lease subsisting between plaintiff as landlord and defendant as tenant, who is sued for his first quarter's rent. The defendant sets up a counter-claim that the plaintiff covenanted to put a new roof on the house. The plaintiff does not deliver his reply until a second quarter's rent is due, when he counter-claims in respect of that amount. By the time the defendant delivers his rejoinder a fresh grievance of his is ripe, possibly that the plaintiff undertook to paint in the first six months. The action is now ready for trial; but before it is reached another quarter-day passes, and the plaintiff adds a fresh counter-claim. It will go

hard if the defendant does not cap the effort, and if, under the rather exasperating circumstances of the case, the monotony of the proceedings is not relieved by a counter-claim or two for assault and battery, to which possibly the wife of one or other of the parties is made third party. There is, in fact, no reason why the litigation should not go on for one-and-twenty years, and such time afterwards as judges and jurymen can be made to understand the case.

This picture may seem extravagant. It is enough if it is a possible picture, unless some limit be placed on the right to counter-claim. The decision in *Toke v. Andrews* allows an unlimited right to counter-claim in either plaintiff or defendant. With this must be contrasted the decision of the Master of the Rolls in *The Original Hartlepool Company v. Gibb*, 46 Law J. Rep. Chanc. 811, which drew so strict a limit to counter-claims as to exclude damages suffered by a defendant since the date of the writ. On the general principle we prefer the decision of the Master of the Rolls to the present; that is, so far as the Master of the Rolls held that a limit must exist. We, on a previous occasion, expressed disapproval of the actual limit placed by the learned judge. His mistake, which is now generally admitted, proceeded apparently from a want of experience in cases in which damages were claimed, the Master of the Rolls being under the impression that damages since the date of the writ could not be recovered by a plaintiff, and, therefore, holding that they could not be recovered by a defendant on a counter-claim. Mr. Justice Fry, in *Beddall v. Maitland*, 50 Law J. Rep. Chanc. 401, declined to follow the Master of the Rolls, and held that a cause of action arising since the writ may be the subject of counter-claim. These two cases are far from standing and falling together. It does not follow, because damages since the writ may be recovered on a counter-claim, that a cause of action arising since the writ may be the subject of a counter-claim. The state of facts which arose in *Toke v. Andrews*, in so far as they throw light on *Beddall v. Maitland*, tend rather to throw doubt on the principle there laid down. The defendant's counter-claim in *Toke v. Andrews* arose since the date of the writ, and the plaintiff's counter-claim arose at exactly the same date. To allow the defendant to set up this cause of action, and to shut the plaintiff out of a cause of action arising at the same time, has the appearance of inequality. It may well be said that, in order to prevent a confused pile of counter-claims, the line ought to be drawn at the date of the writ. We do not think this is necessarily so, because the Judicature Acts speak of a counter-claim as a cross-action; and, if the plaintiff is so backward in pressing forward his claim as to give time for a counter-claim to issue against him, he has only himself to blame. The proposition at present in question is, whether the plaintiff can be allowed a counter-claim.

The foundation of the law of counter-claims is to be found in sub-section 3 of section 24 of the Judicature Act, 1873, and in Order XIX., Rule 3. Neither in the Act nor in the rule is to be found anything to suggest that a counter-claim is an instrument which may be used by a plaintiff against a defendant. The Act refers to relief being given by this means "to any defendant against any plaintiff," and the rule refers to "the defendant setting up claims against the claim of the plaintiff." Order XX. provides for pleading *puis darrein continuance*, but applies only to "grounds of defence," between which and counter-claims a broad distinction is drawn. There can be little doubt that the draftsmen of the Acts and Rules had in their minds only causes of action accrued at the time of the issuing of the writ, but it is still possible that room may be left for claims accruing since. If this be so, the question arises whether such a claim accruing to the plaintiff can be introduced by way of counter-claim, or whether it should not be made by way of amendment? It seems to have been assumed, in *Toke v. Andrews*, that the writ could not be amended so as to allow the rent accruing subsequently to be claimed. But is this clear?

The date of the writ must, of course, remain as originally given; but there seems no reason why it should not be stated that by amendment dated subsequently a further claim was added. If the true reading of the rules is that subsequent claims by a plaintiff may be introduced by amendment of the writ, there is a substantial difference between the right practice and that laid down in *Toke v. Andrews*. Under Order XXVII, Rule 11, an order must be obtained to amend the writ, whereas *Toke v. Andrews* permits a plaintiff to counter-claim as a matter of right. It must be remembered that a plaintiff, by issuing his writ, elects to sue on the causes of action then existing. If there are other causes of action in prospect, he has only to wait, when he can combine both. The whole subject, especially considering the view taken by the Master of the Rolls, requires investigation before the Court of Appeal, which was invited by Mr. Justice Fry in the case before him, and is more than ever necessary since *Toke v. Andrews*. As the law at present stands interpreted, the pleadings in the action seem capable of becoming very inconvenient and perplexing in their character, and extending to a length compared with which a *sutreibutter* was a moderate limit.—*Law Journal*.

#### "OFFICIAL" REPORTS.

In our review of recent English decisions in the present number we are able, for the first time, by reason of having reviewed the *Law Reports* up to date, to turn to the *Law Journal Reports*, and notice those cases of important application which have not as yet appeared in the former Reports. Our present issue reviews the cases in the January and February numbers of the *Law Journal Reports*; and it will be a surprise to many, probably, to find that there are so many cases of considerable importance which have appeared there so long ago as January or February, but which have not as yet been reported in the official Reports. This would not be a matter of surprise if these were decisions of the various Divisional Courts merely, for it might then be supposed that they were standing for appeal, and that the editors of the *Law Reports* were waiting, so as to carry out their very convenient practice of reporting at the same time the decisions of the Court *a quo* with the decisions in the Court of Appeal; but it will be found that several of the cases we review in this number are cases in the Court of Appeal.—*Canada Law Journal*.

#### INDEXING AND DIGESTING.

The following observations (which the *Central Law Journal* quotes from a London contemporary) may be read in connexion with our own remarks on the subject, 18 *Ir. L. T.* 79:—

"Some discussion has recently taken place in the American legal journals on the subject of legal digesting and indexing, and we think that attention might not unprofitably be turned to this subject in England. As regards digests, it appears to us that the *Law Reports* some time ago introduced a completely erroneous principle. The digests issued from time to time by the other current series of reports have always proceeded on the plan of selecting, wherever it is possible, broad general headings, grouping under sub-headings the cases falling under these general headings, and inserting for the cases falling under these general headings, and for others which do not come within them, cross-references under so many of the titles as are necessary to secure that no one looks in vain for any point in the digest. The digest published by the *Law Reports* in 1870 introduced a new principle of arrangement. There is not a single case given under most of the general headings, but only a series of references to other places. Thus, to take one of the best known headings, "Landlord and Tenant," there are about a hundred references to other parts of the digest, including eleven relating to distress—as, for instance, "Distress by opening a window which is shut but not fastened.—See Entry by opening window."

As there happens to be no such heading in the digest as "Entry by opening window," this is embarrassing; but, even when such mistakes do not occur, consider the trouble and annoyance which this mode of arrangement occasions to the practitioner who wants to run his eye over all the recent cases relating to distress. Consider, also, the difficulty occasioned to persons who cannot remember or guess the minutiae of a case sufficiently to look for it at once under the word which relates to a small detail. And again, consider the labour thus occasioned to anyone who wants to note up his text-books on particular subjects. We refer to this matter now because in the Consolidated Digest recently issued by the Council of Law Reporting we observe with satisfaction that this absurd principle has been departed from to a considerable extent. We have now, under the heading of "Landlord and Tenant," fifteen sub-headings, comprising the most important branches, and with the cases arranged under each sub-heading. These are followed by cross-references to miscellaneous points relating to the subject. We hope this is an indication that the evil experiment has been abandoned, and that we are now to return to the old and convenient principle. As regards indexes to law books, we have come across many *quærit* instances illustrating the practice of their preparation without any definite principle. We could point to a work which has a general heading in the index "New," followed by sub-heads such as "Trial," and to another book in the index to which there is first a general heading "Judge," with a sub-heading "Single;" followed by another general heading "Judges, and see Judge." And there is another legal work which has a heading "Vermin—see Hunting and Trespassing," which reminds us of the heading in the index to the North Carolina Statutes, "Stud-horses—see Religious Societies."

#### THE PREVENTION OF CRIME BILL.

Whatever arguments may be urged against the alleged severity of the Bill for the prevention of crime in Ireland, it is an undeniable fact that its most stringent provisions are for the most part in substance mere reproductions of earlier legislation. The clause directed against "unlawful associations" is, for example, founded on the Westmeath Act of 1871 (64 *Vict.*, c. 25), and its enactments against the Ribbon Society. So also the power of arresting strangers found in proclaimed districts under suspicious circumstances is to be found both in the Act of 1868 (8 & 4 *Will.* 4. c. 4) and in the Peace Preservation Act of 1870 (38 *Vict.*, c. 9). In the latter Act, again, are to be found precedents for the power of arresting persons out of their homes at night, the seizure of seditious newspapers, the power of summoning persons suspected of being able to give evidence of an offence where no individual is charged with it, and the right of apprehending absconding witnesses. The revival of the Alien Act speaks for itself. Finally, the payment of compensation for personal injuries by the district in which they were perpetrated is also recognised by the Act of 1870, but is there made assessable by the grand jury of the county instead of by the Lord Lieutenant as in the present Bill.

In one section of the Bill there occurs a word which, as far as we know, is almost unknown to the English language. It is provided that any charge for additional constabulary or compensation shall be "applotted" rateably upon all rateable hereditaments in the district. On reference to the dictionaries we have been able to discover two passages in which the word is used, and, oddly enough, both of these relate to Ireland. One is from the articles of peace with the Irish rebels in 1448: "They shall have power to *applot*, raise, and levy means with indifferency and equality, for the buying of arms and ammunition. . . . They shall be authorised to appoint receivers . . . for such money as shall be assessed, taxed, or *applotted*." The other passage is from articles of peace between the Roman Catholics and the Lord Lieutenant in 1648: "His Majesty is graciously pleased that in the direc-

tions which shall issue to any such county for the *apportioning*, sub-dividing, and levying of the said public assessments," &c. It is remarkable that, although he cites this last passage, Richardson defines the term as meaning "to scheme, to contrive, to plan." Latham, on the other hand, gives the obviously correct rendering, "to effect by assessment, apportionment, or allotment."—*Law Times*.

#### LADY LAWYERS.

The Massachusetts Legislature have enacted that women may practice as attorneys-at-law, subject to the ordinary rules of admission. We are inclined to think this is right. It is difficult to see why men should adjudge that women shall be excluded from any lawful occupation. Exclusion of either sex on ground of policy, such as want of education, experience or capacity, is defensible in respect to many classes whose occupations intrinsically concern the lives or property of the community, such as physicians, apothecaries, lawyers, pilots, engineers, and the like; but exclusion on account of sex or colour is indefensible on philosophical or political grounds. A woman has just as good a natural right to earn her living as a lawyer as she has to earn her living as a teacher, editor, lecturer, painter, actor, or singer, or in the domestic vocations. The question is entirely distinct from that of her right to vote or sit on juries or hold office. Nothing but a childish jealousy has thus far debarred women from access to our profession. Very few probably will ever enter it. Of those who enter it few probably will make a shining success, partly from want of native aptitude, partly from want of public confidence. Women are better adapted to divinity, medicine, and especially to teaching, than to the law, but they have a right to try the law. It is high time that men divested themselves of the foolish notion of their native superiority to women—a notion that leads some communities to enact that they have a sovereign and exclusive right to commit adultery. The question is not so much of superiority as of difference. Man is not physically superior to woman because he can chop wood or play ball better; as a wet-nurse he would make a mortifying failure, and a woman can bear the toothache a great deal better. In intellectual matters they stand about equal in the schools where they taught together, the advantage if any being on the side of the girls. It is perhaps only in intellectual endurance that men surpass women, and this fact will always render man the stronger in the law. But we know a great many pitifully poor he-lawyers. On the whole, we should like to see the learned professions thrown open to women. If any woman wants to be a lawyer, we cannot see why she should not be; and if any man or woman wants to employ a woman-lawyer, we cannot see why the privilege should not be granted.—*Albany Law Journal*.

#### CERTIFICATES FOR TOWN AND COUNTRY.

The case of *Re Horton*, reported in the May number of the *Law Journal Reports*, deals with a subject upon which there is some difference of opinion between country and town solicitors, and which was incidentally involved in the recent action against the law stationers. It was adverted to in an article on "Solicitors and Law Stationers," on April 1 last; and, now that a decision is reported, it deserves fuller treatment. Readers of the case must, however, be prepared for a disappointment, because, in fact, it decides little more than the case in hand, and does not supply a test for a difficulty much needing solution. Mr. Horton, a solicitor, had a bill of costs of his in an action taxed by a client named Brown under an order. Brown was represented at the taxation, which took place at the Royal Courts, by Messrs. Huggins & Mallard, solicitors, of Birmingham. The bill was cut down considerably, and the costs of the taxation became payable by Mr. Horton. The bill of Messrs. Huggins & Mallard was, however, objected

to by Mr. Horton on the ground that those gentlemen had only country certificates, whereas by attending the taxation at the Royal Courts they had practised in London. If this contention were well founded, Messrs. Huggins & Mallard could not recover the costs in question, because, by section 59 of the Stamp Act, 1870, every person who "acts or practises" as a solicitor, without a duly stamped certificate, is declared "incapable of maintaining any action or suit for the recovery of any fee, reward, or disbursement, on account of, or in relation to, any act or proceeding done or taken by him in such capacity." The schedule of the Act imposes a duty of £9 "if such person practises or carries on his business in England within ten miles from the General Post Office," and £6 if "beyond the above mentioned limits." Had Messrs. Huggins & Mallard practised or carried on their business "at the Royal Courts by attending the taxation? Mr. Justice Field decides that they had not, because the words "acts or practises" in the penal clause, and "practises or carries on business," point to a distinction in the case of a person who has no certificate at all, and a person who has a country certificate. The word "acts" occurs in the penal clause but not in the schedule, thus apparently showing that one "act" by an uncertificated person is penal; but there must be a "practising" in London by a person with a certificate of the limited kind.

This seems to be the true reading of the judgments of Mr. Justice Field and Mr. Justice Cave; otherwise, if acting and practising are the same, it would be necessary to show several acts before a totally uncertificated person could be convicted. The statute 23 & 24 Vic., c. 127, s. 19, appears to have been referred to in the argument; but it was unfortunately not dealt with by the judges, who did not hear Messrs. Huggins & Mallard's counsel. It provides that "for determining the rate of stamp duty payable on the certificate, the place or places where the attorney or solicitor carries on his business shall be deemed to be the place or places of his residence within the meaning of the Acts relating to stamp duties on certificates." The Stamp Act was passed since this Act; but it did not repeal the section in question, and the Solicitors Act, 1877, while it repealed a portion of the section, left the words quoted standing. It would thus seem that the Legislature intended "residence" in London or in the country, to be the test of the amount of the duty. The Stamp Act, 1870, it is true, besides the words "carrying on business," uses the word "practise," which latter word is not defined by section 19 of the Solicitors Act, 1877; but the declaration which solicitors have to make, given in the schedule to the Solicitors Act, 1877, uses the words "carry on business" only; thus assuming that practising and carrying on business are one and the same thing, as, in point of language, they would seem to be. It is disappointing that the effect of these provisions should not have been examined, when the question was so neatly raised as in *Re Horton*. The anxiety of judges to shorten arguments by not hearing counsel on both sides, and otherwise, is laudable from some points of view; but, while it saves time at the moment, it not infrequently prolongs litigation by leaving the decision incomplete. If the Court had decided that residence was the test, solicitors would have little difficulty in guiding their conduct. Residence, of course, does not mean merely the place where the solicitor lives. If a solicitor has offices in London, and also twenty miles off, where he lives, he would still have to take out a London certificate. But to satisfy the test of residence, he must, we think, at least have an office or place of call in London. As the case stands, there is some doubt whether practising in London may not be something different from residing. The judges decide that one visit to the central office is not practising in London. But how many visits would constitute practising? If this is the test, one professional act may safely be done in London by a solicitor with a country certificate, but not two. The inconvenience of such a state of the law is a further argument why the simpler

criterion of residence was intended to be adopted. It may be said that if residence be the only test, a solicitor might have his office just outside the ten miles from the Post Office, take the train, and do business all day long at the Central Office, Bedford-row, and the City. The answer to this is that the line must be drawn somewhere; and a solicitor who has no office or address within ten miles of the Post Office cannot in any fair sense be said to be practising in London, although he may on occasion issue a writ or attend a trial within the radius. We believe residence to be the test; but we should have been glad of the decision of the Court one way or the other. At present, the learned judges, while deciding the not very disputable question that one taxation does not make a practice, have inadvertently missed the real point of the matter.—*Law Journal*.

#### CIVIL BILL APPEALS.

At the meeting of the Statistical and Social Inquiry Society of Ireland, on the 23rd instant, a paper was read by Mr. THOMAS LODDELL O'SHAUGHNESSY, Barrister-at-Law, making the following "Suggestions for the Amendment of the Law relating to Civil Bill Appeals."

There can be little doubt, whatever may have been the object of those who devised the trial of small causes by assistant barristers at quarter sessions, the idea was suggested by the ancient and popular practice, which prevailed in the last century, of judges of assize hearing small cases by civil bill. The best part of a century has passed over since the establishment of the quarter sessions court, and during that period their jurisdiction has grown by legislative shreds and patches until, with few exceptions, they now possess a limited jurisdiction in almost every class of litigation. The procedure as originally devised was and has remained simple, the expense small; and these elements, with the natural desire of the inhabitants of this part of the United Kingdom for cheap litigation, bid fair to give the courts a practical monopoly of what constitutes the great bulk of litigation—small causes. The office machinery was quite adequate for the class of cases determined on in these courts before 1870: they were ordinary landlord and tenant ejectments, the most usual classes of torts and contracts, appeals from petty sessions, and business of a kindred class. The chairman was almost always a practising barrister of position, the sessions never lasted longer than the fixed period in each term, a week or less, and from 500 to 600 cases were got through in the week, and for the most part fairly and well decided. Since 1870 the Legislature, having regard to the popularity of the courts, arising in a great measure from the reasons before mentioned, has by a series of enactments conferred a more important and extensive jurisdiction on them—remitted causes, title to corporeal or incorporeal property, and rights where the annual rating of the lands is disputed, or out of which the right is claimed, does not exceed £30; an equity jurisdiction as large as the English county courts; claims under the Employers' Liability Act; land claims; and lastly, the fixing of fair rents between landlord and tenant. Whilst so largely increasing the jurisdiction, the efficiency of the courts has been materially diminished, not only by reason of the increase, but in addition, by the attempt to apply the old procedure devised for the simplest of cases, to the determination of rights often of an exceedingly complex and difficult character. These difficulties have been enhanced by depriving the court of the benefit of chairmen who are practising barristers, thereby getting inferior men, by attempting, without any substantial increase of staff, to work the increased business arising from the new jurisdiction; and, lastly, by substantially applying to judgments on new and important rights the same cumbrous mode of appealing as theretofore existed in common law cases, and by the invention of a mode of appealing in equity cases, consisting of an imperfect copy of all the vices of the very unsatisfactory system prevailing in England.

I propose to discuss a remedy for the latter, and to suggest one or two heads of equity jurisdiction ancillary to that now possessed, which ought to be conferred on the court.

The office machinery as it at present exists in equity cases is incapable of improvement, and save in the counties of Armagh and Antrim, where the clerk of the Crown in the former, and the registrar, in the latter, are gentlemen of exceptional ability and industry, the most monstrous delay, expense, and injustice is the result. The judges are in no fault—they cannot take accounts, settle conditions of sale, and perform all the mass of office work of an administration suit; if they did so the ordinary business could not be got through. Those alone are to blame who in extending a useful measure, stopped short at a most vital point of the English Act, namely, its well-regulated equity office machinery, with a result that their reform is impaired, that suits drag on for years, and usually only terminate in an enforced compromise.

That a cheap and simple mode of appealing should exist from a court so constituted as the civil bill courts are, no one would have the temerity to deny. The present mode consists of the ordinary common law appeal and the equity appeal. The former to the judge of assize, the latter to the Lord Chancellor. An appeal lies in the former from a decree, whether in favour or adverse to a party, from a dismissal on merits; but no appeal lies from a dismissal without prejudice, from an order striking out the case with costs, from an adjudication in an interpleader, under the 150th section of the Civil Bill Act—the procedure is during the hearing of civil bills at the sessions in which the judgment has been pronounced and after it has been written out by the opposite parties' solicitor, and signed by the judge, any of the parties in the case before mentioned may—by lodging double the costs according to a scale provided, and entering into a recognisance in double the amount decreed and costs, or without costs as the case may be, with two sureties—appeal to the judges. On the mere statement it would naturally occur to an intelligent person such a system is unfit for the present day. I will now proceed to point out a few glaring anomalies that I have known to result from it:—The appeal can only be taken when the decree or dismissal is signed; persons have been kept for a whole session, day after day waiting for the opposite solicitor to hand in decree, and I have made applications for the purpose of compelling it to be handed in; the double costs must be lodged and were formally a forfeit, and even now in many counties are still so; the party appealing must get sureties, even the lodgment of the money is not sufficient; if the case be amongst the last heard an adjournment of the sessions has to be applied for to the following day in order to take appeal—in fact, in reference to cases heard on the last day, if the party does not come prepared with sureties, even though he is prepared to lodge the money, he loses his right of appeal, and, with few exceptions, slight facilities are given by chairmen for taking appeals. Only one who has attended a sessions in a small town can realise the difficulty of getting sureties, or a stamped appeal bond; I remember an appeal for this reason on one occasion being taken on two civil bill processes, and I know that the decree was reversed. In remitted cases any amount may now be given, the plaintiff is necessarily a pauper, and if a decree for £500 is given, no surety can be got, and a man may be ruined at the suit of a pauper. The £50 decree is a mode of stopping an appeal, to get two sureties for £100, and lodge £10 or £11 costs is a very serious matter, and in many instances large decrees are given for that very purpose; in this respect a course similar to that in existence before the Act of 1877 now prevails. Until the recent alteration in the law, the favourite mode of stopping an appeal by a plaintiff was to give a decree for a farthing—he could not appeal and the suit was thereby determined. I remember this course being adopted in a case I was counsel in. An action for assault was brought against a policeman of a very gross and aggravated character, the chairman gave

a decree for a halfpenny, and although urgently pressed to give a dismiss in order to enable an appeal to be brought he declined to do so. The same result is now produced by the large decrees, or by pronouncing a dismiss without prejudice, or an order striking out the case with costs; from the first mentioned, an appeal is so clogged with conditions that practically it is useless, and from the last it does not exist.

The instances of hardship and inconvenience might be multiplied, but I have confined myself to those within my own knowledge. The present procedure encourages useless appeals in small cases; it is easy to appeal in a £1 or up to a £5 decree; the parties are hot in the controversy, for it is during the sessions, and enter recklessly into further litigation; nothing else can account for the number of small appeals which are withdrawn, and the number which are heard.

Having pointed out many of the defects in the common law appeals, permit me to adopt a similar course (based in like manner on personal knowledge) in equity appeals: the procedure is within one month, £10 is lodged with the clerk of the peace, the judge's note and registrar's note, which is usually the name of the case, are obtained, and a notice of appeal served on the opposite party; this with the notes is lodged within the like period with the chancellor's secretary, and the appeal on the notes comes on to be heard, perhaps at end of three, more likely six months.

The first objection to this system is the hearing the case on notes, it is equivalent to the old plan of affidavit in chancery which has been condemned on every side. The case often depends on complicated facts, the attempt to unravel the truth from affidavits has always been a failure, and how it is supposed it could succeed in this I am at a loss to conceive. In addition, it is with great difficulty many county court judges are got to take anything like a full note, and it is often with greater difficulty they are obtained from them. I remember being present at the hearing of an equity case and advising that the decree was wrong when the notes were afterwards procured; the entire evidence on which I based my opinion was absent, I do not say nor believe wilfully, but because of the hurry that must exist in hearing of these cases at sessions. A case came before Lord Chancellor Ball on appeal, and it was a matter of notoriety at the time that the county court judge's notes were impugned, and affidavits were filed by the solicitor, stating that a material portion of them was false; the Lord Chancellor acted on the affidavits. I refrain from stating the name of the case or chairman, because I have not personal knowledge of the facts, but I was put in possession of them by a professional gentleman of unimpeachable veracity. Such a case demonstrates that the present system is open to gross abuse. One more illustration: an equity suit, the commonest of all, by one of several next of kin to administer assets was dismissed on a wholly unsustainable objection, an appeal taken, it was six months before the dismiss was reversed, and then the judge who heard the appeal could make no order except remit it back to the chairman, in the meantime the administrator had sold a considerable quantity of the assets, thereby reducing the security of the share of the next of kin. The system is radically bad, it is open to every possible objection, it is most expensive, it is very tardy; the same security must be given in the smallest legacy case as in one involving £500—showing of course that in the small case it is too large, in the large too small.

No more complete remedy could be devised than the Bill brought in by Mr. Findlater, and now before the House of Commons. It proposes to repeal all the appeal sections of the County Court Acts, and to give an appeal from every adjudication, whether legal or equitable, to the judge of assize, provided notice of appeal be given within four days after the close of the sessions; and it further gives a stay of execution only in case the amount decreed be lodged, or costs, as case may be, or sufficient security entered into within a like period, thus simplifying the procedure, allowing time for consideration before bringing an appeal, and enabling in equity cases

the judge to hear the witnesses and judge of the facts from them—at once putting an end to every difficulty in the way of testing the validity of a decision, and as far as possible preserving a similitude to the mode of appeal in use in the superior courts since the Judicature Acts.

Under the present system the court has no power to administer assets at the suit of an executor or administrator, nor has it power to set aside fraudulent deeds or bills of sale at the suit of creditors, to attach debts, or to make its judgments available against the lands of debtors; provisions giving such a jurisdiction would be useful, and attendant with considerable benefit.

#### COUNTY COURT AMENDMENT BILL.

A Bill to amend the Acts relating to the County Courts in Ireland, and to make better provision for Appeals under the said Acts.

WHEREAS it is expedient to amend the law and procedure regulating appeals from county courts in Ireland: Be it enacted, &c.

This Act shall extend to Ireland only.

This Act may be cited as the County Court Amendment Act (Ireland), 1882.

The terms "county court judge," "clerk of the peace," "civil bill court," "county," and "borough," in this Act shall have the same meaning as is provided by the 40 & 41 Vict. c. 56.

1. Any person dissatisfied with any decree, dismiss, or order, whether adverse to him or in his favour, pronounced by any county court judge, in the exercise by him of any jurisdiction at law or in equity under the several Acts conferring jurisdiction on county or civil bill courts in Ireland, may, in manner herein provided, appeal therefrom to the judge of assize for the respective counties in which such decree, dismiss, or order shall have been made or pronounced; and such judge of assize is hereby empowered and required to hear such cause, suit, or matter, and to make such decree or order thereon, and issue such execution in all respects as is empowered by the several statutes in that behalf by the said county court judges to be awarded, and the said judge of assize may upon any such appeal adjourn or remit, the cause, suit, or matter back to the county court judge with such declarations or directions as he shall think proper, and may upon said appeal make such order with reference to the costs thereof as he shall think fit.

2. Every appeal under this Act shall be by notice signed by the party appealing or his solicitor in the form or to the like effect in the schedule to this Act annexed. Such notice shall be served within four clear days from the close of the sitting of the county court for the hearing of civil bills at which the decree or adjudication appealed from shall have been made, and shall be to the next assizes to be held after the said period. Service of such notice shall be effected on the opposing party or his solicitor personally, or by leaving same at their or either of their residences with a clerk, servant, wife, or child, or other person therein over the age of sixteen years; and proof of such service shall be by affidavit made before any justice of the peace, which he is hereby empowered to take, or before the clerk of the peace; and on such proof being given the clerk of the peace shall enter the same for hearing before the judge of assize, and such entry shall be prima facie proof of due service thereof before such judge of assize.

3. A notice of appeal shall be a stay of execution, provided a recognisance conditioned to pay the sum recovered and costs, or costs awarded in case no sum is recovered if a defendant appealing, or to pay the costs awarded where the appellant was a plaintiff in the county court, or to pay the costs of the appeal in case the adjudication appealed from was in favour of the party appealing, be entered into with sufficient sureties within the said period of four clear days before the clerk of the peace or any justice of the peace of the county, or in case the party appealing desire to dispense with a recognisance by lodgment within the like period of the

amount of said sums respectively with the clerk of the peace, who shall retain the same and dispose thereof as he shall be directed by the judge of assize; and in case of an appeal under Part II. of the County Court Officers and Courts (Ireland) Act, 1877, where any act shall be ordered to be done other than the payment of a sum of money, then on entering into the like recognisance as aforesaid with the additional condition to abide any order that may be made by the judge of assize in reference to any such act; and the recognisance herein provided may be in the Form 31, Schedule C. of the 14 & 15 Vict. c. 57., or to the like effect, and with such variation as is by this Act provided; and the reception of such recognisance by the clerk of the peace shall be conclusive evidence that the several provisions herein enacted in reference thereto have been complied with, and in case any such recognisance shall have been taken by any justice of the peace, the same shall be returned to the clerk of the peace within two days after same shall have been taken or acknowledged.

4. In case any decree, dismissal, or adjudication, notwithstanding notice of appeal and of the entry into such recognisance or of the making of such lodgment as is herein provided, shall be executed, the party so executing the same or continuing in possession of any goods thereafter shall be deemed to be a trespasser, and may be proceeded against accordingly.

5. From and after the passing of this Act sections 127, 129, and 130 of the 14 & 15 Vict. c. 57., and of sections 43 and 45 of the 40 & 41 Vict. c. 56., are hereby repealed, and the following sections, namely, sections 128, 133 to 137, both inclusive, of the 14 & 15 Vict. c. 57., shall be deemed to be and are hereby re-enacted; and it is hereby further enacted that every decree, dismissal, or adjudication made under section 150 of the 14 & 15 Vict. c. 57. may be appealed from as in this Act provided.

6. Nothing in this Act shall be deemed to include any appeal brought under the provisions of the Landlord and Tenant (Ireland) Act, 1870, or the Land Law (Ireland) Act, 1881, and appeals thereunder shall be brought in manner and to the court provided by the 47th section of the Land Law (Ireland) Act, 1881.

#### TEXT-BOOK ADDENDA.

[From the *Law Journal*.]

##### *Morgan's Chancery Acts (6th Edition), 190.*

Where a person had assigned a policy of assurance on his life and died intestate, in an action to recover the policy-moneys, held that this was a proper case for the exercise of the Court's jurisdiction to dispense with the presence of a legal personal representative of the assured (*Curtius v. Caledonian Fire and Life Insurance Company*, 51 Law J. Rep. Chanc. 80)—C. A.

##### *Lely and Foulkes on the Judicature Acts (3rd Edition), 426.* *Wilson on the Judicature Acts (2nd Edition), 469.*

In taxing the costs of an interlocutory application, the costs of copies of pleadings necessary for the application were disallowed by the master on the ground of a general rule that costs of pleadings were only allowed on the hearing. Held that the general rule was wrong, it being the duty of the taxing-master to consider what is necessary for the attainment of justice in each particular case (*Warner v. Moses*, 51 Law J. Rep. Chanc. 89)—C. A.

##### *Bills of Sale Act, 1878, s. 3.* *Wilson on Bills of Sale (2nd Edition), 54.*

The consideration for a bill of sale was stated to be "£50 paid at or immediately before the execution thereof." Only £21 10s. was actually paid, £25 being retained to meet the rent of the grantor's house not then due, and not paid till afterwards, and £3 10s. for costs of registration and preparation of the bill of sale. Held that the consideration was not truly stated under section 8 (*In re Spindler, ex parte Rolph*, 51 Law J. Rep. Chanc. 88)—C. A.

##### *Theobald on Wills (2nd Edition), 252.*

Under a gift to "second cousins" by a testator, who had none either at the date of his will, or of his death, or during his lifetime, first cousins once removed were held entitled [*Bentham v. Wilson*, 49 Law J. Rep. Chanc. 587—on appeal, 50 Law J. Rep. Chanc. 629—noted L. J. 1881, p. 402, distinguished] (*In re Bonner, Tucker v. Good*, 51 Law J. Rep. Chanc. 83).

#### PROCRASTINATED LITIGATION.

Probably few cases of modern times have reached the acme of vicissitude and delay attained by the action of *Neill v. The Duke of Devonshire*, now in the course of hearing before the House of Lords. The dispute arises out of a claim to a right of fishery in the county of Cork, and is said to have been constantly before the courts of Ireland for the last thirteen years. The proceedings commenced in 1869 in the form of an action for trespass, which after a trial of more than a fortnight ended in a verdict for the defendants. A similar result attended another action four years later. Next, an order having been granted for a new trial, the jury disagreed. The following year a verdict was obtained by the Duke, but was subsequently set aside. Then came another trial, at which the jury again disagreed; then a seventh hearing, which ended in favour of the Duke. Shortly afterwards application was made to the Divisional Court for a new trial, but was refused, and the refusal was subsequently affirmed by the Court of Appeal by a majority of two judges to one. The further appeal from this judgment is now before the House of Lords. If the decision is upheld the litigation will of course be concluded, but, if otherwise, the whole matter will be reopened for another indefinite period. Admitting the dispute to be intricate and voluminous to the last degree—the muniments of title, we believe, extend over six centuries and a half—the possibility of justice being so procrastinated betokens the hardly disputable fact that our judicial system is still far—very far—from absolute perfection.—*Law Times*.

#### REVIEWS.

##### *David MacBrayne's Official Guide. Summer Tours in Scotland: Glasgow to the Highlands. 1882.*

To those who meditate taking a trip to the Scottish Highlands this season we strongly offer the advice, to provide themselves beforehand with a copy of Mr. MacBrayne's Official Guide Book, "Glasgow to the Highlands," which can be procured for 8d., and an Illustrated Edition for 6d. It contains in the fullest form the particulars of the "Royal Route" (*via* Crinan and Caledonian Canals); the Time Tables and List of Fares by the R. M. Steamers *Columba*, *Ionas*, &c., &c.—which number in all a fleet of twenty-four steamers; Lists of Daily and Weekly Circular Tours; and a List of Calling Places, with Hotels. The Guide Book, and all further information can be obtained at Messrs. Carson Bros., 7 Grafton-street, Dublin.

#### APPOINTMENTS AND PROMOTIONS.

NOTE BENE.—Information intended for publication under the above heading should reach us not later than Friday morning in each week, as publication is otherwise delayed.

Mr. Wm. Neilson Hancock, LL.D., Q.C., Keeper of the Land Commission Records, has been appointed Clerk of the Crown and Hanaper.

They had a good deal of trouble in a Montreal court the other day, trying to swear in a Chinaman. He said he "believed" in anything; "that he no swaeres at alle;" and he didn't swear on a saucer. When asked if he was a Buddhist, he answered: "Me no knowee what you say. What you talkee about?" In reply to the question, "What religion do you belong to?" he said, "State of Ohio," and was finally sworn by crossing his hands on his heart.—*Montreal Witness*.



**BOOKS RECEIVED.**

*The Partition Act, 1868 and 1876; a Manual of the Law and Practice of Partition and of Sale in lieu of Partition; with the Decided Cases, and an Appendix containing Judgments and Orders.* Second Edition, enlarged. By W. GREGORY WALKER, of Lincoln's Inn, Barrister-at-Law, &c. London: Stevens & Haynes, Law Publishers, Bell-yard, Temple Bar. 1882.

**COURT PAPERS.**

**LAND JUDGES.**

Sittings for next Week so far as same are appointed.

Before the Rt. Hon. JUDGE FLANAGAN.

**THURSDAY.**

IN CHAMBER.—M. McGarry, to confirm sale.—G. Le Hunte, payment.

IN COURT.—Administrator S. Gillman, from 18th May.—G. B. Low, from 17th May.

Before EXAMINER (Mr. Kennedy).

R. L. Watson, rental.—M. Linsame, do.—Trustee A. Blake, vouch.

**FRIDAY.**

**SALMS IN COURT.**

J. M. WALKER, . . . . . 1 lot.  
TRUSTEES W. SOULLY, . . . . . 2 lots.

Before EXAMINER (Mr. Kennedy).

W. Deane, rental.—H. Leader, do.—M. Handley, vouch.

Before the Rt. Hon. JUDGE ORMSBY.

**THURSDAY.**

IN CHAMBER.—M. Bouska, confirm sale.—J. Ronayne, do.—F. Graham, do.

IN COURT.—C. M. Gowan, final schedule.—T. Ryan, do.—D. P. McCarthy, do.—T. Barkle, from 18th.—O. Burns, do.

**FRIDAY.**

Before EXAMINER (Mr. M'Donnell).

A. D. Browne, rental.—T. Manley, do.—Devisee Levey, do.—J. Ramsay, do.—C. E. Bell, vouch.—T. Colclough, ditto.

**COURT OF BANKRUPTCY.**

**ADJUDICATIONS IN BANKRUPTCY.**

*The dates of Adjudications are first given, the Sittings follow in Italics.*  
Fenton, J. Cunliffe, of Fermoy, in the county of Cork, a Lieutenant in Her Majesty's 1st (The Royal Scots) Regiment. May 9; *Friday, June 9, and Tuesday, June 27.* Henry Greens Kelly, solr.  
Fitzpatrick, Denis, of 53, Francis-street, in the city of Dublin, boot and shoemaker. May 16; *Friday, June 9, and Tuesday, June 27.* Cronhelm & Tobias, solrs.  
O'Shaughnessy, Margaret Josephine, of Dangan House, Galway, at present residing at No. 26, Aynhoe-road, West, Kensington Park, in the county of Middlesex, widow. April 25; *Tuesday, June 6, and Friday, June 23.* Thomas Geoghagan & Sons, solrs.  
Steell, Thomas, and David Steell, both of Vulcan Foundry, in the city of Cork, iron foundry, trading as "John Steell and Sons," May 9; *Tuesday, June 6, and Friday, June 23.* Thomas Gerrard, solr.  
Wisheart, Bernard, of No. 1, Duke-street, in the city of Dublin, and No. 3, Fortfield-terrace, Rathmines, in the county of Dublin, stationer. May 16; *Friday, June 9, and Tuesday, June 27.* Bouchier Eaton, solr.

**DUBLIN STOCK AND SHARE LIST.**

DESCRIPTION OF STOCK	MAY					
	Sat. 20	Mon. 22	Tues. 23	Wed. 24	Thur. 25	Fri. 26
<b>Paid Government.</b>						
— 3 p c Consols ..	101	101½	101½	101½	101½	101½
— New 3 p c Stock ..	100½	100½	100½	100½	100½	100½
<b>INDIA STOCK.</b>						
4 p c Oct. 1888 } Treas. at ..	104½	104½	—	104½	—	104½
2½ p c Jan. 1881 } Bk. of Irel. ..	101½	—	—	—	—	101½
<b>Banks.</b>						
100 Bank of Ireland ..	319½	—	319½	—	—	320
25 <i>Hibernian Banking Co.</i> ..	—	—	—	—	—	29
20 <i>London and County (Lid.)</i> ..	—	—	—	—	—	—
15 <i>London Joint Stock</i> ..	—	—	—	—	—	—
20 <i>London and W'minster, Ltd</i> ..	70½	71	—	—	—	71
10 <i>Do. New</i> ..	—	—	61½	—	—	—
3½ <i>Minster Bank (Limited)</i> ..	—	—	—	—	—	7½
10 <i>National Bank (Limited)</i> ..	—	—	—	—	24	—
10 <i>National of Liverpool (Lid.)</i> ..	—	—	—	—	—	—
25 <i>Provincial Bank</i> ..	53	—	—	—	52½	53½
10 <i>Do. New</i> ..	—	—	—	—	—	—
10 <i>Royal Bank</i> ..	—	—	—	—	29½	—
25 <i>Standard of B. S. A., Ltd</i> ..	—	—	—	—	—	57
<b>Mines.</b>						
4½ <i>Berghaven (Limited)</i> ..	—	—	—	—	—	—
1 <i>Killaloe Slate Co. (Ltd)</i> ..	—	—	—	—	—	—
7 <i>Mining Co. of Ireland (Ltd)</i> ..	—	—	—	—	—	2½
<b>Miscellaneous.</b>						
10 <i>Alliance &amp; Dub. Cons. Gas</i> ..	—	—	15	—	—	—
4 <i>Arnott &amp; Co., Limited</i> ..	—	—	—	—	—	—
4 <i>National Discount, Ltd</i> ..	—	—	—	—	—	—
25 <i>National Assurance</i> ..	—	—	—	—	—	57
9-4-7 <i>Patriotic Assurance</i> ..	—	—	—	—	—	—
<b>Tramways.</b>						
10 <i>Dublin United Tramways</i> ..	—	—	—	—	—	—
10 <i>Edinburgh Street Trams</i> ..	—	—	—	14½	14½	—
10 <i>L'pl Un'd Trm &amp; Bus Ltd</i> ..	—	—	—	—	—	—
10 <i>Leeds Trams</i> ..	—	—	—	—	—	—
<b>Railways.</b>						
10 <i>Athenry and Tuam</i> ..	—	—	—	—	—	—
50 <i>Belfast and County Down</i> ..	—	—	—	—	—	—
50 <i>Belfast and Northern Cos.</i> ..	—	—	—	—	—	—
100 <i>Dublin, Wicklow, &amp; W'ford</i> ..	—	—	—	—	—	—
100 <i>Great Northern (Ireland)</i> ..	—	—	—	—	119½	119½
100 <i>Gt. Southern and Western</i> ..	—	—	—	—	112	112
100 <i>Midland Gt. Western</i> ..	—	—	—	—	83	—
50 <i>Waterford and Limerick</i> ..	—	—	—	—	—	82
<b>Railway Preference.</b>						
100 <i>Belfast &amp; Nth'n Cos., 4 p c</i> ..	—	—	—	101½	—	—
100 <i>Do., 4 p c</i> ..	—	—	—	—	122	—
100 <i>Gt. Nth'n (Ireland) 4 p c</i> ..	—	107½	—	—	—	—
100 <i>Do., 4 p c</i> ..	—	107½	—	—	—	—
100 <i>Gt. South'n &amp; West'n 4 p c</i> ..	—	—	—	—	—	—
100 <i>Mid. Great Western, 4 p c</i> ..	—	—	—	—	—	—
100 <i>Do., 5 p c</i> ..	—	—	—	—	—	122½
<b>Leased at Fixed Rentals.</b>						
100 <i>Dublin and Kingsdown</i> ..	—	—	—	—	—	—
<b>Debenture Stocks.</b>						
— <i>Belfast &amp; Nth'n Cos., 4 p c</i> ..	—	—	—	—	—	104½
— <i>C'fergus and Larne 4 p c</i> ..	—	—	—	—	—	105½
— <i>Dublin &amp; Wicklow 4 p c</i> ..	105½	—	—	—	—	—
— <i>Do., 4 p c</i> ..	—	—	—	—	—	—
— <i>Gt. Northern (Ireland) 4 p c</i> ..	—	—	—	—	—	—
— <i>Do., 4 p c</i> ..	—	—	—	—	—	—
— <i>Do., 5 p c</i> ..	—	—	—	—	—	—
— <i>Gt. South'n &amp; West'n, 4 p c</i> ..	—	—	—	—	—	—
— <i>Kilkenny Junction, A. 5 p c</i> ..	—	—	—	—	—	—
— <i>Midland Gt. West'n, 4 p c</i> ..	—	—	—	—	—	—
— <i>Do., 4 p c</i> ..	—	—	—	—	—	—
— <i>Waterford &amp; Central 5 p c</i> ..	108	—	—	—	—	—
— <i>Water'd &amp; Limerick 4 p c</i> ..	104½	—	—	—	—	—
— <i>Do., 4 p c</i> ..	—	—	—	—	—	—
<b>Miscellaneous Debent.</b>						
— <i>Alliance &amp; Cons. Gas, 4 p c</i> ..	—	—	—	—	—	—
— <i>Belfast Office Deb., 5 p c 2d, 4 p c</i> ..	—	—	—	—	—	—
— <i>Dub. &amp; Glas. S. P. Co. (1887) 5 p c</i> ..	—	—	—	—	—	—
— <i>(1888) Rathm. &amp; Pom. M. Drain, 4 p c</i> ..	—	—	—	—	—	103

\* Shares not fully paid up are given in Italics. † x d  
Bank Rate—Of Discount—6 per cent., 30th January, 1882.  
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Name Days—June 13th and 29th, 1882.  
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**BIRTHS, MARRIAGES, AND DEATHS.****MARRIAGES.**

**HINDE and WHITE**—May 20, at St. Peter's Church, Dublin, by the Rev. J. B. Shields, A.M., Assistant-Chaplain Christ Church, Leeson Park, George Langford Hinde, Esq., Brigade Surgeon Army Medical Department, to Frances Mary Crawford, youngest daughter of Thos. J. White, Esq., barrister-at-law, of Grosvenor-road, Rathgar.

**DEATHS.**

**MOORE**—May 22, at his residence, Mountjoy-square, suddenly, James Hamilton Moore, solicitor, eldest surviving son of the late Hugh Moore, of Dromont, County Tyrone, aged 62 years.

**O'MEAGHER**—May 20, at Wellington-quay, Upper Leeson-street, in his 80th year, Joseph O'Meagher, solicitor, formerly of Beaumont, Tullow, County Carlow.

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FORM

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No. 801

## NOTICES OF INJURY, UNDER THE EMPLOYERS' LIABILITY ACT, 1880.

THE service of a notice of injury is rendered a condition precedent to the maintenance of an action under the Employers' Liability Act, 1880, by virtue of the provisions of section 4, while the mode of service and the particulars to be contained in the notice are prescribed by section 7, which further declares that the notice is not to be deemed invalid by reason of any defect or inaccuracy therein unless it was for the purpose of misleading, and the defendant was thereby prejudiced in his defence. Those enactments have been construed in several cases by the English county court judges, and have recently formed the subject of three superior court decisions, which it is our present purpose to collate.

In the first of those cases (*Moyle v. Jenkins*, 8 Q. B. D. 116) it was held that the notice must be a written one, although, as had been argued, there could be no reason for so requiring where the employer may have either witnessed the accident or, as the fact was, arrived on the spot immediately afterwards, and had assisted and given money to the plaintiff, thereby acknowledging his liability, and though it was argued that this amounted to a waiver of the requirement of a written notice a nonsuit in the county court, by reason of its absence, was sustained. So, we may add, it has been held that the notice of distress required under 2 W. & M. sess. 1, c. 5, s. 2, must be in writing: *Wilson v. Nightingale*, 8 Q. B. 1034. But, as to waiver, it seems to us that it would be hard to reconcile the county court cases of *Macay v. Hodson* (72 L. T. 140) and *Wallace v. St. Helens Coll. Co.* (71 ib. 416) with *Moyle v. Jenkins*; *et cf.*, under the Lands Clauses Act, 1845, *Kemp v. S. E. Ry. Co.*, L. R. 7 Ch. App. 364; *R. v. Com. of S. H. Drainage*, 8 A. & E. 429. As regards the necessity for writing, *Moyle v. Jenkins* was subsequently approved by the Court of Appeal in *Keen v. The Milwall Dock Co.*, reported in the May number of the *Law Journal*, Q. B. 277 (s. c. 8 Q. B. D. 482). There, it appeared that the plaintiff, a workman, was injured by an accident while in the employ of the defendants. He at once told an inspector of the defendants the circumstances of the accident, and the inspector made a written report to one of their superintendents. The plaintiff's solicitor wrote to the defendants themselves within a week, asking for compensation, mentioning that their superintendent already knew the particulars, but not referring in terms to the inspector's written report. It was held that the Act was not complied with, as the written report containing the particulars was not incorporated by reference in the solicitor's letter, and no other written notice had been given to the defendants within the time limited. There was a variance of opinion as to what would have been the effect if the letter had referred in terms to the inspector's report to the superintendent. Lord Coleridge, C.J., thought that this would not have sufficed, as, from his point of view, the statute described a notice one and single, delivered at one and the same time, containing in it at one and the same time all the incidents which the statute has made a condition precedent to the right to maintain an action. Brett, L.J., agreed that, as a rule, the notice

should be one notice, but was not prepared to say that the fact of its being contained in two documents would be fatal to it, and that it would be more than an inaccuracy which could be remedied. "Suppose," he observed, "that the injured person were to write a letter containing the particulars of the injury received, but omitting his name and address, and were then to write a second letter containing the name and address, I am not prepared now to say that the second letter, if sent in time, and if it referred to the first letter, could not be taken so to incorporate the first letter as to cure the inaccuracy of the first notice, and thus render it a valid notice." And the late Lord Justice Holker said: "I should require further consideration before I could say that a notice under this statute cannot be a good notice because it is contained on more than one piece of paper. I am not prepared to say that there might not be cases in which a man injured away from home might not send an account of his injuries to a friend, which, when sent in to the employer with a letter giving his name and address, might not be held to constitute, when read together, a good notice within the statute."

"It seems to me," said Brett, L.J., in the case last cited, "that a notice may avail although there be some defect in it—if, for instance, it should not name the day, or if the cause of the injury be inaccurately described—in the one case there would be a defect, in the other there would be an inaccuracy in the notice—and yet that defect or that inaccuracy could be supplied, and the notice would not necessarily be invalid." *Stone v. Hyde* (46 L. T. N. S. 421), subsequently decided, was a case on this subject. There the notice given to the employer omitted to state the cause of the injury, and the plaintiff was nonsuited accordingly in the county court, the judge holding that this was not such a defect or inaccuracy as could be amended, and further (without taking any evidence), that, if it could be so regarded, it was such as would prejudice the defendant in his defence, and must have been made for the purpose of misleading. Mathew and Cave, J.J., however, were of opinion that the notice was not a mere nullity, but a defective notice which might be amended, while the county court judge should not have regarded its prejudicing and being intended to mislead the defendant as a mere legal inference, without examining into the circumstances and finding his conclusion as a matter of fact. Some correspondents, writing in the last issue of the *Law Times*, look on this case as seeming to be in conflict with *Keen v. Milwall Dock Co.* (*ubi supra*). We fail to perceive any conflict with that case; but, it does seem inconsistent with the county court cases of *Franks v. Silver & Co.* (reported in the same issue), and *Farley v. Clemson* (71 L. T. 267).

The next case to be adverted to, *Adams v. Nightingale*, has not yet found its way into any of the Reports, but has been noted in 17 L. J. 199. It came before the Queen's Bench Division on appeal from the Southwark county court, where the plaintiff had been nonsuited. The county court judge stated that the matter of law involved in the first question he had decided was, "whether the 'delivering a notice at the residence or place of business of the person on whom it is to be served,' as required by section 7 of the Employers' Liability Act, 1880, means simply delivering the notice

to any person (whether an infant or not), or leaving the same at such residence or place in any manner whatever; or whether it means delivering it to some person, or leaving it at such residence or place in such a manner that it might be reasonably presumed that it would come safely into the hands of the person to whom it was addressed; and upon such matter of law I was of opinion that the meaning of the section was that the notice should be delivered to some person, or left at such residence or place in such a manner that it might be reasonably presumed that it would come safely into the hands of the person to whom it was addressed. The matter of fact involved in such first question was in my opinion whether the delivery of the notice to a child, and the leaving of the notice at the defendant's premises, as proved by the witness Livisey, was delivering or leaving it in such a manner that it could be reasonably presumed that it would come safely to the hands of the defendant, and I was of opinion that it was not, inasmuch as the notice so delivered and left was liable to be removed and hidden or destroyed intentionally or unintentionally by a human or brute being, or by mere accident (as by a gust of wind), and so prevented from ever coming to the defendant's knowledge; and in point of fact there was no evidence that the notice had come to the knowledge of the defendant, but strong evidence to the contrary. That the second question raised by the defendant's counsel at the trial was, in my opinion, one of law only—viz., whether the defendant's knowledge of the injury suffered by the plaintiff within six weeks cured any informality with regard to the notice required by section 7 of the Employers' Liability Act, 1880; and I was of opinion that it did not cure any informality with regard to such notice, or, at all events, that it did not cure the insufficiency of the service of such notice in the present case, inasmuch as there was no provision to that effect in the Employers' Liability Act, 1880." Grove, J., and Huddleston, B., held (April 5, 1882) "that the nonsuit was right, and that a notice under the Act must be delivered in such a manner that it is reasonable to expect that it will come to the defendant's knowledge in the ordinary course of business; and dismissed the appeal, with costs." In the county court case of *Faul v. Fletcher & Co.* (71 L. T. 84) it was held that registration of the letter with the notice was unnecessary, where the defendants had admitted its receipt.

"It was clearly intended by the legislature that the notice should be one which a working man or his friend could frame without professional advice," as was remarked by the county court judge in *Wall v. Burnyeat, Brown & Co.* (17 L. J. 139; and see 14 Ir. L. T. 588); and, on the whole, the decisions that have taken place seem calculated to carry out this object, and to divest this requirement, as far as possible, of all technical difficulties. Yet, it must be confessed that it still interposes sometimes a rather too serious impediment to the remedy of admitted wrongs. "I know of a case," writes a correspondent in the *Morning News* (Belfast) of the 22nd ult., "where a man met with a serious accident, and, although not just at the time in danger of his life, the doctor in whose charge he was would not allow him to be disturbed, as it might occasion a relapse. Consequently, this person lost all benefit under the Act. He will never be able to work. Again, a boy had his two legs broken in the yard of a respectable shipbuilding firm in town. His father employed a solicitor, and got a notice drawn up. Before it was served the father went to the firm, who promised the boy would not want. When three months were up the money stopped, and the notice not being served nothing could be done." In the same paper we observe, by

the way, an able judgment delivered by Mr. Otway, Q.C., in a case under the Act (*Macaulay v. Greeves*, which we intend to report), but, as it does not touch on the specific matter here discussed, it need not be further noticed at present; and see, as to transfer of actions from the county courts, and their jurisdiction as to damages, *Magee v. Martin*, 16 Ir. L. T. Rep. 5.

#### THE NEW LAW LORD.

It has been said that the severest test which can be applied to a man, almost in all the relations of life, is to place him on the judicial bench. But, while various and great are the endowments needed to stand that test, illustrious indeed must be the character rendered pre-eminent by their possession when the temple of justice is served, as now, by so many an exemplary

"priest of Law,  
To pour the oracles by Law inspir'd."

The Right Hon. John David Fitzgerald, whose selection from the ranks of the English and Irish judiciary to occupy the high position of Lord of Appeal in Ordinary induces those reflections, belongs to a well-known Roman Catholic family, other members of which have of late years attained to distinction. He was born in 1816, and was educated in the University of Dublin, where he took the degree of LL.D. In Easter Term, 1838, he was called to the Bar, and joined the Munster Circuit. He took silk in 1847, and, on the retirement of Mr. Jonathan Henn, became the acknowledged leader of his circuit. In 1852 he entered Parliament as member for the borough of Ennis, which constituency he continued to represent until 1860. It will be remembered that, on the introduction of the Prevention of Crime Bill, last month, Mr. Healy, M.P., presumed to refer to him as "a man for whom the people of Ireland spilt their blood in the county of Clare twenty years ago," which evoked a written reply from the learned judge, who said:—"I was member for Ennis up to 1860, and had been six times returned to Parliament for that borough, but at none of my elections was there any bloodshed, or any riot or disorder of any kind. Thirty years since, at the election for the county of Clare, Lieut.-Gen. Sir John Fitzgerald (late Field-Marshal) was one of the candidates, and a serious affray took place at Sixmilebridge between the military and the people, in which several lives were unhappily lost. That calamity had no connexion whatever with any election of mine, and at the time of its occurrence I was busily engaged at the Cork assizes. I was summoned from thence by my own constituents to come to Clare, and, as a J.P. for that county, to assist in the investigation then about to take place. I came and assisted, and such was my only connexion with that lamentable tragedy." It may be added that, besides being a J.P. for the county Clare, he holds the commission of the peace for the county Dublin. He had entered Parliament as what was known in those days as a staunch Liberal—that is to say, in favour of reform, vote by ballot, abolition of church-rates, and, more important still, in favour of tenant-right. And without sacrificing any of those opinions, he took office as Solicitor-General for Ireland under Lord Palmerston's administration, in February, 1855, being subsequently appointed Attorney-General, 1856, which office he held till February, 1858, and again from 1859 to 1860. While he held this position the Court of Appeal in Chancery was created under an Act which he prepared and passed, but he relinquished his claim to the office of Lord Justice at the request of the Government; and on a similar request, he waived his right in relation to two vacancies in the Queen's Bench and Common Pleas, one of which was filled by the late Mr. Justice O'Brien,

and the other by Mr. Justice (afterwards Lord Justice) Christian. In 1859, Mr. Justice Crampton consented to resign, and Mr. Fitzgerald (still Attorney-General) consented to continue in office. But before a successor could be appointed to Mr. Crampton, there was a change of Government, and the late Mr. Justice Hayes was appointed. He adopted the same course again in 1859, and at the like instance, a vacancy having occurred in the Court of Exchequer by the retirement of Baron Richards, to which the late Baron Hughes was appointed. At last, on the resignation of Mr. Justice Perrin in 1860, he was appointed a puisne judge of the Queen's Bench, and since then none of the Irish Judges have worked harder or more continuously. In such test cases, evoking strong passions on either side, especially in Ireland, as election petitions, Bible-burnings, Phoenix or Fenian conspiracies, &c., by the common consent of the Bar and the public, he has never swerved from the strict line of duty, and his utterances from the bench have been at all times calm, temperate, dignified, and impartial. Perhaps the most striking tribute to his fitness for high judicial office is afforded by the fact that more than one Government, Liberal or Conservative, when the office of Chief Justice or Master of the Rolls fell vacant, seriously balanced the question whether, for once, the paramount claim to immediate promotion of the Law Officer of the day might not be waived in favour of Mr. Justice Fitzgerald. But, popular as he has ever been, it is not to be wondered at that even he did not escape being made the recipient of a threatening letter; and it only served to give another opportunity for the display of that scrupulous fairness and consideration by which his judicial bearing has always been characterised, for, on the occasion in question, it will be remembered how he suppressed all mention of the threat addressed to him when taking his seat upon the bench, and only read the letter after the prisoner had been acquitted of the crime of violence of which he was accused. During his tenure of office as judge of the Queen's Bench, in which his special abilities and experience will now be sadly missed, he has been selected and named on almost every Special Commission that has been issued, including those for the trial of the Fenian prisoners at Dublin in 1865-6, at Cork in 1866, and again at Dublin in 1867-8. In January last year, he too it was who presided at the trial of *The Queen v. Parnell and Others*. In 1855 he had been elected a Bencher of the King's Inns, and in the following year was appointed a member of the Privy Council in Ireland. It only remains to notice, among his other public services, that he is a Commissioner of National Education in Ireland, of Charitable Donations and Bequests, and of Endowed Schools; while he is, also, a Governor of the Royal Hibernian Military School, and Visitor of the Queen's Colleges. He married first, in 1846, Rose, second daughter of the late John O'Donohoe, Esq., of Fitzwilliam-square, Dublin; and second, in 1860, the Hon. Jane Southwell, sister of the fourth Viscount Southwell.

Lords of Appeal in Ordinary were created under the Appellate Jurisdiction Act, 1876, for the purpose of aiding the House of Lords. Two were to be appointed, at a salary of £6,000 a year, and entitled to a retiring pension after fifteen years service (in which serving as a judge of the Queen's Bench would be computed). Every Lord of Appeal in Ordinary is entitled during his life to rank as a Baron by such style as her Majesty may be pleased to appoint, and while in office, but no longer, is entitled to sit and vote in the House of Lords. His dignity as a Lord of Parliament, however, is not to descend to his heirs. "If a Privy Councillor," he is also to be a member of the Judicial Committee of the Privy Council; but the Act contemplated the gradual

extinction of paid members of that Committee, and authorised the substitution of a Lord of Appeal in Ordinary for every two of such members as might die or resign. Sir James Colville having died, and Sir Montague Smith retired, Mr. Justice Fitzgerald now succeeds to the vacancy, and becomes a peer of the realm. His duties, however, are likely to be somewhat different from those originally assigned to Lords of Appeal, for a new measure is being introduced by Lord Selborne, enabling both the Law Lords and the members of the Judicial Committee (now including every Lord Justice who is a Privy Councillor: 44 Vic., c. 3) to assist at any time in the intermediate Court of Appeal; and under this condition we presume the new appointment has been made. Certainly, we doubt whether such an arrangement will prove conducive to the dignity of the Law Lords; and we trust it may not be made the stepping stone to further encroachments and innovations. To Ireland and Scotland is due the preservation of the appellate jurisdiction of the House of Lords, such as it is; but, what will become of its distinctiveness, if the judges of the three principal appellate tribunals in England are to be interchangeable at pleasure? Yet, never can we cease to cherish the traditional respect that has always attended the judicial administration of the House of Lords, while it continues to be adorned by such judges as the new Law Lord.

#### CONVEYANCING BILL.

[CONCLUDED.]

After the clauses relating to married women, we arrive at clause 9, which makes a power of attorney, given for valuable consideration, absolutely irrevocable, if in the instrument creating the power, it is expressed to be so. This, however, only applies in favour of a "purchaser," which, by clause 1 (4), includes lessee, mortgagee, "or other person who for valuable consideration takes or deals for property." Neither the death, marriage, lunacy, or bankruptcy of the donor of the power, or any act on his part without the concurrence of the donee of the power, will affect it, even though the donee of the power and purchaser have express notice of such death, &c., or of the attempted revocation by the donor. The next following clause makes similar provisions for a power of attorney limited for a fixed time not exceeding one year from the date of the instrument creating it, whether given for valuable consideration or not. These clauses were contained in the Bill which became the Conveyancing Act, 1881, in a rather different form (Wolst. & T. 223; Rubenstein, 3rd ed., App. p. v.); and they should be read in connexion with ss. 46, 47 of the Conveyancing Act. The object of the clauses is to facilitate transfer by removing difficulties attending sales conducted under powers of attorney.

In the first place, we must call attention to the word "instrument" used in these clauses. It is not defined in this Bill. In the Conveyancing Act it includes a will (sect. 2, xiii.). An "instrument" need not be a deed. But a power of attorney must be given by deed (David i. 475; Co. Litt. 52a), so that it would be better to substitute the word "deed" for "instrument."

A more important question is raised by a correspondent in our columns some weeks ago (*Law Times*, March 11, 1882, page 339). Mr. S. H. King points out with considerable force that a purchaser of property might find after completion that the estate had been conveyed to someone else, by virtue of a power of attorney made before his purchase. We think that, if the Bill passes in its present form, and is construed literally, it would seem that a sale by the donee of the power would prevail even over a prior sale of the owner, and notwithstanding both donee of the power and his purchaser had notice of such prior sale. Of course, on any purchase, the purchaser runs a slight risk of finding

that the vendor has sold and conveyed previously, but the possession of the title deeds by the vendor is generally sufficient guarantee against this. But there is no provision in the Bill that the title deeds shall be handed to the donee of the power of attorney, or that the power shall, in register counties, be put upon the local register.

Moreover, a power of attorney may be given over after-acquired property. It would therefore seem that this Bill will afford a convenient mode of charging such property. In *Tadman v. D'Epineuil* (decisions not yet reported, *Law Times*, May 6, page 8) it was held that a charge by A. on all his present and future personalty, to secure to B. any sum he might owe him when B. should choose to enforce the charge, was invalid as to property acquired by B. after the date of the charge. Is it intended that such a charge should be made by power of attorney giving a power to sell, and to apply the proceeds in discharge of the debt? Mr. S. H. King also points out that the provision enabling powers of attorney to be acted on after the death of the donor of the power would enable powers of attorney to be given under which the whole of the property of a deceased might be realised, and, if the donee of the power was willing to incur the risk of distributing the money, and no administration to the deceased's effects were taken out, the revenue might be defrauded. We trust the attention of the Chancellor of the Exchequer may be given to this.

We can suggest some safeguards against the evils which we have pointed out. The Conveyancing Act, 1880, sect. 48, gives power to register powers of attorney. Make the provisions of the present Bill apply to registered powers of attorney only; and let the official conclusive searches, which clause 3 of this Bill provides, include a search for powers of attorney. Let it be incumbent, under a penalty, for the donee of any registered power of attorney to give notice to the officials of the death of the donor, so soon as he shall be aware of it. The register will afford to the revenue officers a means of occasional detection in case a donee neglects to give the prescribed notice, so that the penalty can be enforced.

Clause 11 of the Bill contains a restriction on executory limitations with respect to land. The word "land" is not defined in the Bill, although it is in the Conveyancing Act (s. 2, ii.), so that it must bear the meaning given in Lord Brougham's Act (13 & 14 Vict., c. 21), s. 4. This clause has undergone considerable alteration: (see *Wolst. & T.* 224.) In its earlier form it spoke of "a tenant in fee simple;" now it is more general, and relates to a person "entitled to land." It should be stated whether by "entitled" the ownership in fee simple is intended.

The object of clauses 12 and 13 is to give one name to the Inclosure, Copyhold, and Tithe Commissioners, and to enlarge their powers. These two sections apply to Scotland, a fact which ought to have been noticed upon the memorandum preceding the Bill, as the Conveyancing Act which this purports to amend does not extend to that country (sect. 1, 3).

Clause 14 amends the "long term" sect. 65 of the Conveyancing Act. As it is retrospective, practitioners should even now carefully peruse it before enlarging any long term. But it most certainly needs amendment, for as it stands at present it invalidates certain deeds extending terms by virtue of the Act. So that the owner of the term may have enlarged it into a fee simple, and done certain acts which would create a forfeiture had it been leasehold. If, then, by this clause it is declared that sect. 65 never applied to such a long term, forfeiture would seem to ensue. Another inconvenience is, that a will may have been made when such a term had become fee simple, devising all the testator's freehold estates. Really it would be too bad to pass an Act in 1881 enabling the conversion of leaseholds into freeholds, and then in 1882 to pass another declaring that that Act never did apply in certain cases. Retrospective legislation is usually objectionable, and this is no exception to the rule.—*Law Times*.

## THE IRISH BENCH.

Lord Redesdale, who was Lord Chancellor of Ireland at the beginning of this century, once said that there existed in Ireland two sorts of justice—the one for the rich and the other for the poor, and both equally ill-administered. But the time has long gone by when such an accusation could be levelled with any truth at the Irish judicial bench; and the Irish judges of the present day, for impartiality, common sense, and legal acumen, need fear no comparison with our own. Mr. Sexton's complaints against the political subserviency of the Irish Bench and Bar have been made over and over again by Irishmen outside the lines of promotion; but at no time with less excuse than now. It stands to reason that the Irish Bar must continue (like our own) to be divided into two hostile camps as long as the ermine remains practically in the gift of the Minister of the day. To the Irishman, indeed, who under the best of circumstances can never now expect to make a fortune at the bar, a judgeship is a far more tempting bait than to the Englishman, who often suffers a pecuniary loss by the exchange. But a glance at the English judicial Bench will show that the reward of political service has had much to do with its constitution too; and if the presence of old political partisans is more conspicuous on the Irish than on the English Bench, it is easily explained by the fact that in Ireland there are only about a third as many judgeships to give away, and one more law officer—the "Castle" adviser—to provide for. With the exception of Lord Chief Justice May the chiefs of all the Irish Courts are all Liberals, promoted presumably for political services in Parliament. The Lord Chancellor, Mr. Law, was only the other day the Attorney-General for Ireland; while Chief Baron Palles, Baron Dowse, and Mr. Justice J. D. Fitzgerald, have all filled with distinction (the latter twice) the same office.—*St. James's Gazette*.

## CONTRACTING OUT OF THE EMPLOYERS' LIABILITY ACT.

In the Dudley County Court a decision was given, on May 16, in an action in which the widow of an under sinker, named Griffiths, sued the Earl of Dudley for £150, the estimated amount of three years' earnings by her husband. Shortly stated, the circumstances of the case are these: The deceased was at work, with a master sinker named Gould, in making "manholes" or places of refuge, in the pumping shaft of Lord Dudley's No. 2 pits, Himley Colliery, on November 19 last. They had fired a shot for the purpose of an excavation, and had given the signal to ascend to the pit bank, when, at the critical moment, the indicator of the engine failed to act, and the men were drawn up close to the pulley, but not over it. Gould, the head sinker, clung to the pit frame and was saved; the deceased, in an effort for life, tried to jump from the "bowk" to the pit's bank, in essaying which he fell down the shaft and was killed. The case came before Sir Rupert Kettle, at the Dudley County Court, on March 24 last, when it was urged on the part of Lord Dudley that the deceased had accepted the "conditions of employment" in force at his lordship's collieries, and had thus contracted himself out of the Act. Sir Rupert Kettle, who reserved his decision at the time in view of the importance of the case, now delivered judgment. He awarded the widow the full amount claimed, as he held that no man had a right or legal power to bind his representatives by contracting himself out of the Act. The learned judge agreed to stay execution, pending an appeal to a higher Court. On the 26th ult. the Queen's Bench Division granted a rule nisi to enter a nonsuit.

## REPORTS AND REPORTERS.

Reports are the first endeavour of traditional law to become written. With all respect to those persons who have discovered in the present confused state of the law a virtue which they call elasticity, the period during which the law is extracted from reports is only

a transitional period. So long as there was no authority higher than the judge's own conscience and knowledge to which to appeal, the law was oral and really in the judge's breast. So soon, however, as the binding force of a decision of another judge recorded in a notebook came to be recognised as an authority to which the judge must bow, the law became partially written. When the authority of a reported decision first became thoroughly recognised, the first step towards a code was taken. To the extent to which decisions were reported, the law was then already written. So soon as decisions regarding all branches of the law were reported, the whole law became written, and a code became a mere matter of form and labour. The last remnant of the struggle between a genuinely traditional and a written law is to be found in the attacks which the judges, from time to time, made on the reporters. We do not think there is a single reporter, however eminent, against whom some judicial criticism, unfavourable to his accuracy, has not been passed. Too much attention ought not to be given to these reflections, which are sometimes petulant and often hasty. A judge who wishes to decide a point of law in a particular way, is hard pressed in argument by a decision in the opposite direction. Like the old instructions to counsel, "No case; abuse the plaintiff's attorney," there is nothing for it but to impugn the accuracy of the reporter. Judgments on reporters arrived at under this pressure thereupon become traditional, and, to some extent, the judges recover their right to extract the law from their own breasts; and the old theory of an oral law regains ground to the extent to which the authority of written decisions is impugned. At the present day, judges complain little that their decisions are misreported. The practice of writing judgments in important cases is commonly followed. The complaint is rather that cases are not reported than that they are wrongly reported. When much labour on the bench and at the bar have been spent on a case, it seems a waste that the result should go unrecorded. But the reporter's duty is merely to fill up gaps in the existing series of decisions. Clauses in a code are not written twice over, neither ought the reports to be encumbered with a decision "already in the books." The common law has long arrived at a condition when it is ripe for codification. The vast majority of cases now reported are merely on the meaning of statutes; and when a code is completed, the reporter's duty will be simply to record decisions on the meaning of the code.—*Law Journal*.

#### THE CONVEYANCING AND LAW OF PROPERTY ACT, 1881. WHERE IT SHOULD BE ADOPTED, AND WHERE EXCLUDED.—XVI.

(Continued from page 231, ante.)

##### SETTLEMENT UPON MARRIAGE OF FREEHOLDS IN FEE SIMPLE WITH USUAL CLAUSES.

###### *Introductory.*

Settlements of land as realty are among the most lengthy documents which the conveyancer has to prepare. They can, however, be considerably abbreviated by reliance upon the recent Act. The sections of the Conveyancing Act which more or less bear upon settlements of this description are very numerous. We shall also have occasion to mention, in connexion with this subject, Lord Cranworth's Act (23 & 24 Vict. c. 145) and the Settled Estates Act, 1877 (40 & 41 Vict. c. 18). Forms of settlement previous to the recent Act will be found in Bythewood, vii. 399; David, iii. 982; and since the Act in Cono. David. 387; Frid. ii. 802.

###### *The Grant, General Words, All Estate Clause, Habendum.*

The form given in the schedule to the Act runs thus: "This indenture made, &c., between &c., witnesseth, that in consideration of the intended marriage between John M. and Jane S., John M. as settlor hereby conveys to X. and Y. all that [&c.] to hold to X. and Y. in fee simple to the use of John M. in fee simple until the marriage, and after the marriage to the use of John M.

during his life, &c." The word "convey" is introduced on account of sect. 49. It is sometimes convenient to use it when it is intended to assign leaseholds also, as the word "convey" is applicable both to freeholds and leaseholds: (see sect. 2 (v.) and Wolst. & T. 76). But in the case before us we see no particular reason for discarding the old word "grant." However, it does not in the least signify which is used. The words "in fee simple" are substituted for the usual words of limitation, "and his heirs," by virtue of sect. 51.

It is no doubt much more intelligible to the non-legal reader, when it is intended to vest the absolute ownership in land in a person (as far as such absolute ownership can be vested in a subject), to give it to him "in fee simple," instead of granting it "to him and his heirs." But in a settlement of this sort, where the fee simple estates given are very far removed from absolute ownership, we think the use of the phrase is likely to be still more confusing than the old legal expression "and his heirs." But again it does not matter which phrase is used. We should, however, be inclined to add, in the clause which conveys the property to "X. and Y.," the words "in fee simple," or "and their heirs," according to the form which it is intended to use in the Habendum. No doubt the limitation of the fee simple in the Habendum explains or "cures" the omission of words of limitation in the granting or conveying part. The two must be read and construed together. Still we certainly prefer the practice which has hitherto usually obtained.

The "general words" and "all estate clause," may be omitted in reliance upon sects. 6, 63: (*Law Times*, Jan. 7, page 167). Where brevity is much desired the settlor may be stated to convey "as settlor," and then the limited covenant for further assurance will be implied, and no covenants for title need be inserted; but we decidedly prefer not to insert the words "as settlor," and to add the usual covenant for further assurance in its proper place: (see *Law Times*, April 22, page 434).

###### *The Preliminary Limitations.*

The limitation to the use of the settlor in fee until marriage will be inserted as usual, and also the limitation to the husband for life, if the property to be settled is his, or given by his family.

###### *Wife's Jointure Rentcharge.—Sect. 44.*

The usual mode of securing the wife's jointure is to limit the estate, to the use that if she should survive her husband she and her assigns should thenceforth receive, during her life, the yearly rentcharge of £ in full for her jointure and in bar of all dower and free bench to be charged upon the premises expressed to be granted, payable quarterly, the first payment to be made at the end of three calendar months after the death of the husband if the wife is then living: (Bythewood, vii. 405; David, iii. 984; for forms since the Act see Cono. David. 388; Frid. ii. 808).

By the 5th section of the Statute of Uses this will vest in the wife a legal rentcharge: (Sanders on Uses, i. 75, 108; David, iii. 310).

There is no need of any apportionment clause, as, if the wife dies between any of the quarter days, the apportioned part will clearly be payable for the benefit of her estate: (33 & 34 Vict. c. 35, s. 2; David, iii. 311).

The forms previous to the Conveyancing Act gave to the jointress remedies by distress and entry, which were also limited by way of use and executed by the Statute of Uses—i.e., they were transferred to her by virtue of that statute.

A power of distress was annexed to rents by 4 Geo. 2, c. 28, but nevertheless it was usual to expressly limit it. The right of entry arose only when expressly given. But sect. 44 of the Conveyancing Act annexes powers both of distress and entry to a rentcharge of this description. It must, however, be expressly stated that it is an annual rentcharge, although it may be payable half-yearly or otherwise, sect. 44 (1).

It was formerly usual further to secure the wife's

jointure by limiting a term to trustees (Bythewood vii 414; David. iii. 986, 988), but more recently it has been very usual, instead of actually limiting a term, to give the jointress and her representatives, within a specified time after her death, power to limit a term: (David. iii. 320; for form see *Ibid.* 1074). The Act, by sub-sect. (4) follows the more recent practice, and enables "the person entitled to the annual charge," by deed, to demise the land charged to a trustee for a term of years on trusts for raising the rentcharge and all expenses.

It should be noticed that these powers of distress and entry and of demising are given to "the person entitled to receive the annual sum," and to "the person entitled to the annual charge." No express mention is made either of the assigns, or of personal representatives, of the person originally entitled, but they seem clearly to be included in the phrases used in the statute. The result is, that neither powers of distress or entry, nor the limitation to trustees to secure the jointure, nor the power to limit a term to trustees for that purpose, are now necessary in a settlement. It may, however, be convenient to declare that the representatives of the jointress shall not have power after one year has expired since her death to limit a term; and also to declare that in any case no term longer than 299 years shall be limited. The object of this last clause is to prevent the acquisition of such a "long term" as may be enlarged into a fee simple under sect. 65, as to which see below. The following form is suggested: "And it is hereby declared that the term of years which may be limited under sub-sect. 4 of sect. 44 of the Conveyancing and Law of Property Act, 1881, to secure the said jointure rentcharge shall not exceed 299 years, and further that it shall not be lawful to limit any term under the said sub-section after more than one year has elapsed from the death of the said [jointress]."

#### *Portions' Term.*

It is usual next to limit a term of several hundred years to the trustees. Later on in the settlement the trusts of this term are declared to be to raise specified sums of money as portions for the younger children of the marriage. For form of limitation see David. iii. 986, and for form of trust, *Ibid.* 988; for the law connected with the subject see *Ibid.* 405-465, and Lewin, 6th edit. 340. The trusts may be slightly shortened, but the limitation of the term will be inserted as usual, except that it may be considered well not to limit a term for more than 299 years. This will be quite long enough, and it will prevent the trustees from enlarging the term into a fee simple under sect 65. It seems that, if the term was for 300 years, the trustees could, after entering into the receipt of the income sect. 65 (2) (ii), so enlarge the term. As the ordinary form of settlement declares a trust of any surplus moneys raised under the powers connected with the term, in favour of the person for the time being entitled in reversion, the eldest son (tenant in tail) would be protected as regards the income, sect. 64 (4), but complications might arise as to his estate.

#### *Limitations in Tail.—Sect. 51.*

The words "in tail male" may be substituted for "and the heirs male of their respective bodies." The limitation will thus run:

"To the use of the first and every other son of the said A. B. by the said C. D. successively in remainder one after another, according to their respective seniorities, in tail male;" (Conc. David. 388).

The other limitations will follow in like manner. As to cross-remainders, they should be limited in the usual way, except that the phrase "in tail" may be used. See *Law Times*, April 8, p. 401.

#### *Ultimate Limitation.*

This will be in fee simple. If the previous estates have been limited by means of the words "in tail," the connecting words formerly employed, "and in default of such issue," will be inapplicable. This

limitation will therefore run: "With the remainder to the use of the said A. B. in fee simple," or "of the said A. B., his heirs and assigns, for ever."

#### *Trusts of Term to secure Jointure Rentcharge.*

This will be omitted. See above.

#### *Trusts of Term for raising Portions.*

The preliminary trusts must be inserted as usual, and also, when required by reason of any power of appointment, the hotchpot clause: (David. iii. 988, 990).

It would seem that the clause which enables the trustees to raise money for maintenance and education may be slightly abbreviated, in reliance upon sect. 43; but we should not advise its omission. Compare Conc. David. 452; *Prid.* ii. 307.

Sect. 43 relates to "property held by trustees in trust for an infant either for life or any greater estate, and whether absolutely or contingently on his attaining the age of twenty-one years, &c." It does not seem that the interest which the infant has in the money to be raised under the trusts of portion falls within the terms of this section, unless we take a very wide view of the word "property." As to this, however, see the definition in sect. 2 (i.).

The following form will probably be sufficient where the first trust to raise portions contains no reference to maintenance: "Provided always that for the respective maintenance, education, or otherwise for the benefit of the child or children for the time being entitled in expectancy to any such portion or portions, such portion or portions shall be deemed to be property held by the said trustees or trustee on trust for such child or children within the meaning of sect. 43 of the Conveyancing and Law of Property Act, 1881, and for such purposes the said portion or portions shall be deemed to bear interest at the rate of 4 per cent. per annum, which interest shall be raiseable by the said trustees or trustee out of the rents and profits of the said premises comprised in the said term accordingly."

If, however, the first trust of the portion contains a power to the husband, or husband and wife, to appoint the portions among the children, and to make provisions for maintenance and education, it will be found more convenient to set out the trust for maintenance. And generally it will be best to set it out. For form see David. iii. 991; *Prid.* ii. 307.

If it is desired that there shall be no power of maintenance out of portions it will be prudent to negative sect. 43 as far as regards the trusts for portions, and until they are actually raiseable.

If it is desired that the trustees shall have a power of advancement either after the death of the tenant for life, or during his lifetime by consent, a form must be inserted as usual: (David. iii. 991).

The same remark applies to power for tenant for life to require that portions be raised in his lifetime, and other provisions connected with portions: (David. iii. 992-996).

These provisions terminate with a declaration that the surplus income during the term, after satisfaction of the portions, &c., and all expenses, shall belong to the next reversioner: (David. iii. 996). This will be inserted as usual.

(To be continued.)

#### FOREIGN CHECKS ON CRIME.

A correspondent of the *Times* writes: The Act for the prevention of crime will not put the Irish in a worse position than that in which the natives of most Continental countries habitually stand. The freedom which British subjects enjoy has always to foreigners appeared excessive; and anyone who reflects on it must see that such freedom can only be maintained so long as it is not used for seditious purposes. Touching aliens, for instance, there is not a country in Europe where strangers are allowed to come and go as they are in the Queen's dominions without ever being questioned by the police as to their business or identity. Even in



Switzerland and Belgium, where boundless liberty is supposed to exist, foreigners intending to settle in the country are bound to give an account of themselves, and they are liable to summary expulsion if by any means they become a nuisance to the authorities. In Switzerland a foreigner sojourning elsewhere than in an hotel is required to obtain a *permis de séjour*, which is only delivered on his producing a passport, a certificate of nationality, or some other *pièce d'identité*; in Belgium the law is even stricter, and the recent notification from our Foreign Office advising travellers to Belgium to furnish themselves with passports was really necessary, because the Belgian police subject strangers to so many prying questions that the exhibition of a passport is the shortest way of satisfying them. Strangers, however, cannot fairly complain of the inquisitorial fashion in which they are handled, for exactly the same treatment is meted out to natives. In all continental countries persons who come to settle in a district where they are unknown must state to the police who they are, and they incur serious penalties if they cannot justify their right to the names, titles, or professional designations which they assume. In the British Isles the laxity as to what is termed abroad *état civil* is so great that a man may style himself by what names and titles he pleases without ever been called upon to prove that they are truly his. Prisoners constantly appear in our courts of justice with several *aliases* without the police having any means of declaring what their real names are. An unscrupulous man may enlist in the army, desert, and re-enlist; marry, desert his wife, and re-marry; be convicted and re-convicted all under false names, and, finally, be buried under a name that was never his, without any official person taking the trouble to penetrate the mystery that surrounded him. Such facilities for concealing one's identity exist nowhere else, and to foreign officials they seem monstrous. Abroad a man cannot perform any public act—he cannot take lodgings, marry, come forward as a candidate at elections, or even enter into a situation as a servant without showing his *pièces d'identité*, and the means thus afforded to the police of finding out on all occasions who a man is and what are his antecedents arm foreign Governments with a formidable weapon for checking crime. But foreign Governments have a still more effective weapon in the forms of their judicial procedure, which enable magistrates to cross-examine prisoners, and to punish them by long detention if they decline to answer or make untruthful replies.

It is only in British courts that accused persons stand unquestioned, and merciful as the rule may be which forbids that a man should be forced to inculpate himself, it cannot be denied that the rule often balks justice sadly in its attempts to get at the truth. Irishmen have complained that the new Act empowering the police to arrest and question suspicious-looking persons found wandering about at night will be oppressive, but in what foreign country are suspicious night wanderers allowed to claim impunity from the interrogations of *gendarmes*? It is the principal business of *gendarmes* to stop tramps whom they meet in country roads, and to assure themselves that such persons are not prowling about with evil intent; what is more, when a tramp cannot prove that he has means of subsistence, he becomes liable from that mere fact to three months' imprisonment as a vagabond, and if he be an alien he will, on the expiration of his imprisonment, be expelled from the country. This law holds good in all foreign States. Even in Republican France at this moment, under the government of men who are ardently Liberal, the police powers for the prevention of crime, for arresting and questioning suspected persons, for searching their dwellings, &c., remain exactly what they were under the empire. Walking on the boulevards of Paris at night or in broad daylight, any man may be called upon to give up his name to an *agent de la sûreté*; and any *commissaire de police* may, without warrant, pay him a domiciliary visit, overhaul his papers, and send him to the *dépôt* of the prefecture, without alleging further excuse for his conduct than that the man had been denounced to him

as a dishonest or dangerous character. Foreigners see no hardship in all this; in fact, they altogether dissociate political liberty from the liberty which may assist men to commit crimes and to baffle judicial investigations into the same. As to trial by jury, it is certainly the fact that in most Continental countries men are tried for their lives in times of civic peace (though not in times of sedition) before juries; but in all Continental States men can be sentenced to as much as five years' imprisonment, with five years' subsequent police supervision, by the Correctional Courts, in which three judges sit without a jury. The French judicial organisation has been more or less copied in all European countries except Great Britain; and trial by jury is everywhere reserved for the greatest crimes. It must not be forgotten, however, that trial by jury abroad, where prisoners are questioned and are, indeed, never brought to trial till the Public Prosecutor has collected all the materials for his indictment out of their own confessions, is a very different thing from trial before a British jury. An English jury must be unanimous to give a verdict, whereas the verdict of foreign juries is taken by the vote of a majority; and, again, when a foreign jury acquits, the prisoner is not necessarily set at liberty. The Public Prosecutor may appeal against the acquittal; he may even appeal *a minima*, as the term goes, if the prisoner has been convicted and has received what appears to be an insufficient sentence. If a Court of Appeal confirms an acquittal even then a prisoner's troubles are perhaps not at an end, for the Public Prosecutor may indict him before a Correctional Court on some minor count that was not laid before the jury. Finally, if the Correctional Court absolves the man the Public Prosecutor can commit him to the general surveillance of the police as a dangerous character; and he would unquestionably do this if the jury's verdict and the acquittal of the lower court had been obtained under circumstances that were not satisfactory. It will be seen from all this that even under the new Act, which will empower the Lord Lieutenant of Ireland to commit certain prisoners to be tried before three judges, these prisoners will still be better off than Continental prisoners usually are. They will not be questioned by the judges, and the prosecution will have no right of appeal if they are acquitted.

#### THE ACKNOWLEDGMENT OF WILLS.

A harmless love of mystery not uncommon in the feminine mind, produced the case of *Blake v. Blake*, reported in the May number of the *Law Journal Reports*. Some women have a weakness for hiding keys not always to the convenience of domestic arrangements; but it is in such solemn matters as making a will that the love of mystery comes out the strongest. Mrs. Mary Gunston did not apparently employ a solicitor when she wished to make her will, but she knew a retired clerk in the Probate Office; and, as the result of a consultation with him, an attestation clause, with which no fault could be found, was appended to her will. Beneath the clause appeared the signature of the testatrix and two witnesses, Ann Harradine and Susan Harradine, in so regular a form that it seemed the will would be proved without question. Unluckily, however, there were some erasures in the will, and when the attesting witnesses were appealed to for an affidavit it appeared that they could not say that Mrs. Gunston had signed the will in their presence. The gentleman who had been in the Probate Office gave her accurate instructions in writing as to the proper mode of executing a will; but instructions of that kind frequently go wrong, unless there is some one to see them carried out. He probably did not anticipate erasures; and, if there had been no erasures, the defect in the execution of the will would never have come out. The will, notwithstanding, was defective as many seemingly perfect wills are, and the circumstances which brought about its informality possess more dramatic interest than is usually to be found in a law report.

Mrs. Gunston, it appears, took the opportunity of a

visit paid to her house by the aunt of her maid-servant to have her will attested. Ann and Susan Harradine were duly called into the room, when the important document was disclosed, or rather, not disclosed, under a piece of blotting paper. Mrs. Gunston naturally did not care that they should read her will; she did not even wish them to know she was making a will. The two women were not quite agreed as to what she did say. Susan, the aunt, believed that she said "We have all our little wishes, and this is one of mine." Ann, the servant, thought the words were simply, "This is a little whim of mine." Mrs. Gunston might safely have indulged her little turn for mystery by hiding the will. She need not even have said that the paper was her will. But when she signed the will before the witnesses came in, and hid her signature under the blotting paper, she made the false step which has proved enough to undo all her care. Sir James Hannen decided that the execution was irregular, and the Court of Appeal have upheld his decision. No attempt was made to argue that the testatrix signed, as the attestation clause professed, in the presence of the witnesses. But it was contended that she acknowledged her signature in their presence. The facts that they did not see her signature, and that she did not say her signature was on the paper, or that the paper was her will, were enough, in the opinion of all the judges, to show that there was no acknowledgment of the signature. The same view is taken by all the judges of the essential requisite of an acknowledgment, although some little difference of opinion existed as to the meaning of two previous cases. All the judges agree that there cannot be an acknowledgment unless the witnesses see, or are able to see, the signature, just as there cannot be an attestation unless the witnesses see, or have the means of seeing, the signature. This view is in accordance with the case of *Hudson v. Parker*, 3 Robert, 25, in which Dr. Lushington held that there was no sufficient acknowledgment unless the witnesses saw the signature. The Master of the Rolls says that it is in accordance also with *Gwillim v. Gwillim*, 3 Sw. & Tr. 200—a decision of Sir Cresswell Cresswell which Lord Penzance followed, or believed he followed, in *Beckett v. Howe*, 39 Law J. Rep. P. & M. 1. Both the Master of the Rolls and Lord Justice Brett agree in overruling *Beckett v. Howe*, in which Lord Penzance laid down that, if the testator told the witnesses that the paper was his will and the will was already signed, there was a sufficient acknowledgment. Lord Justice Brett thought *Gwillim v. Gwillim*, on which Lord Penzance relied, must go with *Beckett v. Howe*. On the other hand, the Master of the Rolls is of opinion that Lord Penzance misunderstood *Gwillim v. Gwillim*, which he thinks is good law. Lord Justice Holker, the third judge present, does not take part in this controversy, which is not of a very important character. In *Gwillim v. Gwillim* the testator's signature was immediately above the signatures of the witnesses, and there was no evidence that the signature was covered over. According to the Master of the Rolls, Sir Cresswell Cresswell drew the inference of fact that the signature must have been seen by the witnesses. Lord Justice Brett, on the other hand, refers to the statement by Sir Cresswell Cresswell that he "was at liberty to judge, from the circumstances of the case, whether the name of the testator was on his will," as showing, in the mind of a judge accustomed to express himself clearly, that the existence of the signature, added to the statement that it was the testator's will, was enough. Whether Sir Cresswell Cresswell did or did not take an erroneous view of the law is not, practically, of much importance. It involves more a question of evidence than principle. The principle that is to guide in the matter is clearly established. The acknowledgment will not be sufficient unless the witnesses see, or have an opportunity of seeing, the signature, and unless the testator says "This is my signature," "This is my will," or something to that effect. The best advice to testators is, however, not to resort to an acknowledgment at all, but to sign their will in the witnesses' sight in the ordinary way.—*Law Journal*.

#### THE EXPULSION OF FOREIGNERS.

It will have been observed that one of the clauses of the Bill now before Parliament for the prevention of crime in Ireland relates to "the removal of aliens from the realm," and expressly re-enacts a statute for that purpose which has been obsolete for more than thirty years. But, exceptional as such a measure may now appear, a slight research into the history of the present century shows it to have been a far from unusual course to adopt in times of general political disturbance and insecurity.

It seems that almost from time immemorial the right of compelling foreigners to withdraw from the kingdom has been considered the undoubted prerogative of the British Crown. In the reign of Elizabeth, for example, there are on record three separate instances of its exercise; but from that time down to the latter years of the eighteenth century the power remained in abeyance. In 1794, however, the revolution in France and its accompanying dangers had the effect of driving across the Channel large numbers of refugees, many of whom were suspected, not without reason, of Jacobite proclivities and hostility to the Government of this country. To guard against their schemes, exceptional powers were accordingly conferred on the Executive. By the Alien Act of that year (39 Geo. 3, c. 4) an account was to be taken of all foreigners arriving at the ports throughout the country, and they were required to declare their names and rank on pain of immediate expulsion or transportation for life. Any arms or ammunition imported by them were to be confiscated; they were forbidden to travel without passports; the Secretary of State was empowered to conduct out of the kingdom all whom he suspected of disobedience, they might be required to reside in certain districts; and their houses might be searched for arms. In the first instance these provisions were to remain in force for one year only, but before the end of that time they were revived, and were from time to time re-enacted without intermission until the conclusion of the general peace. On that event the more stringent clauses of the Act were relaxed, but measures of similar character continued in existence for some years longer. The last occasion on which the Act was renewed was in 1824 (5 Geo. 4, c. 37), and it finally expired two years later.

For the next twenty years such measures remained unnecessary; but in 1848, during the political ferment upon the Continent, the executive was again authorised for a limited period to remove foreigners whom "for the due security of the peace and tranquillity of this realm" it was expedient to treat in that manner. The Act by which this power was conferred (11 & 12 Vict. c. 20) is that which the present Bill proposes to re-enact, subject only to one slight modification. It will therefore be useful to set out briefly its provisions. By the first clause it is enacted that when and so often as the Secretary of State in Great Britain, or the Lord Lieutenant in Ireland, shall have reason to believe it expedient to remove any alien, he may, by order to be published in the *Gazette*, direct such alien to depart the realm within a specified time, and, if such alien wilfully refuses to obey the order, he may be arrested and committed to gaol for the purpose of being sent out of the country. Disobedience to the order is to constitute a misdemeanour, and the offender may be imprisoned for periods not exceeding one and twelve months respectively, according as it may be his first offence or otherwise. Aliens neglecting the orders of the Secretary of State or Lord Lieutenant may be conveyed by warrant out of the kingdom: provided that, if any excuse for non-compliance be alleged, the Privy Council shall decide its sufficiency; and in such event the delinquent shall receive a summary of the allegations to be made against him, and may be heard either in person or by counsel as he may think fit. It is further provided that judges may admit aliens to bail in all cases where they see sufficient cause; and where an alien shall not have been sent out of the realm within a month of his committal to gaol for that purpose, they

are authorised, upon application, to order the prisoner to be continued in custody or discharged from it at their discretion. Finally, there are to be exempted from the operation of the Act all foreign ministers and their suites, all aliens under fourteen years of age, and all who have resided in the kingdom for three years before the passing of the Act.

The only modification now to be imposed on these provisions is one required by the special circumstances of the case, namely, that no order shall be made directing an alien in Great Britain to withdraw unless he shall have come to this country having been previously expelled from Ireland. How far the exercise of these powers may be advisable at the present juncture it is not our purpose to consider, but it is a significant fact that, according to the official return issued in 1850, the Act of 1848 remained a dead letter, and was put in force in no single instance. Equally inoperative, it may be added, and have been for many years past, the enactments respecting the registration of foreigners by a system of declarations and certificates, which are, nevertheless, still to be found in the Statute book: (see 7 Geo. 4, c. 54, and 6 & 7 Will. 4, c. 11). It appears therefore that, useful as a power of supervising and deporting aliens who abuse our hospitality may seem to be, there are in practice certain difficulties in its enforcement. Accordingly, we shall not be surprised if the present revival of precautionary measures proves as barren and ineffective as the preceding enactments.—*Law Times*.

#### THE LIQUOR LAWS.

The Liquor Law of Russia is very comprehensive and easily understood. There is no "local option" about it, but the Czar decrees that there shall be no more than one drink shop in any Russian village, and where two or three villages are near together, the one drink shop shall suffice for all, and this shall be managed by a "man born and resident in the village," who shall be appointed by the Common Council and paid by salary. He is to derive no pecuniary profit beyond his salary, is to sell also food and wares, and is liable to a fine, dismissal, and even imprisonment if he allows any man or woman to get drunk on his premises. In a given contingency, if the population should become notoriously drunken and disorderly, the communal authorities are to interdict the sale of liquor entirely in that district or village, for as long a time as they shall see fit.

The Massachusetts House has passed a Bill providing for the submission to the people next Fall of the restoration of the old prohibitory liquor law, and the Senate has passed a proposed constitutional amendment for biennial elections. The Connecticut House of Representatives adopted a constitutional amendment prohibiting the manufacture and sale of intoxicating liquors in that State. The measure now goes over to the next General Assembly, where it must pass both Houses by a two-thirds majority before being submitted to the people.—*Public Opinion*.

At the end of this year the Irish Sunday Closing Act, which was passed in 1878, comes to a close, unless it be renewed. In a Bill for rendering it permanent, Mr. Richardson, M.P., proposes to do away with the exemptions which at present allow intoxicating liquors to be sold at certain hours on Sundays in the five large towns—Dublin, Cork, Limerick, Waterford, and Belfast. The Bill also makes the closing of licensed premises obligatory on Good Friday and Christmas Day, as well as on Sundays. The *bonâ fide* traveller, too, receives another definition. A new qualification is that he must have lodged the preceding night at a place at least seven miles distant from the premises where he demands to be supplied with liquor. Moreover, to enable the liquor to be served, it is made necessary that the licensed premises contain, at least, four apartments set apart exclusively for the sleeping accommodation of

travellers, and be otherwise structurally adapted for use as an inn for the reception of guests and travellers, and be mainly so used.

#### TEXT-BOOK ADDENDA.

[From the *Law Journal*.]

*Chitty on Contracts (11th Edition), 640.*

The vendor of the goodwill of a business in the absence of express covenant, does not lose his right to deal with former customers [M.R. in *Ginest v. Cooper*, 49 Law J. Rep. Chanc. 601, overruled] (*Leggott v. Barrett*, 51 Law J. Rep. Chanc. 90)—C. A.

*Order LVIII., Rule 15.*

*Lely and Foulkes on the Judicature Acts (3rd Edition), 262.*  
*Seton on Decrees (4th Edition), 1,615.*

The mere poverty of an appellant is sufficient ground for requiring security for costs of the appeal (*Harlock v. Ashberry*, 51 Law J. Rep. Chanc. 96).

*Order XXIX., Rule 10.*

*Lely and Foulkes on the Judicature Acts (3rd Edition), 187.*  
*Wilson on the Judicature Acts (2nd Edition), 222.*

Where an infant defendant fails to put in any defence, the action may at once be set down as against him on notice of trial (*National Provincial Bank v. Evans*, 51 Law J. Rep. Chanc. 97).

*Order LVIII., Rules 16 and 17.*

*Lely and Foulkes on the Judicature Acts (3rd Edition), 203.*  
*Seton on Decrees (4th Edition), 1,618.*

Where an action has been dismissed, and an appeal is pending, the Court below has jurisdiction to entertain an application seeking to stay proceedings under the order appealed from [*Wilson v. Church*, 41 Law J. Rep. Chanc. 690, explained] (*Otto v. Lindford*, 51 Law J. Rep. Chanc. 102)—C. A.

*Order XI., Rule 3.*

*Lely and Foulkes on the Judicature Acts (3rd Edition), 141.*

Where a plaintiff has obtained an order to serve a writ on the defendant out of the jurisdiction, the defendant, on moving to discharge the order, may go into evidence to show that no cause of action has arisen within the jurisdiction (*Fowler v. Barstow*, 51 Law J. Rep. Chanc. 103)—C. A.

*1 Smith's Leading Cases (8th Edition), 68.*

Contract to repair held not to run with the rent, so that the assignee in fee of the covenantor was held not bound to repair in favour of the assignee of a rent-charge assigned with benefit of covenants (*Haywood v. Brunswick Permanent Benefit Building Society*, 51 Law J. Rep. Q. B. 73)—C. A.

#### BOOKS RECEIVED.

*The Land Law (Ireland) Act, 1881, with the Statutes incorporated therewith, and the Rules and Forms issued thereunder; being a Practical Exposition of the Act. With Explanatory Notes, an Abstract of Decided Cases, and Copious Index.* By T. M. HEALY, M.P. Dublin: M. H. Gill & Son, 50 Upper Sackville-street. 1882.

*The Nineteenth Century.* A Monthly Review, Edited by JAMES KNOWLES. No. 64. June, 1882. London: C. Kegan Paul & Co.

*Contemporary Review.* June, 1882. London: Strahan and Co., Limited, Paternoster-row.

*Cassell's History of England from the earliest period to the present time.* With about 2,000 Illustrations. Part 81. London, Paris, and New York: Cassell, Petter, and Galpin.

*Milton's Paradise Lost.* Illustrated by Gustave Doré. Edited, with Notes and a Life of Milton, by the late ROBERT VAUGHAN, D.D. London: Cassell, Petter, Galpin, & Co.

## OBITUARY.

## MR. JAMES O'HEA.

MR. JAMES O'HEA, who died on the 27th ult., was born in 1809, and educated at the University of Dublin, where, as scholar and prizeman (Sch. 1829, B.A. 1831), his career was eminently successful, and he won the gold medal of the Historical Society. In Easter Term, 1836, he was called to the bar, and joined the Munster Circuit. He early acquired a considerable reputation as a criminal lawyer, and was one of the counsel for the traversers in the State Trials of 1844. At the Special Commission of 1848, also, he was assigned as counsel for the prisoners. Subsequently, he was appointed Crown Prosecutor for the Counties of Cork and Limerick. Mr. O'Hea, who was an intimate personal friend of O'Connell, was one of the most active of those who led the van in the Repeal agitation. But, though he had been solicited to become a candidate for the parliamentary representation of Limerick, all his expenses being guaranteed, he was obliged to decline the honour, owing to his professional engagements, and he never entered Parliament, though he had attained such a distinguished place in politics. His name on the occasion of an election contest for the representation of Trinity College suggested to one of the students a humorous idea of applying the *clôture* in a classical form to his speech, which was delivered amid some impatience and angry interruptions. At length one of the audience exclaimed in a stentorian voice, "*Ohe, jam satis*," and the desired effect was immediately produced. He found it impossible to proceed amid the derisive cheers and exclamations of the meeting. Mr. O'Hea was a brilliant classical scholar, an able lawyer of the old type, and in private life a gentleman whose amiability of character, ready humour, thorough honesty, and varied accomplishments gained him a host of friends.

## APPOINTMENTS AND PROMOTIONS.

NOTE BENE.—Information intended for publication under the above heading should reach us not later than Friday morning in each week, as publication is otherwise delayed.

Mr. William W. Glenný has been appointed Keeper of the Land Commission Records.

## LAW STUDENTS' JOURNAL.

## THE INCORPORATED LAW SOCIETY OF IRELAND.

## PRELIMINARY EXAMINATION FOR APPRENTICES TO SOLICITORS,

Pursuant to the *Attorneys and Solicitors Act (Ireland), 1866*.

## DUBLIN, TRINITY SITTINGS, 1882.

## HISTORY.

1. Who were the Normans? What led to, and what were some of the effects of the conquest of England by them?
2. Who were the *Bretwaldas*, and for what was the office instituted?
3. What were the provisions of Oxford?
4. What was the first remarkable occasion on which artillery was used in Europe?
5. Give some account of the origin of the House of Commons?
6. When was Calais taken by the English, and when lost?
7. Mention some of the victories of Edward the Black Prince; and give an account of the loss of the English dominion in France in the reign of Henry VI.
8. What monarch was first styled "Defender of the Faith," and why?

9. What were the chief provisions of the Bill of Rights, and when was it enacted?

10. When was the East India Company first established? State briefly how the English acquired their principal possessions in India.

11. What was the Cato-street conspiracy?

12. For what events in English history are the following places remarkable:—Naseby, St. Albans, Bosworth, Troyes, Fontenoy?

## GEOGRAPHY.

1. Explain why the latitude of a place in the Northern Hemisphere always corresponds to the altitude of the polar star.

2. If it be 12 o'clock in Dublin, what hour is it in a place 45 degrees to the east, and what hour in a place 30 degrees to the west of Dublin?

3. How is an eclipse of the sun, and how an eclipse of the moon caused?

4. What is the snow-line? On what circumstances does the height of the snow-line depend?

5. Enumerate the principal rivers of Asia, through what countries and into what seas do they flow?

6. Mention the principal islands in the Archipelago.

7. What are the principal branches of the Atlantic ocean?

8. Where are the following situate:—Gulf of Riga, Straits of Kaffa, Bay of Honduras, Sierra Nevada, Dantzic, Heligoland, Messina?

9. Mention the counties on the western coast of England and Wales, and the principal towns of each.

10. To what counties do the following belong:—Mizen Head, Clew Bay, Lough Mask, Bristol, Winchester, St. Ives, Plymouth?

## ARITHMETIC.

1. What is the price of 13 cwt. 3 qrs. 4 lbs. at £2 18s. 4d. per cwt.?

2. Divide £9,604 10s. by 144j.

3. Reduce 1s. 7½d. to the fraction of a £.

4. What is the poor-rate chargeable on 128a. 1r. 17p., the valuation being £2 17s. per acre, and the rate 11½d. in the £?

5. The debts of a bankrupt amount to £4,968, he pays 9s. 7d. in the £, what are his assets?

6. What is the interest of £584 18s. 8d. for one year and nine months at 8½ per cent.?

## BOOK-KEEPING.

1. What books are used in book-keeping by double entry? Explain the use of each.

2. Explain what are "real," "personal," and "fictitious" accounts?

3. When you open an account for stock in the ledger, on which side would you enter the cash in hand?

4. What entry is made in the journal when goods are sold for part cash, part on credit, and part bills receivable?

5. Open a cash account? Enter the following transactions, and balance the account:—

	£	s.	d.
Cash in bank, - - -	841	12	6
Cash in hand, - - -	-	-	38 6 4
Paid A. Jones amount of his account, -	46	10	5
Received of John Brown, - - -	86	8	9
Paid amount of my acceptance of John Smith's draft, - - -	95	3	4
House expenses, - - -	27	9	8
Paid William White's account, - - -	218	5	4
Thomas Smith paid me amount of his acceptance, - - -	106	3	8
Paid house rent, - - -	73	2	7
Lent to John Smith, - - -	23	10	0
H. Williams paid to my account at bank, -	97	8	10

BARON ALDERSON once told a lawyer, "You seem to think that the art of cross-examination is to examine crossly."

COURT PAPERS.

HIGH COURT OF JUSTICE.—CHANCERY DIVISION.—LAND JUDGES.

List of Petitions presented to the Land Judges in the month of April, 1882.

DATE	TITLE OF MATTER	OBJECT OF PETITION	COUNTY	PROFIT RENT	SOLICITOR
April 1	Arthur A. Lawder, owner; <i>Joshua Brereton, petitioner</i>	Sale	Roscommon and Leitrim	£ s. d. Not stated	<i>Joshua Brereton</i>
" "	Michael O'Kelly, owner; <i>Arthur Usher and another, petitioners</i>	Sale	Galway	1,254 12 6	<i>Archibald Robinson and Son</i>
" 8	Mary J. Morris and the Assignees of the Court of Bankruptcy, owners; <i>Irish Civil Service Building Society, petitioners</i>	Sale	Mayo	17 15 0 Valuation	<i>H. T. Dix and Son</i>
" "	John Lloyd Bagot, owner; <i>Robert Charles Goff, petitioner</i>	Sale	Galway and Roscommon	1,756 7 7	<i>Longfield, Davidson, and Kelly</i>
" "	Denis Luby, owner; <i>John Connell, petitioner</i>	Sale	Tipperary	54 0 0 Griffith's Valuation	<i>John O'Dwyer</i>
" 5	John Doyle and another, owners; <i>William Quigley, petitioner</i>	Sale and receiver	Armagh	105 0 0 Griffith's Valuation	<i>Webb, Scott, and Seymour</i>
" 6	Nathaniel Wynne, owner; <i>Margaret Lamie, petitioner</i>	Receiver and sale	Cork	62 11 0	<i>Anthony O'Connor</i>
" "	John M'Cavana, senr., owner and petitioner, and Partition Acts	Sale	Antrim	Not stated	<i>Peter Maccaulay</i>
" "	Trustees William Phillips, owners; <i>William Seeds, petitioner</i>	Sale	Down	70 0 0	<i>Charles Higginson</i>
" "	Trustees William Phillips, owners; <i>David Robinson, petitioner</i>	Sale	Down	85 0 0 Estimated	<i>H. and W. Seeds</i>
" 12	Daniel Cronin and others, owners; <i>Denis Heffernan, petitioner</i>	Receiver, Partition, and Sale	Cork	42 10 0 Griffith's Valuation	<i>Daniel C. Bastable</i>
" "	Michael F. Marshall and another, owners and petitioners	Sale	Clare	151 18 11	<i>William Fry and Son</i>
" "	Agnes Hickey, owner; <i>The Munster Bank, petitioners</i>	Sale	Cork	Not stated	<i>Thomas Downes</i>
" "	John Cuddihy, owner; <i>The Munster Bank, petitioners</i>	Sale	Dublin and Kerry	428 15 6 Estimated	<i>Maxwell and Weldon</i>
" 14	John O'Connell, owner; <i>The National Bank, petitioners</i>	Sale	Tipperary	61 2 0	<i>Michael Larkin</i>
" 15	Henry Mills, owner; <i>Thomas Parker, petitioner</i>	Receiver and sale	Cork and Dublin	237 0 1	<i>Samuel Abbott</i>
" 17	Thomas Hyrne, owner; <i>Robert Cooke and others, petitioners</i>	Sale	Mayo	7 0 0	<i>William T. Daniel</i>
" 18	Chambre B. Ponsonby, owner; <i>The Bank of Ireland, petitioners</i>	Sale	Limerick	Not stated	<i>E. H. De Moleyns</i>
" 20	Tyrrell Conry and another, owners; <i>James W. O'Reilly, petitioner</i>	Sale	Roscommon	Not stated	<i>James W. O'Reilly</i>
" "	William H. Greene, owner; <i>Anna E. Hogan, petitioner</i>	Sale	Dublin	Not stated	<i>William C. Hogan and Son</i>
" "	Robert Charters, owner; <i>W. H. Stephenson and another, petitioners</i>	Sale	Longford	120 12 6	<i>John E. O'Farrell</i>
" "	William John C. Allen and another, owners and petitioners	Sale	Antrim	154 2 10	<i>James Campbell</i>
" "	Pierce John Barron, owner; <i>Edward Kelly, petitioner</i>	Sale	Waterford	691 0 0 Estimated	<i>Richard A. Macnamara</i>
" 21	William Vincent Dowdall, owner and petitioner	Sale	Louth	185 18 4 Estimated	<i>James Goff</i>
" 24	George Andrew Bell and others, owners; <i>Margaret Hopps and others, petitioners</i>	Sale	Tyrone	143 0 0 Griffith's Valuation	<i>Edward Green Foley</i>
" "	Henry E. J. Lutman, owner; <i>Robert Cooke and others, petitioners</i>	Sale	Tipperary and Limerick	570 14 7	<i>William Thomas Daniel</i>
" 25	John Langford Rae, owner; <i>Representative Church Body, petitioners</i>	Receiver and sale	Kerry	2,605 7 1	<i>John Maunsell</i>
" "	Mercy Baldwin Townsend and others, owners; <i>Maria T. M'Carthy, petitioner</i>	Sale	Cork	120 8 8	<i>Thomas Downes</i>
" "	William M'Kay and another, owners; <i>James H. Sclater, petitioner</i>	Sale	Meath	696 0 0 Griffith's Valuation	<i>Thompson and Tatlow</i>
" "	Thomas Manley and another, owners; <i>Patrick Joseph Kelly, petitioner</i>	Sale	Wicklow	145 0 0 Griffith's Valuation	<i>G. O'B. Kennedy</i>
" 26	James Francis Moore, owner; <i>Esory Carmichael, petitioner</i>	Sale	Roscommon	30 0 0	<i>A. F. Burton</i>
" 28	William John Murphy, owner; <i>Margaret Murphy, petitioner</i>	Sale	Down	54 8 0	<i>Robert Kelly</i>
" "	Eliza Netterfield and others, owners; <i>Majr-General T. H. Clifton and others, petitioners</i>	Sale and receiver	Cavan	882 8 11	<i>G. H. Major</i>
" 29	Rev. John Harrington, owner; <i>Edward Harding and another, petitioners</i>	Sale	Cork	86 0 0 Griffith's Valuation	<i>R. W. Doherty, junr.</i>

LAND JUDGES.

Sittings for next Week so far as same are appointed.

Before the Rt. Hon. JUDGE FLANAGAN.

MONDAY.

IN CHAMBER.—A. G. Shaw, payment.—Trustee A. Blake, do.—M. M'Tier, do.—Trustees Cooke, do.—M. Handley, do.—J. M'Garry, confirm sale.

IN COURT.—R. L. Watson, as to ejection.—W. R. O'Byrne, receiver.—G. Bolton, payment by receiver.—C. B. Jennings, appoint receiver.—L. Walsh, liberty to bid.

Before EXAMINER (Mr. Kennedy).

H. V. Baillie, rental.

TUESDAY.

IN COURT.—J. O'Shea, final schedule.—J. M'Caig, do.—P. Bradley, receiver.—R. A. Tennent, do.—M. Cody, as to policy.—J. J. Casey, continue proceedings.—G. A. Waller, as to carriage.—N. Woods, to make order absolute.

Before EXAMINER (Mr. Kennedy).

G. Graham, rental.

WEDNESDAY.

IN CHAMBER.—E. G. Holt, explain delay.—S. Holt, do. IN COURT.—J. Wilson, attachment.—L. Simpson, re-entry.

Before EXAMINER (Mr. Kennedy).

C. S. Brice, vouch.

THURSDAY.

IN CHAMBER.—A. H. Goff, proposal.

IN COURT.—Devises Hurley, payment.

Before EXAMINER (Mr. Kennedy).

F. Blake, rental.—A. Elliott, do,

FRIDAY.

SALES IN COURT.

G. S. ROPER, . . . . . 4 lots.  
O. CONOLLY, . . . . . 3 „

Before EXAMINER (Mr. Kennedy).

W. Deane, rental.

Before the Rt. Hon. JUDGE ORMSBY.

MONDAY.

IN CHAMBER.—C. E. Bell, allocate.—T. J. Nolan, do.—T. Colclough, do.

IN COURT.—H. Leader, to examine witness.—E. Jameson, receiver.—T. J. Nolan, attachment.—J. Gartlan, payment.—J. Eyre, as to letting.—T. W. Grady, credit.—D. P. M'Carthy, final schedule.—Lord Huntingdon, receiver.—H. C. O'Connor, to make order absolute.

TUESDAY.

SALES IN COURT.

P. H. HORE, . . . . . 1 lot.  
TRUSTEE W. SCANLAN, . . . . . 5 lots.

WEDNESDAY.

Before EXAMINER (Mr. M'Donnell).

R. Malcomson, rental.—W. W. Gray, do.—M. R. Dalway, do.—G. V. Stewart, do.

THURSDAY.

IN COURT.—Scanlan v. Bunton, action.—D. W. Cruice, final schedule.—H. Leader, to examine witness.

FRIDAY.

Before EXAMINER (Mr. M'Donnell).

P. Leonard, rental.—Devises Leavy, do.

DUBLIN STOCK AND SHARE LIST.

DESCRIPTION OF STOCK	MAY				JUNE	
	Sat 27	Mon 29	Tues 30	Wed 31	Thur 1	Fri 2
<b>*Paid Government.</b>						
— 3 p c Consols ..	101½	—	101½	101½	101½	101½
— New 3 p c Stock ..	100	—	100½	100	100	100
<b>INDIA STOCK.</b>						
4 p c Oct. 1838 } Trsbis. at ..	—	—	—	104½	104½	—
3½ p c Jan. 1831 } Bk. of Irel. ..	101½	—	—	—	—	—
<b>Banks.</b>						
100 Bank of Ireland ..	—	—	—	320	320	—
25 <i>Hibernian Banking Co</i> ..	—	—	—	—	34½	—
20 <i>London and County (Lid'd)</i> ..	—	—	—	—	—	—
15 <i>London Joint Stock</i> ..	—	—	—	—	—	—
20 <i>London and W'minster, Lid'd</i> ..	71	—	71	71½	—	—
10 <i>Do. New</i> ..	—	—	—	—	—	—
34 <i>Minster Bank (Limited)</i> ..	7½	—	7½	—	—	—
10 <i>National Bank (Limited)</i> ..	23½	—	23½	—	—	23½
10 <i>National of Liverpool (Lid'd)</i> ..	—	—	—	—	—	—
25 <i>Provincial Bank</i> ..	—	—	—	—	—	—
10 <i>Do. New</i> ..	—	—	—	—	—	—
10 <i>Royal Bank</i> ..	—	—	—	—	—	—
25 <i>Standard of B. S. A., Lid'd</i> ..	—	—	—	—	—	—
<b>Mines.</b>						
4½ <i>Berehaven (Limited)</i> ..	—	—	—	—	—	—
1 <i>Killaloe Slate Co. (Lid'd)</i> ..	—	—	—	—	—	—
7 <i>Mining Co. of Ireland (Lid'd)</i> ..	—	—	—	—	—	—
<b>Miscellaneous.</b>						
Alliance & Dub. Cons. Gas ..	—	—	15½	15½	—	—
4 <i>Arnott &amp; Co., Limited</i> ..	—	—	—	—	—	—
25 <i>Ir. C. S. Building Society</i> ..	—	—	—	—	42	—
4 <i>National Discount, Ir., Lid'd</i> ..	—	—	—	—	—	—
25 <i>National Assurance</i> ..	—	—	—	—	—	—
9-4-7 <i>Patriotic Assurance</i> ..	—	—	—	—	—	—
<b>Tramways.</b>						
10 <i>Dublin United Tramways</i> ..	10½	—	10½	10½	—	—
10 <i>Edinburgh Street Trams</i> ..	—	—	—	—	—	14½
10 <i>L'pl Un'ed Tram &amp; Bus Ltd</i> ..	—	—	—	—	—	—
10 <i>Leeds Trams</i> ..	—	—	—	—	—	—
<b>Railways.</b>						
10 <i>Athens and Tuam</i> ..	—	—	—	—	—	—
50 <i>Belfast and County Down</i> ..	—	—	—	—	—	—
50 <i>Belfast and Northern Cos</i> ..	—	—	—	—	51	—
100 <i>Dublin, Wicklow, &amp; W'ford</i> ..	—	—	—	—	—	—
100 <i>Great Northern (Ireland)</i> ..	—	—	—	—	—	—
100 <i>Gt. Southern and Western</i> ..	112½	—	112½	—	113½	—
100 <i>Midland Gt. Western</i> ..	—	—	—	83	—	—
50 <i>Waterford and Limerick</i> ..	32	—	—	—	—	—
<b>Railway Preference.</b>						
100 <i>Belfast &amp; Nth'n Cos, 4 p c</i> ..	—	—	—	101½	—	—
100 <i>Do., 4½ p c</i> ..	—	—	—	—	—	—
100 <i>Gt. Nth'n (Irlnd) gt'd 4 p c</i> ..	—	—	—	106½	—	—
100 <i>Do., 4 p c</i> ..	—	—	—	—	—	—
100 <i>Gt. South'n &amp; West'n 4 p c</i> ..	—	—	—	—	—	107½
100 <i>Mid. Great Western, 4 p c</i> ..	—	—	—	—	—	—
100 <i>Do., 5 p c</i> ..	—	—	—	—	—	—
100 <i>Watfd. &amp; Limerick, 4 p c</i> ..	—	—	—	—	—	—
50 <i>Do., new red, 5 p c</i> ..	—	—	—	102	—	—
<b>Leased at Fixed Rentals.</b>						
100 <i>Dublin and Kingstown</i> ..	—	—	—	—	—	—
<b>Debenture Stocks.</b>						
— <i>Belfast &amp; Nth'n Cos, 4 p c</i> ..	105½-5	—	—	105½	—	105½
— <i>C'fergus and Larne 4 p c</i> ..	—	—	—	—	—	—
— <i>Dublin &amp; Wicklow 4 p c</i> ..	—	—	—	—	105½	—
— <i>Do., 4½ p c</i> ..	—	—	—	—	—	—
— <i>Gt. Northern (Ireland) 4 p c</i> ..	—	—	—	109½	—	—
— <i>Do., 4½ p c</i> ..	—	—	—	—	—	—
— <i>Do., 5 p c</i> ..	—	—	—	—	—	—
— <i>Gt. South'n &amp; West'n, 4 p c</i> ..	—	—	—	109½	—	109½
— <i>Kilkenny Junction, A, 5 p c</i> ..	—	—	—	—	—	—
— <i>Midland Gt. West'n, 4 p c</i> ..	—	—	—	—	—	105½
— <i>Do., 4½ p c</i> ..	—	—	—	—	—	—
<b>Miscellaneous Debent.</b>						
Alliance & Cons. Gas, 4 p c ..	—	—	—	100	—	100
Ballast Office Deb., £220s 2d, 4 p c ..	—	—	—	—	—	—
Dub. & Glas. S.P. Co. (1887) 5 p c ..	—	—	—	—	—	—
Pipe Water Old, £92 8s. 2d. ..	—	—	—	—	—	—
Do. New, £100, ..	—	—	—	—	9½	—
(1938) Rathm. & Pem. M. Drain, 4 p c ..	—	—	—	—	—	—

\* Shares not fully paid up are given in Italics. † x d

Bank Rate—Of Discount—6 per cent. 30th January, 1882  
Of Deposit—3 per cent. 30th January, 1882

Name Days—June 13th and 29th, 1882.  
Account Days—June 14th and 29th, 1882.

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**BIRTHS, MARRIAGES, AND DEATHS.**

**BIRTHS.**

**NOLAN**—May 24, at Connaught-terrace, Rathgar, the wife of James V. Nolan, Esq., solicitor, of a son.

**DEATHS.**

**DAVIES**—May 25, at Derby, John Francis, youngest son of the late Thomas Davies, Esq., solicitor, of Kenistown House, County Galway, aged 25 years.

**GASON**—May 24, at Via San Sebastiano, Rome, Eliza, wife of John Gason, Esq., M.D., and daughter of the late Sir Jonas Greene, Recorder of Dublin.

**JONES**—May 30, suddenly, of bronchitis, at the Royal Albert Hotel, Dublin. Augustus T. Jones, Esq., solicitor, of Rushin House, County Fermanagh, second son of the late Captain Charles Jones, formerly of the 90th Regiment.

**O'HEA**—May 27, at Harcourt-street, James O'Hea, Esq., barrister-at-law.

**O'SHAUGHNESSY**—May 31, at his residence, Mercer-street, James O'Shaughnessy, for many years the faithful clerk of Francis Hastings, Esq., solicitor.

**FUNERAL REQUISITES OF EVERY DESCRIPTION.**

49, W A L L E R, 50,  
DENZILLE-STREET.

3-7

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**PUBLIC NOTICES:**

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The Bank undertakes for its Customers, free of charge, the custody of Deeds, Writings, and other Securities and Valuables; the collection of Bills of Exchange, Dividends and Coupons; and the purchase and sale of Stocks, Shares, and Annuities.

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Applied to the Nose for an hour daily, so directs the soft cartilage  
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10s. 6d.; Post Free, 10s. 8d., secretly packed. Pamphlet, Two Stamps.

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## GREAT HAIR RESTORER,

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Beware of Imitations of Ross's articles.

As Chemists keep his articles, see that you get his HAIR DYE for  
either light or dark colours, 3s. 6d.; his DEPILATORY for removing  
Hair, and his CANTHARIDES for the growth of Whiskers. 7

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a Partnership, in either City or Country. Address—"M. A.,"  
Office of IRISH LAW TIMES.

## LEGAL POSTINGS:

IN THE COURT OF BANKRUPTCY  
IN IRELAND.

In the Matter of—

HUGH FITZGERALD,  
of Falaise, Clontarf, Co. Dublin, Victualler, a Bankrupt.

TO BE SOLD BY PUBLIC AUCTION,

Before the Court,

At the Four Courts, Dublin,

On FRIDAY, the 16th day of JUNE, 1882,

At the hour of Twelve o'clock noon,

All the Estate and Interest of the Bankrupt and his Assignees, for the  
Life of the Bankrupt (now aged about 68 years), in and to

Lot 1—Part of Acre Lots 39 and 40, on the North Strand, in the  
Parish of St. Thomas and City of Dublin, upon portions of which  
Houses in Leinster-avenue, Leinster-street North, Spencer-street,  
Spencer-place, St. Joseph's-terrace, James-street North and Stoney-  
road, have been built; held under Conveyance from the Landed  
Estates Court, subject to the payment of interest at £8 per cent. per  
annum (reducible to £5 per cent.) on £50, and to £4 per cent. per  
annum on £700, pursuant to the Orders of the 11th May, 1881, and  
10th March, 1882, respectively, and subject to such claims as the Cor-  
poration of the City of Dublin, as the Urban Authority, may have in  
respect of works executed in or on said Streets, Avenues, Places, or  
Premises, under the provisions of the "Public Health (Ireland) Act,"  
1878. Copies of said Orders and particulars of said Claims, as fur-  
nished to the Vendor's Solicitors, may be seen at the Office of the  
Solicitors having carriage of the Sale. The Yearly Rents and esti-  
mated Value, subject to Taxes and to the claims of the Corporation  
(when assessed), is £325 18s.

Lot 2—Policy on Life of the Bankrupt (age admitted), dated the  
23rd November, 1877, with the Scottish Provincial Assurance Com-  
pany, for £200, at the half-yearly Premium of £5 7s., payable 22nd  
May and 22nd November.

Lot 3—Policy on Life of the Bankrupt (age admitted), dated the  
25th of February, 1880, with the National Assurance Company of  
Ireland, for £300, at the half-yearly Premium of £8 18s. 6d., payable  
25th August and 25th February.

Lot 4—Policy on Life of the Bankrupt (age admitted), dated the  
25th of February, 1880, with the National Assurance Company of  
Ireland, for £300, at the half-yearly Premium of £5 15s. 8d., payable  
25th August and 25th February.

Lot 5—Policy on the Life of the Bankrupt (age admitted), dated the  
7th July, 1881, with the Royal Assurance Company of Liverpool, for  
£100, at the half-yearly Premium of £28 12s. 6d., payable 4th  
January and 4th July.

A Statement of Title and Conditions of Sale are lodged in the Office  
of the Court, and may be seen also in the Offices of the undesignated  
Solicitors having carriage of the Sale.

Dated this 28th day of May, 1882.

WM. PERRIN, Chief Registrar.

## DESCRIPTIVE PARTICULARS.

The Premises comprised in Lot 1, are situate in Leinster-avenue,  
Leinster-street North, Spencer-street, Spencer-place, James-street  
North, and Stoney-road, close to the road leading to Clontarf. Trams  
to Clontarf pass every 20 minutes.

LEINSTER-AVENUE consists of two Plots of Ground let on long leases,  
on which the tenants have built 10 Houses, and have valuable interests  
in their holdings.

LEINSTER-STREET NORTH—One portion consists of two Plots of  
Ground let on long leases, on which the tenants have built 3 Houses,  
and have valuable interests in their holdings. The other portion  
consists of 8 Houses built by the Bankrupt, two of which are let to  
respectable tenants; the remainder are in Vendor's possession.

SPENCER-STREET and SPENCER-PLACE—One portion consists of 9  
Plots of Ground let on long leases, on which the tenants have built 38  
Houses, and have valuable interests in their holdings. The other  
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# THE IRISH LAW TIMES AND SOLICITORS' JOURNAL.

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## THE EFFECT OF THE DEATH OF AN ACCEPTOR OF A BILL OF EXCHANGE, BLANK AS TO DRAWER'S NAME.

IN reviewing the fifth edition of Mr. Lloyd's able work on the Law of Compensation, the current number of the *Law Magazine* observes that he "refers frequently to Scottish, Irish, Colonial, and American cases. These will be found in not a few points to throw a valuable side-light on the binding cases, and it is well that counsel should find ready to hand a suggestion of what may open up a new view that may ultimately find its way into English case-law." The recent English case of *Carter v. White*, reported in the June number of the *Law Journal*, 51 Ch. 465, exemplifies this utility as regards Irish cases, as we there find Kay, J., following *In re Duffy*; *Dutch v. O'Leary* (14 Ir. L. T. Dig. 8). And guided by the same conception of the utility of referring to decisions other than those of our own courts, we too shall, in the first place, before proceeding to examine *Carter v. White*, quote from the decision of the Supreme Court of the United States in *Angle v. North Western Mut. Life Ins. Co.* (92 U. S. 330), in reference to the ground on which the right to fill up blanks in negotiable instruments, and the liability in respect of them was formulated. "Negotiable instruments," said Clifford, J., are frequently delivered for use, with blanks not filled; and in respect to such instruments, it is held, that where a party to such instrument intrusts it to the custody of another for use, with blanks not filled up, whether it be to accommodate the person to whom it is intrusted or to be used for the benefit of the signer of the same, such negotiable instrument carries on its face an implied authority to fill up the blanks necessary to perfect the same; and the rule is that, as between such party and innocent third parties, the person to whom the instrument was so intrusted must be deemed the agent of the party who committed the instrument to his custody, in filling up the blanks necessary to perfect the instrument." See, as to this general doctrine, 14 Ir. L. T. 193, 217, 230; and as to the effect of the death of the drawer of a cheque, see 13 *ib.* 448; and as to the effect of death as revocation of agency, see 13 *ib.* 417, 433, 12 *ib.* 325.

In *Carter v. White* the action was brought by the trustee in bankruptcy of Geo. Noble, who had, on Nov. 19, 1874, deposited with the defendant the certificates of £505 stock as collateral security for a debt of £500 due to the defendant from James Randle. This deposit was made by Noble in consideration of the renewal by the defendant of an acceptance of £250, part of that debt. The renewal was effected by an acceptance of Randle for £250, dated Nov. 18, 1874, payable three months after date; and another bill of exchange was given by Randle for the rest of the debt, dated Oct. 15, 1874, payable two months after date. Both those bills of exchange were accepted by Randle and delivered to the defendant, duly filled up, excepting only the name of the drawer. Randle died on Jan. 6, 1875, leaving his widow his executrix. On July, 23, 1879, Noble became bankrupt. The trustee in bankruptcy sought an account against the defendant, and claimed to have the stock certificates given up to him by the defendant, and to be relieved from the suretyship, the ground chiefly relied on being that the defendant had neglected to perfect the

bills of exchange by filling in his name as drawer, and could not do so after the acceptor's death, so that he could not hand them over to the plaintiff as complete securities. The argument in support of this contention was founded very much on the language of the judgment in *Montague v. Perkins* (22 L. J. C. P. 187), treating the drawer as agent of the acceptor; while, if there was agency, it was argued that the case came within the principle of the authorities like *Watson v. King* (4 Camp. 273), deciding that under a power of attorney, though coupled with an interest, no valid act can be done in the name of the donor after his death. "I cannot see how the drawer who has given value to the acceptor can be his agent to sign his own name as drawer," said Kay, J.; "but here, even if the drawer could be considered Randle's agent, nothing is to be done in the name of Randle to complete this bill." We find the distinction here pointed to also taken in *Story on Agency*, s. 495. "Regularly, indeed," observes that great and authoritative American jurist, "when the act to be done must be done in the name of the principal, and not in that of the agent, the authority is extinguished by the death of the principal, because it has become incapable of being so executed. . . . Where the act, notwithstanding the death of the principal, can and may be done in the name of the agent, there seems to be a sound reason why his death should not be deemed to be a positive revocation under all circumstances." But, putting aside the question whether the right is referable to agency (see 14 Ir. L. T. 231), how stand the authorities? In *Armfield v. Allport* (27 L. J. Ex. 44), Pollock, B., says: "A man who writes his name across a stamped paper as acceptor, there being a direction to him upon the paper, is liable; he gives his authority to anybody to draw upon him when it may be convenient to do so, or when the person to whom the paper is given may think it advisable to apply it for this purpose." And if an acceptance blank as to the name of the drawer be handed to the proposed drawee for valuable consideration, the drawer, or his executors after his death, as in *Scard v. Jackson* (34 L. T. N. S. 65, n), approved in *Harvey v. Cane* (*ib.*), or an endorsee for value, as in the case last cited, may complete the bill by inserting his own name as drawer, and this after the bill has become due. Then, in *Usher v. Dاونcey* (4 Camp. 97), a bill of exchange drawn and indorsed in blank by a partner, and delivered by him to a clerk of the firm, who after the partner's death filled it up with the date, sum, and names of other parties in the counting-house of the person who accepted it, was held to be a good bill in the hands of persons who had discounted it, and to bind the surviving partners. Again, in *Hatch v. Searles* (2 Sm. & G. 147; on app., 24 L. J. Ch. 22) an accommodation acceptance was given in blank, and filled up after the death of the acceptor, and handed to a person who knew it had been given as a blank acceptance. It was proved that the person to whom it was first given in blank had no right to get it discounted, and that the person who discounted it knew, or must be taken to have known, this; and therefore, he could not recover. This case is cited in the last edition of *Byles on Bills* as an authority for the proposition that a blank acceptance for value is irrevocable; but, without any direct decision, it merely seems to have been

there assumed that if the transaction had been *bonâ fide*, the holder might have recovered, notwithstanding the acceptor's death before the bill was filled up. However, the very point called for decision in *Re Duffy, Dutch v. O'Leary (ubi supra)*, where it was expressly held that, where an instrument in the form of a bill of exchange is accepted, with a blank space for the drawer's name, a *bonâ fide* holder, or his personal representative, is entitled to fill up the blank as drawer, and thus make the instrument a complete bill of exchange. "That decision seems to me consistent with principle," said Kay, J., "and I follow it by overruling this objection. In this case the objection is merely technical, and no relief can, I understand, be had against Randle's estate." Accordingly, the action was dismissed with costs, except so far as it sought an account against the defendant.

#### "LAW JOURNAL REPORTS" FOR JUNE.

The monthly number of the *Law Journal Reports* for June is a double one, and contains pages 25 to 48 of the Privy Council cases, pages 409 to 520 of the Chancery Division, pages 313 to 369 of the Queen's Bench Division, pages 25 to 40 of the Probate, Divorce, and Admiralty Division, and pages 59 to 96 of the Magistrates' Cases; in all seventy-nine cases are reported, of which three are Privy Council cases, forty-eight are from the Chancery Division, fourteen from the Queen's Bench Division, six from the Probate, Divorce, and Admiralty Division, and eight Magistrates' Cases.

The number opens with three Privy Council cases: one from Canada, one from Mauritius, and the third from Nova Scotia. The first case in the Chancery Division is *Lyell v. Kennedy*, in which interrogatories by a plaintiff in an action for the recovery of land, asking from the defendant admissions of his title, and discovery as to the defendant's title, were disallowed by the Court of Appeal. In *Avery v. Andrews* trustees of a friendly society, who had been enjoined not to divide its funds among the members, but who had, as members, taken a share of funds distributed by a new set of trustees appointed for the purpose, were pronounced by Mr. Justice Kay guilty of a contempt of Court. In *Hurst v. Hurst* Mr. Justice Fry held that a limitation of property in trust to a man for life, with remainder to his children in equal shares, and a clause of cesser on the life tenant's bankruptcy or alienation, could not be accelerated in favour of the children on the life tenant's alienation. In *Henty v. Wrey* the exercise of a power to appoint portions before it was necessary, was held invalid. In the case of *In re Woodfin and Wray* a personal undertaking by a solicitor to pay the costs of the committal on the release of his client, was enforced summarily. In *Chard v. Jervis* the Court of Appeal held that an undischarged bankrupt, living with his wife who had means, could not be sent to prison for nonpayment of a debt under the Debtors Act. In *Foulers v. Walker* a claim for ancient lights in behalf of a warehouse which had succeeded some cottages with ancient lights, fell through in want of evidence that the windows were in the same place as before the rebuilding. In *Kirk v. Todd* it was held by Vice-Chancellor Hall that an action for an injunction for fouling a stream could not be continued against the executors of a defendant who had died more than six months after the injury complained of. In *Stigand v. Stigand* it was stated that in the Chancery Division the practice in obtaining leave to issue and serve writs abroad is to apply to the chief clerk, who, in plain cases, gives the leave without referring to the judge. In *Briggs v. Massey* a trustee liable for default in not getting in certain gas shares was made to pay the value of bonus shares, less the calls. In *In Ex parte Sear, sâ re Price*, it was held that an attachment in the Tolzey Court of Bristol has the same effect as in the Mayor's court of London, and the plaintiff is not a secured creditor. In the case of *In re Bannerman* an annuity left "free from all deductions in respect of

taxes" was held to be free of income tax. In the case of *In re Atkinson* natural children entitled to succeed according to Italian law were held liable to pay succession duty as "strangers in blood." In the case of *In re Hudson* a gift by will of property to divide the income among children and, on the death of the last, to grandchildren, was held to be an interest for the children's lives only. In *Fordham v. Clagett* it was held that an appeal lay against the disallowance of the debt of a creditor in an administration suit, although no order has been drawn up. In *Ex parte Richdale, sâ re Palmer*, a post-dated cheque, given to a person who became bankrupt before it fell due, was held a protected transaction, and that there was no liability on the drawer to stop the cheque. In *Carter v. White* Mr. Justice Kay held that the holder of an acceptance without a drawer's name may insert his name as drawer after the death of the acceptor. *Robinson v. The Local Board of Burton* is another illustration of what a "street" is not within the Public Health Acts. In *Jerman v. Chatterton* the Court of Appeal committed for contempt, although the judge below had declined. In *Ex parte Firth, sâ re Conburn*, the consideration of a bill being stated to be "£40 now lent and paid by the mortgagees to the mortgagors," whereas in fact £1 10s. was retained for expenses of execution, the bill was held void. These cases are now beginning to produce some very fine distinctions. *Harter v. Colman* is a case in which a mortgagee of two properties who became mortgagee of the second after the assignment of the equity of redemption of the first was held not entitled to consolidate. In the case of *In re The General Financial Bank* it was laid down that an official liquidator ought to be appointed in chambers, and not in Court. In the case of *In re Count d'Epineuil* it was unsuccessfully attempted to invalidate an unregistered bill of sale as against the unsecured creditors of an insolvent dead person—a very ingenious attempt to apply section 10 of the Judicature Act, 1875. In *re Bowllon's Trusts* decides that a petition of trustees for the advice of the Court under 22 & 23 Vict., c. 35, s. 30, still requires the signature of counsel. In *Ex parte Child, sâ re Ottaway*, the practice in bankruptcy, as to cross-examining on affidavits, was settled. If the affidavit is filed, but not read, the deponent cannot be cross-examined. *Crawcour v. Saller* is another case in which the custom of hotels hiring furniture was allowed to take it out of the order and disposition clause. In *Little v. The Kingswood and Parkfield Colliery Company*, Vice-Chancellor Hall restrained a solicitor who had formerly acted for the plaintiff from acting for his opponent. This case came before the Court of Appeal on Thursday, May 25, when the Master of the Rolls said he thought the Vice-Chancellor had gone further than any of the previous cases; but the matter was compromised. In the case of *In re Jesscock's Trusts*, Mr. Justice Chitty held that a power to lease to a "person or persons" authorised a lease to a corporation. In *The Union Bank of London v. Ingram* the Court of Appeal, overruling Mr. Justice Kay, held that, under the Conveyancing Act, an order for sale of mortgaged property may be made after a foreclosure decree. In *Barber v. Blalberg* Mr. Justice Fry seems at the trial to have disallowed a counter-claim as not relating to the action. In *Turner v. Hancock* the Court of Appeal held that a trustee whose costs are disallowed out of the trust fund may appeal.

In the Queen's Bench Division *Gibbs v. Guild* is the first case, deciding that the Statute of Limitation for false representations runs from the discovery, not the committal of the fraud—an important decision from which the late Lord Justice Holker dissented. *Thomson v. The South-Eastern Railway Company* lays down rules as to the terms of staying cross-actions arising out of the same subject matter. In *Jackson v. Litchfield & Sons* it was held that one of the partners in a firm sued failing to enter appearance the proper course is to proceed to judgment before issuing execution against him. In *Wigzell v. The School for Indigent Blind* it was held that, on a contract by a vendee to build a wall on

the property sold, the measure of damages was not the cost of the wall, but the depreciation of the vendor's adjoining property. In *Burgoyne v. Collins* it was held that, although a Burgess at a municipal election can only nominate as many candidates as there are vacancies, it is only the excessive nominations which are void, not all. In the case of *In re Chapman* it was held that the necessity for a certificate for counsel applies in taxations as between solicitor and client—an important decision, as it is not uncommon to neglect to ask for the certificate when the other side has not to pay. *Harris v. Truman & Co.* is a puzzling case as to the property in some malt, in which the decision of the Court below for the defendant was upheld. In *Ormerod v. The Todmorden Joint Stock Mill Company* the Court of Appeal overruled the discretion of a judge at the trial, who had refused an action. In *The Highway Board of Stockport v. Grant* it was held by Mr. Justice Lopes that a wall giving an easement of support to a Highway, in the absence of stipulation, is to be repaired by the owners of the highway. In *Bell v. Lawes* an allegation in a statement of defence that the defendant did not falsely or maliciously write the libel was held bad. In *Richards, Tweedy & Co. v. Hough* it was held that an objection to a witness affirming instead of taking an oath on commission ought to be taken at the time of his appearing before the commissioner. In *Brown v. North* the Court of Appeal allowed a married woman with separate property to sue without her husband and without security for costs. In *Pugh v. Heath* the House of Lords held that an action for foreclosure prevents the Statute of Limitation running against the mortgagee, Lord Cairns delivering a short but masterly judgment.

In the Probate, Divorce, and Admiralty Division the Vesta decides that pilotage is compulsory in the Thames on vessels bound for a port between Boulogne and the Baltic. In the Stowaway the goods of a shipper on board a general ship were held not subject without notice to the lien reserved from the charterer to the shipowner. In *Brownrigg v. Pike* a will appointing an executor, although dealing only with realty, was held entitled to be proved. In *Smith v. Smith* Sir James Hannen refused to alter his decision given at the hearing not to allow more costs to the solicitor of a guilty wife than were secured.

Of the Magistrates' Cases, in *The Hackney District Board v. The Great Eastern Railway Company* a railway company passing under a bridge forming part of a street was held to be an adjoining owner so as to be liable to contribute to paving the street. In *Reece v. Millar* a claim of a right to fish supported by meagre evidence was held not a reasonable claim ousting the jurisdiction of justices. *Regina v. Coney* is the case before a full Court for the Consideration of Crown Cases, which decides that the combatants in a prize fight are guilty of an assault, although a mere spectator is not necessarily aiding and abetting. In *Regina v. Morby* it was held that to justify a verdict of manslaughter in a case of neglect to call in medical assistance, it must be proved that death was caused or accelerated by the neglect. In *Regina v. Newman* it was held that a solicitor who misappropriates money entrusted for investment does not misappropriate property entrusted for safe custody. In *Regina v. The Justices of Montgomeryshire* it was held that an appellant in a bastardy case may appeal either under the Bastardy Acts or under the Summary Jurisdiction Act.—*Law Journal*.

It is difficult to follow the mind of a judge who sentences a youth to a fearful punishment of ten years' penal servitude for sending a threatening letter to the Queen. No doubt Her Majesty must be protected from annoyances of this kind—but ten years' penal servitude! a sentence given for homicide and grave crimes against person and property. It is incomprehensible, and we should much like to hear how Mr. Justice Lopes could justify it.—*Law Times*.

## LORD FITZGERALD.

The elevation of Mr. Justice Fitzgerald, of the Queen's Bench Division in Ireland, to the peerage as a life-peer and a Lord of Appeal, divides the Lords of Appeal with tolerable fairness between the three kingdoms. England, Ireland, and Scotland have now each a Lord of Appeal; although Scotland, not without precedent, has the best of the bargain, as Lord Blackburn may be accounted at least half Scotch. The balance in favour of England is, however, made up by the hereditary law lords.—*Law Journal*.

The Law-lordship long vacant has at last been filled up by the appointment of Mr. Justice Fitzgerald. He has long had a high judicial reputation in Ireland, and English readers have had frequent opportunities of appreciating the commanding firmness with which he addresses an Irish jury. If judicial appointments are to be looked on as acts of graceful homage, it may also be said that his appointment is an act of graceful homage to the merits of the Irish Bench.—*Saturday Review*.

## THE PHOENIX PARK ASSASSINATIONS.

At the opening of the Commission of Oyer and Terminer, on the 2nd inst., the Lord Chief Baron, addressing the County Grand Jury, said:—Gentlemen, whilst on the subject of undetected crime, I cannot refrain from referring to those crimes of almost unparalleled atrocity which were committed in a suburb of this city, and which no less than four weeks ago startled and horrified the whole civilized world. Of the perpetrators of these black deeds, as far as I am aware—for on this subject I have no official information, and know no more than any of you, or any other member of the public—there has not been discovered one single trace. A circumstance of greater moment than this it is, in my mind, difficult to conceive. If you consider how many persons were probably actually present at the commission of the crime, aiding and abetting; how many conveying information to the actual perpetrators—covering or hiding their retreat, endeavouring to divert others from their paths; how many places of concealment must have been prepared; how many would have had opportunities of seeing the assassins before they changed their blood-stained clothes; the enormous rewards which have been offered in vain for information; and if you find that the outcome of all this is simply nothing—the result appears to indicate that our present mode of detecting crime might with advantage to the public be reconsidered. Gentlemen, there are many other considerations the importance of which it is difficult to exaggerate, which these circumstances naturally suggest—the causes which have led to these crimes, and the steps which will be taken to prevent their repetition; but on these things it is not my province to enter, for they are political not judicial considerations. Having, however, enjoyed the privilege of the friendship of both those gentlemen, whose lives were recently most cruelly taken in the discharge of their public duty, I may be allowed the melancholy consolation of adding to the almost unanimous voice of Ireland the tribute of my humble but sincere testimony to their public and private worth, and the irreparable loss which their deaths have entailed upon their Sovereign and their country.

## FOREIGN CHECKS ON CRIME

The Geneva correspondent of the *Times* writes:—“The letter on this subject which appeared recently in the *Times* contains a few slight errors as touching Switzerland that it may be well to correct. There is no general law in this country concerning *permis de séjour*, and although, by virtue of a cantonal law, permits are obligatory in Geneva, they are not obligatory in every other part of the Confederation. Even in Geneva a foreigner unprovided with passports or other means of proving his identity is allowed to remain so long as he

reports himself once a month at the Hôtel de Ville. If it were otherwise, the Russian refugees and other 'paperless' strangers who make their temporary homes here would have to find asylums elsewhere. On the other hand, the police have the power to expel from the canton foreigners who are suspected of using an *alias*, who misbehave themselves, or who have neither occupation nor means. When Prince Krapotkin first came to Geneva he called himself by the name under which he had escaped from Russia. When this fact came to the knowledge of the authorities they sent him out of the Canton; but at Montreux, whither he went, nobody troubled him. He was afterwards, on assuming his right name and producing a witness to his identity, allowed to return to Geneva. His second and subsequent expulsion was expulsion from the Confederation by order of the Federal Council—at the instance, as was believed and stated at the time, of the Russian Government. In respect of expulsion the powers of the Swiss Government seem to be almost unlimited, and applicable as well to natives as to foreigners. Bishop Mermillod, though a born Swiss, was expelled, without trial or notice, on the ground that his conduct tended to disturb the peace of the Commonwealth. Though Switzerland is so thorough a Democracy, and the powers of the police are so much more restricted here than they are in France, Germany, Italy, and other countries, and albeit the Press is quite as free as in England, measures for the detection of crime are adopted which in England are never practised, and would probably not be tolerated. A case in point occurred a short time ago. A number of burglaries were committed in a suburb of Geneva, and so adroit were the thieves—evidently a gang—that they invariably escaped with their booty, and for a long time evaded all the attempts of the gendarmes to lay hands on them. In the end an expedient was tried which had the desired effect. One night shortly after sunset, all the roads in the neighbourhood in question were beset with police, detectives, and *gardes-champêtres*. Every lane was watched, every exit and entrance guarded, every passer-by stopped and questioned and if there were anything suspicious in a man's appearance or in his person he was provisionally detained. One of the men detained had housebreaking tools in his possession. He was led off to gaol. All the others were set at liberty. The prisoner, after being examined and cross-examined a few times by a *Juge d'Instruction*, and kept a week or two in solitary confinement, made a full confession, gave the names of his confederates, and such other information as enabled the police to capture the entire gang, as well as the receiver of the stolen goods, who occupied so respectable a position that suspicion had never for a moment rested upon him. If a similar expedient were occasionally practised in the disturbed districts of Ireland, might it not conceivably lead to equally satisfactory results? Whatever may be thought of the Continental system of interrogating accused persons, there can be no question as to its efficiency in the detection of crime and the conviction of criminals. During the last few years there have been many trials for murder in Switzerland, but I do not remember one that has broken down for lack of evidence, or a single case in which the prisoner has not been brought before trial to make full avowal of his guilt."

#### FREAKS OF JURIES.

Sheil, in his inimitable sketches of the Irish bar, tells of the verdict of a Clare jury, in a case of "felo-nious gallantry." They acquitted the prisoner of the capital charge, but found him guilty of "a great undacency." R. Shelton Mackenzie, in his notes to Sheil's text, says—"This is nothing to the verdict of a Welsh jury: 'Not guilty—but we recommend him not to do it again.'" Mackenzie also relates that an English jury, not very bright, having a prisoner before them charged with burglary, and being unwilling to convict him capitally, as no personal violence accompanied the robbery, gave the safe verdict—"Guilty of getting out

of the window." He adds that the most original was that of an Irish jury before whom a prisoner pleaded guilty, throwing himself on the mercy of the Court. The verdict was—"Not guilty." The judge, in surprise, exclaimed, "Why, he has confessed his crime!" The foreman responded—"Ah, my lord, you do not know that fellow, but we do. He is the most notorious liar in the whole country, and no twelve men who know his character can believe a word he says." And as the jurors adhered to their verdict, the "liar" escaped. J. W. Edmunds reported to the *Albany Law Journal* of June 18, 1870, a murder trial, which took place in New York City, and in which he appeared for the accused some thirty years before by appointment of the court. The defendant was a young woman who, leaving poor parents in New Jersey, went to New York City, and obtained a place as waiter in a restaurant. She met and married a young butcher boy, but kept at work until her pregnancy compelled her to desist, when she went to her parental home to be confined. When she returned to her husband's lodgings in New York City, she found them vacant and her own effects packed off. It was a case of heartless desertion. She discovered him at a slaughter house talking to a woman, who wore at the moment, what she recognized as her, the defendant's, best dress, which she had bought with her own earnings before marriage. He refused to talk with her. The next morning he was seen to take a proffered cake from the hands of a young woman, divide it with some companions, and in a few hours was dead, his companions being taken very sick, but surviving. The police, investigating the matter found that the deceased had three wives, or rather three women supposed themselves his wives. All three were arrested, but two were speedily released, as our heroine admitted that she had done the business. The case for the defence was weak, but after a few minutes' absence the jury returned with a verdict of not guilty. The prisoner's counsel asked one of the jurors on what ground she had been acquitted. "It served him right," was the answer.

#### A PATRIARCHAL SOLICITOR.

Full of years and honours, the oldest solicitor in the United Kingdom has just been struck off the rolls by the hand of a Power greater than the Incorporated Law Society, the judges of the Supreme Court, and the Lord Chancellor all combined. Mr. Henry Ingledew, of Newcastle-upon-Tyne, is the name of the legal gentleman who has died, at the age of ninety-six, after having devoted himself to the study, and still more to the practice, of the law for more than sixty-five years. It was in 1817 that this patriarch of the Legal Profession was admitted to practice as a solicitor, or rather attorney-at-law, as the title then was. He began his professional career in the reign of George III., continued it through the reigns of George IV., and William IV., and ended by enjoying forty-five more years of legal activity during her present Majesty's auspicious tenure of the throne. Moreover, it is apparent that Mr. Ingledew was no juvenile when he first entered on the status of attorney, having already spent thirty-one years of his existence in other occupations. Finally, however, about the time that Europe was settling down after the Napoleonic wars which have bequeathed to us a debt of six hundred and thirty million pounds, Mr. Henry Ingledew also settled down in life, and took to the honourable career which he pursued in Newcastle for nearly three-quarters of a century. Mr. Henry Ingledew, solicitor and notary, and perpetual commissioner for acknowledgments of deeds by married women, had also been at the time of his death for forty-three years a member of the Newcastle Town Council, and an alderman of the Northern city. When it is borne in mind how important to all sections of the community is the work which is daily entrusted to solicitors—what industry, judgment, learning, and integrity it involves, and what a powerful and respected guild they form all over the country—it must seem astonishing that the

honour which appertained to Mr. Ingledeu, of being a town councillor of his borough, was really about the highest dignity to which he could hope to aspire. The enjoyment of a seat at the Municipal Council table of Newcastle is undoubtedly not an honour to be despised. The labour of a civic provincial parliament is always important in its results, and calls forth qualities which afterwards may shine in a higher assembly. We would in no wise decry the laudable ambition to belong to such a body, for the fact that men of position and ability are willing to give time and trouble to the business of municipalities is a most gratifying feature of English life. Nevertheless we must regret that, as we have said, the civic laurel is about the only one to which a solicitor can by any possibility look forward. Because his work is not blazed forth to the world by means of speeches to juries, because he is content to take the less conspicuous part of "instructing counsel" what to say, he is doomed to a career of useful and lucrative obscurity. Can it be maintained that this is a natural, a just, or a wholesome arrangement in any way? At the end of the long lane which barristers travel there is a glittering heap of rewards and honours waiting; a grateful country showers judgeships on the successful advocate; she invites him temptingly to enter the political arena and stand for Parliament—an invitation which he in general accepts, and dangles the bait of the Great Seal before his longing eyes, morning, noon, and night. His course is, like Lord Bacon's, "through indignities to dignities." The solicitor does the same kind of work, discusses the same humdrum legal problems in the same sort of way, and receives no recognition whatever from the State, and has absolutely nothing except fees to which he can aspire. To neglect a great profession in this way is ridiculous. It is not as if solicitors did petty hole-and-corner work, which was of little private and no public value at all. The affairs of every great family, and the secrets of a thousand institutions, are shut up in the solicitor's deed-boxes, or locked in the still safer custody of his mind. Solicitors are the all-important bridge by which the litigious and unlitigious public can alike pass into the mysterious regions of common law and equity; they are the fly-wheel of the whole legal machine. The distinction between them and barristers has recently been much weakened, and the transition from the one sphere to the other is rendered far easier than it was. In time we may arrive at that complete amalgamation of the two branches of the law which obtains in the State of New York, and is generally found to work well in America. It is a great deal more likely, however, that the old difference of position between the person who prepares the evidence and the person who lays it before judge and jury, will last, at any rate in this country, as long as there is any Legal Profession at all. There is thus all the more reason that antiquated prejudices should be dispensed with, and that, as solicitors are now placed practically on the same level as barristers, some means should be devised for recognising them as a learned body. A solicitor ought to be—even if he is not—just exactly as much as a barrister a learned man. There is a terribly tough examination to be passed before the certificate of a practising solicitor can be obtained. More than this, the threefold examination in question, consisting of preliminary, intermediate, and final, is growing harder year by year. The expense attaching to the enrolment among the solicitor fraternity is very considerable; while in numbers and influence the ancient profession of attorney yields to none in the kingdom as justly claiming a share of the honours, as well as of the leaves and fishes, which the State has to bestow. Sir William Garvey, in his edition of the Judicature Act, remarks that an attorney was not a lawyer, but simply a substitute for another man, in the earliest periods of English history. "To appear by attorney" meant only the appearance in court of somebody other than the actual party summoned; some excessively kind-hearted friend who was willing to bear his burden and to set in his "turn" or stead. Then came the separation of such persons into a distinct profession, known as

"attorneys-at-law," and finally ensued the great change of nomenclature, which has recently abolished the time-honoured title of attorney, and substituted for it "Solicitor of the Supreme Court." Now, solicitors and attorneys were once upon a time very different persons, the latter attending to the Common Law department, while the former were engaged in Chancery. Perhaps, in anticipation of the marriage of Westminster and Lincoln's Inn—of law and equity—which was duly celebrated by the passage of the Judicature Act, the word attorney was considered needless in future. Certain it is that "attorney" and "proctor" have both yielded to the usurpation of the comparatively mushroom title of "solicitor." Peradventure, some day the attorney will belong to as completely extinct a race as the moribund sergeant. All things legal have lately been put into the crucible of change, in many respects to the advantage both of the general public and of the Profession itself. In hacking away much that is useless, and some few things that were useful and ornamental, we might, at the same time, remember that this is a peculiarly fit and proper opportunity to make those alterations in the status and prospects of solicitors to which their actual position entitles them. Unnatural and artificial restrictions should be done away with; State recognition should be granted, and more honourable ambitions should be placed in the way of the aspirants who don the solicitor's robe. Solicitors would no doubt infinitely prefer a little more of the so-called "empty praise," and would even feel inclined to surrender fragments of the solid pudding, in the consumption of which they take about equal shares with the more brilliant branch of the law. It is a foolish and injurious plan for a State to relegate any great class or profession to mere money-making, unrelieved by the distinctions and dignities which act as an all-potent stimulus to honourable activity.—*Daily Telegraph.*

#### THE CONVEYANCING AND LAW OF PROPERTY ACT, 1881. WHERE IT SHOULD BE ADOPTED, AND WHERE EXCLUDED.—XVII.

##### SETTLEMENT UPON MARRIAGE OF FREEHOLDS IN FEE SIMPLE WITH USUAL CLAUSES.

(Continued from page 252, ante.)

##### *Declaration as to the Receipt and Application of Rents during Minorities.*

This follows in due course next after the limitations and trusts which we discussed in our article last week, and may be very greatly abbreviated by reliance upon sect. 42 of the Act. It gives extensive powers of management to "the trustees appointed for this purpose by the settlement, if any, or if there are none so appointed then the persons, if any, who are for the time being, under the settlement, trustees with power of sale." We pointed out in a previous article (*Law Times*, April 15, page 418), that, where the property belonged to several, as tenants in common, some of whom might be infants and some not, the statutory powers were not altogether satisfactory, as they did not give the trustees power of management over the entirety of the property under such circumstances. If then the settlement contains limitations to daughters as tenants in common, which are really likely to come into practical operation, then some additional clause should be employed, giving the trustees power over the entirety during the minority of any such daughter as tenant in common. For old form see David iii. 1197, and compare the new supplementary form suggested for a settlement where the children take as tenants in common, in the *Law Times* of April 15, page 419, and form in Conc. David. 880. Although the statutory power exists so long as the settlement itself endures, it would hardly be safe to endeavour to make the supplementary one extend beyond the usual limits, lest it should be held void as against the rules as to perpetuity: (see 1 Jarman on Wills, 4th edit. 274; Wolst. & T. 70.)

sect 42 (7) enables settlers to limit the application of the section, but it does not appear to authorise any such extension as would be given by a supplementary power extending during the entire settlement. If, however the settlement contains no limitations to tenants in common, or if there is only a remote chance of their estates falling into possession, i.e., of such tenants in common ever obtaining the property, then it will suffice, in ordinary settlements, to declare that the trustees shall have the powers of management given by sect. 42. It will be better to make a direct statement than to leave the Act to vest the powers in them because they are trustees with power of sale and exchange.

The statutory power does not authorise the trustees to open new mines, so that sometimes the power must be supplied. The power to cut timber will usually be sufficient; see *Law Times*, April 12, page 418.

The statutory provision for disposal of accumulations during infancy, made by sect. 43 (5), will usually require a supplement, as indeed is evidently contemplated by sect. 42 (5, iii.). The statutory accumulation is strictly confined within the limits assigned by the rules as to perpetuities, and of course the supplementary form must be similarly restricted.

For old forms of power of management and trust for accumulation, see David. iii. 999, 2197; for new short form, see Pridaux, ii. 309, and compare forms in *Law Times*, April 15, page 419, and Conc. David. 880, 449, 459.

#### *Power for Husband to Jointure future Wife.*

This can be considerably shortened by the omission of all reference to the powers for securing the rent-charge. For old forms see David. iii. 1001, and compare Conc. David. 450, and Pridaux, ii. 308. Sect. 44 (5) speaks of "the instrument under which the annual sum arises; but that section clearly applies to the case before us, although the annual sum arises from two instruments, viz., the settlement and the deed or will by which the power is executed. We have shown the sufficiency of the statutory powers. See *Law Times*, April 29, page 458. In the case before us it will not be worth while to insert the proviso against limitation of a term of more than 299 years, &c.

#### *Powers with Relation to Charging Portions on Future Marriage.*

These will be inserted as usual. For form see David. iii. 1002; Pridaux, ii. 308.

#### *Powers of Leasing.*

This should always be inserted. See *Law Times*, April 15, page 419. The statutory powers are insufficient. For forms of lease for twenty-one years see Conc. David. 892; Wolst. & T. 143; Pridaux, ii. 311. It is usual to "appoint by way of lease;" (David. iii. 481.)

#### *Powers of Sale and Exchange.*

These cannot be omitted, but may be greatly abbreviated by reliance on Lord Cranworth's Act (23 & 24 Vict., c. 145), and sect. 35 of the present Act. It will usually, in small settlements, only be necessary to declare that the trustees shall have a power of sale, and that it shall be exercisable during the lifetime of the tenant for life with his consent and afterwards at their discretion. Sometimes a special power to sell minerals and easements apart from the surface, powers with respect to copyholds, and other special powers, must be inserted. See *Law Times*, April 15, pages 419, 420, and form in Pridaux, ii. 320.

It should be noticed that sect. 5 of Lord Cranworth's Act gives power to employ the sale moneys in paying off incumbrances, so that the powers of charging portions, &c., do not seem to necessitate any special provision with respect to this. And sect. 35 of the Conveyancing Act permits sale subject to charges. It would seem, however, most prudent that there should be a clause providing that the power of sale and exchange should overreach all estates and charges to be created under the powers or terms of years, except leases actually granted and sales or mortgages actually

made (Conc. David. 885, n.) For forms see David. iii. 1018, i. 392. The Settled Land Bill, as it stands previous to its second reading in the House of Commons, makes express provisions as to such priorities. It is believed, however, that such a clause is usually of little consequence. See David. iii. 565, 579; Sag. Pow. 492.

#### *Interim Investment.*

Until the purchase money is invested in other lands in accordance with section 6 of Lord Cranworth's Act, or is otherwise disposed of, it will be invested "at interest" under that Act (sect. 7). If it is desired to give a wider range of securities than that given by law, a special or additional power must be inserted.

#### *Trustee Clauses.*

The clauses relating to the appointment of trustees may be much abbreviated. They have already been discussed in the *Law Times* of March 11, page 329, and March 18, page 346. The settlement should supplement sect. 31 of the Act by vesting the power of appointing new trustees in the tenant for life during his lifetime, and, if so desired, in his wife during her life. It should also indemnify the trustee for lending money on leaseholds without investigating lessor's title, and for lending on a less than marketable security. For old forms, see David. iii. 721, 1026; for new forms, see Conc. David. 829; Pridaux, 821; and *Law Times*, March 11, page 329; April 22, page 434.

#### *Covenants for Title.*

We advise the insertion of the ordinary covenant for further assurance, and not the words "as settlor" or "as beneficial owner." Of the two implied covenants, we think that implied by the expression "as settlor" least objectionable. See *Law Times*, March 25, page 365; April 1, page 382; April 22, page 434.

#### *Summary.*

The grant and habendum will remain unaltered, or only receive verbal alteration. The "general words" and "estate clause" will be omitted. The powers of distress and entry, which were usually annexed to the wife's rentcharge will be omitted, but it may be convenient slightly to restrict the powers given by sect. 44 (4). The limitations in tail may be slightly shortened. The trusts of term to secure jointure rentcharge will, like the term itself, be omitted, but the term for securing portions, and the trusts of such term, will be inserted: (*Law Times*, April 29, pages 458, 454.) It is unnecessary for us to summarise the results of the present article.

(To be continued.)

### LORD DERBY AND THE MAGISTRACY.

After having laid the foundation-stone of a new county sessions-house in Liverpool, on June 1st, the Earl of Derby said:—He was not sure that, in any circumstances, a court-house, a place of justice, was exactly one of those places which impressed the mind with a strong feeling of sympathy. He was not now talking of the unluckily rather numerous class whose visits were of an involuntary character, and in whose minds it could only be connected with disagreeable reminiscences of well-deserved penalties; but he did not think it excited a feeling of very lively gratitude in the minds of jurymen when they recalled their long and weary hours of compulsory and ill-paid attendance. Possibly it did not raise entirely agreeable recollections in the minds of witnesses who looked back upon cross-examinations which they had undergone, in the course of which they had been made to say exactly what they did not mean, and being abused for saying it afterwards. Even their friends of the learned profession, he was told, did not reap that golden harvest which Quarter Sessions were accustomed to give. Their happy hunting grounds had been materially curtailed, partly by the simplification of the law, and partly by the increase of summary jurisdiction. They (the magistrates), at any rate, might look back to the many hours of attendance that they

had passed, and forward to the many hours they should pass in one or other of these temples of justice, with the satisfaction which arose from the conscientiousness of unpaid and voluntary service given to the public, and the conviction that, whether that service was worth little or much, it was, at any rate, the best they had to give. Public opinion was a difficult thing to gauge, and, of course, he might be mistaken; but he was inclined to think that there was a change since those days when everybody who wanted to be smart was in the habit of talking about "Justices' justice," and about magistrates committing themselves oftener than they committed anybody else, and unpaid service being worth just what it cost, and other amenities of a similar kind. He did not believe, as far as he could judge, that there was now any desire in the public mind—whether it was that the public had grown wiser, or that the magistrates had grown wiser, or a little of both—but he did not believe there was any desire for the abolition of the unpaid magistrates of this country and the substitution of what would be a very costly army of stipendiaries. But, while he held that opinion, he thought, at the same time, there were some modifications in the way of administering local justice which might be possible and desirable. He had often said the same in public before, and, therefore, he was not now starting an opinion which would be new to that or any other audience. Though he was himself a lay chairman of Quarter Sessions, he had long entertained considerable doubt whether matters would not be on a better footing if in future that office was filled by a professional lawyer; and, speaking for Lancashire, if one such appointment could be made to serve for the entire county, he was perfectly prepared, so far as he was concerned, to give effect to that view whenever it was the general wish. It would require a private Act of Parliament, but that was not a very difficult thing to obtain. If there was to be any general legislation on the subject he would have it upon these lines. He would leave the magistracy in general as it was, but he would make the chairman of sessions a professional man; and if that course were adopted he thought it would be possible to combine with it another improvement, and to extend the jurisdiction of Quarter Sessions so as to materially relieve the judges of Assize from a portion of the very laborious duties which they now perform. As to the other part of their work, the administrative business which was done there, he supposed they must make up their minds before long to hand over, if not the whole, at least the greater part, to somebody chosen upon the representative and elective principle. He was quite prepared to accept that change. It was founded upon a sound principle; but while he did so he must say that he did not think that the magistrates by whom the local affairs of the country had heretofore been administered had any reason to fear competition with their successors, whoever they might be, in regard to the purity, the economy, or to the efficiency of the county administration as it had been managed by them. He only hoped that those who succeeded them might do us well in these respects.

MEDLEYAL BOYCOTTING.

A correspondent, writing in the *Times*, says:—"Our forefathers had to deal with "Boycotting" of an extraordinary kind, but the law seems to have been sufficient for the evil. In the seventh year of Henry III. the Archbishop of Canterbury and the Bishop of Lincoln enjoined the faithful not to sell victuals to the Jews, nor have any communication with them, whereupon the King ordered the sheriffs and Mayors to issue counter injunctions, and to imprison any one who refused to supply the necessaries of life. Thirteen years later the Bishop of London followed the course adopted by his episcopal brethren, and the King thereupon issued a writ to the Mayor and Sheriffs of London to stop the evil. In the reign of Edward I. the Archbishop of Canterbury threatened to excommunicate every one in the province of Canterbury who should have

any intercourse with the Archbishop of York, or supply him or his servants with the necessaries of life. He was subsequently obliged by the King and Parliament to revoke his threats."

THE LIABILITY OF AGENTS IN ACTIONS BASED ON FRAUD.

We referred, at the time when it was decided, to the decision of the Court of Appeal in the case of *Heatley v. Newton* (now reported, 45 L. T. Rep. N. S. 455; L. Rep. 19 Ch. Div. 826) as to the point of practice which arose in it with regard to the time of appealing from orders made in chambers in the Chancery Division. The principal questions raised on the appeal are also of great importance, especially to auctioneers. The action was one brought to set aside a contract for sale of land, alleged to have been entered into under the following circumstances:—One of the plaintiffs, as agent for the other, attended a sale by auction of the land in question, which was conducted under conditions announcing that "Subject to the right which the vendors reserve of bidding once or oftener by themselves or their agent, the highest bidder shall be the purchaser." According to the statement of claim, there appeared to be an animated competition between bidders in different parts of the room, which brought the biddings up to £12,950, at which point the plaintiff bid the sum of £18,000. He paid the deposit of 10 per cent. into the hands of the auctioneers, in accordance with the conditions of sale; but subsequently, before completing the purchase, he ascertained that a large proportion, if not the whole, of the biddings previous to his own were fictitious, having been made by the vendors and their agents bidding against each other. He consequently brought an action for the rescission of his contract, and to this action he made the auctioneers co-defendants with the vendors. The Master of the Rolls made an order in chambers, at the instance of the auctioneers, dismissing them from the action on payment into court of the deposit which they had received, and on their undertaking to pay interest up to the date of such payment, with the costs of the action, if not paid by their co-defendants, in case the plaintiffs should ultimately succeed in their action. This order the Court of Appeal held to be unsustainable, on the simple ground, as stated by Lord Justice Lindley, that the auctioneers had not given the plaintiffs all they asked for, and were therefore not entitled to a stay of proceedings against themselves. The liability of the auctioneers depended on their participation in what is sometimes called a legal fraud; for although the question whether such biddings by agents of the vendors are fraudulent, so as to avoid the sale, could not be finally decided on this application, Lord Justice Lush, in particular, intimated a clear view that it would be so held.

The general question of the liability of an agent personally concerned in a fraud or misrepresentation to be joined as co-defendant with his principal, in an action based on the fraud, was discussed in the Court of Appeal in the case of *Mathias v. Yeats* (noted 72 *Law Times*, 548). There a misrepresentation had been made by a vendor which the Court of Appeal considered sufficient to invalidate the contract, and the purchaser accordingly obtained judgment for a rescission. The purchaser had made co-defendant in the action the vendor's solicitor, against whom the Court of Appeal, agreeing on this point with the judgment of the court below, considered that no case had been made—indeed, the solicitor was able to prove that his client had refused to accept the modifications of the advertisement containing the untrue statements which he had suggested, and had adhered to the original form in spite of his advice. The Master of the Rolls observed that the old rule that an agent, an auctioneer, or an attorney may be made a co-defendant for costs (the three A.'s rule, as it was formerly called) is always a dangerous one to set upon, as a much stronger case must generally be made out against the agent, and you have to bring home to him personal cognizance of the fraud. As he is only liable for costs jointly with the

principal defendants, it is rarely useful to join him as a co-defendant, unless the principal be insolvent or a man of straw. Of course, these considerations do not fully apply where, as in *Heatley v. Newton*, the agent joined as co-defendant is a stake-holder, and is sued for the recovery of a deposit in his hands. In that case the Court of Appeal considered that the liability of the auctioneers as the persons conducting the sale in the improper manner alleged by the pleadings was sufficiently material to the plaintiffs' case to give the latter a right to retain them until the trial, and that they could not be dismissed unless or until they had given to the plaintiffs all the relief which could be obtained against them at the hearing.—*Law Times*.

#### ADDRESSES TO LORD FITZGERALD.

Yesterday, at the sitting of the Queen's Bench Division, valedictory addresses were presented on the part of the Bar, and of the Incorporated Law Society, representing the Solicitors of Ireland, to Lord Fitzgerald, on the occasion of his sitting for the last time as a member of the Irish Bench.

Amongst the Queen's Counsel present were:—

Mr. E. J. Lane, Q.C., Father of the Bar; Sergeant Sherlock, Q.C.; Mr. Purcell, Q.C.; Mr. E. H. Pennefather, Q.C.; Mr. Robert Ferguson, Q.C.; Mr. Egan, Q.C.; Mr. John Nash, Q.C., Law Adviser; Mr. Fiers White, Q.C.; Mr. De Meleyens, Q.C.; Mr. Campbell, Q.C.; Mr. Boytagh, Q.C.; Mr. James Murphy, Q.C.; Mr. W. D. Andrews, Q.C.; Mr. Isaac Walr, Q.C.; Dr. Webb, Q.C.; Mr. Wm. M'Laughlin, Q.C.; Dr. Boyd, Q.C.

The Law Society was represented by its President, Mr. Henry J. Pelham West; the Vice-Presidents, Messrs. Edward T. Stapleton and E. M. Kelly; its Secretary, Mr. John H. Goddard; and the following members of the Council:—

Messrs. Thomas Dix, Richard S. Reeves, Charles G. Stanuall, Michael Larkin, Arthur Lee Barlow, John T. Hamerton, William Read, ex-President; Henry J. P. West, John Mathews, Henry A. Dillon, ex-President; William D'Alton, Patrick Maxwell, W. Milward Jones, Henry Leland Kelly, Edward M. Stapleton, Archibald Tisdall, John Galloway, Shapland M. Tandy, Francis R. M. Crozier, Keith H. Hallows, Richard H. M. Orpen, Thomas C. Franks, Sydenham Davis, Henry S. Meereby, Henry C. Neilson, Thomas E. Baillie-Gage, Robert O. Longfield, John B. Eaton, and William B. Stanley.

The Lord Chief Justice, Mr. Justice Fitzgerald, and Mr. Justice Barry having taken their seats on the bench,

Mr. LANE, Q.C., said—My Lords, understanding that this is the last occasion on which you, Mr. Justice Fitzgerald, will sit in this court as judge I have the pleasure as Father of the Irish Bar—and the pleasure is enhanced by my being the Father of the Circuit of which you are a member—to present to you the following address, unanimously agreed to at a very large meeting of the Bar of Ireland.

“MY LORD—The Bar of Ireland cannot permit your connexion with them to close without endeavouring to express their feelings of respect and admiration after so many years of intercourse. They have recognised and appreciated your high judicial and personal qualities—the learning, impartiality, dignity, courtesy, and firmness which have always distinguished you on the Bench, and which they believe eminently fit you for the high position to which you have been now called. Whilst congratulating you most heartily on this merited advancement they cannot but feel the loss which the legal profession, and this country will sustain by your promotion. They can only express their sincerest wishes for your future welfare and happiness in your new and distinguished position; and they hope that your elevation to a higher and wider sphere of public usefulness will sever as little as may be your connexion with the Irish Bar, and the happy and friendly relations which you have so long maintained with its members. Signed on behalf of the Bar of Ireland,

“RICHARD JAMES LANE, Father.”

Lord FITZGERALD replied:—Father and Brethren, I am truly honoured in being presented with this address from the Bar of Ireland. The honour is as great and exceptional as the occasion is unusual. By

the favour of her Most Gracious Majesty I am about to be removed to a higher judicial position, but not one of more dignity than the seat which I now occupy. No judicial position could be more honourable than to sit on the same bench on which Bushe, Lefroy, Whiteside, Burton, and Louis Perrin formerly presided. It will not be necessary that I should absolutely retire from amongst you, and, on the contrary, I hope to be often in the midst of you, and to continue to show as much interest as ever in your welfare and prosperity. It would make me happy, indeed—too happy—if I could bring myself to believe that I deserved in any proximate degree the terms in which you have described my judicial career; but it would, indeed, be unpardonable presumption in me to take such merit to myself, and I feel that your expressions of approval are due to your kindness and your friendship, rather than to any just claim of mine. I do claim for myself one high judicial attribute—the quality of strict impartiality. I believe that during my long career I have never failed in that quality; and I am gratified, indeed, to find that you, who have known me so long and so well, have spontaneously anticipated and admitted the justice of that claim. If I have been able to assist with some degree of efficiency in the administration of justice, that is largely due to the assistance I received from you. I have ever found you to be a body of advocates of great learning, efficiency, and independence, seeking no favour—not whispering in the ear of justice, but boldly insisting that right and justice should be done. With such aid if the judge fails the fault is his alone. You have given me credit for courtesy. I have endeavoured to show it to all alike who came before me in the administration of justice, and if I have failed I take this occasion to express my regret. You kindly wish for my success and welfare in the new position which I am about to occupy. I feel, however, quite overawed and overwhelmed by the new duties which I have too rashly undertaken, but should I require any incentive to exertion it will be found in the recollection of the terms of your address, and in my own anxious desire that no failure of mine should cast discredit on the Irish Bar or the Irish Bench. Father and Brethren—I have been too highly honoured by my Sovereign, but I say with the utmost sincerity that the honour conferred on me has been greatly enhanced by the bright reward of your approval. There is another view, however, of the present occasion which presses itself on me with pain, and sorrow, and that is the disruption of old ties and life-long friendships, and the separation from my much loved and honoured colleagues which necessarily ensues. I sit for the last time in this chair, and if my lord and brother were not now present it would be to me a duty of affection to dilate on their high qualities and distinguished merits. I am coerced by the circumstance of their presence to be silent. I may, however, gratefully acknowledge their long continued and unselfish kindness, and I must add that if I have been enabled to keep on the straight path of law, to help in administering that tempered justice which is due to humanity, and to exercise sound, judicial discretion, it has mainly been by their instruction, their help, and their guidance. To my lord, my brother, and to you, gentlemen, I confess a debt of gratitude so weighty that no hope can exist on my part of being able to repay it.

Mr. WEST, President of the Incorporated Law Society, then rose, as also did the other solicitors. He said—As President of the Incorporated Law Society, I have to state that the Council of that Society unanimously resolved upon the occasion of your lordship's retirement from the Irish Bench, consequent upon your recent elevation to a high position in England, that they would present to you the address I shall take the liberty of reading. I feel that no words of mine could add anything, or give any additional value to that address; but I cannot refrain from expressing on my own behalf the very great pleasure it gives me to be the medium of this communicating to your lordship, the sentiments of the Council in which I heartily concur, and which I



am sure reflect not only the feelings of the Council, but those of the entire profession. The address is as follows:—

"My Lord—The Council of the Incorporated Society of the Attorneys and Solicitors of Ireland, desire on the occasion of your retirement from the Irish Bench, to express on behalf of their branch of the legal profession, their appreciation of the ability, learning, and fearless independence which have gained for you the admiration and approval of all her Majesty's loyal and law-abiding subjects. While we heartily congratulate your lordship upon the honour conferred on you in being selected from the Judicial Bench of the United Kingdom to be a member of the highest court of the realm, we cannot but feel that your retirement from the Irish Bench deprives it of one of its brightest ornaments. In conclusion, we desire to acknowledge the invariable courtesy which our profession ever experienced at your lordship's hands, and offering our best wishes for your lordship's happiness in your future exalted career,—We respectfully bid your lordship farewell."

Lord FITZGERALD replied—President and Council of the Incorporated Law Society of Ireland—I could with difficulty find words adequate to express how grateful I am for your address, and how acceptable it is to me. I know, and have long known you, one and all, and you constitute a body of enlightened gentlemen whose good opinion, collectively and individually, I estimate in the highest degree. In the answer which I have given to the address from the Bar, I have anticipated the topics which I would otherwise have introduced in reply to yours, and I pray of you to take that answer as equally applicable to your address. You give me credit for courtesy to the solicitors of Ireland. I should have been forgetful indeed of the inestimable services you have rendered to the administration of the law, if I failed in showing you that courtesy which should ever prevail amongst educated gentlemen. You are sometimes styled the second branch of the profession of the law: let me add that you are not the less important of the two branches. The administration of the law largely depends on you who are brought into direct intercourse with the people; and I have no doubt that you will continue to use your best exertions to make the law respected as "the staff of honesty and the shield of innocence." And now, my friends, in taking leave of you all at a period of deep gloom, let me hope that I may still be permitted with you to aid our native land in her present straits and difficulties. In conclusion, let me express my fervent prayer that it may please the Almighty to relieve us from the oppression of crime and its attendant calamities, to restore to this land peace and the love of law and right, and with these blessings that prosperity which can only rest on security, and on honesty and justice.

The LORD CHIEF JUSTICE—The Bar of Ireland and the solicitors of Ireland have suitably expressed their feelings upon the present occasion, and, I think, it would be very much to be lamented if the Bench of Ireland did not add their tribute of admiration. Judge Fitzgerald is the senior member of the Bench of Ireland. He is older than most of them, and during the course of a long judicial career they have had opportunity of appreciating those eminent judicial qualities by which he has always been distinguished. You have expressed in eloquent language your appreciation of those qualities, and, therefore, it is hardly necessary for me, on behalf of the Bench of Ireland, to add anything. It has always appeared to us that no man ever sat upon a bench of justice more distinguished by a lofty intelligence, or more distinguished by that impartiality of which he is himself conscious. He has never been deterred in the administration of his duty by any considerations external to himself. He is possessed of a lofty and serene intelligence, placed upon a height which is unassailable by any lower influence which could possibly be attempted. Judge Fitzgerald anticipates that in the career which is now open before him, he will experience difficulties. I have no doubt that, being

introduced into a higher sphere of action, he will encounter some difficulties, owing to this, that he will be obliged to deal with laws with which he is not so familiarly acquainted as those of our own country. But I have no doubt whatever, and nobody can have any doubt, that those mental faculties which have been exhibited here in Ireland will enable him to master any difficulties which any change of procedure may present before him, and that in whatever sphere he may act, in whatever tribunal he may occupy a seat, he will render eminent assistance. I am speaking the sentiments of the Bench in general. But what shall I say if I attempt, in a few words, to express the loss which this Court will sustain, and the feeling—the deep-feeling regret which the Judges of this Court must feel, that they are now to be deprived of that assistance on which they have always leaned. For my own part, since I have occupied a seat on this bench, my Brother Fitzgerald has always been beside me, and I have always leaned upon his learning and experience; and I must say that it is with deep pain and sorrow, to which I cannot venture to give expression, that I have to consider that for the future I shall be deprived of that assistance. There is one thing that gives us some consolation—we are not parting with Judge Fitzgerald as it were for ever. He is removed indeed to another sphere; but we have the satisfaction of thinking that that is merely an advancement by way of honour, that he carries with him faculties unimpaired by time, that his long experience, and the progress of years have simply developed his intelligence, and added to the stores of learning of which he is possessed. We cannot entertain any doubt that when he comes to apply himself to whatever subjects may be brought before him, those same high mental faculties will enable him to deal with them in a satisfactory manner; and I hope, as has been thrown out, that the judge will not part with this country, though he must, as it were, part from this court, and that he will have the satisfaction of maintaining the cordial relations which have always existed between us.

Lord Fitzgerald then bowed to the bar, the solicitors, and finally to his brother judges, and retired from the bench amid hearty plaudits.

#### TEXT-BOOK ADDENDA.

[From the Law Journal.]

*Fry on Specific Performance (2nd Edition), 288, 289.*

Where a person has been induced to enter into a contract by misrepresentations, it is no answer to his claim for rescission to say that if he had used due diligence he would have discovered the untruth, and the inference should not be drawn that the plaintiff did not rely upon the misrepresentation. Defendant must prove either that the plaintiff knew the representations were untrue, or that he stated he did not rely on them (*Redgrave v. Hurd*, 51 Law J. Rep. Chanc. 118)—C. A.

*Wilson on the Judicature Acts (2nd Edition), 290.*

*Lely and Foulkes on the Judicature Acts (3rd Edition), 252.*

A fund with a gift over on its being charged can still be made subject to an attachment order (*South Western Loan and Discount Company v. Robertson*, 51 Law J. Rep. Q. B. 79).

41 Vict., c. 16, s. 13.

A house divided into different sets of rooms, but having one outer door, is not divided into different tenements so as to make a set used for business purposes exempt from inhabited house duty (*Yorkshire Fire and Life Insurance Company v. Clayton*, 51 Law J. Rep. Q. B. 82)—C. A.

*Wilson on the Judicature Acts (2nd Edition), 313.*

*Lely and Foulkes on the Judicature Acts (3rd Edition), 352.*

Held that there was no appeal against an order imposing the defendant's costs in the action on a third party (*Hornby v. Cartmell*, 51 Law J. Rep. Q. B. 89)—C. A.

*Orderly on Solicitors, 166.*

A town agent is not entitled to set off a general account with a country solicitor against a claim for money recovered in an action made by the client of the country solicitor (*In re Johnson, ex parte Edwards*, 51 Law J. Rep. Q. B. 109)—C. A.

*Employers' Liability Act, 1880 (43 & 44 Vict. c. 42), s. 4.*

A written notice must be given by employed to employer before action under the Employers' Liability Act (*Moyle v. Jenkins*, 51 Law J. Rep. Q. B. 112).

*Income Tax Act (5 & 6 Vict. c. 35), Schedule A, No. III., Rule 3.*

The board held by the Court of Appeal, reversing the decision below, liable to pay income tax on profits; although, under their Act, the profits would only go to reduce past debts (*Mersey Docks and Harbour Board v. Lucas*, 51 Law J. Rep. Q. B. 114)—C. A.

*Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 308.*

Compensation given for being obliged to give support to sewers passing through his land, in which there were mines; but not for injury through percolation (*Corporation of Dudley and the Trustees of the Earl of Dudley*, 51 Law J. Rep. Q. B. 181)—C. A.

*Bankruptcy Act, 1869 (32 & 33 Vict. c. 71), s. 39.*

Damages arising under a contract may be set off against a claim of debt arising on the same contract made by the trustee of a liquidating debtor (*Peat v. Jones & Co.*, 51 Law J. Rep. Q. B. 128)—C. A.

## CALL TO THE OUTER BAR.

James O'Shanahan, Esq., second son of Edmund O'Shanahan, Esq., of Listowel, in the county Kerry, has been called to the Bar.

## REVIEWS.

*The Land Law (Ireland) Act, 1881, with the Statutes incorporated therewith, and the Rules and Forms issued thereunder; being a Practical Exposition of the Act. With Explanatory Notes, an Abstract of Decided Cases, and Copious Index.* By T. M. HEALY, M.P. Dublin: M. H. Gill & Son, 50 Upper Sackville-street. 1882.

"THE Act of 1881 is already antiquated in not a few of its provisions. Its clauses, dealing with arrears of rent, have not done the work expected from them. Its purchase clauses have been equally inoperative. The Bill now before the House of Commons takes up the arrears question and deals with it in a new way. When this amendment of the Act has been completed, the purchase clauses will remain to be dealt with. If these are amended and developed after the fashion of the arrears clauses, if provision is made for the general transfer of the land in Ireland from its owners to their tenants, there will not be much left of the Act of 1881. It will have been wholly changed in some parts, and the changes so introduced into it will have gone far to supersede the remaining clauses. The fixing of a fair rent will be of no consequence if the result on the whole case is that no rent whatever is to be paid. The identity of an Act so altered becomes a mere question of metaphysics." So writes the *Times* on the 27th ult.; and it is while our land law stands as unsettled that Mr. Healy has ventured to publish a volume on the subject, of 443 pages, in which he must necessarily run the risk of saying either too much or too little—*amphora caput instiluit; currente rota curvata erit*. But, this is not his first published reading on the new law; for we remember noticing that an attempt to do a previous smaller performance of his was made before the Land Sub-commission in *M'Gowan v. Clements*, but was summarily crushed on

the ground that its author was only a law student. We trust that Mr. Healy's legal penmanship will not prove, at all events, so obstructive to his advancement to the legal profession, as was Lord Chancellor Clarendon's "Notes of Cases," published while he too was a law student, which nearly caused his rejection by the Benchers. In fact, for aught we know, the honourable member for Wexford may be already a full-fledged barrister; but, it is only too significant that his name as such appears neither in the Law List nor on the title-page of his book. Yet, if not a legist, he is a legislator, and one too who has had much to do with the shaping of the Act of 1881. His experience in this way ought to have had the effect of enabling him to detect the really salient provisions of the measure; but, it is not to be supposed that the more weight should be attached to his opinions, whether on their intention or bearings. Not but that "Hansard" itself has now almost pushed its way into the position of a legal authority (see 18 Ir. L. T. 288), while in America it would seem to be thought that the discussions in Congressional Debates may be resorted to in construing statutes, though the courts are not at liberty to rely on the views of individual members of Congress (see 9 Wash. L. Rep. 242, 321). So that Mr. Healy's particular ideas even about the famous 9th subsection of section 8 (Act, 1881) would carry no special weight. On the merits, however, what he has to say is well worth perusal; and we commend to notice his observations on the *cause celebre* of *Adams v. Dunseath*, (16 Ir. L. T. Rep. 59), thus concluding:—"The decision of the Court on the fifth point adverted to in their judgments (that is, the point as to whether the landlord should not be allowed some rent in respect of improvements made during the currency of the lease) seems to conflict directly with the conclusion come to on the second (that is, as to rent in respect of all improvements made previous to the expiration of the lease). The legal question involved would seem to be still undecided, and it is not clear that if an exactly similar case came before the Court again, a contrary conclusion might not be arrived at. Three members of the Court dissented from the decision come to; and three of the majority of four judges, whose judgments prevailed, based their decision on a construction of the phrase 'predecessors in title,' which the majority of the Court had previously, in deciding point number two, declared to be incorrect; while the fourth judge, whose voice turned the scale on this question, based his decision on a view of the law which three other members of the Court had previously dissented from. The result of this curious complication is rather doubtful, and a further decision of the Court would appear to be necessary to set the matter at rest." In referring to the decisions, by the way, it may be mentioned that Mr. Healy has taken advantage of the full reports in the IRISH LAW TIMES, and also of the other un-official reports which were published up to last March; but, instead of referring to the un-revised report of *Rutledge v. Rutledge* in the latter, it would have been of some importance to cite the authentic report in 15 Ir. L. T. Rep. 107 (see 15 Ir. L. T. 638). He makes no attempt to make his book a treatise on the Act of 1870—a very serious shortcoming, as we have had once before to observe (15 Ir. L. T. 484)—though he does generally point out its bearings on, and connexion with the Act of 1881. So far as we have been able to examine the book, it appears to be well executed on the whole; and we would especially point to his observations, in the Introduction, on the subject of "'Durability,' not 'Perpetuity' of Tenure," and to his reading on section 58 of the Act of 1881 (though as regards Town Parks it might have been well to refer to 15 Ir. L. T. 621, 638, 641, and as regards Chancery Lettings it would have been better to have referred to the cases discussed in 8 ib. 297). Mr. Healy makes a good deal of use of the decisions of the Sub-commissions, but a still more extended use of them might have been made; and it is in a book of this kind, rather than in full reports, that most of those decisions might be most suitably abstracted. On the whole, as we have said,

He appears to have well performed his task, and his book is certainly calculated to prove serviceable to practitioners, and deserves by its success to enable its author to paraphrase Pope's exclamation (a precedent in point for Judge O'Hagan's well-known utterance), after the completion of his imperishable translation,

"Thanks to Homer, since I live and thrive,  
Indebted to no prince or peer alive."

**OBITUARY.**

**MR. CHARLES FITZGERALD.**

MR. CHARLES FITZGERALD, whose death on the 3rd inst. it deeply pains us to have to record, was the surviving member of a well-known firm of solicitors, who had for a long period enjoyed a very extensive practice, especially in the criminal and civil bill courts. His grandfather, Armstrong Fitzgerald, was the solicitor by whom the brothers Sheares were defended in 1798; and his father (who died in May, 1872), though a very pronounced Conservative in politics, whose party services were on one occasion acknowledged by the gift of a silver snuff-box from the Eldon Orange Lodge, was entrusted with the defence of the Ribbonmen, and was publicly thanked by Daniel O'Connell, at the termination of his year of office as Lord Mayor of Dublin, for the advice and assistance which he had rendered him. Mr. Fitzgerald, who was born about 60 years ago, was admitted a solicitor in Trinity Term 1861. He had been in delicate health for some time past, but his death was unexpected and deeply indeed is it deplored. Of his many amiable and sterling qualities, of his genial, courteous, and kindly disposition all who have had the advantage and real pleasure of knowing him, whether in his private or business relations, cherish a vivid recollection. To no man had he ever given offence. In politics he was no partisan. In the practice of his profession he was all that worth, honour, integrity, and perfect fairness could combine to win for him the respect and esteem of his clients and his brethren. To his lot it fell to conduct the defence of many of the accused during the Fenian trials, and in most cases success was the reward of his personal attentions. His support was always rendered for any measure for the improvement of the township of Clontarf, where he had fixed his residence, and he was one of the first members of its Yacht and Boat Club. And in him his branch of the profession has lost a brother who had ever its best interests at heart; the poor have lost a true benefactor; and the many friends to whom he was endeared have lost one who never had an enemy.

**MR. JOSEPH O'MEAGHER.**

MR. JOSEPH O'MEAGHER, Solicitor, whose decease was announced in our issue of 27th ult., was born at the beginning of the present century. He belonged to an old Irish family, being a lineal descendant of John O'Meagher, of Clonyne Castle, near Roscrea, who, in 1658, was dispossessed by the Cromwellian Government of his ancestral lands—Ballybeg, Camlin, Clonyne, Grange, Gortvohine, &c., in the Co. Tipperary—and transplanted to Connaught, where he died in the year 1712, in reduced circumstances. In early life Mr. O'Meagher settled in Carlow, and took an active part in all the contested elections for the county, especially in the one in 1862, when he was mainly instrumental in securing the return of Mr. John Ball, son of Judge Ball, who resigned the appointment of Poor Law Commissioner—a position worth £1,200 a year—to become a candidate. Lord Beaconsfield nominated Mr. O'Meagher for the Commission of the Peace for the Co. Carlow, but he declined the honour, as Lord Chancellor Brady made it a condition that he should get his name removed from the roll of Solicitors, which he refused to do, preferring to "live and die an attorney." He retired in 1856 in favour of his son, Mr. Joseph Casimir O'Meagher.

**CORRESPONDENCE.**

Letters and communications intended for publication, and addressed to THE EDITOR, 52, Upper Sackville-street, Dublin, must be authenticated by the name of the writer, not necessarily for publication, but as a warranty of good faith.

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

**Re BURKE'S ESTATE.**

TO THE EDITOR OF THE IRISH LAW TIMES.

SIR,—A popular cry demands that the transfer of land should be simplified, and the time necessary for, and the cost of, transfer materially lessened. Recent legislation seems to be in compliance with this demand, but when one considers the effect of the decision in *Re Burke's Estate* it would seem that the Courts are running counter to the policy of the Legislature.

As I understand the effect of that decision, no purchaser (save from the Landed Estates Court), no matter what expense he may incur in investigating the title, can be sure that it is a good one, while the vendor who has lost his title deeds is wholly precluded from selling, unless at an immense sacrifice, to cover risk.

Not long ago a great fraud was perpetrated in England by means of forged deeds, and it was then stated that such could not have taken place in Ireland because of its system of Registration of Assurances. But what security is the Registry Act in such a case? None. The purchaser searches for Acts and finds none; he gets the title deeds (as he thinks), but it turns out that the real deeds are lodged as an equitable mortgage, and to the extent of that mortgage he is defrauded (*Re Burke's Estate*).

It seems, therefore, that a prudent purchaser should require that the execution of every deed presented to him, and which apparently completes the title, should be verified by the affidavit of the attesting witnesses. And what delay and expense will this requisition occasion if the witnesses are scattered all over the globe? The purchaser must still incur the expense of a search in the Registry of Deeds, for acts capable of registration, and, after all the delay and expense, it may happen that the witnesses had committed perjury, and the purchaser's deeds were forgeries, while the holder of the genuine deeds had priority by reason of mere deposit. Thus, by reason of this decision, it seems to me that the transfer of land is altogether stopped (save through the Landed Estates Court), and that, whilst the Registry Act increases the expense it gives no protection.

It seems, also, that a mortgagee by mere deposit of the title deeds is in a better position than one having an expensive and formal deed of mortgage. Further, that the doctrine "where equities are equal the law must prevail" no longer exists; for, if a purchaser got title deeds which appeared to be genuine, and used all the precaution which is expected of a prudent man, or if a deed were missing, and he made due inquiries, and received natural and sufficient explanations to account for its loss, and believed that no incumbrance existed, he is as innocent as a prior asset; equitable incumbrancer, and his equities (formerly supposed) equal, and when he clothed himself with the legal estate by a deed of transfer, this doctrine gave him priority; but, by the decision in *Re Burke's Estate*, the deed of transfer giving the legal estate adds nothing to the purchaser's title, and the maxim "Prior tempore potior jure," has no exception.

Therefore, if my interpretation of that decision be correct, no land can be transferred with perfect security save through the Court; while to make a marketable title the costs and delay are increased, and titles marketable before are now wholly unmarketable.

this is so, a great grievance exists, which calls for immediate redress.

I, and perhaps many others of your readers, would like to read the opinion of your Journal on this decision and its result.

I remain, Sir,  
Your obedient servant,  
ONE INTERESTED.

Cork, June 3rd, 1882.

[Our correspondent will find our opinion of the decision in *Re Burke's Estate* and its result stated *ante*, pp. 185, 197, 209.—*Ed.*]

### APPOINTMENTS AND PROMOTIONS.

NOTE BENE.—Information intended for publication under the above heading should reach us not later than Friday morning in each week, as publication is otherwise delayed.

Mr. John Givan, solicitor, M.P. for county Monaghan, and an elder of the Aghnacloy Presbyterian Congregation, has been unanimously elected a trustee of Magee College, Londonderry, by the General Assembly.

Mr. James Vernon has been elected Clerk of Petty Sessions for Sligo.

### LAW STUDENTS' JOURNAL.

#### THE INCORPORATED LAW SOCIETY OF IRELAND.

FINAL EXAMINATION FOR APPRENTICES TO SOLICITORS,  
Pursuant to the *Attorneys and Solicitors Act (Ireland), 1866.*

#### TRINITY SITTINGS EXAMINATION, 1882.

[Every answer is to be accompanied by reasons concisely stated.]

#### CHANCERY DIVISION.

Mr. DIX, Examiner.

1. What is necessary to be shown to ground an application for liberty to issue and serve a Writ of Summons out of the Jurisdiction?
2. What would you advise a client to do who has money in his hands in relation to which there are conflicting claims in order to relieve himself from responsibility concerning it?
3. Upon whom is it necessary to serve Notice of an Originating Petition in a Minor Matter, and what statements should such Petition contain?
4. State generally what you know of the requirements of the Court in relation to Affidavits filed in the Chancery Division?
5. Where there is a large arrear of Interest due on foot of a Mortgage, state what remedies are open to the Mortgagee in respect to his Security?
6. How do you proceed to appoint a Receiver, and what are the principal requirements of the Court in relation to that Office?

#### CHANCERY DIVISION, LAND JUDGES.

Mr. DILLON, Examiner.

1. When is the Purchaser of an Estate to be deemed the Owner?
  - A. In case of a Sale in Dublin.
  - B. In case of a Sale in the Country.
2. At what stage of the proceedings can an Incumbrancer be obliged to part with the Instrument creating his Security?
3. In cases of Sales to Tenants of their holdings by agreement between Landlord and Tenant, what are the restrictions to the Landlord's power of Sale?
4. What is the Rule as to the payment of the Costs

of a Petition for Sale to a Petitioner who is an Incumbrancer?

5. What is the distinction between the rights of the petitioning Incumbrancer and an ordinary Incumbrancer as to bidding at a Sale?

6. Until what time is a Motion to transfer carriage of proceedings premature?

#### PROBATE AND MATRIMONIAL DIVISION PRACTICE.

Mr. JONES, Examiner.

1. Where alterations are found in a Will what course must be adopted before same is admitted to proof?
2. Is there any, and if so what difference between the present and former practice in taking out Grants of Probate or Administration as regards secured or simple contract debts due by the deceased, and state definitely how the Duty is computed?
3. State accurately the practice for re-sealing an English Grant in Ireland, and what Documents are requisite?
4. What responsibility does a person incur who intermeddles with assets of a Deceased without having taken out a Grant? and how in the case of an Executor?
5. What step should be taken after a Caveat has been warned and within what time?
6. In what cases will Security for Costs be required, and how should same be given?

#### COMMON LAW DIVISIONS PRACTICE.

Mr. BARLEE, Examiner.

1. Where a verdict is given for either party in an action, but leave reserved to the other to apply to have such verdict had, changed into a verdict for him, state shortly what is the course of procedure, and is there any difference in this respect between actions tried at Nisi Prius in Dublin or at the assizes?
2. State the preliminary steps necessary to be taken in an action to be brought against a party residing out of the jurisdiction.
3. When one party in an action demurs to the other's pleadings, state shortly how such demurrer is to be brought to a hearing.
4. What are the steps necessary to be taken by a defendant to have an action remitted from the Superior Courts to the Quarter Sessions, and what must be shown to the Court to entitle the defendant to succeed in so remitting the action?
5. Where it becomes necessary after service of a writ of summons to add another party to the action, what is the procedure?
6. At what stage of the proceedings in an action can either party apply for discovery of documents; what is the procedure necessary to enforce such discovery being made, and in what form does the party making discovery furnish the particulars required of him?

In 1788 there were only 300 members of the English Bar altogether, and very few practising in Chancery.

ACTS OF PARLIAMENT.—Up to the present time only eight public and twenty-five local Acts have received the Royal Assent. The Session commenced on the 7th of February.

*Holloway's Pills* are strongly recommended to all persons who are much reduced in power and condition, whose stomachs are weak, and whose nerves are shattered. The beneficial effects of these Pills will be perceptible after a few days' trial, though a more extended course may be required to re-establish perfect health. *Holloway's medicine* acts on the organs of digestion, and induces complete regularity in the stomach, liver, pancreas, and kidneys. This treatment is both safe and certain in result, and is thoroughly consistent with observation, experience, and common sense. The purification of the blood, the removal of all noxious matter from the secretions, and the excitement of gentle action in the bowels, are the sources of the curative powers of *Holloway's Pills*.

**COURT PAPERS.**

**LAND JUDGES.**

Sittings for next Week so far as same are appointed.  
Before the Rt. Hon. JUDGE FLANAGAN.

**MONDAY.**

IN CHAMBER.—L. Simpson, valuation.  
IN COURT.—R. H. O'Bryen, receiver.—P. J. Boylan, allocate.—W. Anketell, objection.—H. Leader, receiver.—J. M. Cochrane, payment.—J. McGarry, from 5th.—J. Spencer, payment.—G. B. Low, receiver.—W. Rowland, ditto.

**TUESDAY.**

IN COURT.—J. Russell, final schedule.—J. J. Casey, from 6th.—M. Cody, do.

**WEDNESDAY.**

IN COURT.—D. Murray, receiver.—W. P. Cullen, do.—N. Woods, make order absolute.

**THURSDAY.**

IN COURT.—C. B. Jennings, receiver from 5th.—R. Moore, from 8th.—J. Carey, do.—E. P. Peyton, do.

**FRIDAY.**

**SALES IN COURT.**

H. WIGMORE, . . . . . 1 lot.  
P. HOLLAND, . . . . . 1 "

Before the Rt. Hon. JUDGE ORMSBY.

**MONDAY.**

IN CHAMBER.—F. Graham, to confirm sale.—A. H. Irwin, to continue proceedings.

IN COURT.—J. Ryan, final schedule.—J. Gartlan, from 8th.

**TUESDAY.**

**SALES IN COURT.**

ADMINISTRATRIX CAROLAN, . . . . . 9 lots.  
R. BURKE, . . . . . 2 "

IN COURT.—D. W. Cruise.

**WEDNESDAY.**

Before EXAMINER (Mr. M'Donnell).

A. M. Nicholson, vouch.—J. Collins, discharge queries.—M. Gallagher, to take account.

**THURSDAY.**

IN COURT.—Rev. A. W. West, final schedule.—R. Burke, ditto.

**FRIDAY.**

Before EXAMINER (Mr. M'Donnell).

A. Noble, rental.—Devisee Leary, do.

**COURT OF BANKRUPTCY.**

**ADJUDICATIONS IN BANKRUPTCY.**

The dates of Adjudications are first given, the Sittings follow in Italics.  
Bourke, Nicholas, of 88 Lower Buckingham-street, in the city of Dublin, farmer. May 19; *Tuesday, June 13, and Friday, June 30.* William Robinson, solr.  
Gracey, James, of Belfast, in the county of Antrim, merchant. May 17; *Tuesday, June 13, and Friday, June 30.* George L. Moore and H. F. Leachman, solrs.  
Kerr, James, of Broome Lodge, Cabra, in the county of Dublin, gentleman. May 28; *Tuesday, June 20, and Friday, July 7.* Wm. Robinson, solr.  
Lilley, James, of Ballymena, in the county of Antrim, trading as "James Lilley and Co.," drapers. May 19; *Tuesday, June 13, and Friday, June 30.* William Neilson & Son, solrs.

Lyons, William H., of No. 1 O'Connell-street, in the city of Dublin, house and land agent. May 28; *Tuesday, June 13, and Friday, June 30.* George William Shannon, solr.  
Madden, Joseph W., of Ballycastle, in the county of Mayo, shopkeeper. June 1; *Tuesday, June 27, and Friday, July 14.* R. Davoren, solr.  
Reid, Arthur, of Newtownards-road, Ballymacarrett, in the county of Down, grocer. May 30; *Tuesday, June 27, and Friday, July 14.* M'Lean, Boyle, and M'Lean, and B. Thompson, solrs.

**DUBLIN STOCK AND SHARE LIST.**

DESCRIPTION OF STOCK	JUNE					
	Sat. 3	Mon. 5	Tues. 6	Wed. 7	Thur. 8	Fri. 9
<b>*Paid Government.</b>						
— 3 p c Consols .. .. .	100½	100½	100½	100½	100½	100½
— New 3 p c Stock .. .. .	100	100	99½	99½	99½	99½
<b>INDIA STOCK.</b>						
4 p c Oct. 1888 } Trafal. at .. .. .	104½	104½	104½	104½	104½	104½
3½ p c Jan. 1881 } Bk. of Irel. .. .. .	101½	101½	101½	101½	101½	101½
<b>Banks.</b>						
100 Bank of Ireland .. .. .	320	320	319	319	319	319
25 Hibernian Banking Co. .. .. .	—	—	—	—	—	—
20 London and County (Lit'd.) .. .. .	—	—	—	—	—	—
15 London Joint Stock .. .. .	—	—	—	—	—	—
20 London and Westminster, lit'd .. .. .	—	—	70½	70½	70½	70½
10 Do. New .. .. .	—	—	—	—	—	—
20 Munster Bank (Limited) .. .. .	—	—	—	7½	—	7½
10 National Bank (Limited) .. .. .	24	24	—	—	—	23
10 National of Liverpool (Lit'd.) .. .. .	—	—	—	—	—	—
25 Provincial Bank .. .. .	—	—	—	—	57	—
10 Do. New .. .. .	—	—	—	—	—	—
10 Royal Bank .. .. .	—	—	—	—	—	—
25 Standard of B. S. A., lit'd .. .. .	29½	29½	29	29	29	29
<b>Steam.</b>						
50 British & Irish .. .. .	—	—	—	—	—	—
100 City of Dublin .. .. .	100½	100½	100½	100½	100½	100½
<b>Mines.</b>						
45 Berchamans (Limited) .. .. .	—	—	—	—	—	—
1 Killaloe Slate Co. (lit'd) .. .. .	—	—	—	—	—	—
7 Mining Co. of Ireland (lit'd) .. .. .	—	—	—	—	—	—
<b>Miscellaneous.</b>						
10 Alliance & Dub. Cons. Gas .. .. .	—	—	—	—	—	—
4 Arnott & Co., Limited .. .. .	—	—	—	—	—	—
25 Ir. C. S. Building Society .. .. .	—	—	—	—	—	—
4 National Discount, Irs., lit'd .. .. .	—	—	—	—	—	—
25 National Assurance .. .. .	—	—	—	—	—	—
9-4-7 Patriotic Assurance .. .. .	—	—	—	—	—	—
<b>Tramways.</b>						
10 Dublin United Tramways .. .. .	—	—	—	—	10½	—
10 Edinburgh Street Trams .. .. .	—	—	—	—	—	—
10 L'pl Un'td Tram & Bus lit'd .. .. .	—	—	—	—	—	—
10 Leeds Trams .. .. .	—	—	—	—	—	—
<b>Railways.</b>						
10 Athlery and Tuam .. .. .	—	—	—	—	—	—
50 Belfast and County Down .. .. .	—	—	—	—	—	—
50 Belfast and Northern Coa. .. .. .	—	—	—	—	—	—
100 Dublin, Wicklow, & W'ford .. .. .	81	81	—	—	—	—
100 Great Northern (Ireland) .. .. .	118	118	—	—	—	—
100 Gt. Southern and Western .. .. .	—	—	114½	114½	115	—
100 Midland Gt. Western .. .. .	—	—	84	84	—	—
50 Waterford and Limerick .. .. .	—	—	—	—	—	—
<b>Railway Preference.</b>						
100 Gt. South'n & West'n 4 p c .. .. .	—	—	—	—	—	—
100 Mid. Great Western, 4 p c .. .. .	—	—	—	—	—	—
100 Do., 5 p c .. .. .	—	—	—	—	—	—
100 Watfd. & Limerick, 4 p c .. .. .	—	—	—	98½	—	—
50 Do., new red, 5 p c .. .. .	—	—	—	—	—	—
<b>Leased at Fixed Rentals.</b>						
100 Dublin and Kingstown .. .. .	—	—	—	—	—	—
<b>Debenture Stocks.</b>						
— Belfast & N'rn Coa. 4 p c .. .. .	105½	105½	—	—	—	105½
— C'fergus and Larns 4 p c .. .. .	—	—	—	—	—	—
— Dublin & Wicklow 4 p c .. .. .	—	—	—	—	—	—
— Do., 4½ p c .. .. .	—	—	—	—	—	—
— Gt. Northern (Ireland) 4 p c .. .. .	109½	109½	—	—	—	—
— Do., 4½ p c .. .. .	—	—	—	—	—	—
— Do., 5 p c .. .. .	—	—	—	—	—	—
— Gt. South'n & West'n, 4 p c .. .. .	109½	109½	—	—	—	—
— Kilkenny Junction, A, 5 p c .. .. .	—	—	—	—	—	—
— Midland Gt. West'n, 4 p c .. .. .	105½	105½	—	—	—	106
— Do., 4½ p c .. .. .	—	—	—	—	—	—
— Waterford & Central 5 p c .. .. .	108	108	—	—	—	—
— Waterfd & Limerick 4 p c .. .. .	—	—	—	—	—	—
— Do., 4½ p c .. .. .	111½	111½	—	—	—	—
<b>Miscellaneous Debent.</b>						
— Alliance & Cons. Gas, 4 p c .. .. .	—	—	—	—	—	—
— Ballast Office Deb., 5½ p c 2d, 4 p c .. .. .	—	—	—	—	—	—
— City Deb. of 1892 2d, 4 p c .. .. .	—	—	—	—	—	—
— Dub. & Glas. S. P. Co. (1887) 5 p c .. .. .	—	—	—	—	—	—

\* Shares not fully paid up are given in Italics. † x d  
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**BIRTHS, MARRIAGES, AND DEATHS.**

**MARRIAGES.**

**CARSON and WILSON**—June 1, at the First Presbyterian Church, Cookstown, by the father of the bride, Thomas G. Carson, of Coleraine, Esq., solicitor, to Janie Knox, third daughter of the Rev. Hamilton B. Wilson, Cookstown.  
**M'MINN and SWAN**—June 5, by special licence, at Rostrevor, by the Rev. James A. Allison, 1st Monaghan, O. C. M'Minn, Esq., solicitor, Monaghan, to Charlotte, eldest daughter of William Swan, Esq., Monaghan.  
**O'DOWD and MORGAN**—June 5, at the Church of the Assumption, Booterstown, County Dublin, by the Rev. James Colohan, C.C., Julia, only child of the late Thomas O'Dowd, Esq., solicitor, Swinford, County Mayo, to William John, eldest son of John Morgan, Esq., Lower Gardiner-street, Dublin.

**DEATHS.**

**BOLTON**—June 7, at Upper Leeson-street, Martha, relict of the late Edward J. Bolton, Esq., solicitor, of this city.  
**CLANCHY**—June 1, at Cheimford-road, Thomas H., youngest son of the late John D. Clanchy, Esq., barrister-at-law, aged 81 years.  
**FITZGERALD**—June 8, at St. John's-terrace, Clontarf, Charles Fitzgerald, Esq., solicitor.

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# THE IRISH LAW TIMES AND SOLICITORS' JOURNAL.

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SATURDAY, JUNE 17, 1882.

No. 803

## RAILWAY CARRIERS, AND THE CONTAGIOUS DISEASES (ANIMALS) ACT, 1878.—I.

IN *Rooth v. The Midland Railway Co.*, heard on appeal before Sir G. Jessel, M.R., Lindley and Bowen, L.JJ., on the 9th inst., the action was for breach of contract to carry some cows, which were detained on the road and suffered damage by the detention. They were kept from Saturday to Monday at Nottingham because receiving licences could not be obtained under the Orders of the Privy Council, made in pursuance of the Contagious Diseases (Animals) Act with regard to the foot-and-mouth disease. One of the cows gave birth to a calf while they were in the truck and died; the others had recently calved and were considerably damaged. At the trial the railway company had been prepared to show that the cows had been properly cared for, and an arrangement was come to between the counsel engaged that the only question was whether the cattle had been kept too long in the truck. The jury were then discharged and the question reserved for further consideration. In November, 1881, Mr. Justice Stephen decided this question in favour of the defendants (unreported). The plaintiff sought to upset this decision. The Master of the Rolls, delivering the judgment of the court, said that "In this case a course had been taken at the trial which had turned out badly for the plaintiff. The plaintiff's contention was that the cows were not properly cared for. The defendants said they were, as far as possible, but that it had not been possible legally to remove them from the truck. The defendants being prepared to show this, an arrangement was come to by which the trial was stopped and the question whether the cows could have been legally removed from the truck was reserved for further consideration. When the case was before the learned judge he could only try the point of law, and this he was obliged to decide against the plaintiff. He could not go into the question whether the cows were fed or not. Whatever the facts might be, the appellants could not take advantage of them now; he should have insisted on the trial going on. If it was true that the cows were not fed at all from Saturday to Monday, the defendants were wrong; even as unwilling bailees they were bound to take proper care of them. But it would be impossible to conduct trials if parties were not to be bound by their counsel; and the result was that the appeal must be dismissed."

Necessarily contracted as is this decision, it is to be regretted that the two cases which have arisen in Ireland, in reference to the same Act as affecting the liability of carriers, have also been shorn of much of their possible interest and practical value, in consequence of the decisions largely turning on mere points of pleading. So it is with *Shaw v. G. S. & W. Ry. Co.* (15 Ir. L. T. 115, 8 L. R. Ir. 10). There the statement of claim alleged that the plaintiff delivered certain pigs to the defendants to be carried from M. to L.; and (1st) that at the M. station the defendants placed the pigs in a pen, and that the defendants had so negligently kept the pen, and had so negligently permitted it to be covered with lime, that the pigs were injured; (2nd) that it was the duty of the defendants to provide fit and proper pens or other accommodation at the station for keeping the pigs until they should be carried

by the defendants; and that the defendants neglected to provide fit and proper pens or other fit and proper accommodation during the period aforesaid, whereby the said pigs were injured: (3rd) that at the request and by the invitation of the defendants, the plaintiff, pending the delivery to and the receipt of the said pigs by the defendants for the purpose of being carried by them, placed the said pigs in a pen of the defendants at the said station at M., pending such delivery and receipt, and that the defendants so negligently kept the said pen for the reception and penning of the said pigs, and so negligently permitted same to be covered with lime, or some preparation thereof, that, by reason of the said pigs coming and being in contact with the said pen while so confined therein, they were injured. The statement of defence stated an Order of the Lord Lieutenant in Council, made on the 20th of September, 1878, under the provisions of the Contagious Diseases (Animals) Act, 1878, duly published in the *Dublin Gazette*, whereby it was *inter alia* ordered that every loading-pen of a railway company should be disinfected before the using thereof, by the application to all parts of the loading-pen, with which animals or their droppings had come in contact, of a coating of lime-wash, as in said Order prescribed; and alleged that it was necessary for the defendants, in the due and ordinary course of traffic, to pen the plaintiff's pigs, and that the defendants, in accordance with the provisions of the said Order, carefully—and a reasonable and proper time for the purpose of carrying out the provisions of the said Order before using the pen for the plaintiff's pigs—disinfected the pen, and duly and carefully applied to the said parts thereof the preparation of chloride of lime, and that the pigs were injured by coming in contact with that preparation, and not otherwise; and that, save by reason of the application of said lime-wash, the pen was in a fit and proper condition for the reception of and penning the said pigs. Similar defences, *mutatis mutandis*, were pleaded to the second and third causes of action. The plaintiff demurred. "It may be taken that the Orders in Council have the force of a statute as to all matters therein directed," said Sir E. Sullivan, M.R.; "but, it is to be borne in mind that these Orders are in no respect conversant with the duties or liabilities or privileges of common carriers, but form merely a code of rules to prevent the spreading of diseases amongst animals. Now, it appears to me that the proposition involved in the three defences of the defendants which have been challenged is this—that they, being common carriers, are freed from all responsibility in relation to the proper state of their pens if they simply do what the Order in Council has directed. That proposition is, in my opinion, far too wide, and cannot be maintained in point of law." "The defendants are aiming at a defence which may raise a very serious question—viz., whether, if it were impossible to have a safer pen for pigs consistently with the Order in Council, the defendants were not discharged of responsibility by mere compliance with the Order; but, these defences, as pleaded, fall entirely short of averments raising that question, and of actual compliance with the Order before us, which is entirely conversant with checking the spread of cattle disease, and leaves untouched numbers of instances of neglect which the company

may be guilty of in the mode and time of putting on the application, which may involve positive injury to the animals which they are bound to carry. Although the company is bound to treat the pen as described by the Order in Council, it is manifest that want of due care and precaution in the reception of the animals into it may, by taking them into it too soon, exist. Where the defence, I think, radically fails is, that it shows no necessary connexion between compliance with the Order and the pens being injurious at the moment of reception, which may be the entire cause of the injury. I give no opinion on the question, suggested during the argument, on the non-liability of the company for the injury to the pigs which, it is said, would result from the use of the lime-wash even if they had been received into the pens after it had been perfectly dry, and all precautions had been taken in regard thereto. Assuming that the company is not warranted in removing the coating of lime-wash, to be applied under the Order, before the reception of cattle, including, of course, pigs, it may be that the company is still bound to counteract the supposed injurious consequences of pigs lying on this coating of lime-wash, by the use of straw, or saw-dust, or some similar covering. That point, as I understand the defences here, does not call for any decision." But, so far as regards the actual decision arrived at, *Shaw's case* appears to be quite in accord with *Roth's*.

The recent case of *Lynch v. The Midland Ry. Co.* (not yet reported, but the judgments in which are now before us), to which we shall next advert, gave rise to a very nice question, as to whether any obligation rested on the carriers, by any contract express or implied, or by reason of any duty imposed on them and arising out of the facts alleged, to procure the licence, rendered necessary by the Act and Orders in Council, so as to enable them to deliver the cattle carried without delay.

#### JUSTICES' JUSTICE.

Lord Derby mooted, at the opening of the new county sessions-house in Liverpool, which is to take the place of the old court-house at Kirkdale, a question which has a little passed out of public notice, but which may become again prominent. He observed that he did not believe that there was any desire on the part of the public—and few men are better judges of a fact of this kind than Lord Derby—for "the abolition of the unpaid magistrates of this country and the substitution of what would be a very costly army of stipendiaries." Lord Derby would not always have said the same. Justices' justice has not been uniformly in repute. The unpaid have been the subjects of much facile sarcasm. The anomalousness of a system under which untrained men administer an unusually complicated body of law is obvious, and the most has been made of this peculiarity. It was the first article in the creed of the legal reformer of other days that an unpaid magistracy was an abuse to which even cheapness ought not to reconcile the nation. But the same language does not now find favour; and we doubt whether all of those who would thirty years ago have voted in favour of creating stipendiaries everywhere would be of the same mind to-day. The cost of taking such a step is a serious element in the problem. When rates are being raised all over the country, and the normal county expenses grow no matter how much care is taken to economise, people are in no mood to set up an army of magistrates at salaries varying from £500 to £1,500. Few of the towns which have the power of obtaining stipendiaries have been in a hurry to make use of it. The Justices may not, perhaps, give complete satisfaction to those who watch their conduct. Their decisions are criticised severely, and their failings are held up to scorn or obloquy. But in few localities is there any

general or pronounced desire to sweep away the local magistracy and to replace it by a new order of paid officials.

This change of feeling is due to circumstances for which there is good reason to be thankful. Most men who are now placed on the commission do not think that they have discharged their whole duty by sitting occasionally on the Bench and taking the law from the clerk and the sentences from the chairman. The modern magistrate talks about his obligation to the public and prepares himself for his judicial work. He buys Stone's "Practice." He looks into Burn's or Oke's "Justice," and "Russell on Crimes." He seeks to obtain elementary notions as to the laws of evidence. He questions his lawyer about the distinction between felony and misdemeanour. He talks about his grave responsibility, and feels that he owes it as a duty to his country to concern himself with the differences between larceny and embezzlement. He follows intelligently each trial and joins in the discussion as to points of law. He whispers queries or suggestions into the ear of the chairman. No doubt, too, in some counties it has become the practice, with the very best effect, to appoint as chairman a barrister, resident in or connected with the neighbourhood. The result is to give an excellent tribunal. The magistrates are pretty sure to know the circumstances and character of every accused or witness. They are able to apportion sentences with nice regard to the requirements of each case. They form a special jury of unusual excellence, and, with the assistance of a trained lawyer, they are well fitted for the trial of minor offences. They know if a loafer or a poacher is brought before them. They can detect an impostor under a specious garb. They are also likely to have compassion for the criminal who they know has been the victim of adverse circumstances. We do not pretend that they rise above local or class prejudices; but, on the whole, there are few better tribunals for the hearing of cases than one or two squires and large employers of labour, assisted by a competent lawyer. Such is the composition of many Quarter Sessions; and where this mixture of elements does not exist there is generally a desire to bring it about without the assistance of Parliament. The present Ministry foreshadowed a measure which was to alter greatly local government. It may be assumed that a bill of the kind would not be in harmony with the present temper of the public if it dealt in a rough and drastic fashion with the unpaid magistracy. Most of us are prepared for some time to endure Justices' justice. It is not perfect, or, perhaps, theoretically defensible. It has the faults of amateur work. In particular, the sentences of an unpaid Bench are apt to be eccentric and unbalanced to an extent not to be seen in the action of men accustomed all their lives to the atmosphere of Courts. But for centuries the Justices have been conservators of the Queen's peace in their counties, and there is no inclination to depose them at once. Their office has much stronger justification than the fact that the work of trying and sentencing their neighbours affords light and interesting occupation for gentlemen of leisure, influence, and means. We hear much of the magistrates who inflict hard sentences upon girls for picking flowers in public gardens or boys for playing at chuck-farthing on the highways, and who are mild and considerate to wife-beaters. Little is said of the mass of arduous work which is quietly and satisfactorily transacted, without cost to the community, at Petty and Quarter Sessions.

But Lord Derby does not say that the tribunal with which he, a veteran chairman of Quarter Sessions, is so familiar is not to be touched or modified, and no one who is unprejudiced and conversant with the facts will take up any such uncompromising position. The present tendency of legislation is to enlarge the area of summary jurisdiction, and this, of course, reduces the labours of the Quarter Sessions in regard to minor offences. The last Summary Jurisdiction Act—that of 1879—operates in that direction, and is pretty sure to be a feature of future Acts dealing with crime. Black-



stone tells us that the Common Law abhorred summary procedure; but modern times abhor, in this respect at all events, the Common Law. On the other hand, the tendency is to withdraw certain offences from the Assizes and leave them to be disposed of at Sessions. Judges complain that they are compelled to try petty cases—of burglary, for example, which might properly have been dealt with on the spot. The complaint is well-founded; and Lord Bramwell last night introduced into the House of Lords a Bill enabling Courts of Quarter Sessions to try cases of burglary in some instances. We must, therefore, look to the probability of Justices at Quarter Sessions being called upon to discharge more arduous work than heretofore. Had we a well drafted Criminal Code—a Code which, to quote the late Lord Chief Justice, would be “an exposition of law for the information and instruction of all”—laymen might be left to perform the work with some confidence that it would be done well. But such a handy epitome does not exist, and seems not likely to be soon obtained. Lord Derby recognises the existence of defects in the present state of things, and while desirous of leaving the magistracy in general as it is, he would make a professional lawyer the chairman. It is open to question whether a universal change of this kind is really needed. Sessions might be named with respect to which no such alteration is expedient. But there are others at which much business is transacted and to which more might with advantage be referred, and in them professional aid may be required. Make this alteration here and there, and it would be possible to extend the jurisdiction of the Sessions so as to materially lighten the labours of the Judges at Assizes. What has been done at the Middlesex Sessions might probably be imitated elsewhere with good effect. But few persons want to go further and to disturb the basis of the lay tribunals which have hitherto answered their purpose fairly well, have always been above the suspicion of corruption, and are quite competent to deal with the bulk of the cases brought before them. Lord Derby is resigned to the prospect of handing over the greater part of the administrative business of counties to some elective and representative body. This reform is impending; and he would welcome such a change. He and many others, however, cling to a system of local administration of justice, the worst defects of which are superficial, and which, having been often menaced, seems about to enter upon a new lease of life—*Times*.

#### THE PARTNERSHIPS BILL.

The bill to consolidate and amend the law of partnership brought in by Mr. Monk, has emerged from the limbo of a second select committee of the House of Commons; and as it is now, except in a few unimportant details, a mere consolidation, it bids fair to become law. It is not the first nor the second session that this bill has appeared upon the order-book of the house, and Mr. Davey's objection to it on Monday came rather late. It has been submitted to thorough discussion and criticism, both by legal and mercantile men—amongst them by no less an authority on this branch of the law than Lord Justice Lindley—in and out of the House, and has been generally accepted. If it becomes law it will be the first block, and that a most important one, in the structure of our Civil Code. The bill was drawn by Mr. Frederick Pollock, whose “Digest of the Law of Partnership” is a reproduction of the bill, with comments. It is, in the main, founded on the Indian Contract Act; which contains extensive provisions as to the particular branch of the law of contractual relations known as partnership; but that Act has been treated as “a model to be followed and improved upon, and not merely an example to be copied.” There is this essential difference between them, as there is between Mr. Justice Stephen's “Digest of Criminal Law” and the Criminal Code Bill, that the bill omits the illustrations which form an important part of the Digest and of the Indian Code on which it is founded. The omission is to be regretted, as the illustrations give

flesh and blood to the dry bones of the law, and would afford an easy method of noting up the Act to the latest results of judicial decision. But the insertion of illustrations would be an innovation which might prejudice the chances of the bill. As it has now been discovered in India that the illustrations and the substantive sections are apt to conflict, and in such case it has been decided that the construction placed upon the text by the judges is to overrule the construction put upon it by the Legislature in the illustrations, the omission is not, perhaps, to be altogether regretted. During its progress through the select committee, two very important parts of the bill, which proposed to establish limited partnerships, or what the French call *société en commandite*, and to compel the registration of firm names, and the members belonging to them, have been struck out. The bill is, of course, less complete, but, as they raised matters of controversy, more “passable” without them. As it now stands, it consists of three parts and sixty-four sections. The first part deals with the definition of partnership and the liability and authority of partners as regards the firm as a whole; the second part deals with the relations of partners to each other while the partnership is a going concern; and the third, with the dissolution of the partnership and its consequences.

The first part opens, in clause 6, with a definition of partnership, which is taken, as a memorandum attached to the bill states, from the Indian Contract Act, modified to meet the criticism of the Master of the Rolls. It is “the relation which subsists between persons who have agreed to share the profits of a business carried on by all or any of them on behalf of all of them;” and, by a sub-clause, in deciding what a partnership is, the Court shall have regard to the true contract and intention of the parties as appearing from all the facts of the case. This is the test laid down in *Molloy, Marsh & Co. v. Court of Wards*, L. R. 4, P. C. 419. But the Courts are to be given something more definite as a test than the test stated. Having defined what partnership is, the bill goes on in eight consecutive clauses to say what it is not. It, in effect, incorporates all the cases which have turned on the question of partnership or no partnership. Thus, clause 7 excludes the presumption of partnership arising from joint ownership, and the presumption that the property of partners who are joint owners is necessarily that of the firm; clause 8, that arising from sharing gross profits, and clause 9 (founded on *Cox v. Hickman*, 8 H. L. C. 267; *Ex parte Tennant*, L. R. 6 Chanc. Div. 308) net profits; clause 10 (founded on such cases as *Syres v. Syres*, L. R. 1 App. Cas. 174; *Pooley v. Driver*, 46 Law J. Rep. Chanc. 466) negatives the presumption of partnership arising from receiving debts or other liquidated amounts by instalments out of profits; clauses 11-15 re-enact substantially sections 1 to 5 of the Partnership Amendment Act, 1865. Under our present system of legislation this negating of special cases may be necessary, but it is dangerous and cumbersome. It is for this purpose that illustrations would be useful as showing in a short form the result of decided cases. The danger of incorporating them in the text is, that it gives the Courts an opportunity of applying the maxim *exclusio unius est inclusio alterius*, and, notwithstanding the generality of the substance of clause 6, sweeping in as a partnership every arrangement which could not be brought within one of the specific negations, however alien from the intention and acts of the parties.

In dealing with the liabilities of firms, clause 19 substitutes for the cumbersome verbiage of section 4 of the Mercantile Law Amendment Act, 1858, the following, from the Indian Contract Act: “A continuing guaranty given either to a firm or to a third person in respect of the transactions of a firm is, in the absence of agreement to the contrary, revoked as to future transactions by any change in the constitution of the firm to which or in respect of which the guaranty was given.” The words “as to future transactions” are somewhat ambiguous where they stand; and the meaning would

be clearer if placed at the end of the sentence. But the new form is a distinct improvement on the old. Clause 20, on the authority of *Kendall v. Hamilton*, 48 Law J. Rep. C. P. 705, settles the law differently from that laid down by Mr. Justice Lindley as to the liability of partners for the firm on contracts as being joint only during life, though their estates after their death are also severally liable. Clause 21 is a neat statement of the doctrine of *novatio*, and clause 22 of the doctrine of "holding out" as applicable to partnership. Section 24 lays down generally, that partners are agents for the firm in the usual business of the firm, but subject to the exception "unless the partner so acting has in fact no authority to act for the firm in the particular matter, and the person with whom he is dealing knows that he has no authority, or does not know him to be a partner." Clause 25 specifies—but with a wise provision that the specification is not to prejudice the general section—the usual power of a partner on behalf of the firm, as generally embodied in partnership deeds. Clause 81 defines the liability of partners for torts as joint and several. A distinction is thus drawn between their liability on contracts and on torts. Surely in both cases the liability should be several as well as joint. The authority of text-books is to that effect; and there seems no valid reason why the dictum of the House of Lords, in *Kendall v. Hamilton*, on this point should have upset that authority. Clauses 83 and 84 specify particular cases in which the wrongful act of a partner shall entail liability on the firm.

The second part consists chiefly of doctrines of law well settled, or, as in clause 42, states those which are usually inserted, though implied by law, in partnership deeds. But clause 88 extends the law in accordance with the current of modern decisions and convenience, by laying it down that land which is partnership property is converted out and out into personalty, "unless the contrary appears by express agreement or by the conduct of the partners." It would, we think, be well to confine the exception to "express agreement." It is prudent, as far as possible, to close the door to controversy on disputed points of the law of property; and, as the law of conversion is one of the most intricate and complicated of these points, it would be well to close this avenue to it, at least. In committee a new clause (41) has been introduced, which would more properly belong to the new rules of procedure. It provides that, in future, "a writ of execution shall not issue upon any partnership property, except upon a judgment against the firm; and it gives the judgment creditor of any partner power to apply to the High Court by summons for an order charging that partner's share with the amount due and with all necessary or consequent directions, extending to a dissolution of the partnership and a sale of the share; but on any order for foreclosure or sale the other partners are to have liberty to redeem. This is, in one direction, a considerable extension of the powers of obtaining an order in chambers or interpleader summons to take the partnership accounts in favour of a creditor of one of the partners, while it puts a stop to the inconvenient practice of taking partnership property in execution for a partner's separate debt. It is likely to prove a considerable help to a creditor, while saving the expense to the debtor of a long and circuitous process, and to the firm the annoyance of a sale of their partner's share.

The third part deals with dissolution. Clause 56 sums up the causes of dissolution. Its last limb is not sufficiently clear. "In the last-mentioned case—i.e., partnership not for a fixed term, the partnership shall be dissolved as from the date of the communication of this notice." Presumably it means from the date of the notice reaching the person to whom notice is given; but it may mean from the date of sending the notice off. Which is the rule, seems immaterial, but it should be certain. In clause 59 the decision in *Atwood v. Maude*, L. R. 3 Chanc. 369, has been followed; and we note that an addition has been made in committee of the rule laid down in *Mycroft v. Beaton*, 49 Law J. Rep.

Chanc. 12; L. R. 13 Chanc. Div. 384, to the effect that when a partnership has been rescinded on the ground of fraud, the defrauded party is entitled to a lien on the assets for any money paid by him for the purchase of an interest in the partnership. Taken altogether, the bill is a good piece of scientific legislation; and, both for its intrinsic merits and as a foretaste of more to follow, it may well find a place in the statute book this session—*Law Journal*.

#### OLD INNS OF COURT CUSTOMS.

The history of the Inns of Court in days gone by, apart from its legal interest, affords us a good insight into the festive and social life of our forefathers. Indeed, the merry doings associated with these old institutions are proverbial, and many a graphic picture has been bequeathed to us illustrative of the joviality which once formed a prominent characteristic on all seasons of rejoicing. Thus, it may be remembered that in the hall of the Middle Temple was performed Shakespeare's "Twelfth Night," a fact recorded in the table-book of John Manningham, a student of the Middle Temple:—"Feb. 2, 1601-2.—At our feast we had a play called 'Twelfth Night; or What You Will.'" As Charles Knight remarks in his "Pictorial Shakespeare," "it is yet pleasant to know that there is one locality remaining where a play of Shakespeare was listened to by his contemporaries, and that play 'Twelfth Night.'" We read, too, how, in the reign of Charles I., the students of the Middle Temple were accustomed at All Hallows-tide, which they considered the beginning of Christmas, to prepare for the festive season, an account of which we find in Whitelock's "Memoirs of Bulstrode Whitelock." Evelyn alludes to the Middle Temple feasts, and describes that of 1688 as "very extravagant and great, as the like had not been seen at any time." Equally famous were the entertainments at the Inner Temple—Christmas, Candlemas, Ascension Day, and Halloween having been observed with great splendour. In 1561 the Christmas revels were kept on a very splendid scale. At breakfast, brawn, mustard, and malmsey were served; and at the dinner in the hall several imposing ceremonies were gone through. Thus it is related how, between the two courses, first came the master of the game, then the ranger of the forests, who, having blown three blasts of the hunting-horn, paced three times round the fire, then in the middle of the hall. Nine or ten couples of hounds were then brought in, with a fox and a cat, which were set upon by the dogs, amidst the blowing of horns. At the close of the second course the oldest of the masters of the revels sang a song. Finally, after supper, the Lord of Misrule addressed himself to the banquet, which, amongst other diversities, generally concluded with minstrelsy and dancing.

Many of the dinner customs of the Inns of Court are curious. Thus a banquet at the Inner Temple is a grand affair. At six, the barristers and students in their gowns follow the benchers in procession to the dais; the steward strikes the table three times, grace is said by the treasurer or senior bencher present, and dinner commences. The waiters are called "panniers," from the "panarii" who attended the Knight Templars; and in former years it was the custom to blow a horn in every court to announce the meal. The loving cups used on important occasions are huge silver bowls, which are passed down the table filled with time-honoured "sack," which consists of "sweetened and exquisitely-flavoured white wine;" each student being restricted to a "sip." On the 29th May a gold cup of this fragrant beverage is handed to each member, who drinks to the happy restoration of Charles II.

Referring to the customs once observed at the Middle Temple banquets, many of these have died out. "The loving cup," Mr. Thornbury remarks in "Old and New London" (I. 179), "once fragrant with sweetened sack, is now used to hold the almost superfluous toothpicks. Oysters are no longer brought in, in Term, every Friday before dinner; nor when one bencher dines does he, on

leaving the hall, invite the senior bar-man to come and take wine with him in the Parliament Chamber (the accommodation-room of Oxford colleges)." Dugdale informs us that "until the second year of Queen Elizabeth's reign, this society did use to drink in cups of aspenwood; but then those were laid aside, and green earthenware pots introduced, which have ever since been continued." Amongst the old customs associated with the Middle Temple may be mentioned the calves'-head breakfast which was given by the chief cook of the society to the whole fraternity, for which every member paid at least one shilling. In the eleventh year of James I, however, this breakfast was turned into a dinner, and appointed to be held on the first and second Monday in every Easter Term. The price per head was regularly fixed, and to be paid by the whole society, as well absent as present, and the sum thus collected was divided amongst all the domestics of the house.

The merry doings at Lincoln's-inn were, in days gone by, kept up with much enthusiasm; and frequent notices of the "Revels" are given by our old writers. Charles Knight, too, in his "Oyclopaedia of London," tells us that on such occasions dancing and singing were insisted on, and, by an order of Feb. 8, in the 7th James I, it appears that "the under-barristers were by decimation put out of commons for example's sake, because the whole Bar were offended by their not dancing on the Candlemas Day proceeding, according to the ancient order of the society, when the judges were present." Of the social customs formerly observed, we read that at each mess it was a rule that there should be a "moot daily;"—the junior member of each mess having to propound to the rest at his table some knotty question of law, which was discussed by each in turn during the dinner. Not many years ago, too, it was the custom for one of the servants, attired in his robes, to go to the threshold of the outer door about twelve or one o'clock, and call out three times, "Venez manger." To quote a further old custom, in the first year, of Elizabeth, it was ordered "that no Fellow of the House should wear a beard of above a fortnight's growth, under a penalty of loss of commons, and, in case of obstinacy, of final expulsion."

Gray's-inn, again, formerly had its masques and revels, when the presentation of plays seems to have been one of the chief features. A comedy, acted at Christmas 1527, written by John Roos, a student of the inn, so offended Wolsey that its author was actually imprisoned. Amongst the many customs relating to the dining-hall, we are told that in 1581 an agreement was made regarding Easter, in accordance with which the members who came to breakfast after service and communion were to have "eggs and green sauce" at the expense of the House, and that "no calves' heads were to be provided by the cook." In the year 1600 the members were instructed not to come into the hall with their hats, boots, or spurs; but with their caps, decently and orderly, "according to the ancient orders." Gray's-inn has also been noted for its exercises known as "bolting," which is thus defined in Cowell's Law Dictionary—"Bolting is a term of art used in Gray's-inn, and applied to the bolting or arguing of moot cases."

Lastly, a very curious dinner custom has in years gone by been kept up at Clifford's-inn. The society consists of two distinct bodies—"the Principal and Rules," and the junior members, or "Kentish Mess." Each body has its own table. At the conclusion of the dinner the chairman of the Kentish Mess, first bowing to the Principal of the Inn, takes from the hand of the servitor some small rolls or leaves of bread, and, without saying a word, he dashes them three several times on the table; he then discharges them to the other end of the table, from whence the bread is removed by a servant in attendance. Solemn silence—broken only by three impressive thumps upon the table—prevails during this ceremony.—*Illustrated London News.*

By railway accidents in 1881 there were 521 employees killed and 2,446 injured.

## HOMICIDE.

Manlaughter is unlawful homicide without malice aforethought; murder, on the other hand, is unlawful homicide with malice aforethought. "Malice aforethought," says Mr. Justice Stephen (*Digest of the Criminal Law*, p. 359), "is a mere popular phrase unluckily introduced into an Act of Parliament and half explained away by the judges. It throws no light whatever on the nature of the crime of murder, and never was used in its natural sense of premeditation. On the other hand, it served as a sort of standing hint at the kind of definition which was wanted, for it was equivalent to saying there were two degrees of homicide—homicide with premeditation, or other circumstances indicating the same sort of malignity; and homicide provoked by a sudden quarrel, or accompanied with other circumstances indicative of a less degree of malignity." Perhaps the best illustration of homicide without premeditation is afforded by the case of *Reg. v. Denwood, Barrett, and others* (*Times* report, April 28, 1868), in which the prisoners blew up by gunpowder a portion of the wall of Clerkenwell prison with the object of effecting the escape of an imprisoned comrade. The gunpowder, which was in a barrel, was exploded in the public street, and a number of persons were killed, and the prisoners were convicted of murder. Lord Chief Justice Cockburn said: "If a man does an act, more especially if that be an illegal act, although its immediate purpose might not be to take life, yet, if it were such that life was necessarily endangered by it—if a man does such an act, not with the purpose of taking life, but with the knowledge or belief that life is likely to be sacrificed by it, that is murder." In this case, though there was premeditation so far as the illegal act was concerned, the homicide was unpremeditated, and probably undesired; nevertheless the crime amounted to murder.

Again, it is the law that if any person engaged in the commission of a felony accidentally kills a person, the crime is that of murder: (*Foster*, 258). Thus, if a medical man seeks by the aid of a drug, or instruments, to procure abortion and the patient dies, beyond all doubt he is guilty of murder, though it is very difficult sometimes to get a jury to convict, no doubt because where death occurs in such cases, it not being the immediate purpose of the person causing the death, it is thought a harsh law to make the act murder.

"When a constable or other person properly authorised, acts in the execution of his duty, the law casts a peculiar protection around him, and consequently, if he is killed in the execution of his duty, it is in general murder, even though there be such circumstances of hot blood and want of premeditation as would in an ordinary case reduce the crime to manslaughter. But when the warrant under which the officer is acting is not sufficient to justify in arresting or detaining the prisoner, or there is no warrant at all, he is not entitled to this peculiar protection, and consequently the crime may be reduced to manslaughter when the offence is committed on the sudden, and is attended by circumstances affording reasonable provocation."

The above passage is an extract from a letter written by Lord Blackburn in reply to an earnest appeal by all the counsel for the defence in *Reg. v. Allen and others* (17 L. T. Rep. N. S. 223), inviting him to reconsider the refusal of the court to grant a case for the consideration of the judges. The prisoners were tried at Manchester by a special commission, consisting of Justices Blackburn and Mellor, for the murder of Sergeant Brett, who was in charge of a prison van containing some Fenians. The warrants under which the prisoners were arrested were improperly granted, one being for treasonable practices committed in Ireland, in respect of which a magistrate in this country has no jurisdiction, and cannot even remand a prisoner so charged. It was urged that, not being lawfully in custody, the killing of Sergeant Brett did not amount to murder, but was manslaughter only. Mr. Justice Blackburn said that the court entirely agreed with the opinion of Lord Hale

(2 Pleas of the Crown) that, though defective in form, the gaoler or officer is bound to obey a warrant in this general form, and consequently is protected by it; still, if the act has been unpremeditated, the point would have been reserved. As, however, it was clearly proved that there was a conspiracy to attack the police with firearms, and shoot them if necessary to effect the release of Kelly and Deasy, it was idle to grant a case on so clear a matter, and to do so would be productive of most serious mischief, by discouraging the police in the performance of their duties, and by encouraging the lawless in a disregard of the authority of the law.

The "Finchley murder," tried last week at the Old Bailey before Mr. Justice Hawkins, after a very long trial, and a deliberation of several hours, resulted in the jury bringing in the extraordinary verdict of "guilty of murder without premeditation." On this finding the judge directed a verdict of manslaughter to be recorded. The prisoner and his comrade, the unfortunate deceased, had together committed a burglary. A feeble attempt was made to show that the deceased was not killed by the prisoner at all; but there being a large body of evidence on this point, the substantial question was, Did the prisoner intentionally cause the death, or did they quarrel over the proceeds of the burglary, or for any other cause, and did death so ensue? In favour of the first view was the fact that the spot where the body was found did not show any sign of a struggle, and that the prisoner was unharmed. On the other hand, there was no direct evidence, and we cannot but think, if the facts had been left with a simple direction to the jury, they would have readily found a verdict of manslaughter, which was obviously the safer one under all the circumstances.

A practice has, however, sprung up, which we cannot but think an unfortunate one, which reverses the old rule that the summing-up of a judge in a criminal case should consist of a clear exposition of the law, and a logical arrangement of the facts, leaving it wholly to the jury to say what verdict is alone consistent with the evidence. We think it a mistake for a judge to let it be clearly apparent that he considers but one verdict possible, where the facts fairly admit of a different view, because judges have immense influence with juries, and they are at all times averse to finding a verdict in the teeth of the judge's summing-up, and by the law of England the jury alone are the judges of the facts. Another objection to this practice being resorted to by Her Majesty's judges is, that it is servilely followed by inferior judges to whom unhappily the trial of prisoners has to be entrusted, who, instead of summing-up the case, simply act as counsel for the prosecution, which is not an edifying spectacle, particularly if the jury take the case into their own hands and acquit the prisoner, or counsel for the accused has to observe on the obvious one-sidedness of the conduct of the judge or chairman.—*Law Times*.

#### EVIDENCE OF FOREIGN LAWS.

(From the *Law Magazine*.)

A case has lately been decided by the Landgericht, or Superior Court of the Grand Duchy of Baden, which presents several features of International interest, and especially concerns the numerous class of British subjects who may, without prejudice to their *animus revertendi*, be described as living abroad.

In 1860, X., an Englishman, married a German lady in Germany. The marriage was duly solemnized at the British Embassy. The lady was neither possessed of nor inherited any property, and no settlement was made either before or after the marriage. In 1865, X. purchased a freehold at Y., within the Grand Duchy of Baden, and commenced to build a house on it. The purchase was registered at the official Registry of Titles, an excellent German institution, which registers the sale of all realty; thus the Municipality become in practice the keepers of every one's title to land, and thereby imperfect titles are entirely obviated. However, this system has its drawbacks, as will be noticed

presently. In 1876 the wife of X. died, leaving several children issue of the marriage. The authorities of the Grand Duchy regarded X. and his family as aliens, and therefore on the death of the wife took no steps to assure themselves concerning his property, or concerning the tutelage of the children. No question of domicile was raised; we may, therefore, assume for all purposes, that X. was merely a sojourner, or temporary dweller, in the Grand Duchy. X. subsequently married again.

In 1880 X. sought to raise some money by mortgage on his freehold, but found that he could not do so on account of the following entry having been made, by the Pfandrichter, or Registrar, in the Register of Titles, viz. :—

"Since the purchase of the land to be mortgaged, the first wife of the (would be) mortgagor has died, leaving children who are minors. The Registrar does not know what property, priority and mortgage-rights the minors may have, according to the laws of their own country. Therefore, the mortgage can only be effected subject to the rights and claims of the minors. The Registrar therefore refuses to be responsible to the mortgagor."

Thereupon X. wrote to England, and having fortified himself by obtaining the written opinion of an Equity barrister, to the effect that the minors had no rights according to English law, complained to the Amtsgericht or judges of the Inferior Court. The Registrar who had raised the question, did not profess to know anything about the English law, but was uneasy under the influence of the unknown. He justified his views, however, by asserting that, as the case then stood, in the absence of a marriage settlement, and until the contrary should be proved either by English officials or by a decision of the Baden Courts, the minors were entitled to half the freehold. X., on the other hand, triumphantly produced the counsel's opinion, pointing out that it clearly supported what he had previously explained, and that the law was so obvious that the question would never have been raised in England. The Judges and the Registrar all looked at the opinion. They were horrified at its being without a seal. How could a man, who is not a Government official, dare to give an opinion? It was monstrous! They became obstinate, and remained horrified at the idea of a private individual thinking himself competent to give an opinion, which should in any way bind the very smallest German official. The complaint was dismissed, and X. was ordered to pay the costs "as his complaint was groundless." The Court, holding that the children of a foreigner have no rights, by virtue of the Baden law, to the realty of their father situate in the Grand Duchy, observed that it was not authoritatively shown to the Court what were the children's rights according to the law of their own country.

From this decision X. appealed to the Landgericht, or Superior Court, consisting of five Judges. These judges eventually decided that according to the law of England the minors had no rights to the realty. Their decision (the later portion of which suggests an idea hitherto unknown to English Jurisprudence) was conceived in the following terms :—

"The Landgericht decides that the following paragraphs are proved beyond a doubt, viz. :—The children of X. have not inherited any rights from their mother, who brought no property into the marriage. The mother had herself no claims on the property bought by the father during marriage, and consequently, as she had herself no claims, the children cannot deduce any claims through her. The law does not give the children any mortgage claims on their father's property, and as such claims are not known to English law, minors are protected by trustees, or by the Court of Chancery."

The decision of the Superior Court of Baden, in the case before it, was substantially correct so far as the English law is concerned. But what if it had not been so? X. would in such case have been unable to mortgage his property, and with the adverse note against it

in the Registrar's books, would have been unable to sell it. It will be noticed that the main difficulty that X. was under, all through this tedious transaction, was the difficulty of producing to the German authorities an *authoritative declaration of some English official*, capable of pronouncing on the question of law. The opinion of a mere conveyancing counsel was scouted as being unofficial; the British Chargé d'Affaires stated that he was unable to make an official declaration of what was the English law; and an English County Court Judge, on the request being made to him, very properly declined to do so.\*

This difficulty was some years ago recognised by our Legislature. The Act 24 & 25 Vict., c. 11, passed in 1861, for the better ascertainment of the law of any foreign country or State, with the Government of which Her Majesty may be pleased to enter into a Convention, enacts (section three) as follows:—

"If in any action depending in any Court of a foreign country or State with whose Government Her Majesty shall have entered into a convention as above set forth, (i.e., for the purpose of mutually ascertaining the law), such Court shall deem it expedient to ascertain the law applicable to the facts of the case as administered in any part of Her Majesty's dominions, and if the foreign Court in which such action may depend shall remit to the Court in Her Majesty's dominions whose opinion is desired a case setting forth the facts and the questions of law arising out of the same, on which they desire to have the opinion of a Court within Her Majesty's dominions, it shall be competent to any of the parties to the action to present a petition to such last-mentioned Court, whose opinion is to be obtained, praying such Court to hear parties or their counsel, and to pronounce their opinion thereon in terms of this Act, or to pronounce their opinion without hearing parties or counsel; and the Court to which such petition shall be presented shall consider the same, and if they think fit, shall appoint an early day for hearing parties or their counsel on such case, and shall pronounce their opinion upon the questions of law as administered by them which are submitted to them by the foreign Court; and in order to their pronouncing such opinion they shall be entitled to take such further procedure thereupon as to them shall seem proper, and upon such opinion being pronounced a copy thereof, certified by an officer of such Court, shall be given to each of the parties to the action by whom the same shall be required."

It is much to be regretted that no Convention has up to the present date been entered into by this country with any foreign Government; and this useful Act of Parliament therefore remains, like so many other statutes, a dead letter. It is almost incredible that at the present day, with the boundless facilities for foreign travel at command, and the vast network of commercial transactions of our mercantile community rendering more and more frequent the occasions when our Courts of Justice are called upon to seek for an accurate knowledge of foreign laws, this most valuable and indeed necessary Act should be permitted to remain inoperative.

Why is this state of things suffered at all, and how much longer is it to be allowed to last?

In the absence of any International convention or agreement, it becomes necessary to consider what evidence of the law of a foreign State is sufficient in order that it should be received. In this country, the rule appears to have been more lax in the Courts governed by the civil law than in the common law Courts, and even the latter did not always concur. A copy of the foreign law if proved to be such, is sufficient to prove the existence of the bare law, although a professional witness may be required to interpret it.

Of late years the oral evidence of an expert (i.e., a witness who in the opinion of the Court is competent to prove a foreign law, from having had peculiar means of

becoming acquainted with it) has been held admissible, without the production of a copy of the foreign law.

In 1802, Lord Stowell accepted as evidence extracts from the Council of Trent, referred to by advocates practising at the Hague, and copied into their opinions, on the ground that the extracts were authenticated, and that there was every reason to believe that such ordinances were, at the time in question, valid and in force. *Middleton v. Janssen*, 2 Hagg. Consist. R., 437.

In 1808, in an action in the King's Bench, an opinion was read showing the proper interpretation of a particular Russian law; this opinion was signed by the three presiding judges of the Custom House Court of St. Petersburg, and was sealed with the seal of that Court. But the Court did not find it necessary to decide the case on the question governed by the opinion, and declined to say whether it was admissible or not. *Bohlingk v. Inglis*, 3 East, 331.

In 1806, in the proceedings before the Court of King's Bench at Westminster, against Thomas Picton, Governor and Commander-in-Chief of Trinidad, on an indictment for causing torture to be inflicted on a free Mulatto woman, Lord Ellenborough is reported to have said, "to prove the written law of any nation, a copy of that law should be produced. If I were sitting at Guildhall, and proof of foreign commercial regulations were necessary, I should require an authenticated copy of those regulations. . . . The text-writers furnish us with their statement of the law, and that would certainly be good evidence upon the same principle which renders histories admissible. There is a case in which the history of the Turkish Empire by Cantemir was received by the House of Lords, and received after some discussion; I shall therefore receive any book that purports to be a history of the common law of Spain." *Re Picton*, 30 How. State Trials, 491.

In 1812, it being stated to the same learned judge that at Surinam all agreements must be stamped to be of any validity, and that there was a written law of the colony to that effect, he thought it quite possible that the colonial law might not be without some exceptions, like our own Stamp Act, and required an *authenticated copy* of the law to be produced. *Clegg v. Levy*, 3 Camp. 166.

In 1815, Chief Justice Gibbs, sitting at the Guildhall, held that foreign laws, not written, are to be proved by the perol examination of witnesses of competent skill, but that where they are in writing, a copy, properly authenticated, must be produced. *Miller v. Heinrich*, 4 Camp., 155.

In 1834, Chief Justice Tindal directed the circumstances of an action in the Common Pleas to be set forth in a special case, and to contain any opinions of French advocates which had been taken on either side up to that period. (*Trimbeu v. Viguer*, 1 Bing. N. C., 158).

In the Sussex Peerage Case (1844), it was objected that the late Cardinal Wiseman, then Dr. Wiseman, holding the office of coadjutor to a Vicar Apostolic in this country, was not admissible as a witness to prove the Canon Law with respect to marriage administered by Ecclesiastical Courts in Rome; for it was necessary that he should have some peculiar means of knowledge, as for instance from his office. But the Committee of the House of Lords determined that he did come within the description of a person *peritus virtutis officii*, for he was engaged in the performance of responsible public duties, and in order to discharge them properly, was bound to make himself acquainted with the subject of the law of marriage. 11 Cl. & Fin., 133.

In 1845, the Court of Queen's Bench permitted a French Advocate, practising at Strasburg, to give evidence that the feudal law had been put an end to in Alsace *de facto* by the French Revolution in 1789, and *de jure* by the Treaty of Lunéville in 1801; and upon the said Advocate being asked whether there was not a decree to that effect, he added that there was such a decree of the National Assembly of the 4th of August, 1789, and that he had learned this in the course of his legal studies, it being part of the history of the law

\* X. produced a copy of Blackstone to the Landgericht, and the author of the present article having been consulted, offered some suggestions, which in the end prevailed.

which he learned while studying for the Bar. It was objected that this evidence was inadmissible, on the ground that it was not offered as secondary evidence admissible on account of any difficulty in procuring primary evidence, but as the primary evidence itself, and that it was as if the original decree were shown to be in Court, and yet oral evidence were offered. The evidence was, however, held admissible by Lord Chief Justice Denman and Justices Williams and Coleridge, on the ground that the opinions of persons of science must be received as to the facts of their science, and that this rule applies to the evidence of legal men, and is not confined to the unwritten law, but extends also to the written laws which such men are bound to know. Properly speaking, the nature of such evidence is not to set forth the contents of the written law, but its effects and the state of law resulting from it. The mere contents, indeed, might often mislead persons not familiar with the particular system of law; but the witness in such cases is called upon to state what law results from the instrument referred to. This rule does not apply to the case of a Treaty, for no class of persons are so peculiarly conversant with the subject matter as to invest it with the character of a science. *Baron de Bode's case*, 8 Q. B., 208.

In 1849 the Court of Common Pleas admitted a native of Belgium to give evidence of the law of Belgium with respect to bills and notes. He had formerly carried on the business of a merchant and commission agent in stocks and bills of exchange at Brussels, but was then a hotel keeper in London. He stated that he was well acquainted with the Belgian law on the above subject. The Superior Court, consisting of Justices Maule, Cresswell, Williams, and Talford confirmed the admissibility of this evidence, on the ground that he was a person having special and peculiar means of knowledge of the law of Belgium with regard to bills and notes, one whose business it was to attend to and make himself acquainted with the subject, and that inasmuch as he had been carrying on a business which made it his interest to take cognisance of the foreign law, he fell within the description of an *expert*. Applying common sense to the matter, why should not persons who may be reasonably supposed to be acquainted with a subject, though they have not filled any official appointment such as judge or advocate, be deemed competent to speak upon it? Persons who have *practised* as physicians are frequently examined, and no inquiry is ever made as to whether or not they have a regular diploma. All persons who practice a business or profession which requires them to possess a certain knowledge of the matter in hand are experts so far as expertness is required. Foreign law is a matter of fact; *any person who can satisfy the Court that he has had the means of knowing it is an admissible witness to prove it.* *Vander Donck v. Thelasson*, 8 Q. B., 828. But in 1850, in the case of *Bristow v. Sequerville* (5 Exch., 275), Baron Alderson, sitting at Nisi Prius, doubted whether the law of Prussia was sufficiently proved by a witness who stated that he was a juriconsult and adviser to the Russian consul in England, that he knew the Code Napoléon was in force at Cologne, and that by that Code certain receipts would be inadmissible in foreign courts, because unstamped; the witness also stated that he had studied law at the University of Leipzig, and from his studies there was able to speak as to the Code Napoléon being the law of Cologne. On a motion for a new trial, Chief Baron Pollock, and Barons Platt, Alderson and Rolfe, threw doubts on the relevancy of such evidence; the rule, however, was refused on another ground. This case is to be distinguished from the two last foregoing cases, in this, that the Court doubted the competency of the individual, but it does not shake the now generally received opinion, that the oral evidence of a trustworthy *expert* is always admissible to prove a foreign law.

In 1862, a certificate of the Ambassador from the King of Hanover, under the seal of the Legation, declaring the Hanoverian law on a question concerning

testaments, was admitted in the Probate Court (*Re Klingemann*, 32 L. J. (N. S.), P. M. A., 16), and in an earlier case in the Ecclesiastical Court, the certificate of the French Consul-General was deemed sufficient evidence of the law of France. *Re Dormoy*, 8 Hagg. Eccl., 767.

The Courts of the United States generally require authenticated copies of foreign laws to be produced when they can be procured. Foreign unwritten laws and customs are proved by parol evidence, and when such evidence is objected to on the ground that the law in question is a written law, the party objecting must show the fact (15 Serg. & R., 87). Proof of such unwritten laws is usually made by the testimony of witnesses learned in the law, and competent to state it correctly on oath (3 Oranch, 287; 15 Serg. & R., 84). By the Constitution of the United States (Art. 4, s. 1.) "full faith and credit shall be given in each State to the public Acts of every other State" of the Union; and these Acts are authenticated by having the seal of the respective State affixed thereto.

The public seal of a foreign sovereign, or foreign State, affixed to a writing purporting to be a written law or edict, is of itself the highest evidence; although further proof of the seal of a foreign court is required. Courts of Admiralty, however, are Courts under the Law of Nations, and their seals are always admitted without further evidence.

The reported cases which we have considered in the earlier part of this article, form a curious exception to the rule of law, that witnesses are to inform the tribunals of facts, and not of their opinions. But *cessante ratione legis cessat ipsa lex*. When circumstances rebut the presumption that a tribunal is as capable of forming a judgment on the facts as a witness, the rule gives way, and competent witnesses are permitted to give their opinions in evidence on questions of science, skill, trade, and the like, as well as on questions of Foreign Law.—SHERBORN BAKER.

## THE CONVEYANCING AND LAW OF PROPERTY ACT, 1881. WHERE IT SHOULD BE ADOPTED, AND WHERE EXCLUDED.—XVIII.

(Continued from page 266, ante.)

### SETTLEMENT OF LEASEHOLDS.

#### Introductory.

In discussing settlements of leaseholds, it will be impossible for us to enter into many details, or to recapitulate what we have already said with regard to freeholds; we can only give some general remarks and suggestions. Except where leaseholds are assigned on trust for sale, and the proceeds of the sale form the subject of the settlement, the trusts of the leaseholds will usually be very simple, or else the leaseholds will form part of a settlement comprising freehold land, and the leaseholds will be settled by reference to the freeholds. We shall in the first instance treat of matters which are common to most settlements of leaseholds.

#### Recitals.

In some settlements where it was formerly usual to recite the lease, an abbreviation may sometimes be made by omitting the lease, and declaring the settlement "supplemental" by virtue of sect. 53. But this should only be done where the property comprised in the settlement is small, and is held under one lease, and is unlikely to be divided or sold, so that the lease can always be kept with the settlement. If the settlement is made by means of an assignment on trust for sale, the assignment and not the settlement of the proceeds will be declared "supplemental" to the lease. Of course, when leaseholds are settled with freeholds, the settlement should not be declared supplemental to lease.

#### Assignment, Habendum, All Estate Clause, General Words.

There is no object in using the word "convey" instead of "assign," except freeholds are conveyed also,

and then possibly it may sometimes be found convenient, as the word "convey" is applicable to both freeholds and leaseholds. The "all estate clause" and "general words" will usually be omitted.

#### *Covenants for Title.*

As in settlements of freeholds, we prefer that the settlor should neither convey as "settlor" nor as "beneficial owner," but that the ordinary covenant for further assurance should be inserted. Indeed, our objection to the use of the phrase "beneficial owner" is stronger in this case than in that of a settlement of freeholds, as there is an additional covenant implied: see sect. 7 (1) (B). It should be noticed that this implied covenant extends to the settlor's predecessors in title "otherwise than by purchase for value."

#### *Settlements of Leaseholds as Personality.*

A like settlement of freeholds forms the subject of our article in the *Law Times* of the 1st April, page 882. The old trust for sale may be much abbreviated in reliance on sects. 85, 86, 88. The word "property," which is used in sect. 85, includes leaseholds, s. 2 (i). Trustee's receipt clause may be omitted (s. 86). Trusts of proceeds of sale and of rents and profits till sale will be declared as before. Power of leasing should be inserted. For old form of assignment of leaseholds on trust for sale in contemplation of marriage, see Conc. David. 895. In the settlement of proceeds the maintenance and accumulation clauses will be omitted and trustee clauses abbreviated: (see *Law Times*, *ubi sup.*, and Conc. David. 897.)

#### *Settlement of Leaseholds upon Trusts corresponding with Uses of Freeholds.*

When it is intended to comprise leaseholds in the same settlement as freeholds it is usual to settle them by reference. We shall take as an example an ordinary marriage settlement on husband for life, with jointure to wife, and remainder to the first and other sons in tail. The leaseholds are assigned to trustees upon trusts, and subject to powers, &c., corresponding with the uses, trusts, powers, &c., previously limited, as nearly as the different tenure and the rules of law and equity will permit, but, as regards leaseholds for years, so that they shall not vest in tenant in tail male by purchase until he attains twenty-one, but shall, if he dies under age, go over as freeholds: (see David. iii. 599, and for form *Ibid.* 1180.)

Whether, and to what extent, the draftsman should rely on the Act must depend partly on the value of the leaseholds, both absolutely and in proportion to the freeholds, and partly on the complexity of the settlement. He should, however, if he relies at all on the Act, take care, in making a reference to the powers, &c., affecting the freeholds, to use apt words to include the powers, &c., added by statute in consequence of using phrases employed in the settlement.

It will often be necessary to add special powers; thus, if the property comprises renewable leaseholds of value, a trust for renewal should be inserted, as the power or discretionary trust given by 28 & 24 Vict. c. 145, s. 8, is hardly satisfactory: (David. iii. 568, 622.) A clause indemnifying the trustees for neglecting to renew should be inserted with the trust for renewal: (David. *ibid.* 607.)

It should be noticed that the powers of management conferred by sect. 43 do not assist; they only give the trustees power, during infancy of tenant for life, &c., to act as landlord, not to effect renewals in the capacity of tenant.

#### *Provision for Management and Application of Rents and Profits during Minority.—Sect. 43.*

As to this power with respect to freeholds, see *Law Times*, April 15, page 419. The word "land" used in sect. 43 (i.) includes "land of any tenure," sect. 2 (ii.) and therefore sect. 43 applies to leaseholds. Where leaseholds are settled with reference to freeholds, it is sometimes rather difficult to see what will be the

precise effect of sect. 42 (5) (iii.) This plan of enacting a section with regard to freeholds and leaseholds, and then inserting a clause which cannot be construed literally with regard to leaseholds, leads to great difficulty. Compare sect. 4 of Lord Cranworth's Act and see remarks in David. iii. 566.

#### *Power of Sale and Exchange.*

In our article on this power in connexion with freeholds we pointed out that sect. 85 of this Act obviously applied to leaseholds, and that it was usually considered that Lord Cranworth's Act (28 & 24 Vict., c. 145), part 1, also applied. See *Law Times*, April 15, page 419.

The use of the word "hereditaments" in sect. 1 of Cranworth's Act has given rise to the doubt, but it is clear that that word may include leaseholds, and in sects 4, 8, 9 of this very Act it is used in connexion with leaseholds. However, sect. 4, relating to the conveyance of the purchased lands, is not strictly applicable when leaseholds are sold: (David. iii. 561, 566.) We think there is no reasonable doubt that the Act does apply.

Assume, however, that an intending purchaser should raise the objection that leaseholds are not comprised in Lord Cranworth's Act, part 1; the trustees would reply that they had full power to sell under sect. 85 of the Conveyancing Act. The new Act contains no provision that the purchaser shall not be bound to inquire whether the trustees contemplate re-investment in purchase of any other hereditaments or otherwise. This provision is contained in the last clause of sect. 2 of Lord Cranworth's Act, but is wholly needless: (David. iii. 564.)

Also the new Act contains no power to revoke uses (which, however, would not apply to leaseholds for years), nor does it give, in so many words, power to convey, like sect. 8 of Cranworth's Act: (see *Sng. Pow.* 196, 837.)

The best plan will be, when the power is not fully set out, to declare in the settlement that the trustees shall have power to sell, exchange, and convey the lands comprised in the settlement.

The result will follow that it will be impossible for any purchaser to raise any objection to the sale, for the settlement gives power to sell, then sect. 85 of the Conveyancing Act gives liberty as to the mode of sale, and the settlement expressly gives power to convey, while sect. 86 supplies a receipt clause. We may observe that section 85 does not apply to exchanges, but that Lord Cranworth's Act does, if a power of exchange is expressly given.

### SETTLEMENT OF COPYHOLDS.

#### *Introductory.*

The introductory remarks which we made in a previous part of the article with regard to settlements of leaseholds will for the most part apply equally to those of copyholds. It may be convenient to mention here that the following sections of the Act affect or relate to copyholds:—Sect. 6. General words. Sect. 7. Covenants for title, but see sect. 7 (5). Sects. 81 to 88. Trustees. See, however, sect. 84 (8). Sect. 85. Trustees' power of sale. Sect. 86. Trustees' receipt clause. Sect. 87. Trustees' power to compound. Sect. 88. Survivorship of trustees' powers. Sect. 42. Management of land, &c., during minority. See, however, sect. 43 (5) (iii.). Sect. 48. Maintenance. Sect. 44. Remedies for recovery of rentcharge. Sect. 51. Limitation of estates in fee, and also, where there is a custom to entail, of estates in tail. Sect. 53. Supplemental deeds. Sect. 68. All estate clause. Of course other sections affect copyholds, but these are the only ones to which we have occasion, at present, to refer.

#### *Covenants to surrender Copyholds.*

A covenant to surrender will still be necessary as before: see sect. 7 (5). For forms, see David. iii. 1024, 919; Conc. David. 885. Neither general words nor the all estate clause need be inserted. It was formerly usual to add a declaration of trust until the surrender,

so that a vesting order could be obtained under the Trustee Acts without suit (David. iii. 597); but it seems that on a sale such an order may now be obtained without any such declaration after the purchase money has been obtained (*Re Cumming*, 21 L. T. Rep. N. S. 789; L. Rep. 5 Ch. App. 73; David. ii. 866), and the same principle would apply to a marriage (Conc. David. 886). For old form of trust, see David. iii. 1025.

#### *Covenants for Title.*

Sect. 7, implying covenants if the words "as beneficial owner" or "as settlor" are used in the conveying part, applies to copyholds. See sect. 7 (5), and sect. 2 (v.) which interprets "conveyance" to include "covenant to surrender." We prefer not to employ either phrase, but to insert the usual covenant for further assurance.

#### *Settlement of Copyholds upon Trusts corresponding with Uses of Freeholds.*

This is usually done by means of a covenant to surrender. For form see David. iii. 1150, 1025; Conc. David. 885, and compare Prideaux, 11th edit. 832.

The declaration of trust until surrender is now needless, as we said above. As we stated in our remarks on a similar settlement comprising leaseholds, care must be taken that the reference to the powers, &c., declared as to the freeholds, sufficiently comprises the powers which have been omitted in reliance on the statute. The tenure of copyhold of inheritance is very analogous to freehold tenure, so that there seems no reason why in many matters reliance should not be placed on the statute in the one case as well as in the other.

Special powers will often be necessary. Thus powers in relation to obtaining enfranchisement will be useful.

The powers of sect. 42 for management and application of rents and profits during minority apply to copyholds. Sect. 42 (5) (iii.), relating to tenants in tail, may occasionally create some difficulty where the land is situate within a manor in which there is no custom to entail copyholds, as a limitation which would have created an estate tail will confer a fee simple conditional, subject to the incidents of that estate before the statute *De donis*: (David. iii. 599; Scriven. 6th edit. 42; Tudor. L. C. Conv. 749.)

There is no doubt that the powers of sale in Lord Cranworth's Act, as well as in sect. 85 of the new Act, apply to copyholds of inheritance, but it gives no power to apply moneys received on a sale for purchasing the enfranchisement of the copyholds. This power should be added if desired.

(To be continued.)

#### THE JUDICIAL VACANCIES.

We are enabled to state that the vacancy in the Judicial Bench in the Queen's Bench Division, which was created by the death of the late Mr. Justice O'Brien, will be filled up by the transfer of Mr. Justice Lawson from the Court of Common Pleas. Mr. Gladstone was expected to make this announcement on Monday night; but we presume that he was restrained by more regard for official etiquette than he is usually credited with from making a public statement until the arrangement has received the sanction of the Queen. There is now no longer any obligation of reticence, and the public will learn, we are sure, with satisfaction that Mr. Justice Lawson will retire from the Common Pleas, and take his place in the Queen's Bench. We need hardly say that the accession of a judge of his ripe experience, thorough knowledge of constitutional law, sagacity, energy, and firmness in the administration of justice, will materially strengthen the important court to which he is to be transferred. This is a great desideratum at present, when the law requires to be clearly interpreted and vigorously administered. The Right Hon. James Anthony Lawson had a distinguished reputation as a scholar and a lawyer before he was elevated to the Bench as Second Judge of the Common Pleas in 1868. Since then he has had a long and varied experience in

the judicial office, and has exhibited qualities which eminently fit him for the position which he is about to assume. There never was a time in the history of the country when the Queen's Bench so much required strength of character and breadth of knowledge, as well as an impartial judgment, for the adequate discharge of its duties. We have little doubt that the other members of the court will gladly welcome so able a colleague. With respect to the other legal changes which are likely to occur, nothing definite is yet settled. It is understood that the Attorney-General will succeed to the vacancy in the Queen's Bench which will be caused by the retirement of Mr. Justice Fitzgerald, but the place cannot be filled at present, as the Attorney-General's help in Parliament is needed during the passage of the Crimes Bill. For the vacant place in the Common Pleas Division different persons are named, and amongst the most likely the Solicitor-General, but it may be doubted whether the Government will be disposed to lose his services in the House at such a time.—*Daily Express.*

#### THE IRISH JUDGES, AND TRIAL BY JURY.

In the House of Commons, on Monday last,

Mr. HEALY asked the First Lord of the Treasury if he had now received the protest of the Irish judges against the abolition of trial by jury in Ireland, and what reply it was intended to make thereto; or if any had been sent?

Mr. CALLAN asked the First Lord of the Treasury whether, since his statement to the House that no communication or memorial from the Irish judges had reached him or any of his colleagues in the Cabinet, he had received a letter from the Lord Chief Justice of the Queen's Bench, Ireland, stating that the resolution come to by the judges had been forwarded, when passed, to the Lord Lieutenant by the Lord Chancellor; whether such letter and resolution had not, in fact, at the time been received by the Lord Lieutenant; could he state what answer had been returned to the letter and resolution of the judges so forwarded, and was it still his intention to persist in imposing distasteful duties on the Irish Bench; whether the judges had again met, and passed a resolution reiterating in language of increased emphasis the former declaration; and whether he would have any objection to place upon the table a copy of these resolutions of the Irish judges?

Mr. GLADSTONE said that since his last reply on this subject he had found that the document in question had been received by the Viceroy, but it was not communicated in a manner that seemed to call for any formal answer. The proposition was before Parliament, and it would now be for Parliament to say whether those duties should be committed to the Irish judges or not. The Government's intentions were expressed in the Bill.

Mr. CALLAN asked whether there would be any objection to lay a copy of the resolution on the table of the House.

Mr. GLADSTONE said there would be no objection.

Mr. HEALY asked what answer was to be returned.

Mr. GLADSTONE said that, in their opinion, the resolution did not call for any reply.

#### AGRICULTURAL LABOURERS IN IRELAND.

A Parliamentary paper just published shows "the nature of the provision made for labourers in each of the cases reported by the Irish Land Commission on January 28, 1882, together with information in each case whether such order was made on landlord or tenant." There are 42 such cases. In almost the whole of these the order is made upon the tenant. Such orders chiefly apply to the provision of better cottage accommodation, and generally include an addition to the land attached to the cottage. The following order, made upon the tenant on the Earl of Arran's estate, may be taken as a fair example of the rest:—"It is ordered that the tenant do build and complete a labourer's cottage, in lieu of the existing one, before the



1st of November, 1882. The new cottage to have a slated roof, and to consist of a kitchen not less than 15 ft. square, and a bedroom (floored) not less than 15 ft. by 10 ft. We also order him to inclose half an acre of land as a garden convenient to the new cottage, and that the rent of the said cottage and garden, to be let to the labourer for the time being employed on the farm, be 1s. per week."

**QUEEN'S COUNSEL SWORN IN AS MAGISTRATES.**

The following Queen's Counsel (named in the Commission of the Peace for each county in Ireland) have selected to be sworn in, so as to enable them to act as magistrates for the counties set opposite to their names:—Richard Paul Carton, Esq., County Louth; John Ayle Curran, Esq., County Dublin; William Harris Falloon, Esq., County Antrim; W. Neilson Hancock, Esq., LL.D., County of Antrim and City of Dublin; Constantine Molloy, Esq., King's County; John B. Murphy, Esq., County Tipperary; Robert W. Shekleton, Esq., City of Dublin; Piers Francis White, Esq., County and City of Dublin.

**APPOINTMENTS AND PROMOTIONS.**

**NOTE BENE.**—Information intended for publication under the above heading should reach us not later than Friday morning in each week, as publication is otherwise delayed.

Mr. Francis Egan has been elected Petty Sessions Clerk for Westport district.

**CORRESPONDENCE.**

**COUNTY COURT EQUITY JURISDICTION AND PRACTICE.**

TO THE EDITOR OF THE IRISH LAW TIMES.

SIR,—I expect the matter about which I ask to say a word or two, through your paper, contains much interest for the Sessions Solicitors all over Ireland, and I trust this letter may be of some service.

The County Officers and Courts Act of 1877 greatly extended the jurisdiction of the County Court Judges, and gave them all the powers of the Court of Chancery in certain matters, subject to a limitation as to value; and a vast number of cases is pending under this useful provision. In pursuance of that Act, certain rules were made as to the course of procedure in some few matters connected with the new jurisdiction, and for the rest the officials and practitioners were referred to the procedure in the Court of Chancery.

Now, I think I am correct in assuming that provincial solicitors, as a rule, leave the conduct of Chancery matters, especially the Chamber business, to their town agents, and I am certain that those clerks of the peace who are not solicitors are for the most part ignorant of the duties cast upon them by the late Act and Rules. Take the case of a suit by a mortgagee to realise. What does the ordinary provincial solicitor know of the intricacies of the Chamber practice in Chancery? and, above all, what do the County Court officials know of it? In fact, I am of the belief that such suits were not very frequent in Chancery since the Landed Estates Court was established.

The procedure in Chancery seems to me of a very elaborate and confusing character, and I have often thought a much less intricate machinery might well have been devised by the framers of the Rules under the Act of 1877. For instance, the value of the property involved in the suits in the County Courts would not at all pay for the aid of counsel at every turn round; and the registrars, under the direction of the judges, might well do what counsel is called upon to do in the heavier suits in the superior courts.

I would be anxious to see a book dealing with this new branch of the County Court work, going fully into

the powers and duties of the Court and its officials, showing exactly the different steps at present applicable to the various suits, including the Lunacy department. Such a book is much wanted among the profession, and it might well include the present Chamber practice of the Chancery Division of the High Court of Justice.

I know of several pending suits in which the only hope seems to be that the parties may settle and relieve the Court.

Yours truly,

P. MAXWELL.

5 East Wall, Derry, 8th June, 1882.

**BOOKS RECEIVED.**

*The Law of Life Insurance, with a Chapter on Accident Insurance.* By CHARLES CRAWLEY, M.A., of Lincoln's Inn, Esq., Barrister-at-Law, &c. London: William Clowes and Sons, Limited, 27 Fleet-street. 1882.

**LAW STUDENTS' JOURNAL.**

**THE INCORPORATED LAW SOCIETY OF IRELAND.**

**TRINITY SITTINGS, 1882.**

At the Examination of Applicants seeking to become Apprentices to Solicitors, held on Thursday the 18th, Friday the 19th, and Saturday the 20th of May, 1882, the undernamed candidates were adjudged by the Court of Examiners to have passed said Examination, and their names were arranged in the following order, viz. :—

- |                       |                        |
|-----------------------|------------------------|
| 1. Michael Coyle      | 12. Charles Mullin     |
| 2. James Thompson     | 13. Thomas Maguire     |
| 3. Matthew Riordan    | 14. Lionel A. Julian   |
| 4. Thomas F. Monks    | 15. Arthur M. P. Keogh |
| 5. Thomas B. Wallace  | 16. Patrick O'Rorke    |
| 6. Frederick W. Clay  | 17. J. J. O'Callaghan  |
| 7. Rody X. M. Gleeson | 18. John Hardiman      |
| 8. James Binohy       | 19. George Murphy      |
| 9. Thomas J. Harbison | 20. Hugh H. Musson     |
| 10. Edward S. Jones   | 21. Alexander M'Dowell |
| 11. Francis M. Fitt   |                        |

The remaining candidates on the list have been postponed.

**TRINITY SITTINGS, 1882.**

At the Examination of Applicants seeking admission as Solicitors, held on Monday the 22nd, and Tuesday the 23rd of May, 1882, the Court of Examiners decided that the undernamed candidates should be allowed the Examination, and their names were arranged in the following order, viz. :—

- |                          |                       |
|--------------------------|-----------------------|
| 1. William S. Collis     | 13. Thomas H. Risk    |
| 2. Patrick A. Chance     | 14. Daniel O'C. Miley |
| 3. Edward J. M'Ardle     | 15. William Shean     |
| 4. Maurice Healy, Jun.   | 16. James J. Aglietta |
| 5. William H. Hancock    | 17. Thomas J. Bennett |
| 6. James Clarke          | 18. Hubert C. West    |
| 7. Hugh J. Hayes         | 19. William H. Irwin  |
| 8. Paul A. Brown         | 20. John C. Wakeham   |
| 9. Thomas Rice           | 21. John H. M'Cann    |
| 10. Henry F. C. Stephens | 22. Gerard A. Bird    |
| 11. Albert Cagney        | 23. Samuel Cunningham |
| 12. Michael Murphy       |                       |

Mr. Edward T. Mulhall has also been allowed the Special Examination for which he had leave to present himself.

The Court of Examiners have awarded a gold medal to Mr. William S. Collins; silver medals to Messrs. Patrick A. Chance, and Edward J. M'Ardle; and special certificates to Messrs. Maurice Healy, Jun., William H. Hancock, and James Clarke.

The other candidates on the list were postponed.

THE INCORPORATED LAW SOCIETY OF  
IRELAND.

FINAL EXAMINATION FOR APPRENTICES TO SOLICITORS,  
Pursuant to the *Attorneys and Solicitors Act (Ireland), 1866.*

TRINITY SITTINGS EXAMINATION, 1882.

FRACTION OF THE COURT OF BANKRUPTCY.

Mr. NEILSON, Examiner.

1. From what debts does a certificate of conformity not release the bankrupt?
2. State what powers the Court has to give possession of lands or premises sold by the Court.
3. Within what period, and under what circumstances, may voluntary settlements be voided?
4. What are the statements necessary to be contained in a charge filed by an incumbrancer upon a bankrupt's estate?
5. A debtor desires to have himself immediately adjudicated a bankrupt at the instance of a creditor; state the proceedings and proofs necessary for such purpose.
6. What are the rights of a creditor, holding a mortgage on a policy of insurance, against the estate of the bankrupt, such mortgage containing a covenant by the bankrupt to pay the premiums on the policy?

DUBLIN, TRINITY SITTINGS, 1882.

[Every answer is to be accompanied by reasons concisely stated.]

COMMON LAW.

1. "When personal property is directed to be paid to any person at a future time, the leaning of the Court is always in favour of vested interests." Explain and illustrate this proposition.
2. A liability to the debts of a partnership was, until recently, incurred by a participation in the profits, although the circumstances of such participation might be unknown to the creditors. State accurately the present state of the law in this respect.
3. Where a contract, not under seal, is made with an agent in his own name for an undisclosed principal, either the agent or the principal may sue upon it. This right of the principal to intervene and charge the other contracting party is subject to certain exceptions. Explain and give instances.
4. Define accurately the nature of "lien," the distinction between particular and general lien, and give examples of each.
5. State accurately the statutable requisites for the valid execution and attestation of Warrants of Attorney and *Cognovits*.
6. What was the state of the law respecting the apportionment of income of different kinds previous to the passing of the "Apportionment Act, 1870," and what are the provisions of that Act?
7. What interests in lands may be sold by a Sheriff under a writ of *fi fa*? What course should the Sheriff adopt, and how make title to the purchaser? At what time does such title accrue, and what steps are necessary to give it effect?
8. Some general doctrines and rules of construction have been laid down upon the question whether the terms of the contract import a condition precedent to the promise. Explain and give instances.
9. "Conditions precedent must be performed and satisfied in order to render the conditional covenant or promise absolute, and to entitle the promisee to the performance." Are there any cases in which the conditions precedent may be discharged or excused? How if the condition be partly performed?
10. Is a master under all or any, and what circum-

stances liable for damages occasioned by the negligence or criminal act of his servant?

11. What provision is made by the Joint Stock Companies Acts for the winding up of a company, and what are the rules regulating the liability of Contributories?

12. How does Broom classify "extraordinary remedies"? Give an instance of each class.

REAL PROPERTY, CONVEYANCING AND EQUITY.

1. What are the provisions of the Statutes, 18 Elizth., c. 5, and 27 Elizth., c. 4, and illustrate these provisions by referring to some decisions upon each?
  2. Explain accurately what are resulting trusts, and mention the different classes of cases in which the presumption of a resulting trust will be rebutted.
  3. "If a person does not expressly fill a fiduciary character, as that of Trustee or Executor, but is merely a Constructive Trustee, his liabilities are in some respects different from those of an Express Trustee." Explain how and illustrate.
  4. The modes in which it has been held that property may belong to a married woman independently of her husband are various. Mention the principal of them, and state what new classes of separate property have been created by the Married Women's Property Acts, and what facilities have been given for its investment.
  5. Mistakes of fact are, as a general rule, relievable in Equity. State the qualifications of this rule. Give examples of the principles on which the Court acts in the rectification of mistakes in Marriage Settlements, and in the case of defective execution of powers arising from mistake.
  6. Cases of actual fraud may be divided into two classes; cases of constructive fraud into three classes. Distinguish and give instances of each.
  7. In the exercise of powers of appointment amongst children, in what cases are the limits of perpetuity to be reckoned from the time of the exercise of the power and in what cases from the date of its creation?
  8. Suppose that a married woman is entitled, on the death of A, a person now living, to a sum of stock standing in the names of Trustees, and that her husband should make an assignment of this reversionary interest to B, a purchaser. The benefit which will accrue to B by virtue of this assignment will vary according as the husband, the wife or A, the tenant for life, may happen to die first. How would this be in each case?
  9. Lands are devised by Will to A for life with remainder in fee to such son of B as shall first attain the age of twenty-one years. In this case the limitation to the son of B may be either a contingent remainder or an executory devise. Explain accurately.
  10. An important step towards levelling securities differing in degree was effected by the 32 & 33 Vict., c. 46. What was this? What enactments are contained in the Judicature Act on the same subject?
  11. What was "Taltarum's Case," and when was it decided? Explain what points in the case make it so important in the history of the law of real property.
  12. Draft a devise of real estate to use that testator's wife may receive a rentcharge during her life, and subject thereto to testator's sons in strict settlement, remainder to testator's daughters as tenants in common in tail.
- It is not generally known that the late Lord Justice Holker served in early life under articles of clerkship to a well-known solicitor (Mr. Eastham), of Kirkby Lonsdale, Westmoreland. The service extended over several years and up to the time of the deceased learned judge entering as a bar student at Gray's-inn in 1851. When called to the bar he was twenty-six years of age. This is another of the many instances in which lawyers who have risen to the highest judicial positions have commenced with a training in a solicitor's chambers. *Law Times.*

COURT PAPERS.

LAND JUDGES.

Sittings for next Week so far as same are appointed.

Before the Rt. Hon. JUDGE FLANAGAN.

MONDAY.

IN CHAMBER.—B. Hegarty, confirm sale.—Trustee A. M. Blake, allocate.

IN COURT.—Assignees A. M. Miller, occupation rent.—E. Guilfoyle, as to letting.—W. Bagnall, payment.—J. Kilbee, re-entry notice.—J. Kilbee, to give possession.—T. H. Crofts, as to sale.—Trustees Little, receiver.—R. Moore, do.—E. P. Peyton, two notices from 15th.—W. Anketell, from 16th.

Before EXAMINER (Mr. Kennedy).

F. Blake, rental.

TUESDAY.

IN COURT.—B. D. Smith, as to costs.—S. Davis, final schedule.—E. J. Brady, payment.—M. Cody, as to policy.—E. H. O'Brien, receiver from 15th.—G. B. Low, do.—W. Rowland, do.—Rev. J. Bradshaw, do.—M. Murphy, to vary order.—Representatives Church Body, receiver.

THURSDAY.

IN COURT.—R. Moore, from 8th.—R. O'Donnell, receiver.—H. Leader, payment by receiver.—E. J. Holt, as to carriage from 15th.—S. Holt, do.

Before the Rt. Hon. JUDGE ORMSBY.

MONDAY.

IN CHAMBER.—R. W. Fearon, payment.

IN COURT.—L. O. Weir, carriage.—B. M. Bloomfield, receiver.—E. E. J. Lutman, adjourned motion.—D. W. Cruise, peremptorily.—Rev. A. W. West, final schedule from 15th.

TUESDAY.

SALES IN COURT.

T. HIGNELL, 2 lots.

WEDNESDAY.

Before EXAMINER (Mr. M'Donnell).

J. Young, rental.—D. P. M'Carthy, vouch.

THURSDAY.

IN CHAMBER.—J. Harshaw, confirm sale.

IN COURT.—P. H. Hore, final schedule.—Rev. A. Cooke, do.—E. Burke, liberty to bid.—R. Kelleff, as to partition.

COURT OF BANKRUPTCY.

ADJUDICATIONS IN BANKRUPTCY.

The dates of Adjudications are first given, the Sittings follow in Italics.

- Bell, George, of Armagh, in the county of Armagh, shoe warehouseman. June 1; *Friday, June 30, and Tuesday, July 18. Cronhelm & Tobias, solrs.*
- Curran, Thomas, of Millertown, Stradbally, in the county of Waterford, farmer. May 28; *Friday, June 30, and Tuesday, July 18. R Davoren, solr.*
- Flanagan, John, of Tullamore, in the King's County, shoe-maker. June 1; *Friday, June 30, and Tuesday, July 18 Cronhelm & Tobias, solrs.*
- Freeman, Richard Deane, of Beachfield, Clontarf, in the county of Dublin, Esquires. June 5; *Tuesday, July 4, and Friday July 21. D. & T. Fitzgerald, solrs.*
- O'Brien, Michael, of No. 8 Essex-bridge, in the city of Dublin, grocer. June 1; *Friday, June 30, and Tuesday, July 18. Casey & Clay, solrs.*
- Tweedie, David Henry, of Canal-street, Newry, in the county of Armagh, grocer and publican. June 6; *Tuesday, July 4, and Friday, July 21. Henry C. Neilson, solr.*

DUBLIN STOCK AND SHARE LIST.

DESCRIPTION OF STOCK	JUNE					
	Sat. 10	Mon. 12	Tues. 13	Wed. 14	Thur. 15	Fri. 16
<b>*Paid Government.</b>						
— 3 p c Consols ..	100½	100½	—	100½	—	100½
— 3 p c Reduced ..	—	—	—	—	99½	—
— New 3 p c Stock ..	100	99½	99½	99½	99½	99½
<b>INDIA STOCK.</b>						
4 p c Oct. 1888 } Trafalgar at ..	—	104	104½	104½	104	104
3½ p c Jan. 1881 } Bk. of Irel. ..	—	101½	—	—	101½	—
<b>BANKS.</b>						
100 Bank of Ireland ..	819	—	819	—	—	819½
25 <i>Hibernian Banking Co</i> ..	—	—	—	32-18	—	32
20 <i>London and County (Ld'd.)</i> ..	—	—	75	—	—	—
15 <i>London Joint Stock</i> ..	—	56½	56	—	—	56
20 <i>London and Westminster, M'd</i> ..	—	—	70½	70½	70½	—
10 <i>Do. New</i> ..	—	—	61	—	—	—
3½ <i>Munster Bank (Limited)</i> ..	—	7½	7½	7½	7½	—
10 <i>National Bank (Limited)</i> ..	—	—	23½	23½	—	23½
10 <i>National of Liverpool (Ld'd.)</i> ..	—	—	14½	—	—	—
25 <i>Provincial Bank</i> ..	—	—	—	—	—	—
10 <i>Do. New</i> ..	—	—	—	—	—	—
10 <i>Royal Bank</i> ..	—	—	—	—	—	—
25 <i>Standard of B. S. A., M'd</i> ..	—	—	58	—	—	—
<b>Steam.</b>						
50 <i>British &amp; Irish</i> ..	—	—	—	—	—	—
100 <i>City of Dublin</i> ..	—	—	101	101½	101½	—
10 <i>Dundalk (Limited)</i> ..	—	—	—	—	—	5½
<b>MINES.</b>						
4½ <i>Borahoen (Limited)</i> ..	—	—	—	—	—	—
1 <i>Killaloe Slate Co. (ltd'd)</i> ..	—	—	12/6	—	—	—
7 <i>Mining Co. of Ireland (M'd)</i> ..	—	—	—	—	—	—
<b>Miscellaneous.</b>						
10 <i>Alliance &amp; Dub. Cons. Gas</i> ..	—	—	—	—	15½	15½
8 <i>Do. New</i> ..	—	—	11½	—	—	—
4 <i>Arnott &amp; Co., Limited</i> ..	—	—	—	—	—	—
20 <i>C. Dub. Brewery Co. (ltd.)</i> ..	—	—	5½	—	—	—
25 <i>Ir. C. S. Building Society</i> ..	—	—	—	—	—	—
4 <i>National Discount, Fra., Ltd</i> ..	—	—	—	2½	—	—
25 <i>National Assurance</i> ..	—	—	—	—	—	—
9-4-7 <i>Patriotic Assurance</i> ..	—	—	—	10	—	—
<b>TRAMWAYS.</b>						
10 <i>Belfast Trams</i> ..	—	—	8½	—	—	—
10 <i>Dublin United Tramways</i> ..	—	—	—	—	—	—
10 <i>Edinburgh Street Trams</i> ..	—	—	—	—	—	—
10 <i>L'pl Un'ed Tram &amp; Bus l'hd</i> ..	—	—	—	138½	—	—
10 <i>Leeds Trams</i> ..	—	—	—	—	—	—
10 <i>N'th Metr. Tramway, Lond.</i> ..	—	—	18½	—	—	—
<b>Railways.</b>						
100 <i>Dublin, Wicklow, &amp; W'ford</i> ..	—	—	—	—	—	—
100 <i>Great Northern (Ireland)</i> ..	—	—	118½	118½	—	—
100 <i>Gt. Southern and Western</i> ..	—	—	—	114½	—	—
100 <i>Midland Gt. Western</i> ..	—	—	—	84½	—	—
50 <i>Waterford and Limerick</i> ..	—	—	—	—	31½	—
<b>Railway Preference.</b>						
100 <i>Gt. N'th'n (Ireland) g'd 4 p c</i> ..	—	—	—	—	108	—
100 <i>Do., 3½ p c</i> ..	—	—	—	—	—	87
<b>Leased at Fixed Rentals.</b>						
100 <i>Dublin and Kingsdown</i> ..	—	—	—	—	—	—
100 <i>Londonderry &amp; Enniskillen</i> ..	—	—	—	—	—	—
100 <i>Do., Pref. 5 p c</i> ..	—	—	—	—	127	—
<b>Debenture Stocks.</b>						
— <i>Belfast &amp; N'th'n Cos. 4 p c</i> ..	105½	105½	—	—	—	—
— <i>C'fergus and Larne 4 p c</i> ..	—	—	—	—	—	—
— <i>Dublin &amp; Wicklow 4 p c</i> ..	—	—	106	—	106	—
— <i>Do., 4½ p c</i> ..	—	—	—	—	—	—
— <i>Gt. Northern (Ireland) 4 p c</i> ..	—	—	109½	109½	—	—
— <i>Do., 4½ p c</i> ..	—	—	—	—	—	—
— <i>Do., 5 p c</i> ..	—	—	—	—	—	—
— <i>Gt. North'n &amp; West'n 4½ p c</i> ..	—	—	109½	—	—	—
— <i>Gt. South'n &amp; West'n, 4 p c</i> ..	109½	109½	109½	—	—	109½
— <i>Kilkenny Junction, A, 5 p c</i> ..	—	—	80	—	—	—
— <i>L'derry &amp; Enniskillen 5 p c</i> ..	—	—	—	125½	—	—
— <i>Do., 4½ p c</i> ..	—	—	114½	—	—	—
— <i>Midland Gt. West'n, 4 p c</i> ..	—	—	106	105½	—	105½
— <i>Do., 4½ p c</i> ..	109½	—	—	—	—	—
— <i>Waterford &amp; Central 5 p c</i> ..	—	—	—	—	—	—
<b>Miscellaneous Debent.</b>						
Do. <i>New, £100,</i> ..	—	—	—	—	—	99

\* Shares not fully paid up are given in Italics. † x d

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**BIRTHS, MARRIAGES, AND DEATHS.****BIRTHS.**

**ALLEN**—June 10, at Upper Temple-street, Dublin, the wife of Elobard Allen, Esq., solicitor, of a daughter.  
**FRENCH**—June 13, at Dancesfield, Aylsbury-road, Dublin, the wife of John A. French, Esq., solicitor, of a daughter.  
**GEOFFGAN**—June 8, at Sunbury Gardens, Upper Rathmines, the wife of Hanbury C. Geoghegan, Esq., solicitor, of a daughter.  
**HARRISON**—June 11, at Mountjoy-square, the wife of the Hon. Mr. Justice Harrison, of a daughter.

**MARRIAGES.**

**HARDING and MAGUIRE**—June 6, in the private chapel at Ardmanagh, Passage West, by the Very Rev. Canon A. Maguire, P.P., Ballinacraig, uncle to the bride, Edward Harding, eldest son of the late John Harding, Esq., barrister-at-law, Cork, to Mary, fourth daughter of the late John Francis Maguire, M.P.  
**M'MINN and SWAN**—June 5, by special licence, at Rostrevor, by the Rev. James A. Allison, 1st Monaghan, C. C. M'Minn, Esq., solicitor, Monaghan, to Charlotte, eldest daughter of William Swan, Esq., Monaghan.  
**O'HARA and RUSSELL-CRUISE**—June 13, at St. Kevin's Chapel, Pro-Cathedral, Marlborough-street, by the Rev. B. Conlan, Admr., assisted by Very Rev. N. Walsh, S.J., and Rev. A. Murphy, S.J., Robert F. O'Hara, Esq., barrister-at-law, Mountjoy-square, Dublin, and Derryhoyle, County Galway, only son of John M. O'Hara, Clerk of the Peace, County Galway, to Beatrice, daughter of Robert Russell-Cruise, Esq., J.P., Drynam, Swords, and Mountjoy-place, Dublin.  
**STRITCH and DUNN**—June 8, at St. Thomas's Church, by the Rev. James White, A.M., Rector, M. M. Stritch, Esq., S.I., Royal Irish Constabulary, third son of the late Andrew Russell Stritch, Esq., barrister-at-law, E.M.M., to Lissie E., only daughter of John Dunn, Esq., L.B.C.S.I., Summerhill, Dublin.

**DEATHS.**

**CRONHELM**—June 13, Florence, aged two years, youngest daughter of Wm. Henry C. Cronhelm, Esq., solicitor, Marlborough Park, Belfast.  
**DOWLING**—June 12, suddenly, at his residence, Lower Gardiner-street, Wm. P. Dowling, Esq., solicitor.

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# THE IRISH LAW TIMES AND SOLICITORS' JOURNAL.

VOL. XVI.

SATURDAY, JUNE 24, 1882.

No. 804

## RAILWAY CARRIERS, AND THE CONTAGIOUS DISEASES (ANIMALS) ACT, 1878.—II.

IN the first place, in order the more readily to discern the true bearing and effect of *Lynch v. The Midland Ry. Co.*, it will be well to recall some general principles of the law of contracts which were brought into application or distinguished. Those on which impossibility of performance rests as a defence (see Pollock, *Contr.*, 2nd ed.; Anson, *Contr.*; 2 Parsons, *Contr.*; 12 C. L. J. 4; 19 Amer. L. Reg. 548) were primarily invoked. Now, such impossibility may relate (1) to the consideration of a contract—*i.e.*, where the consideration cannot be executed by the promisee because it is either illegal, or impossible to perform, for some reason or other (as to which category *Bates v. Cort*, 2 B. & C. 474, may be cited as a strong example); and (2) where the impossibility exists in the performance of the promise, arising either (a) from the act of God, or (with a few limited exceptions) from inevitable accident, (b) from the act of the law (of our own country), or (c) from the acts of the promisee. We have here to do with impossibility existing in the performance of the contract, and arising either from the act of the law or of the promisee. Firstly, then, while as regards cases of impossibility of consideration, any impossibility, arising from whatever cause (except the act of the promisor), will constitute a good defence, cases of impossibility arising in the performance of the promise by the promisor are governed by a narrower rule; and as to the latter the general rule is that impossibility of performance, whether arising through the fault of the promisor or not, if the promise was made unconditionally, and not obtained through fraud or collusion, will not constitute a defence. The question has chiefly occurred, however, where the impossibility has arisen after the contract is made; and as to such cases the general doctrine may be expressed that, where a person contracts absolutely to do a certain act, he will not be discharged from his obligation by the supervention of circumstances rendering performance impossible: *Atkinson v. Ritchie*, 10 East, 530; *Kearon v. Pearson*, 7 H. & N. 386, 31 L. J. Ex. 1; *This v. Byers*, 1 Q. B. D. 244; *Brown v. Royal Insurance Co.*, 1 E. & E. 853, 28 L. J. Q. B. 275; *Brewster v. Kitchell*, 1 Salk. 198; *Taylor v. Caldwell*, 3 B. & S. 826, 833, 32 L. J. Q. B. 164, 166; *Hill v. Sughrue*, 15 M. & W. 253 (as to which see Anson, *Contr.* 313, n., Pollock, *Contr.*, 2nd Ed., 356, n.); *Arthur v. Wynne*, 14 Ch. D. 603; *Jervis v. Tomkinson*, 1 H. & N. 208; *Bullock v. Dornit*, 6 T. R. 650; *Brecknock Co. v. Pritchard*, *ib.* 750; *Duncan v. Gibson*, 45 Miss. 352; *Lomis v. Ruetter*, 9 Watts, 516; *Huling v. Craig*, Addison, 342; *Thorp v. Ross*, 4 Abb. App. Dec. 416; *Dermott v. Jones*, 2 Wall. 1; *Anspach v. Bast*, 2 Smith, Pa. 356; *Ketzinger v. Sanborn*, 70 Ill. 146; *Lewis v. Atlas M. L. I. Co.*, 61 Mo. 534; *Cobb v. Harmon*, 23 N. Y. 148; *Dodge v. Van Lear*, 5 Cranch C. C. 278; *Booth v. Spuyton D. R. M. Co.*, 3 Thomp. & C. (N. Y.) 368; *Beebe v. Johnson*, 19 Wend. 500; *Porter v. The New England*, 17 Mo. 390; *Gilpins v. Consequa*, Pet. C. C. 86; *Harmony v. Bingham*, 2 Kern. 90; *Jones v. U. States*, 17 Amer. L. R. 500; and as to impossible conditions in wills, see Flood, *Wills Per. Prop.* 437; *Thomas v. Howell*, 1 Salk. 170; *Bunbury v. Doran*,

I. R. 9 C. L. 284; *Decrow v. Moody*, 25 Alb. L. J. 457. This rule, however, only extends to express contracts: see *Taylor v. Caldwell*, *ubi supra*; *Fitzgerald v. Mid. Ry. Co.*, 34 L. T. N. S. 771; *Adams v. Nichols*, 19 Pick. 275; *Boyle v. Agawam Canal*, 22 Pick. 381; *Dermott v. Jones*, 2 Wall. 1; see Bishop, *Contr.* ss. 615, 619; and an undertaking to be answerable for delay caused by *vis major* cannot be made part of an implied contract: *Ford v. Cotesworth*, L. R. 5 Q. B. 544; *Fitzgerald v. Mid. Ry. Co.*, *ubi supra*; *cf. Boswell v. Sutherland*, 1 Canada L. T. 726. And to this general rule of law one exception is, as we have premised, that (b) legal impossibility, arising from a change in the law of our own country, exonerates the promisor: *Baily v. De Crespigny*, L. R. 4 Q. B. 180, 38 L. J. Q. B. 98; *Brown v. Mayor of London*, 9 C. B. N. S. 726, 13 ib. 828; *Atkinson v. Ritchie*, *ubi supra*; *Doe d. Anglesea v. Rugeley*, 6 Q. B. 107; *Richards v. Easto*, 15 M. & W. 253; and see *Newby v. Sharpe*, 8 Ch. D. 39; *Newington Local Board v. Cottingham Local Board*, 12 ib. 725; *Esposito v. Bowden*, 7 E. & B. 763, 27 L. J. Q. B. 17; *Beason v. Dean*, 3 Mod. 38; *Brewster v. Kitchell*, *ubi supra*; *Brick Presbyterian Church v. New York*, 5 Cow. 538; *Brown v. Dillahunty*, 4 Sm. & M. 713; *Bennett v. Woolfolk*, 15 Ga. 213. So, a process from court interrupting and rendering performance impossible, will furnish an excuse: *Walker v. Fitts*, 24 Pick. 191, 195; *Lord v. Thomas*, 64 N. Y. 107; *Bain v. Lyle*, 18 Smith, Pa. 60; *Ohio, &c., Ry. Co. v. Yohe*, 51 Ind. 181; *Styles v. Davis*, 1 Black, 101; *Bliven v. Hudson River Ry. Co.*, 36 N. Y. 403; *Burton v. Wilkinson*, 18 T. R. 186; and so where goods are attached in the hands of a carrier: *Verrall v. Robinson*, Tyrw. 1069, 4 D. P. C. 242, 2 C. M. & R. 495; *Styles v. Davis*, *ubi supra*; *Lawson, Contr. of Car.* 18; 4 Sthn. L. Rev. N. S. 465; and where a vessel was detained by a military officer, it was held that the owner was not answerable for a loss by reason of a fall of prices of goods on board during the period of detention, he having yielded only to a force which he could not resist: *The Schooner Onrust*, 1 Ben. 446; but, see *Gosling v. Higgins*, 1 Camp. 451 (regarded as bad law by Mr. Lawson, *Contr. of Car.*, and by Judge Rose, writing in 4 Sthn. L. Rev. N. S. 465). And a statute may so act upon a contract as to suspend its operation for a time, and yet leave it so far subsisting that upon the repeal of the law the contract will be revived and its obligations enforced; so, it was held that a law of the United States laying an embargo for a limited time, did not destroy a contract to deliver debentures, but only suspended its operation as long as the law continued in force: *Baylies v. Feltplace*, 7 Mass. 325; and see *Hadley v. Clark*, 8 T. R. 259. Another exception to the general rule is, as we have premised, that (c) if the impossibility results from the act (or default: *Bigland v. Skelton*, 12 East, 436; 1 Ro. Ab. 453, N.) of the promisee or his agents, the promisor is excused; and so, even if the impossibility arises only indirectly from such acts, as where one was engaged to excavate some land, and to replace the earth in a certain way, and by the direction of the promisee he deposited the earth temporarily upon the land of a neighbour, who refused to allow him to remove it: *Tome v. Doelger*, 6 Rob. 251; and see *Caines v. Smith*, 15 M. & W. 189; *Short v. Stone*, 8 Q. B. 358; *Ford v. Tillet*, 6 B. & C. 326; *Bowdell v.*

*Parsons*, 10 East, 359; *Roberts v. Bury Com.*, L. R. 4 C. P. 755, 5 ib. 310; *Tewksbury v. O'Connell*, 21 Cal. 60; *Johnston v. Caulkins*, 1 Johns. Cas. 116; *M'Collough v. Baker*, 47 Mo. 401; *Squire v. Wright*, 1 Mo. App. 172; *Seipel v. International Life Ince. Co.* 3 Norris, Pa. But, in all such cases within those exceptions there must be an actual impossibility, and it is not enough that the change of circumstances would render the performance more difficult, onerous, or expensive: *Williams v. Vanderbilt*, 38 N. Y. 217; and see cases cited *supra*, in reference to general rule; nor is the promisor excused if the impossibility of performance applied to him individually, and the thing is not inherently impossible: *Lloyd v. Crispe*, 5 Taunt. 249; *M'Niel v. Reed*, 2 M. & S. 89, 9 Bing. 68; and the defendant's insolvency, and consequent inability to carry out his part of the contract, constitutes no defence: *Lewis v. Atlas Mut. Life Ince. Co.*, 61 Mo. 584; *Malone v. Dockrill*, I. R. 3 C. L. 561.

Passing from this subject, we have now to turn to some other doctrines of the law of contracts. And first we may note that the general principle is that the person who is to be discharged from his liability upon a contract, by the performance of a certain act, is impliedly bound to do, or cause to be done, the act which is to discharge him: *Cranley v. Hillary*, 2 M. & S. 120. But, in reference to various contracts, it becomes a question on whom the obligation so rests of performing certain acts necessary for the completion of the contract: see *Bigland v. Skelton*, 12 East 436; *Fry, Spec. Per.*, 2nd ed., 633; *Horgan v. South City Market Co.*, and *Posnett* (Q. B. D., June 8, 1882). "I think," said Lord Blackburn, in the recent case of *Macay v. Dick* (L. R. 6 App. 251), "I may safely say, as a general rule, that where in a written contract it appears that both parties have agreed that something shall be done, which cannot effectually be done unless both concur in doing it, the construction of the contract is that each agrees to do all that is necessary to be done on his part for the carrying out of that thing, though there may be no express words to that effect. What is the part of each must depend on circumstances. In a very early case in England, in the Year Book of 9th Edward IV., Easter Term, 4 A., where the defendant was sued on an obligation, the condition of which was that, if the great bell of Mildenhall should be brought, at the cost of the men of Mildenhall, to the house of the defendant in Norwich, and there weighed and put in the fire in the presence of the men of Mildenhall, and the defendant made a tenor of it to agree with the other bells of Mildenhall, the obligation should be void. Choke, then Chief Justice, and Littleton, and Moile, then judges, held that a plea by the defendant that the bell was not to be weighed nor put in the fire was bad, for the defendant, being a brazier, it was his part to weigh it and put it in the fire; Needham, who was the fourth judge, thought that the weighing of the bell required no particular skill, and might as well have been done by the men of Mildenhall or those they employed as by the defendant. But he said that the putting it into the fire was the part of the artificer." And in reference to the time of performance in such cases, the same learned judge laid it down (*Ford v. Cotesworth*, *ubi supra*) that, whenever a party to a contract undertakes to do some particular act, the performance of which depends entirely on himself, so that he may choose his own mode of fulfilling his undertaking, and the contract is silent as to the time, the law implies a contract to do it within a reasonable time under the circumstances; but, when the act to be done is one in which both parties are to concur, and both bind themselves to the performance of it, that which is implied by law is not that either party contracts that it shall

be done within a fixed or a reasonable time, but that each contracts that he should use reasonable diligence in performing his part. In *Wise v. G. W. Ry. Co.* (1 H. & N. 68, 25 L. J. Ex. 258), a horse was delivered to the company to be conveyed to W. for the plaintiff. On arrival at W., the company's servants either forgot or did not notice that the horse had arrived, and on the plaintiff calling for it the next day it was discovered in a horse-box on the siding, and found to be injured from remaining all night in the cold and in a confined position. It was the usual and proper course for the sender to give an intimation to the consignee, and for someone to come to meet the horse at the end of the journey, and this had not been done. It was considered that (independently of the special contract in the case) the company would not have been liable, as the injury had been the result of the plaintiff not being ready to receive the horse on its arrival at W. Cf. *Gordon v. G. W. Ry. Co.*, 8 Q. B. D. 44; *M'Kean v. M'Iver* L. R. 6 Ex. 36; and as to agreements to perform services with instruments supplied by the other party, see *Robertson v. Amazon Tug Co.*, 7 Q. B. D. 598. It was held in *Hall v. Pennsylvania Ry. Co.* (19 Amer. L. Reg. 250), that a strike of its employees is no defence to a common carrier in an action for damages for delay in transportation: but, in *Pittsburg, &c., Ry. Co. v. Hollowell* (65 Ind. 188), it was held that, in an action against common carriers for failure to receive and carry live stock in pursuance of their agreement, it is a good defence that they were prevented from fulfilment solely by the armed violence of their late employees, whose wages had been reduced, and who had quit work and struck for higher wages. If a carrier give notice that he will not be liable unless certain conditions are complied with, he must provide the means for obtaining the customer's compliance: thus, a regulation that the carrier will not be liable for the loss of baggage, unless the same has been checked, if it have any effect (*Williams v. G. W. Ry. Co.* 10 Ex. 15; *G. W. Ry. v. Goodman*, 12 C. B. 313), will not prevent a person who gave his baggage to the carrier's agent and demanded a check, but failed to receive one, because the person whose duty it was to give them was not present, from recovering its value: *Freeman v. Newton*, 3 E. D. Smith, 245 (Amer.). And as to the exoneration of the carrier from liability for results arising from the discharge of duties undertaken by the customer, which would otherwise devolve on the carrier, see cases collected in 14 Ir. L. T. 380. Bearing those general principles and illustrations in mind, we shall next state the effect of *Lynch v. The Midland Ry. Co.*—a case on which we think it right not to comment more directly at present, as we believe an appeal is projected; and we shall but add that, of the decisions here collected, the only ones there cited were *Bailey v. De Crespigny*, *Esposito v. Bowden*, *Richards v. Easto*, *Shaw v. G. S. & W. Ry.*, *Newington Local Board v. Cottingham Local Board*, and *Fitzgerald v. The Midland Ry. Co.*

#### THE SALVATION ARMY.

The Salvation Army has managed at last to get a decision from a superior court on the moot question of the legality of their public gatherings. The case has been attentively watched over the entire kingdom, for the difficulty of dealing with the noisy if well-meaning army has been no small one. It is fortunate that the facts before the court on Tuesday last are representative of the ordinary daily occurrences throughout the country, for the decision will at least inform magistrates what their duty is, though it may be doubtful whether it has rendered it easier.

The facts of the case were as follows: A charge was made by the police of Weston-super-Mare against the

defendants, who were leaders of the Salvation Army, "for that they did unlawfully and tumultuously assemble with divers other persons to the number of 100 or more in public thoroughfares" to the disturbance of the public peace. It was proved that the Salvation Army is an organised body of persons who are and have for some time been in the habit of forming themselves into public processions, and parading the public streets with bands, flags, and banners. They start from a hall for the purpose of collecting as they go a mob of persons, with whom, attended by much shouting and singing, noise and uproar, they return. At Weston-super-Mare there was another body who called themselves the Skeleton Army, which also paraded the streets for the express purpose of disturbing the operations of the Salvation Army. There were also large numbers of other persons who were accustomed to assemble around or in front of the Salvation Army, some of whom came to assist the Skeleton Army in disputing their passage, while others encouraged such passage by shouting, uproar, and noise, the effect produced being, to use the words of the special case, "to the great terror, disturbance, annoyance, and inconvenience of the peaceable inhabitants of the town and to the endangering of the public peace." On several occasions when the hostile bodies had come into collision there was a free fight, and great disorder, among the incidents of which blows and stone-throwing were noticeable. On the 23rd March last one of these fights occurred. The police were for a long time unable to cope with the disturbance, but at length they were reinforced and the crowd dispersed. Complaints were made by the inhabitants to the police, and a notice was consequently issued, signed by the magistrates, to the effect that there were reasonable grounds for apprehending a repetition of such riotous and tumultuous assemblies, and concluding with these words:—"We do therefore hereby require, order, and direct all persons to abstain from assembling to the disturbance of the public peace in the public streets within the parish" of Weston-super-Mare. On Sunday, the 26th March, while numbers of the inhabitants were proceeding to morning service at the various churches and chapels, the Salvation Army, formed into a procession headed by the defendants, began to march from their hall through the streets. They were surrounded by a tumultuous and shouting mob which increased in numbers as they went on. The police stopped them, and the defendants admitted that they were leading the procession, and that they had received or seen the notice. The police required them to comply with the notice and to desist from leading the procession, but the defendants refused and marched on some 20 yards further, saying that they should still proceed. They were then arrested. None of the defendants were guilty of any overt act of violence other than these acts, and submitted quietly to their arrest. The special case concluded by finding that the procession on the morning in question was calculated to cause a breach of the peace, and that there was reason to fear another collision with the Skeleton Army, followed by the usual fighting and disturbance. Before the magistrates the defendants contended that there had not been any tumultuous and unlawful gathering on their part, that they had not been guilty of the charge against them, and that their arrest was illegal. The magistrates decided against the defendants, and ordered them to find sureties to keep the peace. From this the defendants appealed, and the question before the court was whether the order of the magistrates was valid.

For the appellants it was argued that they had used no force or violence, and had not intended to resist the police, but merely to go on with their procession notwithstanding the opposition of the Skeleton Army. To that extent they were justified, for they were not an unlawful assembly—i.e., an assembly for an unlawful object or with intent to carry out a lawful object riotously and tumultuously. The only riot or tumult was that of the persons besetting them. Their object in walking through the streets was in itself lawful; if

so, the assembly could not become unlawful by the conduct of other persons, and that even although it tended to provoke opposition, *R. v. Vincent*, 9 C. & P. 91, was referred to. There Alderson, B., in summing up told the jury, "I take it to be the law of the land that any meeting assembled under such circumstances as, according to the opinion of rational and firm men, are likely to produce danger to the tranquillity and peace of the neighbourhood is an unlawful assembly. You will have to say whether, looking at all the circumstances, the defendant attended an unlawful assembly." This was an authority for the proposition that the court must look at the nature and intent of the assembly itself. In the present case the defendants only intended to do a peaceable and lawful act, and they ought to have been protected against the violence of others who sought to assail them.

For the magistrates it was pointed out that there was no conviction of the defendants, but merely an order to find sureties. The magistrates were justified in making the order even if the assembly was not unlawful, if there was a tendency to produce a breach of the peace. The defendants had gone through the streets to collect a mob of the roughest and worst classes, possibly in order to induce them to attend their services, but still causing disturbance to the public peace in so doing. They were aware that they would have opponents, and that disorder would follow from their proceedings. The notice of the magistrates was general, and included both the defendants and their opponents. Reference was made to the cases of persons exhibiting pictures, &c., in their shop windows and causing crowds to assemble, who were held to be guilty of nuisance. The defendants were the cause of riot and tumult, and might, therefore, properly be called upon to find sureties to keep the peace.

The court, without calling on the other side for a reply, held that the order of the magistrates was invalid. The object of the defendants was in itself laudable, and they had not used any force or violence. Their marching in procession was not of itself unlawful, any more than the like acts on the part of many other public bodies. Before the magistrates could bind them over to keep the peace they must be justified by some unlawful act committed. The defendants were charged with "unlawfully and tumultuously assembling with others to the disturbance of the peace." Their mere number did not make their assembly unlawful. They were not in themselves tumultuous, nor were they themselves guilty of any disturbance of the peace. If it had been their intention, or if it had been the natural consequence of their acts to produce disturbance they might have been responsible. But it was only because others would molest them that any riot or tumult would arise. What right had these others to interfere with them? these others had no such right, and it was the duty of the magistrates and police to prevent such interference. The riots caused not from the acts of the Salvation Army, but from the opposition to them. It was unlawful for persons to assemble with the intention of doing anything which if carried out would be riotous; but because others acted riotously the defendants would not be guilty of riot. It was not unlawful to do a lawful act merely because others made it the pretence for raising a riot. The court also intimated a strong opinion that the magistrates would fail to do their duty, if, in the event of future disturbance, they did not arrest and make an example of the real disturbers, viz., the Skeleton Army.

We have set out at length the substance of the arguments and the judgments in this case, as it will be some little time before the full reports are published, and because of its importance to magistrates. That the decision is right will not seriously be questioned, although there are many inhabitants of towns to whom the Salvation Army and its gatherings are a real nuisance, and who cannot therefore be expected to appreciate a legal doctrine when it occasions them personal discomfort. But now that the meetings and processions of the Salvation Army are pronounced to

be legal, and any interference with them illegal, it is probable that the opposition they have encountered will largely abate, if not cease altogether. In any event the duty of the magistrates and the police is clear. They must arrest the persons actually causing the breach of the peace and require them to give sureties for their good behaviour. In fact, they must deal with them in the same way as the Weston-super-Mare magistrates sought to deal with their peaceable opponents. The wonder is that it did not occur to them to have done so before.—*Justice of the Peace.*

#### MARRIED WOMEN'S PROPERTY BILL.

This Bill is now in the House of Commons, and was ordered to be printed June 2. We discussed the Bill as amended by the Committee of the House of Lords, in the *Law Times* of April 15, p. 417, but since that time some considerable changes have been made, so that it is necessary to re-examine the Bill in its altered form. It contains four new clauses: "Execution of general power" (4); "Married woman as an executrix or trustee" (18); "Legal representative of married woman" (23); "Interpretation of terms" (24). This plan of putting an interpretation of terms at the end of an Act is very objectionable. If it is not "locking the door on the inside," it is at least putting the key in a most inconvenient place. And the key is a very important one. "The word 'contract' in this Act shall include the acceptance of any trust, or of the office of executrix or administratrix, and the provisions of this Act as to liabilities of married women shall extend to all liabilities by reason of any breach of trust or *deceit* committed by any married woman being a trustee or executrix either before or after marriage."

We cannot but think this very important extension of the Bill has been made without due consideration of the effect of this non-natural interpretation of the word "contract." By the first and governing clause of the Bill the married woman may enter into any "contract" as if she were *feme sole*. Hence by this new clause she may accept a trust or executorship as if she were *feme sole*, and therefore apparently without the consent of the husband; but by the present law a husband is liable for his wife's breaches of trust (Lewin, 82), and also for her *deceits* (Wms. Exors. 1836). Obviously the husband should be freed from this liability. But it is by no means clear whether this Bill gives such relief. If we read the words "acceptance of trust" in some of the various places in clause 1, where the word "contract" occurs, we simply get nonsense. How can a married woman or anybody else be sued "either in 'acceptance of any trust' or in tort?" And the sub-clause (3) will have to be read, "Every acceptance of any trust entered into by a married woman shall be deemed to be an acceptance of trust entered into by her with respect to and to bind her separate property, unless the contrary be shown."

This addition of an extension clause, under the name of an interpretation, renders a careful revision of the whole Bill needful; and it would be a great improvement if a clause were added protecting a husband from any liability in consequence of his wife's acceptance of any trust or executorship, &c. The framers and supporters of this Bill seem so entirely to ignore the interests of married men that we cannot help suggesting that they must all be confirmed bachelors. Clause 4, which will render the property passing under a married woman's will, in consequence of her execution of a general power, liable for her debts, seems very reasonable. Compare the present law in Bagden on Powers, 8th ed. 474, and the notes to *Silk v. Prims* and *Hulme v. Tarrant* in White and Tudor's Leading Cases on Equity, vol. 1. 140, vol. ii. 495. Clause 23 declares that the personal representative of the married woman shall "in respect of her separate estate, have the same rights and liabilities, and be subject to the same jurisdiction, as she would be if she were living." This is not grammar, and, moreover, becomes ridiculous when read with clause 12, which relates to legal proceedings

between husband and wife, and makes special regulations with regard to such proceedings when they are living together.

It will be seen that the Bill has been greatly altered, but in some respects not amended.—*Law Times.*

#### PRACTICE IN "FAIR RENT" CASES.

It is important to suitors and their advisers in the Land Commission Court to attend to the notice, which we print elsewhere, in reference to the practice in fair rent cases. Agreements entered into in Form No. 83 do not at once operate as a withdrawal of an originating notice, so that it is desirable in such cases to make a distinct application, in Form No. 71, for leave to withdraw the originating notice. Neglect so to do will render the parties liable to incur costs that might otherwise have been avoided.

#### SPECTATORS AT A PRIZE-FIGHT.

When the full Court for the Consideration of Crown Cases Reserved meets, it nearly always differs. This is partly because so many as a dozen lawyers, even when they are judges, are not likely to agree upon any subject, but more substantially because the full Court is not summoned except in very doubtful cases. The result usually obtained from so numerous a *concilium* is seldom in proportion to the labour involved. The knot required to be untied is either of an exceptional character, not likely to occur again; or it is found, after all, to be matter of fact rather than of law. This last consideration accounts a great deal for the difference of opinion in *Regina v. Coney*, heard before eleven judges, and reported in the June number of the *Law Journal Reports*. Upon the only pure question of law involved—namely, whether a prize-fight is an assault by the combatants on one another—there is no difference of opinion; but the judges are eight to three on the character of the evidence necessary to convict a spectator of aiding and abetting the assault. As Mr. Justice Manisty points out, the purely legal question was not before the Court. No point of law was reserved, in reference to the principals in the fight, who were convicted without appeal. The case stated in regard to Coney and two others, who were bystanders, was consistent with the fight not being a prize-fight. All that was stated was that the men fought, and there were blue stakes and a rope forming a ring. Nearly all the judges, however, assumed in the prisoners' favour that the fight was a prize-fight, and so put beyond future controversy the principle that a public prize-fight is an assault between the combatants. The majority of the judges further held that to prove a defendant to have been at a fight and looking on, without other evidence, is not enough to justify a conviction for aiding and abetting the fight.

We have described the unanimous decision of the judges as having reference to a public, as distinguished from a private, prize-fight, and this was the only question before them upon the facts stated in the special case. Probably, in practice, there can be no prize-fight without spectators. Two men in anger may well fight alone, either with fists or weapons, but they are not likely to do so for money. Yet most of the judges appear to rely, in part at least, on the publicity of the fight as making the consent on both sides immaterial. Mr. Justice Stephen—in a judgment which, in some places, takes a high flight into the philosophy of judges' decisions—says: "The consent is no defence if the injury is of such a nature, or if it is inflicted under such circumstances, that its infliction is injurious to the public as well as to the person injured." Lord Coleridge says: "As the combatants in a duel cannot give consent to one another to take away life, so neither can the combatants in a prize-fight give consent to one another to commit that which the law has repeatedly held to be a breach of the peace." Lord Coleridge's illustration suggests that it is doubtful whether the distinction in question was present to his mind. If the immateriality of consent depends on the



same principle in a prize-fight as in a duel, it does not matter whether the fight was public or private. If a man kills another in a duel in a room in an empty house, let us say, on Dartmoor, the survivor is clearly guilty of murder. And yet there is no breach of the peace in the sense of public scandal. It may possibly be that there is a distinction between the case in which two men agree to do their best to kill one another, and the case in which they do their best only to maim one another. Mr. Justice Stephen seems to think there is; and Lord Coleridge appears to think so, unless his phrase "breach of the peace" means nothing more than breach of the law. Mr. Justice Cave—who delivered judgment first, taking the place of Mr. Justice North, and whose careful examination of the authorities formed the basis of the judgments of most of the other judges—leaves the matter in doubt. We are a little disappointed to find that, after all, we do not get to the bottom of the reason why consent is no defence to a criminal assault. Even Mr. Justice Stephen, who is generally clear and fearless in his views, after the passage already quoted, adds: "The injuries given and received in prize-fights, are injurious to the public, both because it is against the public interest that the lives and health of the combatants should be endangered by blows, and because prize-fights are disorderly exhibitions and mischievous on many obvious grounds." If the first reason is true, the second is totally unnecessary. We believe that the first reason is the only true one. Consent excuses what would otherwise be a criminal assault when the blows are given in sport, but not when they are given in earnest. Two men may spar with boxing gloves, if the gloves are not a mere pretext; but they may not fight, although they both agree. The principle is that of public policy, and rests on the same ground as the law against suicide. In this view public scandal does not affect the question. The elements of a breach of the peace may be present at a genuine boxing match as well as at a fight, and yet it is not suggested that the competitors would be guilty of an assault on the ground of the public scandal of the exhibition. For the reason that the distinction referred to was not clearly present to the minds of the judges, the decision is not so valuable as it might have been.

The attention of the judges was directed so closely to the second point on which they disagreed that the first was not determined with scientific accuracy. The direction given by the chairman of the Berkshire Quarter Sessions is probably the same which most lawyers would have given off-hand, although such opinions have often to be modified on consideration. The law, as laid down, had crept into the text-books, and is supported by Russell on "Crimes," in a passage based on the opinion of Mr. Justice Littledale in *Regina v. Murphy*, 6 Car. & P. 103. The direction given to the jury was to the effect that if they thought the defendants were present at the fight not casually, but as spectators, they were guilty of aiding and abetting it. Upon this direction a verdict of "guilty" was returned, but this verdict was set aside by the majority of the judges. The burden, it seems to us, lies on those who maintain that the mere looking at a crime is criminal in itself. We are not convinced by the arguments with which Lord Coleridge, Baron Pollock, and Mr. Justice Mathew discharge themselves of this burden. The line of argument which Lord Coleridge adopts, is that the view maintained by the prosecution is desirable in itself, because if there were no spectators there would be no prize-fights, and that there is respectable authority in support of it. But is not this reasoning based on much too narrow an appreciation of the materials upon which a judge should act? His decision ought to be in consonance with the whole law in question as laid down by the best authorities; and with the general considerations involved in the subject. It ought not to be content to rest merely on expediency shod out with a little authority. Baron Pollock treats the question as pure fact, drawing inferences from the posts, and the cord, and the other indications of a deliberate fight. His judgment amounts to little more

than that, as a jurymen, Baron Pollock would have drawn an inference sufficient to convict Coney. The same observation may be made on the judgment of Mr. Justice Mathew. But ought not the jury to have been asked whether, in their opinion, the presence of the defendants with the surrounding circumstances amounted to aiding and abetting? Was it right to tell them that merely standing to see the assault was a crime? It is difficult to answer this question in the affirmative upon general principle or upon authority. There is no statute creating the offence out of the materials laid before the jury. There must be an aiding and abetting of the assault which one combatant was committing on the other. No doubt the crowd of spectators is one of the incidents which encourage a prize fight. But is every individual in the crowd responsible for the whole crowd? If there had been evidence that a dozen men agreed to attend the fight, the proof would have gone far to establish the case insisted on by the dissentient judges. As it was, merely to stand still is not to aid; merely to look is not to abet. The passages cited by Mr. Justice Cave from Hale and Foster tend to support this view as strongly as do general principles. In fact, Mr. Justice Littledale and Mr. Justice Patteson had gone a little too far in directing juries. They had applied a test which turns out to be incomplete. The decision of the Court, we think, does not amount to more than this, and cannot be said to settle any great rule of criminal law. In fact, the judgments of the Court of Crown Cases are rather interesting from the insight which they give into the modes of thought of individual judges, than useful as clear expositions of a branch of the law. We doubt whether there is advantage in numbers on the bench; and the time, we hope, is not far distant when points of criminal law will go to the Court of Appeal and the House of Lords, like other points of law.—*Law Journal*.

#### THE CONVEYANCING AND LAW OF PROPERTY ACT, 1881, WHERE IT SHOULD BE ADOPTED, AND WHERE EXCLUDED.—XIX.

(Continued from page 284, ante.)

##### WILLS.

##### *Devise of Trust and Mortgage Estates.*

Hitherto it has been usual in all wills, whether of realty or personalty, to insert this. Now it may be omitted in reliance upon sect. 30: (Cons. David. 490; *Prideaux*, 11th edit. §72.) Messrs. Clerke and Brett (page 120) consider it doubtful whether this section includes copyholds. We think it clearly does include them: (*Walst. & T. 59*; Cons. David. 62.)

There are "estates of inheritance" in copyholds, and a copyhold may be both a tenement and hereditament. The section renders any devise invalid; it has, however, been suggested that, by appointing the intended devisee executor for that special purpose, the testator's desire may be affected: (*Walst. & T. 60*; but see *Clerke & Brett, 121*.) As to executors for limited purposes, see *Warr. Exors. 252*. It would seem that, *quoad creditors*, all the executors are as one executor and may be sued accordingly: (*Ross v. Bartlett, Cr. Car. 293*.)

This plan of appointing limited executors is not usually to be recommended.

Before this Act, when a sole trustee was an admitted copyholder, he could devise the copyhold which he held in trust to such uses as his trustees should appoint, and so, in case of a speedy sale, avoid the fees on a double admittance: (*Hayes & Jarman, 8th edit. §78*; *Prideaux, 470*.) This plan can, of course, still be adopted with regard to a testator's own copyholds, but not for those he holds as trustee or mortgagee.

It was held in *Garland v. Mead* (24 L. T. Rep. N. S. 491; L. Rep. 6 Q. B. 441) that, under sect. 3 of the Wills Act, the legal estate in devised copyholds descends to the customary heir until the admittance of the devisee: (*David, iv. 82*.)

By the legal estate of course the customary estate is

meant. It is not easy to decide whether the present section places the executor in the position of devisee or of heir: (see Clerke & Brett, p. 120.) For many purposes the heir is a copyholder before admittance: (Soriven, 6th edit. 81, 189.)

#### *Trust for Sale.*

This may be much shortened in reliance upon sect. 35 of the Act. For form see Cono. David. 412; Prideaux, 454.

Where the testator has copyhold estates, and the fines on admittance are considerable, it will be best to devise the copyholds to uses as the trustees shall appoint. For form see David. iv. 82; Hayes & Jarman, 8th edit. 121; Cono. David. 417.

#### *Maintenance and Accumulation.*

These clauses are, in general, no longer essential, when the property is held on trust in favour of infants taking at twenty-one, in consequence of sect. 43 of the Act: (Cono. David. 415.) Sometimes, however, they both should be inserted. Compare article on settlements of personality, *Law Times*, March 11, page 323.

Sect. 43 relates to "settlements," but there seems no possible reason to doubt that this word here includes settlements by will as well as those created by deed. Messrs. Clerke & Brett (p. 154) point out that this view is confirmed by the use of the general word "instrument" in sub-sects. 7 and 8. Mr. Wolstenholme takes the same view, and so omits these clauses (pp. 67, 206, 189), and so does Cono. David. and Prideaux (p. 455); see also definition of the word in sect. 1 of the Settled Estates Act, 1877; David. iii. 2. Advancement clause must be inserted if desired. For forms see Cono. David. 327; Prideaux, 455.

#### *Trustee Clauses.*

These may be abbreviated. For form see Cono. David. 418. Trustees receipt clause, and power to trustees to compound debts, may usually be omitted. Compare *Law Times* of March 18, page 846. It will be usually proper to state by whom new trustees are to be appointed, and to supplement the statutory indemnity. Compare *Law Times*, March 11, p. 329. And for new forms see Cono. David. 418; Prideaux, 457. For old forms see David. iii. 55, 56. When the testator has much property in a foreign country or colony it is generally best to set out the clauses fully, as it is doubted whether the statutory powers can operate abroad: (Hayes & Jarman, 8th edit. 120; David. iv. 375.) In some colonies similar provisions are in force: (David. iv. 375, 353.) If it is intended that a solicitor trustee should charge his costs a suitable clause must be inserted.

#### **COPYHOLDS.**

The definition of "land" in sect. 2 (ii.) includes copyholds, so that as a general rule, and unless a contrary intention appears, the provisions of the Act relating to land apply to copyholds. But in the application of this rule it will be found that there are many exceptions and limitations. Conditions of sale may, in reliance upon sect. 3 (2) be slightly shortened by omitting the common condition that the vendor should not be called upon to show the title to make the enfranchisement: (Dart, 6th edit. 166, 289.)

Mr. Wolstenholme (2nd edit. 14) states that "the title to the freehold of enfranchised copyholds . . . commences with the deed of enfranchisement. This sub-section should be read in connexion with sub-sect. 3 . . ." See Dart, 293; and Sug. V. & P., 14th edit. 372. It would, however, appear that the copyhold title whilst the transaction is a recent one is also necessary. As to sale of enfranchised copyholds under the description of freehold, see *Upperton v. Nicholson* (L. Rep. 6 Ch. App. 436; 28 L. T. Rep. N. S. 343; 25 Ib. 4); Dart, 188.

Other portions of this section also relate to copyholds as well as freeholds: see sub-sects. 8, 6, 7 to 11. "General words," and the "all estate clause" will not be necessary (sects. 6, 63); indeed they were, even before the Act, often omitted from covenants to surrender

copyholds. Mr. Davidson inserted the general words, but omitted the estate clause (vol. ii. 365); while Bythewood abbreviated or omitted the former, but added the latter, though stating it to be unnecessary (vol. vi. 69, 312). Unless they happen in any case to be on the court rolls they may usually be omitted with perfect safety.

By virtue of sect. 7 covenants for title may be omitted from purchase deeds if the words "beneficial owner" are used in the covenant to surrender: sect. 7 (5), sect. 2 (v.). For old form see David. ii. 365, and for new form Cono. David. 140; Prideaux, i. 231. If, however, the copyholds are surrendered without any previous deed of covenants the statute will not supply the covenants for title, and the usual deed of covenants for title must be executed. For form see David. ii. 367. It would not be safe, under such circumstances, to declare that the vendor had surrendered as beneficial owner, or to attempt by any other device to imply the covenants. Nor can they be incorporated in the surrender: (Wolst. & T. 2nd edit. 85.) The same remarks apply *mutatis mutandis* to mortgages. For old form see David. ii. 961, and for new form Cono. David. 190. In settlements we should advise that the usual covenant for further assurance be inserted. This may be framed from the forms in David. iii. 928, 1029, which give more covenants than the one we advise. See *Law Times*, March 25, p. 365; April 1, p. 382; and April 23, p. 484; and see further as to settlements of copyhold, *Law Times*, June 3, p. 78; and for form see Wolst. & T. 2nd edit. 228.

It is not possible for us in this series of articles to do more than give this short outline of the effect of the Act on copyhold assurances. As to wills of copyholds, see above in this present article. It may be convenient to add here that the following sections and sub-sections of the Act make special reference to copyholds—viz.: sects. 2 (v.), 3 (2) (6), 7 (5), 21 (1), 54 (8).

#### *Some Cautions in Application of the Act to Copyholds.*

It will be well in mortgages of copyholds to insert a clause prohibiting the mortgagee, as well as the mortgagor, from making any lease under sect. 18 without licence from the lord, and, if the mortgage is by deed, from cutting down timber or doing any other act under sects. 19-24 without licence, which might create a forfeiture. An exception may be made, in favour of the mortgagee, as to leases which may be granted without forfeiture. The statutory mortgages authorised by sects. 26 to 29 do not apply to copyhold land. It should be noticed that the power of sale given by sect. 19 only arises where the mortgage is by deed, so that it does not apply to a mere surrender: (Wolst. & T. 2nd edit. 60.) It seems doubtful whether the power arises under a simple covenant to surrender. Wolstenholme and Turner give an express charge, and consider that then the power is implied (2nd edit. p. 60). For forms see Wolst. & T. pp. 205, 153. By sect. 2 (vi.) the word "mortgage" includes "charge."

Sect. 84, relating to the vesting of property in new trustees, contains (sub-sect. 3) an exception as to the legal estate in copyholds. Compare form in Wolst. & T. 2nd edit. 257.

Sect. 51 applies only to deeds, so that the word "heirs" must be used in surrenders as formerly. Sect. 62, relating to grants of easements, does not apply to copyholds. From the above remarks it will be seen that considerable care is necessary in the application of the Act to customary tenures.

#### *Proposed Summary.*

We shall, in our next article, conclude this series with a general summary of the results at which we have arrived.

(To be continued.)

A LAWYER in Bangor, Me., has brought suit for \$5,000 damages against the publishers of a history of Penobscot county which reported him as dead, and gave him a complimentary obituary sketch. This is the first time we ever knew a lawyer, "living or dead," to sue anybody for saying a good thing of him.—*Chicago Legal News.*

## FIXING FAIR RENTS.

In the case of *Deegan v. Adair* (Queen's Co., June 13, 1882), the County Court Judge (Joshua Clarke, Q.C.) observed:—"I know nothing about land. If I went out on the fields to look at them, and had some sods cut up, I would not be one bit wiser than are some of these land commissioners. I would take Griffith's valuation and the landlord's rent. Suppose Griffith's valuation to be £20, and the rent £30, I would simply split the difference, and settle the new rent at £25; thus giving half the valuation to the tenant. That is my fixed rule, and one I will not depart from, and it is just as well you should all know it in case I should come here again."

## "THE COURT" ON HORSEBACK.

On a pleasant Friday afternoon in early June in the year of grace eighteen hundred and eighty-two, two solitary horsemen might have been seen by an attentive observer, wending their way along the dusty highway leading from the magnificent capital of the Empire State to the world's greatest watering-place. Somewhat past the meridian of life, of middle height, of amplitude of person indicative of quiet conscience, good digestion, long unexpired term of office, and ample salary, and of that easy dignity that bespeaks long and intimate association with courts (of law), they sat their steeds with a steadiness that evinced a great experience in balancing on the bench, and pursued their journey at a dignified pace, that promised to bring them to its end without infringing the law of the State against Sunday travel. They wisely refrained from announcing themselves as candidates for the Presidency, by avoiding the tow-path of the canal that skirted their way. They were in light marching order, having sent forward their judicial opinions and other *impedimenta* by railway. A tinge of sadness perceptible on their brows was probably attributable to the absence of their accustomed pioneer, the gallant clerk, P—n, and to the consciousness that their entry upon the streets of the gay Spa would consequently lack something of the brilliancy of the like event in the last preceding year. We hardly need say to the initiated that these two horsemen were their honors, A—s, C.J., and D—b, J., on their way to hold a tournament of the Court of Appeals at Saratoga. We make this explanation lest some might suspect that they were Hanover and Youatt on the Horse. Going to court on horseback probably has some advantages for the judges. It enables them to seize the mane points, and tends to put their decisions on a stable basis, and they cannot be accused of not having sufficiently taken oats on the arguments. One word of caution perhaps is superfluous, but at least is well meant—let them on no account be over-persuaded into entering their horses at the races, for the characteristic of the judicial cob is or should be deliberateness and not swiftness, and the judges of the racecourse are as unapt to grant retrials as their honors are indisposed to accord rearguments.—*Albany Law Journal*.

## A NOVEL MARRIAGE CONTRACT.

Probably few funnier things have ever come before a Court of Justice than the following agreement, made between the parties concerned previously to entering the bonds of matrimony. It is to be found given in its beautiful entirety in the recent case of *Dagg v. Dagg*, 51 L. J. N. S. 19, in which the husband was suing for dissolution of the marriage in question. The male to the agreement, be it remembered, was a porter, and the female party a cook in a hydropathic establishment; and it is necessary to add, we regret to say, that the porter had been guilty of certain familiarities with the cook, which one would have hoped a man of his refinement would have shrunk from. This is the agreement:—

"This is to certify that whereas the undersigned parties do agree that they will marry, and that only to

save the female of us from shaming her friends or telling a lie; and that the said marriage shall be no more thought of, except to tell her friends that she is married (unless she should arrive at the following accomplishments—namely, piano, singing, reading, writing, *speaking* and *deportment*); and whereas these said accomplishments have in no way being sought after (much less mastered), *therefore the aforesaid marriage shall be, and is, null and void*; and whereas we agree that the male of us shall keep his harmonium in the aforesaid female's sitting-room, and agree that it shall be there no more than four months, and that from that time the aforesaid and undersigned shall be free in every respect whatsoever of the aforesaid female, as witness our hands, &c., Catherine L. H. Jeffries, William Pritchard Dagg."

Who can doubt, from internal evidence, that it was the "male of us," the elegant and accomplished, but too fastidious, Dagg, who penned this agreement with his own hand? Who can help admiring his heroic condescension in marrying the illiterate "female of us," even though she had in no way sought after, much less mastered, the accomplishments of piano, singing, reading, writing, speaking and deportment? Lastly, who will not deplore the hard-heartedness of the judge who refused to grant poor Dagg's petition, and dissolve his marriage with this uncongenial "female of us?"—*Canada Law Journal*.

## THE PARTNERSHIPS BILL, 1882.

In the present deadlock of all legislative business it would obviously be unsafe to predict with certainty the ultimate fate of any measure introduced by a private member of the House of Commons; but so far as can be seen, there would appear at least a reasonable chance that Mr. Monk's Bill respecting the law of partnership may pass into law before the end of the current session. The fact that the measure has just issued from the hands of a select committee seems to afford an opportune occasion for examining its most salient points and the main purport of its provisions.

In the first place, it is to be observed that the Bill, as now amended, has a much narrower scope than was originally intended. Its objects as it was at first drawn were threefold. First, it was intended to consolidate the existing laws of private partnership, so far as they are uncontrolled by the law of bankruptcy; secondly, it proposed to introduce a system of limited partnerships, corresponding to the Continental *Sociétés en Commandite*, and the similar American institutions; and, thirdly, it provided for a general registration of commercial firms. With these views the Bill was divided into five distinct parts. Of these the first three dealt with the consolidation of existing laws, the fourth set out the principles of limited partnership, and the fifth treated of registration. In the Bill as it now appears, the two last divisions have wholly disappeared, and the three preceding parts alone remain; consequently the measure is reduced for the most part to a mere explanation and consolidation of established doctrines.

Turning to the Bill in its existing state it will be seen that the first division deals with the liability of partners and their authority in respect of partnership dealing. Partnership is at the outset defined to be "the relation which subsists between persons who have agreed to share the profits of a business carried on by all or any of them on behalf of all of them," and the question whether a partnership exists in any particular case is to be decided by the crucial test of the intention and contract of the parties. This definition, it is evident, includes many associations that are not subject to the law of partnership, but are regulated by special legislation, as, for example, corporations and joint stock companies. In other respects, however, it appears unobjectionable, and as is stated in the memorandum annexed to the bill, it is expressly devised to meet the criticism passed by the Master of the Rolls, presumably in *Pooley v. Driver* (36 L. T. Rep. N. S. 79; L. Rep. 5

Ch. Div. 458) upon the definition given by the American jurist Kent, whereby the contribution of labour and skill is made a necessary element of partnership. In giving special prominence to the intention of the parties the Bill follows the dicta of the Privy Council in *Molloy, March and Co. v. Court of Wards* (L. Rep. 4 P. C. 419). The clauses that follow provide what circumstances shall not of themselves create a partnership, as, for instance, part ownership, the sharing of gross returns, and the various arrangements enumerated in Bovill's Act (28 & 29 Vict. c. 86). The ruling in the well-known case of *Cox v. Hickman* (8 H. of L. Cas. 268) is also incorporated to the effect that mere participation in profits is not conclusive evidence of the existence of a partnership.

Passing by the limitation placed upon the members of a firm, as to which the Bill adopts the provisions of the Companies Act, 1862, s. 4, the next point that calls for notice is the clause respecting the revocation of a continuing guarantee by a change in the constitution of the firm; and here the Bill incorporates the concise enactment of the Indian Contract Act, in lieu of the verbose provision to the same effect of the Mercantile Law Amendment Act, 1856. In defusing the liabilities of partners the Bill lays down a rule somewhat different to the popular statement of the law, but in accordance with the judgments in *Kendal v. Hamilton* (30 L. T. Rep. N. S. 250; 41 *Ibid.* 418; L. Rep. 8 O. P. Div. 403; 4 App. Cas. 504), and other recent cases, making the liability of partners for debts and other obligations joint rather than joint and several; while, by subsequent clauses, their liability for torts inflicted on third persons is extended to both joint and several responsibility. The bill next goes on to describe the position of outgoing partners, and of persons who hold themselves out as partners. A further clause is founded on the expressions of Barou Cleasby in *Holme v. Hammond* (L. Rep. 7 Ex. 233), making the acts of a partner in the usual course of business as binding on his co-partners as if he were their duly appointed agent; and another section, due to the words of the Master of the Rolls in *Williamson v. Barbour* (37 L. T. Rep. N. S. 698; L. Rep. 9 Ch. Div. 535), constitutes notice to any acting partner equivalent to notice to the firm.

The second part of the Bill describes the relations of the partners to one another, as, for example, their right to indemnity and contribution, their duty of gratuitous diligence and of abstaining from competition with the firm, the admission of new partners, and the inspection of the books. The existing rules of law respecting most of these are incorporated, and are too well-known to need special remark. We may notice, however, the 38th clause, which states the established doctrine that land which has become partnership property is to be treated as personal and not real estate, "unless a contrary intention appears either by express agreement or by the conduct of the partners;" and the 41st, which relates to a matter of procedure, and is intended to remedy the hardship and inconvenience now caused by partnership property being seized in execution for a partner's separate debt. Henceforth, it is proposed, no writ of execution shall issue against any partnership property except upon a judgment against the firm. On the other hand, an order may be made with all necessary directions, charging a partner's share in the partnership assets with payment of his private debt. Notice, however, of any application for such order must be given to all the other partners, and every order for sale or foreclosure must include liberty for the other partners to buy or redeem the charged share. These provisions seem amply to respect the rights of all parties, and are therefore free from objection.

The dissolution of partnership and its consequences occupy the third portion of the Bill. Dissolution by expiration, by notice, by bankruptcy, by death, and by other causes, is dealt with; cases are enumerated in which application for a dissolution may be made to the court; and the rights of the partners as to the partnership assets and goodwill on dissolution are defined.

One or two doubtful points of law are settled according to the most recent authorities. After dissolution every partner may restrain the others from carrying on the same business under the same name until the affairs have been wound up: (*Lindley*, 2, p. 1042.) On a premature dissolution the court may apportion any premium paid by a partner as it thinks fit (*Atwood v. Maude*, L. Rep. 8 Ch. 369); and where the partnership is rescinded on the ground of fraud, the defrauded party shall have a lien on the assets for money paid in purchasing an interest in it: (*Mycock v. Beaton*, 42 L. T. Rep. N. S. 141; L. Rep. 13 Ch. Div. 884.) It remains only to add that the enactments it is proposed to repeal are Bovill's Act and sect. 4 of the Mercantile Law Amendment Act, 1856. Both, however, as we have already seen, are in substance re-enacted, the former with some slight extension, and the latter in a simplified form.

On the whole the Bill may certainly be taken as a well-arranged exposition of the existing law of partnership. It is, perhaps, to be regretted that the provisions concerning limited partnerships and registration have disappeared, for until these have been discussed no codification can be considered final or complete. But their elimination has gone far to remove the measure from the sphere of controversy, and even in its present state its probable reception into the Statute-book is to be viewed with no small satisfaction.—*Law Times*.

#### LIMITATION LEGAL AND EQUITABLE.

The case of *Gibbs v. Guild*, reported in the June number of the *Law Journal Reports*, has a double importance. It decides that a wide interpretation is to be given to the Judicature Act in providing that, "in all matters in which there is any conflict or variance between the rules of equity and the rules of the common law with reference to the same matter, the rules of equity shall prevail." It also decides a question of frequent occurrence; namely, that the Statutes of Limitation begin to run from the discovery of the cause of action and not from the cause of action itself in cases in which the cause of action has been concealed. It is a remarkable accident that the judges who gave this decision were all common lawyers; but evidence that modes of thought die hard was supplied in the dissent recorded by Lord Justice Holker, then newly arrived on the bench from the common law bar, and now unfortunately lost to the law. The short judgment of Lord Justice Holker will be read with great interest, and the line of thought adopted may be stated in a few words. The late Lord Justice took his stand on the words of the statute of James I. That statute provides that "actions on the case shall be commenced within six years next after the cause of such actions or suits, and not after." The action in question was an action on the case commenced after six years from the cause of it; and, therefore, in Lord Justice Holker's view, there must be judgment for the defendant. As it stands, this reasoning is, we think, unimpeachable. It is the protest of the common lawyer against the bad logic in which equity lawyers allowed themselves to indulge. But how, if the Act of James I. is itself repealed or modified by another Act of Parliament? If that is so, Lord Justice Holker's reasoning fails. The Judicature Act, 1873, s. 25, sub. 11, provides that where law and equity are in conflict, equity is to prevail. It therefore gives statutory force to the decisions of equity judges on the Statutes of Limitation and other statutes, unsond as those decisions may have been at the time when they were delivered. Hard cases make bad law, but there is nothing to prevent the bad law being turned into good if it is done by an Act of Parliament.

It is not difficult to clear the ground occupied by this case, so as to reduce its decision to a very general question. There was some doubt whether, at common law, the concealment of a cause of action did not prevent the Statute of Limitation running. In *Bree v. Holbeck*, 2 Dong. 654, Lord Mansfield, while deciding

that the Statute ran, notwithstanding a concealment, in an action for money had and received, said "there may be cases which fraud will take out of the Statute of Limitation," and gave leave to the plaintiff to amend. But, in *The Imperial Gas Light Company v. The London Gas Light Company*, 23 Law J. Rep. Exch. 303, Chief Baron Pollock and Barons Alderson, Platt, and Martin treated the contention that the time did not run till the discovery as unarguable. In 1856—two years later, and after the Common Law Procedure Act had authorised equitable pleas—the same Court (Barons Bramwell and Watson being in place of Barons Platt and Martin), in *Hunter v. Gibbons*, 26 Law J. Rep. Exch. 1, decided against an equitable replication of fraudulent concealment to a plea of the statute in an action for abstracting coal from a mine. The "rule of the common law" was, therefore, ascertained, with reasonable accuracy, to be against the replication in question. On the other hand, "the rule of equity" was ascertained even more clearly, to be in its favour. *Booth v. Warrington*, 4 Bro. P. C. 163, was a suit in equity for the return of money obtained by fraud, the lapse of the period of limitation being excused by an allegation of concealment. This case was decided for the plaintiff in the House of Lords, and only fails of conclusiveness through its being loosely reported. It is clear, however, that the point at issue was before the Lords, because the questions put to the judges are directed to it. Here, then, was a rule in equity in one sense, and a rule of law in the opposite sense. Was there "a variance or conflict" within the meaning of the Judicature Act? It may be argued, with plausibility, that the Act only contemplated a "conflict" in its severest form—that is to say, when equity would interfere by injunction with the litigant taking advantage of the law. There is no instance, apparently, of an injunction being granted to prevent a defendant taking advantage of the Statute of Limitation. Lord Justice Brett, in his judgment, appears to think that there was no reason why there should not be such an injunction, but the reason why there was not is tolerably obvious. Where a plaintiff had a Statute of Limitation staring him in the face, he sued in equity and not in law. The test whether there would have been an injunction does not, therefore, apply; but whether there would be an injunction or not is accidental, depending on the question whether it was the party suing or the party sued who invoked the equity. The only other explanation of the word "conflict" is inconsistency. The generality of this word is limited by the phrase "with reference to the same matter." A mere logical inconsistency is not enough. There must be a practical inconsistency. Such a conflict existed in this instance. Probably in equity the action would be for money obtained by fraud, whereas at law it would be for damages. In the case of coal abstracted, the claim in equity would be for an account, and at law for damages. But, for practical purposes, the claims were the same.

Whether the decision arrived at is in accordance with a right view of the Statutes of Limitation is a question with which the judges were not directly concerned, but is of interest. Two theories may be set up as the foundation of these statutes: one based on the maxim *interest reipublice ut sit finis litium*, and claiming absolutely that after a definite lapse of time there shall be a certain immunity from legal proceedings; the other based on the equitable doctrine of *laches*, and allowing proceedings, however far back in time, to be brought into Court so long as the plaintiff has not been guilty of undue delay. It is the second of these theories which has now been established; and it is not without its dangers. Lord Justice Holker is undoubtedly right in saying that the Statutes of Limitation have been repealed. There is now no limit after which a man can feel safe from an action, so long as the plaintiff alleges not only that the defendant has injured him, but that he has concealed the injury from him. Such an action is possible twenty or thirty years after the event—in fact, there is no limit. This state of the law cannot be expedient. While admitting that the fraudulent con-

cealment of an injury ought to give the injured man a longer period in which to enforce his rights, yet there ought to be an absolute limit to which there is no exception. The man who does not find out that he has been wronged for seven or eight years is either little alive to his own interest, or there is not much reality about his wrongs. In either case his interests do not deserve maintaining. This subject would appear to require the attention of the Legislature, and it is by no means clear that, on the ground of mere expediency, the rule of the common law ought not to prevail over the rule of equity.—*Law Journal*.

#### THE LABOUR LAWS.

In these days of trades unionism, strikes, and constant conflicts between capital and labour in almost every branch of the industries of this kingdom, it is interesting to turn back to statutes the existence of which is generally unknown, and to see how such matters were dealt with by Parliament in early times. In the reign of Queen Elizabeth (1562) a statute was passed which repealed all existing statutes dealing with the subject of the labour laws, and which was intended to codify the whole law concerning the employment of artificers, labourers, servants of husbandry, and apprentices. From the recital it appears that an amendment of the existing laws was thought necessary for several reasons, but chiefly "that the wages and allowances, limited or rated in many of the said statutes, are in divers places too small and not answerable to this time respecting the advancement in prices of all things belonging to the said servants and labourers;" and the recital concludes with the words that "there is good hope that it will come to pass that the same law (being duly executed) should banish idleness, advance husbandry, and yield unto the hired person, both in the time of scarcity and in the time of plenty, a convenient proportion of wages." The statute itself contains what is intended to be a complete code of the orders regulating all kinds of labour, of which the following may be taken as affording the best examples and the most striking contrasts to the state of affairs at the present day. Section 12 provides that all artificers and labourers being hired for wages by the day or week shall, betwixt the months of March and September, be and continue at their work at or before five of the clock in the morning, and continue at work and not depart until betwixt seven and eight of the clock at night (except it be in the time of breakfast, dinner, or drinking, the which times at the most shall not exceed two and a half hours in a day), upon pain to lose and forfeit one penny for every hour's absence, to be deducted out of his wages that shall so offend. Section 13 provides that anyone who shall be lawfully retained in and for the building or repairing of any church, house, ship, mill, or every other piece of work taken in great, or gross, shall not depart (unless it be for nonpayment of his wages) until the same be finished, upon pain of imprisonment for one month, and the forfeiture of the sum of five pounds to the person from whom he shall so depart. Perhaps, however, the most remarkable of all the provisions of this statute is that contained in sect. 15, which provides for the regulation of the price of labour. It enacts that the justices of the peace of every shire, riding, and liberty within the limits of their several commissions, and the sheriff of that county, if he conveniently may, every mayor, bailiff, or other head officer within any city or town corporate, shall before the 10th June next coming, and afterwards shall yearly at every general session first to be holden and kept after Easter, assemble themselves together, and they so assembled calling unto them such discreet and grave persons of the said county, or of the said city or town corporate, as they shall think meet, and conferring together respecting the scarcity or plenty of the time and other circumstances necessarily to be considered, shall have authority within the limits of their commissions to limit, rate, and appoint the wages of all servants and workmen whose wages in time past hath been by any law or statute rated and appointed.

The section further provides for proclamation to be made of the rates of wages in the various districts when approved by the Lord Chancellor. No better instance could, we venture to think, be found of the extraordinary difference existing between the present state of society and that existing three hundred years ago. No single person could now probably be found who would wish for a return to a state of things suggested by this statute of Elizabeth; still, as a matter of history, it is interesting to rake it up. It affords a striking contrast between England in the reign of Victoria and England in the reign of Elizabeth, and affords ample occupation to the thoughtful mind in tracing the causes which have produced such a change, and in prophesying the result to which such a change will tend.—*Law Times.*

### APPOINTMENTS AND PROMOTIONS.

**NOTE BENE.**—Information intended for publication under the above heading should reach us not later than Friday morning in each week, as publication is otherwise delayed.

Mr. William O'Brien, Q.C., has been appointed a puisne judge of the Common Pleas Division, *vice* Lawson, J., transferred to the Queen's Bench Division.

Mr. Richard Hicksen, Deputy Clerk of the Peace, has been appointed Deputy Clerk of the Crown for the county Sligo.

### OBITUARY.

#### MR. W. M. BOURKE.

MR. WALTER M'WILLIAM BOURKE, of Curraghlea, Co. Mayo, and Rahassane Park, Co. Galway, who was assassinated at Castle Taylor (a place over which he was land agent), near Ardahan, in the latter county, on the 8th inst., was the eldest surviving son of the late Isidore Bourke, Esq., Crown Solicitor for the Co. Mayo, by his marriage with Matilda, daughter of Matthew Crozier, Esq., M.D., of the 52nd Foot. Born in 1838, Mr. Bourke was educated at the Colleges of Stonyhurst and Clongowes Wood, and at the University of Dublin where he was a member of the Historical Society, and took the degrees of A.B. and M.A. He had at one time contemplated entering the Indian Civil Service, and won a high place in the examination, but his age was afterwards found to exceed the prescribed limit. In Trinity Term, 1858, he was called to the bar, and joined the Connaught circuit. He practised here for some years, and also became a contributor to some literary Magazines, since defunct, which were then published in Dublin. Failing, however, to meet with that fall and rapid measure of success which rewards the efforts of so few, he went to India, and there, as an advocate in the High Court of Calcutta, Mr. Bourke, who was a good but rather florid speaker, soon realised a considerable fortune. He, also, published a volume of Indian law reports, which displays a good deal of industry and ability. About two years ago, on his return from India, he succeeded to the inheritance of Curraghlea, on the death of his elder brother, Major Bourke, and he himself purchased the estate of Rahassane Park, which had once belonged to the family of the Frenchs. Mr. Bourke, who was appointed to the commission of the peace for the County of Mayo, was more than once a candidate for senatorial honours, having on one occasion, shortly after his call to the bar, contested Tralee with the present Lord O'Hagan, and at the last general election having been nominated for Mayo. During the distress of 1879-80, Mr. Bourke, who was a most active member of the Board of Guardians of the Poor of the Claremorris Union, exhibited the most kindly and generous spirit towards the poorer tenantry. But, subsequently, he evicted many of the tenants on his Rahassane property, in some cases even acting as his own bailiff, and about a year ago he was pictured in the *Graphic* personally serving notices to quit. He became extremely unpopular, and was in the habit of

carrying about a repeating rifle, armed with which, a few months ago, he attended Mass at Carraroe, refusing to leave when requested by the officiating clergyman, and having subsequently to get away by a side door in order to avoid the mob which was waiting to attack him. Indeed, so unpopular had he become, that his life was threatened, and a military escort was told off for his protection. He was returning home after attending the sittings of the Land Sub-Commission at Gort, when he and the soldier by whom he was accompanied met their terrible fate.

### REVIEWS.

1. *Business.*
2. *Money.*
3. *Morality.*
4. *Life.*
5. *Economy.*
6. *Progress.* By JAMES PLATT. London: Simpkin, Marshall, & Co., Stationers' Hall-court.

THIS excellent series of books has deservedly attained a worldwide reputation. As their titles indicate, Mr. Platt deals with the most important questions of the day, and we are bound to say in his treatment of them he is plain and straightforward, often in his earnestness rising to eloquence; and the copious quotations, both prose and poetical—which are admirably chosen and always to the point—add an additional charm to his writings. As Canon Farrar said the other day—"Reading is an amulet against vice and misery, taking away from the poorest youth all excuse for seeking companionship in the gin palace, or the low haunts where pleasure foraged for death. With books loneliness is not altogether lonely, nor sadness altogether sad." So, we believe, if Mr. Platt's books are carefully read, though there may be much with which we may differ, there is still very much more that we can approve as good and sound, when habits of temperance and honesty are inculcated, and when his readers are advised to make all they can from "Business," to remember "Morality," to use "Money" wisely, to study the true principles of "Economy," and to believe that "Life" rationally and wisely led must end in individual and national "Progress."

Mr. Platt is a thoroughgoing Free Trader, and he states his views as opposed to Protection and Reciprocity in a most exhaustive manner. He traces the history of the Civil Service Stores and Co-operative Trading, and shows how their effects can be counteracted. Nowhere do we remember to have seen a better defence of the House of Lords than in his chapter on "Causality," in "Progress."

In the same book he discusses the Irish Land Act of 1881; but Mr. Platt must dip a little deeper into contemporary Irish history. He judges of Ireland too much from the standard of his own prosperous England. Now that the Irish Land Act is beyond recall, we recommend for his perusal a very able article in this month's *Contemporary Review*, on "Judicial Rents," by Mr. W. S. Seton-Karr, in which he shows that in India the practice of invoking the assistance of the established tribunals to decide on the status and rent of a tenant has been recognised by the Government, by the law courts, and by the agricultural community, Hindu and Mohammedan, ever since the great settlement of Lord Cornwallis in 1793.

**EVICIONS (IRELAND).**—A return to an Order of the House of Lords, dated June 8, 1882, shows that the number of evictions in Ireland during the first three quarters of the year 1881 was 2,697 families, containing 15,490 persons. The number of those evicted who were readmitted as tenants before March 31, 1882, was 781 families, containing 4,263 persons.

A MEMPHIS coloured man was unable to secure the services of a lawyer to defend him from mule stealing, because he had not paid his fee for a previous acquittal for bed-clothes stealing. Even his "Why, boss, I stole dot mule 'specially to sell him and pay you," did not affect the lawyer's obdurate heart.

**LAW STUDENTS' JOURNAL.**

**THE INCORPORATED LAW SOCIETY OF IRELAND.**

**SOLICITORS' APPRENTICES.**

**NOTICE.**

The SESSIONAL EXAMINATION will be held on Friday, the 30th of June instant, and Saturday, the 1st of July next, from 9 30 A.M. to 12 30 P.M. and from 1 P.M. to 4 P.M. on each day. Candidates desiring to be examined will have to enter their Names at the Secretary's Office, Solicitors' Buildings, Four Courts, not later than Tuesday, the 27th day of June instant, in order that the necessary arrangements may be made.

Candidates whose names begin with letters from A to F (inclusive), will be examined at 9 30 A.M. on Friday, the 30th of June instant.

Those whose names begin with letters F to Ke (inclusive) will be examined at 1 o'clock P.M. on the same day.

Those whose names begin with letters K to P (inclusive), will be examined at 9 30 A.M. on Saturday, the 1st of July next.

The remaining Candidates at 1 o'clock P.M. on the same day.

Apprentices are requested to take notice that the Sessional Examination held at the end of the month of June, or the beginning of July, is the Examination held after each Course of Lectures under the 25th Rule of the Society, and that no Apprentice can be examined at any other time unless he has been hindered from attending at the regular Examination by illness, or some similar unforeseen mischance, to be proved to the satisfaction of the Council.

By Order,

**WILLIAM HICKSON,**  
Professor.

Solicitors' Buildings, Four Courts,  
Dublin, 21st June, 1882.

**COURT PAPERS.**

**CIRCUIT LIST.—SUMMER ASSIZES, 1882.**

**HOME CIRCUIT.**

Trim—July 2, at 11 o'clock. Maryborough—July 10 at 11.  
Mullingar—July 5, at 11 30. Carlow—July 12, at 11 30.  
Tullamore—July 7, at 11 30. Naas—July 14, at 11.

Judges—MORRIS, C.J., and PALLES, C.B.  
Registrars { Arthur H. Courtanay, Esq., 14 Fitzwilliam-sq., East.  
Andrew Palles, Esq., 21 Northumberland-road.

**NORTH-EAST CIRCUIT.**

Drogheda—July 2, at 11 o'clock. Downpatrick—March 14, at 11.  
Dundalk—July 4, at 11. Belfast and Carrickfergus—  
Monaghan—July 6, at 2. July 17, at 2.  
Armagh—July 10, at 11.

Judges—MAY, C.J., and HARRISON, J.  
Registrars { George C. May, Esq., 13 Fitzwilliam-square, East.  
Robert F. Harrison, Esq., 3 Mountjoy-square, North.

**NORTH-WEST CIRCUIT.**

Longford—July 2, at 2 o'clock. Lifford—July 17, at 12.  
Cavan—July 7, at 11. Londonderry (city and co.)—  
Enniskillen—July 10, at 2. July 20, at 11.  
Omagh—July 12, at 11.

Judges—FITZGIBBON, L.J., and FITZGERALD, B.  
Registrars { Pelham J. Mayne, Esq., 33 Merrion-square, North.  
John Allen Shone, Esq., 61 Upper Sackville street.

**CONNAUGHT CIRCUIT.**

Carrick-on-Shannon—July 4, at Galway (town and co.)—July  
11 o'clock. 12, at 11.  
Sligo—July 7, at 4. Roscommon—Not Fixed.  
Castlebar—July 12, at 11.

Judges—ORMSBY, J., and O'BRIEN, J.  
Registrars { Alfred Hamilton Ormsby, Esq., 16 Fitzwilliam-sq., E.

**MUNSTER CIRCUIT.**

Ennis—July 2, at 5 o'clock. Tralee—July 12, at 11.  
Limerick (city and co.)—July 7, Cork (co.)—July 18, at 2.  
at 11. Cork (city)—July 21, at 11.

Judges—LAWSON, J., and BARRY, J.  
Registrars { Arthur Lawson, Esq., 27 Upper Fitzwilliam-street.  
James Barry, Esq., 8t. Helen's, Rathgar.

**LEINSTER CIRCUIT.**

Nenagh—July 4, at 11 o'clock. Waterford (city and co.)—July  
Kilkenny (city and co.)—July 7, 15, at 11.  
at 11. Wexford—July 19, at 11.  
Clonmel—July 11, at 11. Wicklow—July 22, at 11.

Judges—DEASY, L.J., and DOWSE, B.  
Registrars { J. W. Clarke, Esq., Carysfort, Blackrock.  
Richard Dowse, jun., Esq., 38 Mountjoy-square.

**LAND JUDGES.**

Sittings for next Week so far as same are appointed,  
Before the Rt. Hon. JUDGE FLANAGAN.

**MONDAY.**

IN COURT.—G. M. Hewson, receiver.—G. A. Waller, re-entry.—M. Murphy, from 20th.—G. H. Mayes, liberty to bid.—Trustees Little, from 22nd.—W. R. O'Byrne, objection.

Before EXAMINER (Mr. Kennedy).  
Trustee A. Sullivan, rental.—M. Horgan, ditto.

**TUESDAY.**

IN CHAMBER.—T. M. Cummins, proposal.—F. W. Crofts, ditto.

IN COURT.—R. F. Barry, payment by receiver.—M. Cedy, as to policy.

Before EXAMINER (Mr. Kennedy).  
J. M'Caig, vouch.

**THURSDAY.**

IN COURT.—H. Leader, payment by receiver.  
Before EXAMINER (Mr. M'Donnell).  
Devises R.-C. Hurley, vouch.—J. W. Pollock, ditto.

**FRIDAY.**

SALES IN COURT.  
R. B. BOOTH . . . . . 2 lots.  
Before EXAMINER (Mr. Kennaedy).  
Rev. J. F. Shearman, rental.

Before the Rt. Hon. JUDGE ORMSBY.

**MONDAY.**

IN CHAMBER.—J. Butler, allocation.—Rev. A. Cooke, ditto.

IN COURT.—D. C. Taylor, reference.—M. O'Kelly, objection.—R. W. Fearon, payment.—E. P. Brennan, receiver.—A. H. Irwin, do.—M. Bourke, final schedule.—Trustees Roche, do.

Before EXAMINER (Mr. M'Donnell).  
Rev. A. W. West, vouch.

**WEDNESDAY.**

Before EXAMINER (Mr. M'Donnell).  
M. Quaine, vouch.—W. Johnston, do.—Executors M. Macnamara, amend rental.—J. Morgan, take account.

**THURSDAY.**

IN COURT.—T. Barklie, special.—A. Carolan, final schedule.

**FRIDAY.**

Before EXAMINER (Mr. M'Donnell).  
F. Salmon, rental.—T. J. Nolan, ditto.

## HIGH COURT OF JUSTICE.

## CHANCERY DIVISION.—LAND JUDGES.

*List of Petitions presented to the Land Judges in the month of May, 1882.*

DATE	TITLE OF MATTER	OBJECT OF PETITION	COUNTY	PROFIT RENT	SOLICITOR
May 2	Alexander George Richey, Trustee of Anne King, owner and petitioner	Receiver and sale	Leitrim	£ s. d. 1,006 11 2	Hallowes and Hamilton
" 8	Joseph Bourke and another, owners; Margaret M. Bourke and another, petitioners	Receiver and sale	Mayo and Galway	568 11 1	Robert P. Bourke
" "	Assignees of Michael Rochfort, owners; Robert Sheil and another, petitioners	Receiver and sale	City Dublin	100 0 0 Valuation	Longfield, Davidson, and Kelly
" 4	Henry William Baldwin, owner; William Massey and H. Massey, petitioners	Receiver and sale	Co. Cork	1,744 16 10	Thomas K. Sullivan
" 6	Arthur O'Donnell and others, owners; Arthur O'Donnell, petitioner	Sale	Co. Clare	845 0 0	Francis Kearney
" "	James Browne and others, owners; Emanuel Churcher, petitioner	Sale	Co. Galway	Not stated	R. H. Beauchamp
" "	Helen Gillman, owner; Emily Leonard, petitioner	Sale	City Cork	56 18 4	Thomas Ware
" 8	William Casey and another, owners; Mary Hill, petitioner	Sale	Tipperary	64 10 0 Griffith's Valuation	Wm. H. Robinson
" "	William Donnelly and others, owners; Philip R. Pigott, petitioner	Receiver and sale	City Dublin	155 11 6	Joshua L. Nunn
" 9	Howard John St. George, owner and petitioner	Sale	Kilkenny	1,487 14 10	Russell and MacDermott
" "	Henry Daunt, owner; Thomas Haynes and others, petitioners	Sale	Cork	617 10 0 Griffith's Valuation	Thomas F. O'Connell
" "	James Lecky, owner; Rev. George W. Biggs, petitioner	Sale	City Dublin	62 0 0	William C. Hogan and Sons
" "	Sarah Jane Tucker, owner; James Campbell, petitioner	Receiver and sale	Meath	201 1 6	James Campbell
" 10	William Chartres and Wife, owners and petitioners	Sale	Fermanagh	50 10 0	John T. Hinds
" "	Dermot O'Conor Donelan, owner; A. S. Drake and Wife, petitioners	Sale	Galway	181 11 8 Estimated	Thomas F. O'Connell
" 11	Daniel Ryan, owner; Samuel C. Wilmot, petitioner	Sale	Co. Tipperary	188 10 0 Estimated	Russell and MacDermott
" "	John Maurice O'Connell, owner; The National Bank, petitioners	Sale	Co. Cork	In owner's possession	Reuben T. Harvey
" "	Wilbert Finnermore, owner; Rice Meredith, petitioner	Sale	King's Co.	Not stated	W. D. Whelan
" "	Ellen Reford, owner and petitioner, and Partition Acts	Partition and Sale	Antrim	Not stated	H. H. Orr
" 19	William Montgomery, owner and petitioner, and Partition Acts	Sale and partition	Fermanagh	418 5 2	John T. Hinds
" 23	Cornelius Alexander Keogh, owner and petitioner	Sale	Sligo and Clare	1,251 19 8	Meade and Colles
" 24	John O. Mahony, owner; Stephanie Rochford, petitioner	Receiver and sale	Kerry	1,872 6 4	Hatton R. O'Kearney
" "	George Burrowes, owner; Richard Perrott and others, petitioners	Receiver and sale	Londonderry	268 8 1	H. and A. Blake
" "	William Black, owner; Anne Black, petitioner	Sale	Donegal	97 10 0 Valuation	William Martin
" "	John Lennon and another, owners; The National Bank, petitioners	Sale	Co. Dublin	In owner's possession	Michael Larkin



LAND JUDGES' COURT.

SALES.

June 9.—Before the Right Hon. Judge FLANAGAN.

CITY OF DUBLIN.—Estate of Geraldine S. Roper, owner; W. R. Atkin and another, petitioners.

Lot 2.—Two third parts of a fee-farm rent of £33 15s. 4d., payable out of houses and premises Nos. 55, 56, and 57 South Richmond-street, subject to two-thirds of a superior rent of £16 15s. 2d.; annual profit rent £11 6s. 10d. Sold to G. V. Patton for £190.

Lot 4.—Two third parts of a fee-farm rent of £22 17s. 10d., payable out of houses and premises Nos. 58 and 59 South Richmond-street; annual profit rent £15 5s. 2d. Sold to R. Newland for £300.

Sale of Lots 1 and 3 adjourned.

Solicitor, *Henry F. Martley.*

June 13.—Before the Right Hon. Judge OMSBY.

COUNTY AND CITY OF DUBLIN.—Estate of Anne Carolin, administratrix of Robinson Carolin, deceased, owner and petitioner.

Lot 1.—Dwelling-house and premises No. 6 Burlington-road, held under lease for 150 years from 1854; head rent, £8 15s.; profit rent, £92 5s.; valuation, £80. Sold to Mr. Littledale, solicitor, in trust for Mrs. C. Hewson, for £1,650.

Lot 2.—Dwelling-house and premises, No. 8 Burlington-road, similarly held; head rent, £8 15s.; profit rent, £111 5s.; valuation, £78. Sold to Mr. C. B. Hely for £1,620.

Lot 3.—Dwelling-house and premises, No. 38 Lansdowne-road, held under lease for 150 years from 1859; head rent, £8; profit rent, £92; valuation, £55. Sold to Mr. Hely for £1,000.

Lot 4.—Dwelling-house and premises, No. 40 Lansdowne-road, same tenure; profit rent, £87; valuation, £55. Sold to Mr. Hely for £1,055.

Lot 5.—Dwelling-house and premises, No. 35 Lower Gardiner-street, held under lease for 999 years; head rent, £9; profit rent, £61; valuation, £58. Sold to M. E. Solomon for £475.

Lot 6.—Dwelling-house and premises, No. 62 Lower Gardiner-street, same tenure; head rent, £10; profit rent, £60; valuation, £60. Sold to Mrs. Jackson for £630.

Lot 7.—Dwelling-houses and premises, Nos. 4, 5, 6, 7, 7½, and 8 Lower Mecklenburgh-street, same tenure; head rent, £55 7s. 8d.; profit rent, £62 12s. 4d.; valuation, £76. Sold to T. E. Jones for £325.

Lot 8.—Dwelling-houses and premises, Nos. 12, 13, and 14 Lower Mecklenburgh-street, and Nos. 30, 31, 32, 33, 34, and 35 Mabbot-street, same tenure; head rent, £46 7s. 8d.; profit rent, £87 19s. 5d.; valuation, £149. Sold to Peter Whelan for £275.

Lot 9.—Dwelling-houses and premises, Nos. 15, 16, and 17, Lower Mecklenburgh-street, Nos. 1 and 2 Eyre's-court, and 52 and 53 Purdon-street, same tenure; head rent, £24 13s. 10d.; profit rent, £21 6s. 2d.; valuation, £39. Sold to John Redmond for £70.

Solicitor, *William Sterne.*

COURT OF BANKRUPTCY.

ADJUDICATIONS IN BANKRUPTCY.

The dates of Adjudications are first given, the Sitings follow in Italics.

Cullinane, James, of Loughrea, in the county of Galway, victualler and cattle dealer. May 27; *Tuesday, June 27, and Friday, July 14.* *Thomas J. White*, solr.

Fleming, John, of Millmount, Dolphin's-barn, in the city of Dublin, manufacturer. June 2; *Friday, July 7, and Tuesday, July 25.* *William P. M'Evoy*, solr.

DUBLIN STOCK AND SHARE LIST.

DESCRIPTION OF STOCK	JUNE					
	Sat. 17	Mon. 19	Tues. 20	Wed. 21	Thur. 22	Fri. 23
<b>*Paid Government.</b>						
— 3 p c Consols ..	100½	100½	100	100½	99½	—
— 3 p c Reduced ..	—	—	—	—	—	—
— New 3 p c Stock ..	100	99½	99½	99½	99½	99½
<b>INDIA STOCK.</b>						
4 p c Oct. 1898 } Trafalgar ..	104	—	103½	103½	103½	103½
3½ p c Jan. 1931 } Bk. of Irel. ..	—	—	—	—	—	—
<b>Banks.</b>						
100 Bank of Ireland ..	315	315	314	315	—	—
25 <i>Hibernian Banking Co.</i> ..	—	—	31½	—	—	—
20 <i>London and County (Ld'd.)</i> ..	—	—	—	—	—	74½
15 <i>London Joint Stock</i> ..	—	—	—	—	—	—
20 <i>London and W'minster, Ltd</i> ..	—	—	—	—	69½	69½
10 <i>Do. New</i> ..	—	—	—	—	—	—
24 <i>Munster Bank (Limited)</i> ..	7½	7½	7	—	—	—
10 <i>National Bank (Limited)</i> ..	23½	23½	23½	—	—	—
10 <i>National of Liverpool (Ld'd.)</i> ..	—	—	—	—	—	—
<b>Steam.</b>						
50 <i>British &amp; Irish</i> ..	—	—	—	—	—	—
100 <i>City of Dublin</i> ..	101	101	—	—	100½	—
50 <i>Dublin and Glasgow</i> ..	—	—	—	11½	—	—
10 <i>Dundalk (Limited)</i> ..	—	—	—	—	—	—
<b>Mines.</b>						
4½ <i>Berehaven (Limited)</i> ..	—	—	—	—	—	—
1 <i>Killaloe Slate Co. (Ld'd.)</i> ..	—	—	—	—	—	—
7 <i>Mining Co. of Ireland (Ld'd.)</i> ..	—	—	—	—	—	—
24 <i>Wicklow Copper</i> ..	—	13/-	—	—	—	—
<b>Miscellaneous.</b>						
10 <i>Alliance &amp; Dub. Cons. Gas</i> ..	—	—	15	—	15½	15
8 <i>Do. do. New</i> ..	—	—	—	—	—	—
4 <i>Arnott &amp; Co. (Limited)</i> ..	—	—	—	—	—	—
20 <i>C. Dub. Brewery Co. (Lim.)</i> ..	—	—	—	—	—	—
8 <i>Coulding &amp; Co. (Limited)</i> ..	—	8½	—	—	—	—
25 <i>Ir. C. S. Building Society</i> ..	—	—	—	—	—	—
4 <i>National Discount, Ire., Ltd</i> ..	—	—	—	—	—	—
25 <i>National Assurance</i> ..	—	—	—	—	—	—
9-4-7 <i>Patriotic Assurance</i> ..	—	—	10	—	—	10
<b>Tramways.</b>						
10 <i>Belfast Trams</i> ..	—	—	—	—	—	—
10 <i>Dublin United Tramways</i> ..	10½	—	—	10½	—	10½
10 <i>Edinburgh Street Trams</i> ..	—	—	—	—	—	—
10 <i>L'pl Un'ed Tram &amp; Bus Ltd</i> ..	—	13½	13½	—	—	—
10 <i>Leeds Trams</i> ..	—	—	—	—	—	—
10 <i>N'th Metr. Tramway, Lond</i> ..	18½	—	—	—	—	—
<b>Railways.</b>						
100 <i>Dublin, Wicklow, &amp; W'ford</i> ..	—	—	—	—	—	—
100 <i>Great Northern (Ireland)</i> ..	—	118½	118½	—	—	118½
100 <i>Gt. Southern and Western</i> ..	—	—	—	—	—	114
100 <i>Midland Gt. Western</i> ..	—	—	—	—	83½	—
50 <i>Waterford and Limerick</i> ..	—	—	—	—	—	—
<b>Railway Preference.</b>						
100 <i>D., W., &amp; W., 5 p c (1880)</i> ..	—	—	—	—	—	117
100 <i>Gt. N'th'n (Irlnd) gr'd 4 p c</i> ..	—	—	—	—	—	—
100 <i>Do., 4½ p c</i> ..	—	—	—	—	—	—
100 <i>Watfd. &amp; Limerick, 4 p c</i> ..	—	—	—	—	—	—
50 <i>Do., new red, 5 p c</i> ..	102	—	—	—	—	—
<b>Debenture Stocks.</b>						
— <i>Belfast &amp; N'th'n Cos. 4 p c</i> ..	—	—	—	—	—	—
— <i>C'fergus and Larne 4 p c</i> ..	—	—	—	—	—	—
— <i>Dublin &amp; Wicklow 4 p c</i> ..	—	—	—	—	—	—
— <i>Do., 4½ p c</i> ..	—	—	—	—	—	—
— <i>Gt. Northern (Ireland) 4 p c</i> ..	—	—	—	109½	109½	109½
— <i>Do., 4½ p c</i> ..	—	—	—	—	—	—
— <i>Do., 5 p c</i> ..	—	—	—	—	—	—
— <i>Gt. North'n &amp; West'n 4½ p c</i> ..	—	—	—	—	—	—
— <i>Gt. South'n &amp; West'n, 4 p c</i> ..	—	110	—	—	110	110
— <i>Kilkenny Junction, A, 5 p c</i> ..	—	—	—	—	—	—
— <i>L'derry &amp; Enniskillen 5 p c</i> ..	130	—	—	—	—	—
— <i>Do., 4½ p c</i> ..	—	—	—	—	—	—
— <i>Midland Gt. West'n, 4 p c</i> ..	—	106	—	—	—	—
— <i>Do., 4½ p c</i> ..	—	—	—	—	—	—
— <i>Waterford &amp; Central 5 p c</i> ..	—	—	—	—	—	—
<b>Miscellaneous Debent.</b>						
<i>Dub. &amp; Glas. S.P. Co. (1887) 5 p c</i> ..	—	—	100	—	—	—
<i>Pipe Water Old, £92 6s. 2d.</i> ..	—	—	—	—	—	—
<i>Do. New, £100</i> ..	—	—	—	99½	—	—

\* Shares not fully paid up are given in Italics. † x d

Bank Rate—Of Discount—6 per cent., 30th January, 1882.  
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BIRTHS, MARRIAGES, AND DEATHS.

BIRTHS

DUNN—June 16, at Belgard-bridge, the wife of M. J. Dunn, Esq., barrister-at-law, of a daughter.
FROSTE—June 17, at Barba Villa, Howth, the wife of Richard Pope Froste, Esq., A.B., solicitor, of a daughter.
LITTLE—June 16, at Dundrum House, the wife of Judge Little of a daughter.
M'WILLIAM—June 15, at North road, Monaghan, the wife of Wm. M'William, Esq., solicitor, of a son.
TOBIAS—June 20, at Strand-road, Sandymount, the wife of Matthew Tobias, Esq., solicitor, of a son.

MARRIAGES.

BELAS and BIRD—June 17, at St. John's Church, Monkstown, County Dublin, by the Rev. J. Sandys Bird curate of St. John's, Monkstown, assisted by the Rev. F. E. K. Bird, incumbent of Leixlip, County Kildare, brothers of the bride, Charles William, youngest surviving son of George Henry Belas, of Ivy House, Leixlip, Esq., solicitor, to Eva, youngest daughter of the late John Sandys Bird, Esq., J.P., Kinsale, County Cork.
CORCORAN and LETT—June 22, at St. Peter's Church, Dublin by the Rev. R. W. Buckley, D.D., John Corcoran, Esq., solicitor, Ennisceorthy, County Wexford, eldest son of the late L. W. Corcoran, Esq., to Grace Anne, only daughter of the late Joshua Lett, Esq., J.P., Ballybane, County Wexford.

DEATHS.

LONGFIELD—June 20, at Fitzwilliam-square, Dublin, Elizabeth Penelope, wife of the Right Hon. Mountfort Longfield.
LOUGHEED—June 19, at Fortarlington, Caroline T., the beloved wife of Henry M. Lougheed, Esq., solicitor.

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In the Matter of

THOMAS WOODLOCK, of 43 Dame-street, in the City of Dublin, Stock and Share-Broker, a Bankrupt.

A Public Sitting will be held before the Chief Registrar, at the said Court, at the Four Courts, Dublin, on FRIDAY, the 7th day of JULY, 1882, at the hour of Half-past Eleven o'clock forenoon, for the Proof and Admission of Debts. The Account of the Official Assignee and the Vouchers for the same will also be examined.

A Creditor may prove his Debt at the Sitting, or send his Affidavit of Debt in the prescribed form to the under-named Official Assignee, four days previously to the Sitting, in order to have the same admitted as a Proof.

Dated this 22nd day of June, 1882.

W. H. S. MONK, Chief Clerk.

CHAS. HENRY JAMES, Official Assignee, 16 Merchants'-quay, Dublin.

MICHAEL LARKIN & CO., Solicitors for the Assignee, 51 Dame-street, Dublin. 94

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# THE IRISH LAW TIMES AND SOLICITORS' JOURNAL.

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SATURDAY, JULY 1, 1882.

No. 805

## CONTRACTS IN OUSTER OF THE EMPLOYERS' LIABILITY ACT, 1880.

THE important decision of the English Queen's Bench Division in *Griffiths v. The Earl of Dudley*, on the 16th ult., confirms an opinion expressed first by the present writer more than a year and a half ago, in reference to the question whether it is competent to a workman to enter into a contract with his master so as to oust the remedial operation of the Employers' Liability Act, 1880 (see 14 Ir. L. T. 590, 612, 621). We ventured to maintain the affirmative view, notwithstanding the opinion to the contrary advanced by a learned and well-known jurist and legal writer, Dr. Wharton, who maintained that such contracts would be invalid, because "by the consent of the great body of our American courts, contracts to relieve a party from the consequences of his negligence are unlawful, as against the policy of the law": 3 Stn. L. R. (N. S.) 745. But, as we then observed, to our thinking he must have had in mind merely the decisions (referred to, 14 Ir. L. T. 367) as to contracts limiting the liability of railway companies, respecting which some exceptional considerations of public policy are concerned: see 5 Stn. L. R. 202; while even as to them our courts had allowed extreme latitude prior to the passing of Cardwell's Act: see 14 Ir. L. T. 367, *et seq.*; 25 Journ. of Jur. 478; *et cf.*, as to waiver of statutory benefits in reference to insurance policies, *Farmers, &c., Ince. Co. v. Curry*, 13 Bush. 312; *White v. Connecticut, &c., Ince. Co.*, 4 Dill. 177; *Reilly v. Franklin Ince. Co.*, 48 Wis. 449; *Thompson v. St. Louis Ince. Co.* ib. 459; *Chamberlain v. Ince. Co.*, 55 N. H. 249. Since then, however, we find it held last year, in the Indiana case of *Rosener v. Hermann* (8 Federal Rep. 782), that a contract between employer and employee, whereby the latter, in consideration of the employment, agrees to release and discharge the former from all damages on account of accident or death to the employee, caused by the negligence of his employer or co-employees, is void as against public policy. "So far as he could do so by the exercise of reasonable care, the defendant was bound," said the court, "to supply his factory with suitable and safe machinery. If he failed to do this, and required his employee to operate machinery which was unsound and unsafe, and in doing so the latter, while exercising ordinary care and prudence, received injuries which caused his death, his personal representative has a right of action for the benefit of those who have sustained loss from the injury and death. When the defendant's negligence in supplying his employees with unsafe machinery has caused the death of the latter, the law will not allow the defendant to say—as in effect he does say in this answer—'it is true that my machinery was defective and unsafe, and my negligence caused the death of my employee, but I am not liable to those who have suffered from the loss of his life, because I had a contract with my employee which secured to me the right to supply him with defective and unsafe machinery, and to be negligent.' Such a contract is void as against public policy." We find, however, that in a previous Georgia case (*Western, &c., Ry. Co. v. Bishop*, 50 Ga. 465), a well-considered decision to the contrary was delivered, the court distinguishing the case of a common carrier, as we, also, had thought

such cases distinguishable; but, we further find it held that a railway company may, in the contract of employment, stipulate that they will not be responsible for injuries sustained through the negligence of a co-employee (*Western, &c., Ry. Co. v. Strong*, 52 ib. 461; *cf. Ingersoll v. Randall*, 14 Minn. 400), although there is a statute making it no defence, in that State, to actions for injuries sustained by railroad employees, that the injury was caused by a fellow-servant: Code Ga. 1873, ss. 2083, 3036.

Now, in *Griffiths v. The Earl of Dudley*, it appeared that there had been established in the defendant's collieries a kind of club or benefit society, called the "Field Box," which was a fund raised by levying weekly contributions from workmen, in some cases directly and in other cases indirectly, through the agency of the contractors under whom they worked. The Earl, as the owner of the collieries, added to the fund a gross sum equal to the amount of the total contributions levied from the workmen. The deceased was a journeyman pit-sinker, and from his wages was deducted by the contractor in whose immediate employment he was 4d. per week for the fund. He was not asked to contribute, but the sum was deducted from the amount payable to him at each reckoning. The Earl's contributions to the fund were voluntary. The benefits derived by the workmen from the fund were—(a) surgical aid in case of personal injuries in their work; (b) a weekly allowance in case of inability to work from injuries or sickness; (c) money to pay funeral expenses in case of a workman's death; and (d) an allowance to the widow and family in case of workmen killed when engaged in their employment. The club or society was not registered as a benefit society, nor, was there any rule for its management. There was no evidence that there were any officers, nor, as between the parties, any balance-sheet or audit. The payments out of the fund were voluntary and at the discretion of the agents who managed the fund as part of the business of the collieries. As regarded the case of a widow, the allowances made were optional, and so as to the allowances as to children. When the Employers' Liability Act was passed, meetings of the men took place (which, however, it was not proved that the deceased man attended), resulting in an agreement to accept the existing arrangement, and the Earl circulated conditions the effect of which would be that all the workmen were to be members of the club or relief society on the basis already existing, and that they should thus contract themselves out of the Act; and that no workman, nor, in case of death, any person entitled to look to the funds of the society for compensation should be entitled to sue the Earl. It was proved that Griffiths read these conditions, and went on to work as before, paying his subscriptions as he had been used to do. He afterwards lost his life in consequence of the negligence of a person in the employment of the Earl, who had a superintendence which under the Act would give a workman or his widow a right of action against the Earl, and his widow brought such an action under Lord Campbell's Act and the Employers' Liability Act, in the county court. The Earl set up as a defence the implied contract entered into by the deceased workman to waive for his widow the benefits of the Act. It was contended on the part

of the plaintiff that she was not bound by it, and that in truth there was no binding contract, it being void for want of mutuality and want of consideration, and also as contrary to public policy as tending to defeat the object of the Act; and the county court judge yielded to this contention. From this decision the defendant appealed. The plaintiff's counsel strongly relied on the words of the Act of 1860, that in the classes of cases provided for "the workman or, in case the injury results in death, the legal personal representatives, and any persons entitled in case of death shall have the same right of compensation and remedies against the employer as if the workman had not been a workman, nor in the service of the employer, nor engaged in his work." In giving judgment, Field, J., said that the general object of the Act was to avoid the injustice which was considered to have arisen in cases where workmen were killed or injured by reason of negligence of persons in superintendence under the employers, and where there was before the Act no remedy. The object, however, was only to get rid of the obstacle to recovery of compensation arising merely from the fact that the person injured was in the employment of the person sued. It was not intended to get rid of actual and express contracts. When the Act came into operation Lord Dudley intimated that he would not employ workmen except upon the conditions published, and it was clear that the deceased had assented to them. And these conditions expressly stipulated that in such case the workman or his widow should not look to the Earl for compensation. It was a reasonable contract, fairly entered into, and there was abundant consideration for it, as the Earl largely contributed to the fund. That being so, the workman sustained injuries in his employment which caused his death, and his widow sued the Earl, who set up the contract in defence. The county court judge had overruled the defence, taking a view of the contract in which this court could not concur. First, he held the contract void for "want of mutuality," but that was not pressed in argument, and was clearly untenable. Next he held that the contract was void as being contrary to public policy, because tending to frustrate the object of the Act. But why was it so? He thought, on the contrary, that it was quite consistent with and tended to carry out the object of the Act. Then it was urged that the workman could not contract his widow out of the Act, as her right of action was quite distinct from his own or his representative's, and so, in a sense, it was, for by the recent Act she could sue under Lord Campbell's Act if the representatives did not, but that, though in a sense a new right of action, was rather a change of procedure than a new right of action, the right of action really remained the same. Then the words of the Act referred to were relied upon, that the workman or his widow should be in the same position as if he were not a workman in the service of the parties sued. But that only got rid of the objection arising before the Act from the doctrine of "common employment," and was not to be taken literally, and, indeed, if it were to be so the action could not be maintained at all, for it could only be maintained on the ground that the workman was in the employment of the person sued. It was to be taken then that the deceased workman had contracted himself out of the Act. There were no words in this Act—as there were in others—providing that the workmen should not contract themselves out of the Act. And where it was not expressly provided that freedom of contract should be restrained, it was not to be interfered with. On these grounds, therefore, he came to the conclusion that this action could not be maintained against the Earl, and that the decision of the county

court judge must be reversed and judgment entered for the Earl. Cave, J., in concurring, said that the question was whether the workman could contract his representatives and his family out of the Act, as well as himself, and he was clear that he could. The only effect of the words in the Act relied upon was that the objection could not be taken—in the classes of cases provided for—that the workman was in the defendant's employment; but it did not interfere with freedom of contract, nor prevent the workman from entering into such a contract as this, which was really for his benefit.

This decision, as we have said, not only in conformity with the opinion originally expressed in this journal, but with the opinions (quoted, 14 Ir. L. T. 620) of the late Lord Justice Holker, when Attorney-General, and of Mr. Horace Smith, the writer of a well-known work on the Law of Negligence, as well as with the opinion maintained by Messrs. Roberts and Wallace in their excellent edition of the Act; and a like opinion was affirmed by Bramwell, and Brett, L.JJ., in their evidence before the Select Committee of the House of Commons on Employers' Liability. To us it seems that the only point that could have been thought substantially open to question, was as to whether the deceased could so contract his wife and children also out of the benefit of Lord Campbell's Act, which the first two of those opinions affirmed he could do. However, if it be allowed that Lord Campbell's Act gave no new right of action to the representatives of the deceased, and was merely intended to prevent his death operating as a bar to an action for damages (see 13 Ir. L. T. 565; *Byrne v. Wilson*, 15 Ir. C. L. R. 363; *Reed v. G. E. Ry. Co.* L. R. 3 Q. B. 555), the decision on that point too must be taken as practically following. But, whether an employer could exempt himself from liability for his own wilful negligence, is another question, unconcluded by this decision. As it is, however, the occasion would seem to be ripe for reconsideration of this subject, remembering the words of Mr. Dodson, the former President of the Local Government Board, declaring (Nov. 11, 1860) that, "as regarded any attempts to evade or frustrate the intentions of the Legislature, if such attempts occurred, then would be the time for the Government and the Legislature to consider the nature of the cases and whether they called for any legislative interference." "It does not appear," remarks Mr. Murehie, Secretary of the Amalgamated Society of Carpenters and Joiners, in their 22nd annual report, just issued, "that any justification can be found for the permissive character of the Act, and the Parliamentary Committee of the Trades Union Congress have resolved to make a strong effort to induce Parliament, along with other very necessary improvements, to insert a clause which will render it impossible for either employers or workmen to contract themselves out of its provisions." And certainly, as Lord Shand maintained two years ago, workmen have reason for agitating against such a perversion of what the law would seem to recognise as their ordinary rights; though we find that, at the meeting of the Sheffield Chamber of Commerce, this week, it was resolved that such interference, as now proposed, with the right of free contract between adults would be prejudicial to the interests of commerce in this country.

#### MORTGAGES AND THE STATUTE OF LIMITATION.

Our ancestors in the law, when they created the present form of mortgage, sowed the seed of fiction which has produced a crop of misapprehension. If the equity lawyers had possessed sufficient firmness of mind to allow a mortgage deed to mean what it said, an intelligible mode of securing the loan of money would have

sprung up which, doubtless, would have been quite as convenient as the present, and would, at the same time, have been clear on the face of it. One of the perplexities arising from the double nature of a mortgage transaction has lately required a Lord Chancellor, an ex-Chancellor, and a Chief Justice, besides three Lords of Appeal, two Lords Justices, and a puisne judge, to solve it. In the action of *Heath v. Pugh*—an action of ejectment, reported in its last stage in the June number of the *Law Journal Reports*—Mr. Justice Denman, at the trial, held that the plaintiff, being the mortgagee of the land, was entitled to recover it. On appeal to Lord Coleridge and Mr. Justice Lindley, it was held that, as twenty years had elapsed from the date of the mortgage, and there was no proof of the payment of interest, the Statute of Limitation applied. In the Court of Appeal (consisting of Lord Selborne and Lords Justices Baggallay and Brett), it was held that, as the plaintiff had obtained a foreclosure decree within twenty years from bringing his action, he was entitled to recover. In the House of Lords this judgment was affirmed, with the full approbation by Lord Cairns of the judgment of his successor on the woolsack, and with the concurrence of Lords O'Hagan, Blackburn, and Watson.

The facts of a case frequently referred to need be recalled but briefly. In 1856, the plaintiff, Heath, with a co-trustee, Creaklock, invested trust money on the security of the land in question. Creaklock, with the complicity of the mortgagor, in 1859, sold the land to the defendant without disclosing the mortgage. The defendant took possession, and Creaklock appropriated the purchase money. He appears afterwards to have kept matters quiet by paying the interest; but in 1870, in order apparently to cover up the transaction, he induced Heath to execute a reconveyance to the mortgagor on the representation that the mortgage was to be paid off. Shortly afterwards he absconded. In 1870 Heath filed a bill for foreclosure, and in 1873 he obtained a decree, the reconveyance being set aside as fraudulent. In 1878 he brought the present action of ejectment against the purchaser from Creaklock. If the twenty years were to count from 1856, or so soon as the redemption clause in the mortgage deed was exhausted, the plaintiff was out of time; and it was equally clear that in 1870, when he brought the foreclosure action, he was within time, and would be within time if the period of limitation only began to run from the foreclosure. The question is one of those upon which judges may well differ, form and substance being mixed up in a manner likely to give the result a turn either way in the judge's mind. Lord Coleridge, when the matter came before him and Lord Justice Lindley, seemed to be influenced by the fact that the defendant had bought and paid for the land, and that between him and the plaintiff, both being innocent persons, the plaintiff, by not bringing his action before, was the more to blame. Mr. Justice Lindley, although an equity lawyer, seems, sitting in the Common Pleas, to have taken a rather extreme common law view of the case. Both agreed that a foreclosure action does not deal with the possession of the land; and in very short judgments, without citing cases, decided for the defendant. In the Court of Appeal the Lord Chancellor happened to be sitting, and, out of deference to the judges below, gave an elaborate judgment overruling their decision. In the House of Lords, Lord Cairns contents himself by referring to the judgment of Lord Selborne in the Court of Appeal, but puts the considerations involved in a very brief but powerful way. Lord Cairns, after stating all the material facts in ten words, points out that if the mortgage, instead of being legal, had been equitable, there would have been no possible question that the proceedings in Chancery would have given a right to the mortgaged property. Lord Cairns adds: "The Court is not now a Court of law or a Court of equity; it is a Court of complete jurisdiction; and if there were a variance between what, before the Judicature Act, a Court of law and a Court of equity would have done, the rule of the Court of equity must now prevail." These words appear to us to give a

wider meaning to the Judicature Act than has ever been given before. Lord Cairns's words may be construed to mean that where an equitable right gives certain privileges, *a fortiori* a legal right gives them. No strain must, however, be put upon the words, which appear intended mainly to point a *reductio ad absurdum*. He proceeds to ask why a legal mortgagee is to be worse off than an equitable mortgagee: and refers for authority to the case of *Wrighton v. Viz*, 8 Dr. & War. 104, decided by Lord St. Leonards. Lastly, he lays down the proposition that the right of the mortgagee to bring his action of ejectment as absolute owner did not accrue until he had brought his action of foreclosure; and, therefore, that the statute did not begin to run at all until the foreclosure decree was obtained. Lord Cairns treats this proposition as not necessary for the decision of the case. He relies sufficiently on his *reductio ad absurdum* to dispose of the case in hand. Lord Selborne, however, in his judgment, concurs in this proposition; and the sufficiency of the first ground on which Lord Cairns affirms the decision of the Court of Appeal may well be doubted. The establishment of this doctrine completes the triumph of substance over form. There was a time when the common law Courts looked upon a mortgagor as a mere tenant at sufferance of the mortgagee; now he is declared to be the true owner of the estate, and the mortgagee can only obtain a full right to turn him out by obtaining a decree of foreclosure. Lord Cairns, of course, does not say that a mortgagee cannot bring an action of ejectment until he has obtained a foreclosure decree. This would be vastly to restrict his rights. He may enter into possession, by ejectment or otherwise, "of land which he is to hold as a pledge, subject to account and to all the infirmities of a mortgagee's title;" but when he has obtained a foreclosure decree he obtains a new title, being that of absolute owner.

This view would seem to put the decision on its firmest ground. The mortgagee may have two rights of entry. One he has at all times during the continuance of the mortgage; namely, that which, when exercised, makes him mortgagee in possession. The other he has only after a foreclosure decree, which makes him absolute owner. This view avoids the difficulty that a foreclosure action is not an action for the recovery of land—a fact upon which the judges in the Divisional Court relied. If it were an action for the recovery of land, the present question would never have arisen, because the land would already have been recovered. But the foreclosure decree gives an entirely new title. It is as if a person who was tenant for life became tenant in fee by the happening of some event. The statute would run, not from the accrual of his first title, but from that of the second. The difference in the character of the titles is, no doubt, recognised in equity only, and not in law, but the Court is now a Court of equity. The decision involves propositions which it is not difficult to criticise, but such criticism is not of a profitable kind. We have now the highest authority on the subject, and the conclusion arrived at is in accordance with convenience and justice.—*Law Journal*.

#### PARTICULARS AND CONDITIONS OF SALE.

(From the *Law Times*.)

In consequence of the Vendor and Purchaser Act 1874, and the Conveyancing Act, 1881, a very considerable abbreviation can be made in those conditions of sale which relate to title or evidence of title. But conditions of sale can by no means be dispensed with, and we propose to give some common form conditions of sale, which may be useful both in auctions and in private contracts. Most of our readers are aware that some of the provincial law societies did, before the passing of the Conveyancing Act, issue general conditions of sale, which have been largely adopted in the districts represented by such societies. The advantage of general conditions is very obvious. They save much labour to the vendor's solicitor. Although he has to

peruse the title to the property for sale for the sake of drawing any special conditions which may be necessary, he is relieved from much mechanical work, and also in some cases from the trouble of deciding whether it is necessary to insert such and such a condition. He can limit his attention to framing the special conditions. To the purchaser's solicitor, again, if he practises in the districts where the conditions are current, the relief is considerable. He is acquainted with the general conditions, and does not therefore, while he peruses the abstract, need to be perpetually referring to the conditions to see whether some inquiry is barred, or some right of the purchaser restricted. He can keep his attention the better to matters which are really of consequence to the title. Of course, to make the general conditions useful, they must be moderate and be generally adapted. The disadvantage of the present system is that each society has different conditions, and solicitors are not likely to be acquainted with those of societies at a distance.

This gives more trouble to the Profession. Also, many societies have no conditions, or have not yet adapted them to the recent changes. We propose, therefore, to frame some general conditions of sale to be called the "Law Times Conditions," in which we shall, as far as is reasonably practicable, rely on the statute. We shall make some preliminary remarks on particulars and conditions, and we shall also give some notes upon the conditions we propose for acceptance, and state the recent decisions relating thereto, with references to well-known text books.

The distinction between the office of particulars and conditions should be thoroughly understood. It is for the particulars to describe the subject-matter of the contract, and of the conditions to state the terms on which it is sold: (*Torrance v. Berton* 27 L. T. Rep. N. S. 722; L. Rep. 14 Eq. 120). In other words, the particulars state what is sold, and the condition how it is sold. The importance of the distinction arises from the fact that an omission made in the particulars will not necessarily be remedied by a statement, however explicit, in the conditions; unless it can be shown that the purchaser's attention was expressly directed to it: (*Dart*, 114). So also the usual condition for compensation will not avail in case of material misdescription, as where long leasehold or copyhold is described as freehold (*Dart*, 159); or where land, which was formerly copyhold and has been enfranchised, but in which the minerals belong to the lord, is described as freehold (*Sydney v. Nicholson*, 25 L. T. Rep. N. S. 4; L. Rep. 6 Ch. App. 436). In selling an underlease it is best to show clearly, in the particulars, that it is not an original lease. It is not prudent to call it a lease in the particulars, and leave it to the conditions to explain that it is an underlease; but the very strict view held in *Madeley v. Booth* (2 De G. & Sm. 718) has been impugned in later cases (*Dart*, 148); and was disented from in very strong terms by Sir G. Jessel in *Camberwell, &c., Building Society v. Holliday* (41 L. T. Rep. N. S. 752; L. Rep. 15 Ch. Div. 760). In that case it was held, that there was enough in the conditions to give notice to the purchaser that the property was held under a derivative lease. Still it is most prudent to show it in the particulars. So the condition as to compensation will not cover a material misdescription as to the land sold, whether with regard to quantity or otherwise (*Dart*, 144-145; *Arnold v. Arnold*, 42 L. T. Rep. N. S. 705; L. Rep. 14 Ch. Div. 270). Where, on a sale of leasehold, at Liverpool, by a slip, the ground rent was not stated, and the purchaser believed that there was no, or only a nominal, ground rent, he was held entitled to be discharged from the contract (*Jones v. Rismer*, 43 L. T. Rep. N. S. 111; L. Rep. 14 Ch. Div. 526). If the land is held subject to any restrictions they should be stated. It is proper on sale of freeholds to mention heriots and quit rents. In case of a long term which has been enlarged into a fee simple under sect. 65 of the Conveyancing Act, if there are onerous restrictions which are kept alive by sub-sec. (4), they should be mentioned or noticed in the particulars. In fact, the particulars should not

merely be not untrue, or even just true, but they should be a fair honest description of the property to be sold. However, it is not necessary on sale of leaseholds to notice the covenants, although unusually stringent, if the purchaser has an opportunity of examining the lease; and so on sales of copyholds the uses and customs of the manor, and the lord's rights as to minerals, need not be mentioned, as they are the ordinary incidents of copyholds; but, as a matter of expediency, it is best to mention the fines. The above remarks are not intended to be a summary of the law relating to particulars, but merely to give a general view of their nature. For further information see *Dart*, 118-122; 1 *Davidson*, 511; and as to Plan incorporated with the particulars, see *New Valley, &c., v. Dunkley* (L. Rep. 4 Ch. Div. 1). We shall endeavour to make our general conditions as comprehensive as possible, so as to reduce the number of the special conditions. It will often be practicable then, in an advertisement of the property for sale, to state the conditions in the following simple form:—"The property will be sold subject to the Law Times Conditions 1882, the title to commence with a conveyance on sale dated the \_\_\_\_\_ of \_\_\_\_\_, 18, and the purchase to be completed on the \_\_\_\_\_ day of \_\_\_\_\_ next."

(To be continued.)

#### CONTRACT OF CARRIAGE—LIMITATION OF TIME FOR PRESENTING CLAIM FOR DAMAGE.

In *Capelhart v. Seaboard and Roanoke Railroad Company*, 81 N. C. 493, it was held that a stipulation in a bill of lading given by a common carrier, that in case any claim for damage should arise for the loss of articles mentioned in the receipt, while in transit or before delivery, the extent of such damage or loss should be adjusted before removal from the station, and claim therefor made in thirty days to a "trace agent" of the carrier, is an unreasonable provision, which the courts will not uphold. The court said:—"The jury having found that there was negligence on the part of defendant, we must take that as a fact, and adhering to the principles established in the cases cited, we are of the opinion that the defendant's liability for damages is not diminished or affected in any way by the notice or contract annexed to the bill of lading, not even by the stipulation that the damages must be adjusted before the removal of the goods from the station and the presentation of the claim for payment within thirty days; for the stipulation must be reasonable; and we do not think it is reasonable to require the consignee of a car-load of cotton to cut into the bales before they are received to ascertain whether they have been seriously damaged. A contract restating the responsibility of the carrier must be reasonable in itself, and not calculated to ensnare or defraud the other party. A contract requiring notice of loss in thirty days is not reasonable." *Adams Express Co. v. Reagan*, 29 Ind. 21; *So. Ex. Co. v. Caperton*, 44 Ala. 101; S. C., 4 Ark. Rep. 118; *Place v. Union Ex. Co.*, 3 Hilt. 19."

In *Adams Express Co. v. Reagan*, 29 Ind. 21, it was held that a condition that the carrier should not be liable for any loss, unless a claim was presented within thirty days after shipment, was void. The shipment was to Savannah, Georgia, during the war, when transportation was much interrupted. The court said:—"The conditions must be reasonable in themselves, and not such as will operate as a snare and fraud upon the public." "In the case under consideration, the company, in a shipment of a package sent from Clayton, in this State, to Savannah, Georgia, at a time when the country was in an unsettled condition, occasioning great delays in shipments, and in the transmission of the mails, attempt to incorporate into their contract a condition precedent, that they will not answer for any loss or damage, unless the claim therefor shall be presented to them, at their office at the former place, within thirty days after the date of the receipt; thus placing it in their power, by a delay which perhaps under the circumstances would not have been unreasonable, to prevent any claim for loss or damage, however

gross might have been their negligence. We think the stipulation in question void as being against public policy."

In *U. S. Express Co. v. Harris*, 51 Ind. 127, there was a condition that any claim must be presented within thirty days from the date of the receipt, at the office of shipment. The shipment was at Pittsburgh, Penn., for Jonesboro, Ind. The court say:—"We know of no reason why this stipulation is not binding and valid between the parties." "It seems to us reasonable." They lay stress on the fact that the transportation would ordinarily be completed in a day or two, and cite *Southern Express Co. v. Caldwell*, and *Weir v. Express Co.*, *infra*. They distinguish *Adams Express Co. v. Reagan*, on the ground of the peculiar circumstances of that case.

In *Southern Express Co. v. Caperton*, 44 Ala. 101; S. C., 4 Am. Rep. 118, the condition was that the claim should be made, at defendant's receiving office, in writing, within thirty days from the date of the receipt, with the receipt annexed. The transportation was to be from Stevenson to Huntsville, Ala. On this point the court simply said:—"He cannot be allowed to make a statute of limitations so short as to be capable of becoming a means of fraud. Thirty days might elapse before the consignee became aware that anything had been consigned to him, especially if he was absent from home. It was the duty of the defendant to deliver this package to Mr. Cruse, and it is more than unreasonable to allow it to appropriate the property of another by a failure to perform a duty, and that, too, under the protection of a writing signed only by its agent, the assent to which by the other party is only proven by his acceptance of the paper." The court queried whether the paper constituted a special contract.

In *Weir v. Express Co.*, 5 Phila. 355, the condition was that claim must be made within thirty days after the time when the property had or ought to have been delivered. The particular facts are not disclosed. The court say:—"This is a very reasonable and proper provision, to enable the defendants, while the matter is still fresh, to institute proper inquiries, and furnish themselves with evidence on the subject. The defendants do a large business, and to allow suits to be brought against them, without such notice, at any length of time, would be to surrender them bound hand and foot to almost every claim that might be made. It would be next to impossible, when a thousand packages, large and small, are forwarded by them daily, to ascertain anything about the loss of one of them at a distance of six months or a year."

In *Express Co. v. Caldwell*, 21 Wall. 264, a condition that the claim must be made within ninety days from delivery to the company, was held reasonable where the time required for the transportation is not long, as in that case a single day. The court said:—"Policies of fire insurance, it is well known, usually contain stipulations that the insured shall give notice of a loss, and furnish proofs thereof within a brief period after the fire, and it is undoubted that if such notice and proofs have not been given in the time designated, as have not been waived, the insurers are not liable. Such conditions have always been considered reasonable, because they give the insurers an opportunity of inquiring into the circumstances and amount of the loss, at a time when inquiry may be of service. And still more, conditions in policies of fire insurance that no action shall be brought for the recovery of a loss unless it shall be commenced within a specified time, less than the statutory period of limitations, are enforced, as not against any legal policy. *Riddleberger v. Hartford Ins. Co.*, 7 Wall. 386."

Telegraph companies, though not common carriers, are engaged in a business that is in its nature almost if not quite as important to the public as is that of carriers. Like common carriers they cannot contract with their employers for exemption from liability for the consequences of their own negligence. But they may, by such contracts, or by their rules and regulations brought to the knowledge of their employers, limit the

measure of their responsibility to a reasonable extent. Whether their rules are reasonable or unreasonable must be determined with reference to public policy, precisely as in the case of a carrier. And in *Walf v. Western Union Telegraph Company*, 62 Penn. St. 69; S. C., 1 Am. Rep. 587, a case where one of the conditions of a telegraph company, printed in their blank forms, was that the company would not be liable for damages in any case where the claim was not presented in writing within sixty days after sending the message, it was ruled that the condition was binding on an employee of the company who sent his message on the printed form. The condition printed in the form was considered a reasonable one, and it was held that the employer must make claim according to the condition, before he could maintain an action. Exactly the same doctrine was asserted in *Young v. Western Union Telegraph Company*, 84 N. Y. Superior, 890.

In *Lewis v. Great Western Railway Co.*, 5 H. & N. 867, which was an action against the company as common carriers, the court sustained, as reasonable stipulations in a bill of lading that 'no claim for deficiency, damage, or detention, would be allowed unless made within three days after the delivery of the goods, nor for loss, unless made within seven days from the time they should have been delivered.' Under the last clause of this condition the onus was imposed upon the shipper of ascertaining whether the goods had been delivered at the time they should have been, and in case they had not, of making his claim within seven days thereafter. In the case we have now in hand the agreement pleaded allowed ninety days from the delivery of the parcel to the company, within which the claim might be made, and no claim was made until four years thereafter. Possibly such a condition might be regarded as unreasonable, if an insufficient time were allowed for the shipper to learn whether the carriers' contract had been performed. But that cannot be claimed here. The parcel was received at Jackson, Tennessee, for delivery at New Orleans. The transit required only about one day. We think, therefore, the limitation of the defendants' common law liability to which the parties agreed, as set up in the plea, was a reasonable one, and that the plea set up a sufficient defence to the action."

The court then advert to *Southern Express Co. v. Caperton*, and, after describing the case, remark:—"It will be observed that it was a much more onerous requirement of the shipper than that made in the present case, and more than was necessary to give notice of the loss to the carrier." "This case is a very unsatisfactory one. It appears to have regarded the stipulation as a statute of limitations, which it clearly was not, and it leaves us in doubt whether the decision was not rested on the ground that there was no sufficient evidence of a contract."

In *Lewis v. Great Western Railway Co.*, *supra*, Pollock, C.B., said:—"Such a condition is perfectly reasonable. The law allows persons to make their own bargains in matters of this sort."

In *Southern Express Co. v. Hummell*, 54 Miss. 566; S. C., 28 Am. Rep. 885, the condition was that claim must be made at the shipping office within thirty days from the date of the receipt. The shipment was at Landerdale, Miss., for delivery at New York city. The court said:—"We find that the precise condition set up in the plea was held to be reasonable, and a discharge of the company from all liability if not complied with, in *United States Express Co. v. Harris*, 51 Ind. 127. There, as in the case before us, the claim for loss was required to be made in thirty days from date of receipt. In *Weir v. Express Co.*, 5 Phila. 355, before Sharswood, P. J., the claim was required to be made of the express company within thirty days after the property had been, or ought to have been, received; and the ruling was that the owner had lost his remedy, where non-delivery was complained of, if the claim was not preferred within thirty days after delivery ought to have been made. Such provision in the contract was said to be reasonable, as enabling the express company while the matter was

fresh, to institute proper inquiries, and furnish themselves with evidence on the subject. The chief business of express companies, as is well known, is to carry small but valuable packages. There is more or less liability, that in the vast multitude of parcels which they handle, passing through the hands of so many agents, a loss, by mistake or accident, or by the appropriation of an employee, will at times occur. It is not unreasonable that the individual shippers, who have, or may be supposed to have, distinct knowledge and recollection, should be required to give notice of non-delivery or unreasonable delay. The law is settled by the great weight of authority that a common carrier may limit his liability by contract, provided the special contract does not exempt from losses by negligence or misconduct. The exemption thus claimed must be reasonable, and the carrier cannot take advantage of his powers and of the necessities of the public, to exact exemptions from that measure of duty which public policy demands. Such was the line of observation of the Supreme Court of the United States in *Express Co. v. Caldwell*, 21 Wall. 264, upholding as reasonable a stipulation in the contract, not differing from that in this case, except that the time for making the claim was ninety days. The only case holding a contrary doctrine is *Southern Express Co. v. Caperton*, 44 Ala. 101; S. C., 4 Am. Rep. 118, which is said in the case last cited to be a very unsatisfactory decision. The Alabama court puts its objection to the covenant on the ground that it was a statute of limitations. Clearly it was not, any more than is notice of a fire, and proof of loss within a specified time. The stipulation is no more than a condition, with which the owner and shipper must comply, or lose his claim; if he does comply, he may bring his suit within the time prescribed by the statute of limitations.

"It appears that the usual time required for the transportation of this package to New York from Lauderdale station is three or four days. We are not called upon in this case to say whether thirty days from the date of the receipt is an unreasonably short time to make claim for damages or loss. The pleadings raise no question of that sort, but admit that it was reasonable. Reasonable time would be time ample to ascertain the non-delivery of the parcel at the place of destination, which depends on the distance and facilities of communication. If Hunnicutt received no tidings of his package in ten or twelve days from the shipment, his suspicion ought to have been aroused, and inquiry made. If that had been done, it is almost certain that the parcel would have been found in due time for its delivery at New York."

The condition in the principal case, it will be observed, was much more stringent than in any of the cases above reviewed, and it may well be that it was unreasonable even within those cases.

Mr. Lawson, in his recent valuable monograph on *Contracts of Carriage*, speaks of the principal case as holding the condition "reasonable except as to latent defects." We do not find any warrant for this construction of the case.—*Albany Law Journal*.

In reference to the last paragraph in the above paper, Mr. J. D. Lawson subsequently wrote as follows:—

"In *Caphart v. Seaboard, &c., R. R. Co.*, 77 N. C. 855, decided in 1877, the bill of lading stipulated that any claim for loss or damage to the article shipped should be adjusted in the presence of an officer of the road before it was taken from the station; and also, that within thirty days thereafter the claim should be taken before another officer who had the authority of the road to settle such matters. On the trial the defendant asked the court to charge the jury that the plaintiff was not entitled to recover because he had not proceeded according to the stipulations of the bill of lading. This the court refused, and there was a verdict for the plaintiff. 'We think,' said Reade, J., in reversing the judgment below, 'that it is a reasonable regulation that a claim for damages should be made by the consignee at the delivery station before the article is

taken away.' . . . 'Of course the provision would not protect the carrier against liability for latent defects.' This is the case to which I referred in my book.

"In *Caphart v. Seaboard, &c., R. R. Co.*, 81 N. C. 438, decided in 1879, and reported since my book went to press, a precisely similar provision was held unreasonable. This is the case to which you referred in your article.

"I shall neither attempt to reconcile these decisions nor to explain why the court did not in the last case deign to notice their former ruling. It is, however, worth while to note that the reason which they give to sustain their latest position applies only to what Reade, J., called a 'latent defect' (better latent 'injury')—viz., 'the stipulation must be reasonable; and we do not think it is reasonable to require the consignees of a car-load of cotton to cut into the bales before they are received, to ascertain whether they have been seriously damaged.' The case required no such opinion, as the jury had found that the damage sued for was patent."

Another correspondent observes:—"The facts are that the court was differently constituted when *Caphart v. S., &c., R. R. Co.*, was again brought before it, and the decision in 81 N. C. was intended to overrule the decision in 77 N. C.; that no reference is made to the one in the other, was probably an inadvertence on the part of Judge Ashe in delivering the opinion of the court."

#### EXCESSIVE CHARGES BY RAILWAY COMPANIES.

The case of *Brown v. The Great Western Railway Company*, recently decided by the Court of Appeal, is deserving of greater attention than at first sight it seems to demand. The amount in dispute was a mere trifle, but the principle involved one affecting the railway company against whom the decision was given considerably. The plaintiff, travelling third-class from Paddington to Bristol, a distance of 118½ miles, was charged 10s. 6d. for the journey. He paid the money under protest, contending that he was overcharged. The same thing happened on the return journey, and he sued the company for the amount he had been overcharged—about twopences. A Divisional Court, upon a special case raising the point, decided in favour of the plaintiff, and the Court of Appeal now upheld that decision upon the ground that the company were not justified, by virtue of certain Acts of Parliament upon which they relied, in charging what they did, to the extent complained of by the plaintiff. It is unnecessary for our present purpose to mention the Acts relied upon or quote from them, as the Court has pronounced a distinct decision, which interprets them unfavourably to the company. It is sufficient to state that the company endeavoured to make an illegal charge and failed. Now, this levying of excessive fares has been carried on generally, and therefore the public using the company's line between Bristol and Paddington have been systematically overcharged, and, whether knowingly or not, have acquiesced in such overcharging. It is pretty certain, too, that had not the plaintiff taken up the case the company would have continued to act in excess of their rights until some one of equal determination took up his stand against them. Unfortunately, however, men who, when the amount is so small as this, have the courage to vindicate their rights and those of their fellow-subjects by bringing an action against a powerful company are rarely to be found, and, acting upon this well-known fact, not only this, but many other railway companies daily levy with impunity charges they are not authorised by their statutes to make. This, as we have, when dealing with such cases before, repeatedly pointed out, applies not only to cases of passenger fares, but, and to a much greater extent, to cases of ordinary goods traffic. It is a most unfair condition of things which permits the creation of



powerful monopolists like railway companies, and provides no adequate means of preventing the excessive abuse of their powers. Even such means as the Legislature has provided for protecting the public are not made use of by the body to whom they have been entrusted—viz., the Board of Trade. In pursuance of a recommendation in the Report of the Royal Commission on Railways of 1866, it was provided by sect. 16 of the Regulation of Railways Act, 1873, that an officer of the Board of Trade might act for the public, and might upon the Board's certificate take proceedings before the Railway Commissioners. From the first the Board of Trade objected to having these powers conferred upon it, upon the ground that it was a matter of great difficulty to determine what is and what is not a matter of public interest and what is a grievance. Whether in the first years of the existence of the Railway Commissioners' Court applications under sect. 16 were made to the Board of Trade or not is difficult to say, but certain it is that, if any were made, none were acted upon. In their fourth annual report the commissioners deal with this matter thus: "Up to this time no use has been made of this form of procedure, and we recommend that, as another means of carrying its principle into effect, the certificate entitling and requiring the officer to act should be one that might be granted not only by the Board of Trade, but by ourselves as well. The issue of a certificate must be founded upon some preliminary inquiry, and it would not be difficult for us to deduce from a statement and answer whether the case is a fit one to be taken up on behalf of the public, and whether *prima facie* the facts alleged upon either side afford a good cause of action or an adequate defence. The course would then be that, wherever the public interest was affected, anyone would be at liberty to complain to us, and if the affidavit filed in support of the complaint appeared to us to disclose a sufficient case, and if we were also satisfied upon the point of public interest, we would issue a certificate, substituting the public officer for the party who had complained, for the further proceedings to be taken to prosecute his complaint and to enforce the law." The objection which has been taken to this recommendation is that, if carried out, the commissioners would be both prosecutors and judges in the same cause, but a little reflection will show that that is not so, and it is not likely that they would in any way feel bound to find against the companies when the matter came on for hearing because they had upon mere *ex parte* statements decided that if these were true a case would be made out. The same objection applies with equal force to the proceedings of magistrates who sit at quarter sessions, and hear the very cases they themselves have committed for trial. This, however, is clear, that, as the Board of Trade have shown themselves either too supine or too obstinate and regardless of their duties to exercise the powers conferred upon them by the Act of 1873, some other body or person should be entrusted with those powers, or even additional powers, so that the public should no longer remain subject to the tyranny of the companies, tempered only by the courage and determination of such men as Mr. Brown.—*Law Times*.

GIFTS CAUSA MORTIS.

Justinian, in describing a *donatio mortis causa*, says that it is "when the donor wishes that the thing given should belong to himself rather than to the person to whom he gives it, and to that person rather than to his own heir." In illustration of which he cites the words which Homer puts into the mouth of Telemachus when the latter gives to Pircus: "Pircus, for we know not how these things shall be, whether the proud suitor shall secretly slay me in the palace, and shall divide the goods of my father. I would that thou thyself shouldst have and enjoy these things rather than that any of those men should; but if I shall

plant slaughter and death amongst those men, then indeed bear these things to my home, and joying give them to me in joy."

Gifts *causa mortis* have not been generally favoured in the law. It is now more than a hundred years since Lord Chancellor Hardwicke declared it to be a pity that the statute for the prevention of frauds and perjuries did not set aside all such gifts.<sup>1</sup> A *donatio mortis causa* was required by the law of Justinian to be made in the presence of five witnesses.<sup>2</sup> But the common law does not require the gift to be executed in the presence of any stated number of witnesses, notwithstanding the fact that such donations amount to a revocation *pro tanto* of written wills.<sup>3</sup> As they lack all those formalities and safeguards which the law, in its wise precaution, throws around wills, it cannot be denied that a strong temptation is created to the commission of fraud and perjury. Such gifts are, therefore, said by Chancellor Kent in the note last cited, to be "of a dangerous nature." "Cases of this kind demand the strictest scrutiny. So many opportunities, and such strong temptations," says Lord Chelmsford, "present themselves to unscrupulous persons to pretend these death-bed donations, that there is always danger of having an entirely fabricated case set up. And, without any imputation of fraudulent contrivance, it is so easy to mistake the meaning of persons languishing in a mortal illness, and by a slight change of words, to convert their expressions of intended benefit into an actual gift of property, that no case of this description ought to prevail, unless it is supported by evidence of the clearest and most unequivocal character."<sup>4</sup> Such gifts are never presumed, and the maxim is applied, *nemo donare facile prae Sumitur*. Such gifts "must be established beyond suspicion;"<sup>5</sup> and "where a gift *causa mortis* is alleged the presumption being against it, clear proof on the part of the claimant is required."<sup>6</sup> And there is no doubt that they have been "a fruitful source of litigation, often bitter, protracted and expensive."<sup>7</sup>

Now, a *donatio mortis causa* is defined to be a conditional gift, depending on the contingency of expected death, and defeasible by revocation, or deliverance from the peril.<sup>8</sup>

And the rule is that in order to render perfect a *donatio mortis causa* three things must concur;<sup>9</sup> 1. The gift must be made with a view to the donor's death. 2. It must be made with a condition, either express or implied, that it shall take effect only on the death of the donor by a disease from which he is then suffering. 3. There must be a delivery of the subject of the donation.

While it is essential that the donor make the gift in his last illness, or in contemplation or expectation of immediate death,<sup>10</sup> yet it is not necessary that it should be made *in extremis* like a nuncupative will.<sup>11</sup> Where a citizen of Tennessee, on leaving his home in Tennessee to enlist in the Federal army in Kentucky, delivered money and notes to be a gift to the donee in case he perished in the war, it was held that the peril and appre-

(1) *Ward v. Turner*, 2 Ves. 481, 487 (1752).  
 (2) Sanders' Justinian (Hammond's ed.) 218.  
 (3) 2 Kent's Com. 444.  
 (4) *Cochran v. Grace*, 15 Moore P. C. 215, 222.  
 (5) *Gray v. Gray*, 47 N. Y. 552, 556.  
 (6) *Conklin v. Conklin*, 30 Hus. 278, 286. See also, *Walter v. Ebdop*, 2 Swans. 97; *Contant v. Schuyler*, 1 Paige, 816.  
 (7) *Hatch v. Atkinson*, 56 Me. 328.  
 (8) *Nicholas v. Adams*, 3 Wharton, 17.  
 (9) *Taylor v. Henry*, 48 Md. 580; *Murray v. Cannon*, 41 Md. 466; *Dole v. Lincoln*, 31 Me. 422; *Smith v. Kirtbridge*, 31 Vt. 288; *French v. Raymond*, 29 Vt. 628; *Bianchard v. Sheldon*, 16 Vt. 268; *Raymond v. Saltick*, 10 Can. 484.  
 (10) *Lanson v. Lanson*, 1 P. W. 441; *Miller v. Miller*, 3 P. W. 288; *Bisnet v. Burrows*, 1 Vesey, Jr. 546; *Cochran v. Grace*, 15 Moore P. C. 215, 222; *Grattan v. Appleton*, 3 Story C. C. 755; *Courley v. Laubigler*, 51 Pa. St. 845; *Rhodes v. Childs*, 64 Pa. St. 18; *Robinson v. Ring*, 72 Me. 144; *Cass v. Dennison*, 9 E. E. 88; *Cass v. Simpson*, 4 Coldw. (Tenn.) 288; *Chaplin v. Seaber*, 58 How. Pr. (N. Y.) 46; *Irish v. Nulling*, 47 Barb. (N. Y.) 370; *Sheldon v. Burtin*, 6 Hus. (N. Y.) 110; *Merchant v. Merchant*, 2 Bradf. (N. Y.) 422; *Barter v. Barker*, 2 Gratt. (Va.) 844; *Shogoy v. Perkins*, 4 Baxter (Tenn.), 278; *Kwoit v. Hogan*, 4 Met. (Ky.) 101.  
 (11) *Nicholas v. Adams*, 2 Wharton (Penn.), 17; *Cass v. Simpson*, 4 Coldw. (Tenn.) 288.

(1) Sanders' Justinian (Hammond's ed.) 218.

hension were sufficiently immediate to justify a gift *causa mortis*.<sup>13</sup> On the other hand, the Supreme Court of New York has held that the delivery of a promissory note, by a person about entering the army, to his brother, with directions to give it to his mother should he not return alive, was not a valid gift to the mother.<sup>14</sup> And where a gift was made in expectation of immediate death from consumption, and the donor afterwards recovered so far as to attend to his ordinary business for eight months, and then finally died from the same disease, the court held that the gift could not be supported as a *donatio mortis causa*.<sup>15</sup> The expectation or apprehension of death may arise from infirmity or old age, or from external and anticipated danger.<sup>16</sup>

That delivery of the gift is essential, is a principle established by a long line of decisions, and disputed by none.<sup>17</sup> But it is not necessary that the delivery should be to the donee personally, it may be made to a third person in his behalf.<sup>18</sup> And instead of delivering the gift to the donee or to a third person in trust for him, the donor may create himself a trustee for the donee. As where money is deposited in bank in the name of the donor as trustee for the donee, and a pass-book is received containing an entry that the funds are in trust. In such case there may be a valid gift, although the *cestui que trust* possesses no knowledge of the trust, and although the pass-book is in the donor's possession until death.<sup>19</sup> The acceptance of the gift by the donee is also essential in order to make a gift complete or perfect.<sup>20</sup> But acceptance may be presumed in cases where it would be beneficial to the donee.<sup>21</sup> And in general any gift by deed, will, or otherwise, is supposed *prima facie*, unless the contrary appears, to be beneficial to the donee.<sup>22</sup> Not only must there be a delivery of the gift, a change of possession, but this change of possession must be continued in the donee, or in a third person for him, until the donor's death.<sup>23</sup>

Although a difference of opinion at one time existed as to what could be the subject of a gift *causa mortis*, the principles determining the question are now well settled. A *donatio causa mortis* extends only to personalty, and a gift of real estate cannot be sustained as such a gift.<sup>24</sup> In Pennsylvania the courts have held that the gift of all a person's property to take effect after death, was not a valid *donatio causa mortis*, that a gift *causa mortis* could not thus be made to operate as a will,<sup>25</sup> though the same court, in a subsequent case, has held that the rule is otherwise as to a particular chattel, although such chattel may have constituted the principal part of the donor's property.<sup>26</sup> But it has been held in Vermont that there is no principle of

limitation as to the amount of property which may be transferred by a *donatio causa mortis*, and it was held a valid gift where the donor, on his death bed, executed a deed of all his personal property to his wife.<sup>27</sup> It was formerly held that a mere chose in action did not pass by delivery, and could not take effect as a gift *causa mortis*.<sup>28</sup> But such is no longer the rule, and it is well settled that a promissory note made by a third person, and payable to the order of the donor, or a bill of exchange may be a valid gift *causa mortis*.<sup>29</sup> But the donor's own promissory note is not the subject of such a gift.<sup>30</sup> Such a note is a mere promise of the donor, and can no more be recovered upon as a gift, than could a recovery be had upon the unwritten promise of the donor. Such notes "are of no more value than blank paper," for a mere intention or naked promise to give is not a gift, and a court of equity will not interfere and give effect to a gift left inchoate and imperfect.<sup>31</sup> And if the promissory note of a third person be given *causa mortis*, and be secured by a mortgage, the mortgage will enture solely to the benefit of the donee, although the mortgagee died was not delivered with the note, or even alluded to at the time of the delivery of the note, but continued to remain in the donor's possession until his death.<sup>32</sup> It is also settled that it is entirely unnecessary that the note should be indorsed in order to pass the title.<sup>33</sup> So a bond may be given without any written assignment.<sup>34</sup> And the delivery of a certificate of deposit on a life insurance company has been held to be effectual, without a written assignment to transfer the deposit itself to the donee, as a gift *causa mortis*.<sup>35</sup> A deposit in a savings bank may be the subject of a valid gift *causa mortis*, and such gift may be proved by the delivery of the bank or pass-book to the donee, accompanied by an assignment;<sup>36</sup> or it may be proved by the simple delivery of the pass-book, without any assignment.<sup>37</sup> It has been held that the delivery of a banker's deposit note may be a good gift *causa mortis*.<sup>38</sup> In *Cherry v. Powers*, recently decided in the New York Court of Appeals, it was held that the delivery of a cheque upon a savings bank, payable four days after the death of the drawer, together with the pass-book of the depositor, did not amount to a valid gift *causa mortis*.<sup>39</sup> And in the English case of *Hewitt v. Kaye*,<sup>40</sup> where a cheque given by the drawer was not presented for payment until after the death of the donor, it was held not to amount to a good *donatio mortis causa*. But in *Reid v. Pearce*, where a cheque was drawn by a donor payable to his wife or her order, and was given to him by her shortly before his death, was indorsed by her and paid into a foreign bank against the amount of which she

(13) *Gass v. Simpson*, *supra*.

(14) *Sheldon v. Sutton*, 8 Hun. 110.

(15) *Wright v. High*, 17 Me. 289.

(16) Dig. 39, 6, sec. 3, 4, 5, 6; 2 Kent's Com., 444.

(17) *Ward v. Turner*, 2 Vesey, 431; *Tait v. Gilbert*, 2 Vesey, Jr. 111; *Dunn v. Marthens*, 7 Taunton, 224; *Powell v. Hillier*, 28 Beavan, 261; *Gough v. Tinson*, 3 E. L. & Eq. 507; *Drury v. Smith*, 1 P. W. 404; *Reese v. Sonn*, 25 Wia. 286; *Carpenier v. Dodge*, 20 Vt. 595; *Frost v. Frost*, 38 Vt. 639; *Turner v. Brown*, 6 Hun. 338; *Cox v. Sprigg*, 9 Md. 574; *Powell v. Leonard*, 9 Fla. 359; *Cass v. Danston*, 9 R. L. 88; *Egerton v. Egerton*, 1 C. E. Green, 419; *Dow v. Gould, & Co.*, Man. Co., 21 Cal. 629; *Smith v. Wiggins*, 3 Stew. (Ala.) 221; *Singleton v. Cotton*, 23 Ga. 261; *M'Kenzie v. Downing*, 20 Ga. 669; *Hatch v. Atkinson*, 26 Me. 324; *Young v. Young*, 20 N. Y. 499; *Brown v. Brown*, 18 Conn. 414, 417; *Phelps v. Hope*, 16 Ohio St. 686; *Craig v. Craig*, 3 Barb. Ch. 76; *Champion v. Seaber*, 56 How. Pr. 48; *Waring v. Edmonds*, 11 Md. 424; *People v. Johnston*, 14 Ill. 343; *Withers v. Weaver*, 10 Bar. 381.

(18) *Drury v. Smith*, 1 P. W. 404; *Caldwell v. Royfree*, 38 Vt. 213; *Jones v. Deyer*, 16 Ala. 221; *M'Gouldy v. Cook*, 5 Blackf. 178; *Michener v. Dale*, 28 Pa. St. 59; *Gourley v. Linsanbigler*, 51 Pa. St. 345; *Wells v. Tucker*, 5 Binney, 368; *Grymes v. Hons*, 49 N. Y. 17; *Borneman v. Stalinger*, 15 Me. 429, 431; *Dole v. Lincoln*, 31 Me. 423; *Waring v. Edmonds*, 11 Md. 424; *Gass v. Simpson*, 4 Coldw. (Tenn.) 288.

(19) *Marlin v. Funk*, 75 N. Y. 184, and the cases there cited.

(20) *Dehnote v. Taylor*, 1 Ream. 417; *Dow v. Gould, & Co.*, Manuf. Co., 21 Cal. 629; *DeLevellain v. Evans*, 39 Cal. 120; *Higman v. Stewart*, 28 Mich. 618, 624; *Darland v. Taylor*, 52 Iowa, 508.

(21) *Gass v. Singleton*, 2 Head (Tenn.), 67; *DeLevellain v. Evans*, 39 Cal. 120; *Higman v. Stewart*, 28 Mich. 618, 624; *Darland v. Taylor*, 52 Iowa, 508.

(22) *Gass v. Singleton*, 2 Head (Tenn.), 67.

(23) *Hatch v. Atkinson*, 26 Me. 324; *Jones v. Deyer*, 16 Ala. 221.

(24) *Meach v. Meach*, 24 Vt. 591; *Gilmore v. Whitehead*, Dudley (S. C.), 13.

(25) *Headley v. Kirby*, 19 Pa. St. 226.

(26) *Michener v. Dale*, 28 Pa. St. 59.

(27) *Meach v. Meach*, 24 Vt. 591.

(28) *Miller v. Miller*, 3 P. W. 358; *Bradley v. Hunt*, 3 Gill & J. 54.

(29) *Austin v. Mead*, 15 L. R. Ch. Div. 651; *Peal v. Peal*, 27 Beavan, 202; *Rankin v. Wagoner*, 1d. 399; *Calhoun v. Rawfoss*, 28 Vt. 219; *M'Connell v. M'Connell*, 11 Vt. 290; *Turpin v. Thompson*, 3 Meic. (Ky.) 421; *Brown v. Brown*, 18 Conn. 414, 417; *Borneman v. Stalinger*, 15 Me. 429; *Wing v. Merchant*, 57 Me. 383; *Grover v. Grover*, 24 Pick. 261; *Bates v. Kempton*, 7 Gray, 382; *Parlor v. Marston*, 27 Me. 126; *Contant v. Schuyler*, 1 Palg. 318; *Harrie v. Clark*, 2 Barb. 94; a. c. 2 N. Y. 93; *Champney v. Blanchard*, 39 N. Y. 111.

(30) *Blanchard v. Williams*, 70 Ill. 647, 652; *Porter v. Stone*, 14 Pick. 192; *Priester v. Priester*, Rich. Eq. Can. 96; *Brown v. Moore*, 3 Head (Tenn.) 671; *Raymond v. Bellch*, 10 Conn. 494; *Smith v. Kirtledge*, 21 Vt. 338; *Voorhees v. Woodhull*, 33 N. J. Law 494, 498; *Smith v. Smith*, 20 N. J. Eq. 562; *Haymore v. Moor*, 8 Ohio St. 239; *Starr v. Starr*, 9 Ohio St. 74; *Craig v. Craig*, 3 Barb. Ch. 76; *Harris v. Clark*, 3 N. Y. 98; *Dodge v. Pond*, 23 N. Y. 69; a. c. 28 Barb. 121.

(31) 2 Kent's Com., 289; *Andrews v. Smith*, 12 Ves. 22; *Pennington v. Gittings*, 2 Gill & J. 208.

(32) *Brown v. Brown*, 18 Conn. 414, 417.

(33) See the cases cited in note 29.

(34) *Waring v. Edwards*, 11 Md. 424; *Welsh v. Sexton*, 56 Barb. 261; *Duffield v. Elwes*, 37 Beavan, 309.

(35) *Waterloo v. DeWitt*, 36 N. Y. 240.

(36) *Kingman v. Perkins*, 105 Mass. 111; *Poss v. Lowell Five Cents Savings Bank*, 111 Mass. 235; *Sheedy v. Boach*, 124 Mass. 472; *Dowd v. Ney*, 125 Mass. 600.

(37) *Pierce v. Boston Five Cents Savings Bank*, 120 Mass. 425; *Turner v. Boston, &c., Savings Bank*, 15. 425; *Hill v. Stevenson*, 63 Me. 264; *FWingham v. Wheaton*, 3 R. I. 588; *Camp's Appeal*, 26 Conn. 86; *Penfield v. Thayer*, 3 E. D. Smith, 205.

(38) *Amis v. Will*, 28 Beavan, 619; *Moore v. Moore*, L. R. 16 Eq. 474; *Brooks v. Brooks*, 12 S. C. (N. S.) 424.

(39) 70 N. Y. 212.

(40) L. R., 6 Eq., 198.

drew, the court held it to be a good *donatio mortis causa*, although the cheque was not presented for payment at the bank on which it was drawn till after the death of the donor.<sup>41</sup> The delivery of a bill of exchange payable to the donor or order, and which did not fall due until after he died, has been held a gift *causa mortis*.<sup>42</sup>

A distinction, therefore, exists as to cheques, and the principle is, that although the drawer of the cheque may deliver it to the payee, intending thereby to give to the donee the fund on which the cheque was drawn, that, nevertheless, until the cheque has been paid or accepted the gift is incomplete, and that, in the absence of either payment or acceptance, the death of the drawer operates as a revocation of the gift.<sup>43</sup> The rule then, is that personal chattels, bonds or choses in action, may be the subject of disposal as gifts, either *inter vivos* or *causa mortis*,<sup>44</sup> but that a donor's own promissory note cannot be so disposed of, and that a cheque which he has drawn and given to the payee, must be either paid or accepted before the donor's death, to make the gift valid and complete. While personal property is thus the subject of gifts *causa mortis*, as above stated, yet the rule is that the only property which can thus be disposed of, is the balance left after the payment of all debts. Or, in other words, the donee takes the property, subject to the right of the administrator to reclaim it, if required for the payment of the debts of the donor,<sup>45</sup> but not to the claims of legatees.<sup>46</sup> So, by the civil law, such gifts were liable to debts. If the donor was insolvent at the time of his death, this was considered an implied revocation of the gift.<sup>47</sup>

We have stated that delivery is essential to complete a gift *causa mortis*. It remains, however, to direct attention to what is a sufficient delivery of the property, which is the subject of the gift, to satisfy the requirements of the law upon this branch of the subject. For while the maxim "*donatio perfecta possessione accipiuntur*" is an ancient one in the law, it has not always been easy to determine what is a sufficient possession of the property to perfect the title of the donee. This question of delivery was elaborately considered and learnedly discussed by Lord Chancellor Hardwicke in *Ward v. Turner*,<sup>48</sup> in the year 1752. In the course of the opinion announced by the Chancellor, he said: "It is argued that, though some delivery is necessary, yet delivery of the thing is not necessary, but delivery of anything by way of symbol is sufficient; but I cannot agree to that; nor do I find any authority for that in the civil law, which required delivery to some gifts, or in the law of England which required delivery throughout. Where the civil law requires it, they require actual tradition, delivery over of the thing. So in all the cases in this court delivery of the thing given is relied on, and not in the name of the thing." While thus holding that delivery should be actual and not symbolical, he adds that "delivery of the key of bulky goods, where wines, &c., are, has been allowed as delivery of the possession, because it is the way of coming at the possession, or to make use of the thing; and, therefore, the key is not a symbol, which would not do." The point actually decided was, that the delivery of receipts for certain South Sea annuities did not amount to a delivery of the annuities. Subsequently this subject was discussed, and with marked learning, in *Tate v. Hilbert*,<sup>49</sup> when Lord Loughborough again argued the necessity of actual delivery to the efficacy of gifts of this nature, unless the transfer was perfected by means of a deed or written

instrument. He decided that where a person, in his last sickness, gave his cheque on his banker for a sum of money, and died before the cheque was paid, it was not a good gift *causa mortis*, and, that where the same person, at the same time, gave his own promissory note for a sum of money to another donee, that it was not good as such a gift, inasmuch as it was no transfer of property. It is settled that there must be such a delivery as comports with the nature of the subject matter.<sup>50</sup> The delivery should be *secundum subjectum materiam*. It should "be the true and effectual way of obtaining the command and dominion of the subject."<sup>51</sup> The rule is well stated in a case decided in Virginia, where it is said: "A delivery is indispensable to the validity of a *donatio mortis causa*. It must be an actual delivery of the thing itself, as of a watch, or a ring; or of the means of getting the possession and enjoyment of the thing, as of the key of a trunk or a warehouse in which the subject of the gift is deposited; or if the thing be in action of the instrument by using which, the chose is to be reduced into possession, as a bond, or a receipt, or the like."<sup>52</sup> The fact that the property is out of reach of the would-be donor, so that delivery is impossible, is entirely immaterial, the gift cannot be sustained in the absence of a delivery, whether delivery is possible or not.<sup>53</sup> In illustration of the principles discussed, a reference to a few of the cases may not be out of place. In *Hatch v. Atkinson*,<sup>54</sup> the court held that the delivery of a key of a trunk containing money and government bonds, was not a valid delivery of the money and bonds. "Although delivery of the key of a warehouse, or other place or deposit," said the court, "where cumbersome articles are kept, may constitute a sufficient constructive or symbolical delivery of such articles, it is well settled that delivery of the key of a trunk, chest, or box, in which valuable articles are kept, which are capable of being taken into the hand, and may be delivered by being passed from hand to hand, is not a valid delivery of such articles. The rule is that the delivery must be as perfect and complete as the nature of the articles will admit of. While a constructive delivery may be sufficient for large or cumbersome articles, it will not be sufficient for small articles, capable of a more perfect and complete delivery." In *Bunn v. Markham*,<sup>55</sup> the would-be donor had certain bonds and notes brought out of his chest and laid on his bed. He then caused them to be sealed up in packages, the amount of the contents written on them, with a statement "for Mrs. C." "for Miss G." This being done, he directed that they should be returned to the chest, that the chest should be locked, the keys sealed up, and the keys to be delivered to one J. after his decease. The gift was invalid for want of delivery. In *Powell v. Hellier*,<sup>56</sup> the donor told one A. to take the keys of his dressing case and box, containing her watch and trinkets, and immediately on her death to deliver the watch and trinkets to the plaintiff. A. acted accordingly, but it was held that the gift was incomplete for want of delivery. But in *Smith v. Smith*,<sup>57</sup> it was ruled that the delivery of the key of a room containing furniture was such a delivery of possession of the furniture as to render a gift *causa mortis* valid. Other cases may be referred to,<sup>58</sup> but those cited plainly illustrate the necessity of delivering the thing itself in all cases when the nature of the thing admits of such a delivery. Upon this question of delivery, and of delivery as distinguished from possession, we quote as follows: "It

(41) L. E. 5 Ch. Div. 730.

(42) *Austin v. Mead*, L. R. 15 Ch. Div. 681.

(43) *Second National Bank v. Williams*, 13 Mich. 282; *Simmons v. Savings Society*, 81 Ohio St. 467.

(44) *Blanchard v. Williams*, 70 Ill. 647, 652.

(45) *Pitman v. Boston Savings Bank*, 129 Mass. 425, 433; *Mitchell v. Pease*, 7 Conn. 250; *Chase v. Eddings*, 13 Gray, 418; *McLean v. Woods*, 67 Me. 297; a. c., 65 Me. 411; *Gowan v. Tucker*, 18 Ala. 27; *Barnaman v. Stidinger*, 15 Me. 429, 431; *Gowan v. Grant*, 4 Lana. 298.

(46) *Gowan v. Tucker*, 88 Ala. 37.

(47) Sanders' *Justinian* (Hammond's ed.) 219.

(48) 2 Vesey, 431, 443.

(49) 2 Vesey, Jr. 111.

(50) *Turner v. Brown*, 6 Hun. (N. Y.) 338; *Hitch v. Davis*, 3 Md. Ch. 266; *Brown v. Brown*, 18 Conn. 414; *Pope v. Randolph*, 13 Ala. 214; *Carroll v. Collins*, 7 S. & M. 438; *Blakely v. Blakely*, 9 Ala. 391; *Hillebrand v. Brewer*, 6 Text. 46; *Powell v. Leonard*, 9 Fla. 359.

(51) 2 Kent's Com., 439.

(52) *Miller v. Jeffers*, 4 Gratt. 479.

(53) *Case v. Dennison*, 9 B. L. 8.

(54) 56 Me. 324.

(55) 7 Taunton, 228.

(56) 26 Beavan, 261.

(57) Str. 955.

(58) *Jones v. Shelby*, Chan. Proc. 300; *Ferguson v. Case*, 2 Colby, 256; *Cooper v. Burr*, 45 Barb. 9; *Reddel v. Dobree*, 10 Sim. 246.

is not the possession of the donee, but the delivery to him by the donor, which is material in a *donatio mortis causa*; the delivery stands in the place of nuncupation, and must accompany and form a part of the gift; an after-acquired possession of the donee is nothing; and a previous and continuing possession, though by the authority of the donor, is no better. The donee, by being the debtor or bailee or trustee of the donor, in regard to the subject of the gift, stands upon no better footing than if the debt or duty were owing from a third person. A debt or duty cannot be released by mere parole, without consideration; and where there is nothing to surrender by delivery, the only result is, that in such a case, there cannot be a *donatio mortis causa*; and a release, without valuable consideration therefor, must be by testament, or by some instrument of writing which would be effectual for the purpose *inter vivos*.<sup>10</sup>

It remains for us to notice that it has been that until death the title to the subject of the gift remains in the donor, and vests in donee only at time of donor's death, having relation back to the time of delivery.<sup>11</sup> Is it not more correct to say that the title passes to the donee at the time of delivery, and that the title thus obtained is defeasible only on the recovery of the donor, or on his express revocation? While a gift *inter vivos*, having been perfected by delivery is irrevocable,<sup>12</sup> a gift *causa mortis* may be revoked at any time before the donor's death.<sup>13</sup>—*Central Law Journal*.

#### THE CONVEYANCING AND LAW OF PROPERTY ACT, 1881. WHERE IT SHOULD BE ADOPTED, AND WHERE EXCLUDED.—XX.

(Continued from page 294, ante.)

##### GENERAL SUMMARY AND CAUTIONS AS TO USE OF THE ACT.

It is believed that it will be a convenience to our readers if we give a summary of this series of articles, and point out briefly the results at which we have arrived. The series commenced with an article in our issue of the 7th Jan. 1882, and has been continued with a few interruptions up the present date. When we quote the *Law Times* of any date, it must be understood that we are referring to the present year unless it is otherwise stated. It must be also noted that we are speaking in this summary generally, and of ordinary assurances and transactions, and that for the exceptions the reader must look at the articles to which we make reference.

##### Conditions of Sale, sect. 3.

These may be shortened in reliance on sect. 3, but cannot be dispensed with. See *Law Times*, Jan. 7, p. 166.

##### General Words—All Estates Clause, sects. 6, 61.

These may be omitted from almost every description of conveyances of land, in reliance upon sects. 6, 63. See *Law Times*, Jan. 7, p. 166. We shall not repeat this in our future remarks on various assurances in this summary.

##### Covenants for Title, sect. 7.

These may be omitted in most conveyances on sale and mortgages of land if the person conveys, and is expressed to convey, "as beneficial owner." The statutory phrase must be used. There are, however, several cases where it is better to insert the usual covenants—*e.g.*, in conveyances of wife's estate, and perhaps in appointments. Considerable adaptation is needed for conveyances by joint tenants, by tenant for life and remainderman, and by trustees with power of sale conveying with consent of tenant for life. The Act may easily be used in conveyances by tenants in

common, and in conveyances both to joint tenants and tenants in common: (*Law Times*, Jan. 7 pp. 166, 167.)

The Act applies to covenants to surrender copyholds (see *Law Times*, June 10, p. 96), and to assurances of leaseholds: but in the latter case, covenant by purchaser for indemnity against rent and covenants of the lease must be inserted. In marriage settlements, either of land or personalty, it is generally best to insert the ordinary covenant for further assurance. See as to settlements of personalty, *Law Times*, March 25, p. 365; of land as personalty, *Id.* April 1, p. 382; of land, the children taking as tenants in tail, *Id.* April 22, p. 434.

In marriage settlements, however, and other settlements for valuable consideration, either "vendor's covenants" or "settlor's covenants" may, if desired, be implied by using the statutory phrases "as beneficial owner" or "as settlor;" but in voluntary settlements "vendor's covenants" cannot be raised by implication, though "settlor's covenants" may: (*Law Times*, Jan. 7, p. 167). As to what is a settlement, see *Law Times*, April 1, p. 382.

This section does not apply to leases at a rent: (subsect. 5).

In conveyances by trustees, mortgagees, &c., they may be expressed to convey as such, and usual covenants against incumbrances may then be omitted: sect. 7 (1) (F).

In bills of sale and mortgages of policies of assurance, it is necessary either to insert usual covenants, or else carefully to supplement the statute: (*Law Times*, Jan. 21, p. 204; Jan. 28, p. 220.) In mortgages by several persons, if joint and separate covenants are desired, it will be easiest to set them out: (*Law Times*, Feb. 11 p. 257.) We shall not repeat these remarks.

##### Completion of Purchase, sect. 56.

Authority to receive purchase money is now unnecessary if vendor's solicitor produces deed and indorsed receipt signed by person entitled to give receipt. *Semble*, this does not apply to accountants, solicitors' clerks, &c. See *Law Times*, Jan. 14, p. 185.

##### Mortgages of Land, sects. 18, 24.

It is best now to exclude leasing powers by mortgagor and his assigns. In legal mortgages of freeholds made by deed, powers of sale, of cutting timber, and of appointing receiver, may usually be omitted; but the statutory power of sale is not quite satisfactory in charges, mortgages for a term, or mortgages of leaseholds by demise. In any case the insurance provisions are incomplete. The sum in which the property is to be insured should be stated; and if it is desired that mortgagor shall insure provision must be made: (*Law Times*, Jan. 14, p. 185.)

In a mortgage of leaseholds by demise, or freeholds for a term, a covenant by mortgagor to stand possessed of the reversion on trust for the purchaser should be inserted: (*Law Times*, Jan. 14, p. 185.) As to copyholds, either a distinct charge must be made in the covenant to surrender, or to a power of sale must be inserted: (*Law Times*, June 10, p. 96.)

##### Mortgage of Chattels.

Sect. 18 does not apply, but sect. 19 does, so far as it relates to power of sale, insurance, and apparently to appointment of receiver. But if the Act is relied upon considerable supplementary provisions will be necessary. See *Law Times*, Jan. 21, p. 204.

##### Mortgage of Policy of Assurance.

This may be shortened by reliance on receipt clause of sect. 22. Statutory power of sale is unsatisfactory. See *Law Times*, Jan. 28, p. 220.

##### Mortgage to Joint Tenants.

The Mortgage money should be stated to belong to the mortgagees on a joint account, and then joint account clause may be omitted (sect. 61). The usual declaration that heir of surviving mortgagees shall concur in sale may be omitted in mortgages of freehold

(59) *Miller v Jeffress*, 4 Gratt. (Va.) 480; and see *French v Baymond*, 39 Vt. 624.

(60) *Case v. Simpson*, 4 Quidw. (Irean.) 268.

(61) 2 Kent's Com., 440.

(62) *Id.*, 447.

land of inheritance, as the legal estate will pass by virtue of sect. 80. See *Law Times*, Jan. 28, p. 221.

*Mortgage by Tenants in Common (Partners) of Works.*

Exclude leasing powers of mortgagors and their assigns. The power of sale will need modification, especially as to notices. *Law Times*, Feb. 11, p. 257.

*Deeds connected with Mortgages.*

Often a further charge may be declared supplemental to the mortgage (sect. 53). If the form in Schedule IV. is used, a clause against redemption of mortgage without payment of fresh advance should be added. The Act encourages second mortgages (sects. 15, 17). Transfers and reconveyances may sometimes be made "supplemental." Covenants for title may be omitted if proper statutory phrases are employed. As to joint account clause in transfer, see above. *Law Times*, Feb. 11, p. 258.

*Statutory Mortgages, sects. 26-29.*

These can only be made by deed and with respect to freehold or leasehold land. The deed must be stated to be by way of statutory mortgage, and mortgagor should convey "as mortgagor." Power of leasing given to mortgagor and his assigns by sect. 18 should be excluded. These forms will be convenient for small transactions and family arrangements. The forms are satisfactory for mortgages (1) by one person to another, (2) by several persons to one, (3) by one person to several. The statutory forms of transfer (A) and (C) are satisfactory, and form (B) will usually suffice in practice, though not perfectly satisfactory. These forms are in Part II. of Schedule III. to the Act, and are authorised by sect. 27. The deed must be expressed to be by way of statutory transfer. The statutory form of reconveyance should be altered, as it is very incomplete. These statutory assurances can be made with respect to leaseholds, but a trust of the last three days should be declared in favour of the purchaser from the mortgagee, and other alterations made. *Law Times*, Feb. 18, pp. 275, 276.

*Leases.*

Notwithstanding sect. 14, provisions for re-entry on breach or non-performance of covenant should be inserted as usual. The only safe way to avoid operation of the section is to grant merely tenancy at will. Sometimes it will be well to specify penalty on breach of covenant. Other plans of avoiding the section may be suggested. In action for re-entry or forfeiture on breach, the giving of precedent notice required by sect. 14 (1), should now be alleged in the statement of claim, and it should be stated that the notice was in writing (sect. 67).

The law as to specific performance of agreement to grant a lease is probably altered by this section. It will seldom now be necessary to insert in a lease-provisions protecting lessee from the exercise of power of re-entry without notice. The law as to leases by a mortgagor is considerably altered by section 18. It will sometimes be convenient, by agreement in writing, sect. 18 (16), to extend the powers of sect. 18 to mortgagors who hold subject to securities made before the Act. If the security was by deed it will be prudent to make this agreement under seal. In leases the covenant for quiet enjoyment should be inserted as usual. See *Law Times*, Feb. 25, pp. 292, 295.

It will sometimes be prudent for an intending lessee to stipulate that lessor shall show title. *Law Times*, March 4, p. 312.

When a guardian grants lease of infant's land (see sect. 41 and Settled Estates Act, 1877, ss. 46, 49), he should get the infant to join if he is old enough, and should carefully limit his own covenant for quiet enjoyment. When the lessee is likely to spend a considerable sum on the land it will be best to apply to the court to authorise the lease.

For remarks on leases to companies, mining, and other licences, and for explanation of the apportionment sections (10-12), see *Law Times*, March 4, p. 311.

Notwithstanding sects. 10, 11, 58, if the conveyance wishes covenants to bind the assigns, or impose any obligation upon them, the assigns should be mentioned in all cases where their mention was previously necessary.

In leases for lives the word "heirs" should be retained in the limitation of the estate and also lessor's covenant for quiet enjoyment should be inserted, sect. 7 (3).

*Conveyances at a Fee Farm Rent.*

For explanation of "fee farm," see *Law Times* (*ubi sup.*). Add to the cases there cited, *London and South-Western Railway v. Gomm* (46 L. T. Rep. N. S. 449). The provisions of sect. 14 apply (sub-sect. 8). The powers of distress and entry for securing the rentcharge may be omitted (sect. 44). If covenants for title by vendor are omitted, and he conveys as "beneficial owner," some words should be added to exclude the rentcharge and remedies from the scope of his covenant. Covenants by purchaser must be inserted as usual: (*Law Times*, March 4, p. 311.)

*Settlements of Personality.*

Maintenance and accumulation clauses may be omitted where the infants are to become entitled at twenty-one, or on occurrence of any event before twenty-one: (sect. 43.) Where the infants become entitled at some age exceeding twenty-one both maintenance and accumulation clauses must be added. The power does not authorise application of capital for maintenance: (*Law Times*, March 11, p. 328.) Power to appoint new trustees may be shortened (sect. 31). Power should simply be given to husband and wife to appoint the new trustees, and the trustees should be indemnified for lending on leasehold securities without production of lessor's title, and for lending with less than a marketable title: (*Law Times*, March 11, p. 329, where a form is given.) Trustees' receipt clause may be omitted (sect. 28), except in cases where the trust funds may be realised by anticipation. It is needless to give trustees any power to compound debts, &c. (sect. 37). Sometimes it may be well partially to exclude this section: (*Law Times*, March 18, p. 348, where a form is given). If it is wished to give the trustees power to settle questions among the beneficiaries, power must be expressly given. The *Law Times*, March 25, contains a discussion on covenants for title in these settlements. We advise usually that the settlor should simply covenant for further assurance. In a settlement of policy of assurance usual covenants as to keeping up policy, &c., must be inserted. If the policy is effected in the name of the trustees no covenants for title will be needed. If it is effected in settlor's name, covenant for further assurance should be inserted. If higher covenant is desired, he should convey as "beneficial owner." An additional covenant should be added to the effect that he will enable the trustees to recover the money secured. In a settlement of mortgage debt the settlor should convey "as mortgagee," and also give covenant for further assurance: (*Law Times*, March 25, p. 365.)

*Settlement of Land as Personality.*

This will be effected by two deeds, viz., conveyance upon trust for sale, and declaration of trusts of proceeds of sale. From the former omit maintenance and accumulation clauses, and shorten trustee clauses as above. In the latter give the trust for sale to the trustees, and state with what consents (if any) it is to be exercised, then sects. 85, 86 render it needless to insert the old lengthy trust for sale. Omit receipt clause (sect. 80). Insert trusts of proceeds and power of leasing as usual, and usual covenant for further assurance: (*Law Times*, April 1, page 392.) For effect of covenants for further assurance and for liabilities of trustees in connexion therewith, see *Law Times*, March 25, p. 365, and April 1, p. 362.

(To be continued.)

ACTS OF PARLIAMENT.—The number of Acts passed this Session is 73, of which 16 are public and 57 local.

## ADMISSION OF SOLICITORS.

The following gentlemen have been admitted Solicitors of the Court of Judicature:—Messrs. Patrick A. Chance, Edward J. M'Ardule, William H. Hancock, James Clarke, Paul A. Brown, Thomas H. Risk, Gerard Acheeson Bond.

## TEXT-BOOK ADDENDA.

[From the *Law Journal*.]

*Addison on Torts (5th Edition)*, by *Cave*, 93.

A cab proprietor letting his cab to a driver at weekly hire, the driver providing horse and harness, held not a master so as to be responsible for the driver's negligence (*King v. Spurr*, 51 Law J. Rep. Q. B. 105).

*Order XXXI, Rule 12.*

*Lely and Foulkes on the Judicature Acts (3rd Edition)*, 193.

The defendant held entitled to stay until the ship's papers were produced by the plaintiff and all interested, as before the Judicature Acts. (*China Trans-Pacific Steamship Company v. Commercial Union Insurance Company*, 51 Law J. Rep. Q. B. 132)—C. A.

*Succession Duty Act, 1853 (16 & 17 Vict. c. 51), s. 2.*

Succession duty is payable on the whole value of a fund settled on A. for four years, if he should so long live, and, on the expiration of the four years or his death, to A.'s niece, A. having died before the four years expired (*Attorney-General v. Noyes*, 51 Law J. Rep. Q. B. 135)—C. A.

## APPOINTMENTS AND PROMOTIONS.

**NORA BARRA.**—Information intended for publication under the above heading should reach us not later than Friday morning in each week, as publication is otherwise delayed.

Mr. Peter O'Brien, Q.C., has been appointed Junior Crown Prosecutor at the Commission of Oyer and Terminer.

Mr. William Sullivan, Barrister-at-law, has been appointed Registrar to the Hon. Mr. Justice O'Brien.

## BOOKS RECEIVED.

*The Nineteenth Century.* A Monthly Review, Edited by JAMES KNOWLES. No. 65. July, 1882. London: C. Kegan Paul & Co.

*Cassell's History of England from the earliest period to the present time.* With about 2,000 Illustrations. Part 82. London, Paris, and New York: Cassell, Petter, and Galpin.

*Milton's Paradise Lost.* Illustrated by Gustave Doré. Edited, with Notes and a Life of Milton, by the late ROBERT VAUGHAN, D.D. London: Cassell, Petter, Galpin, & Co.

*Little Folks.* New Series. Part 91. July, 1882. London: Cassell, Petter, Galpin, & Co.

"LITTLE FOLKS."—We hear their Royal Highnesses the Princesses Louise, Victoria, and Maud, of Wales have enrolled themselves as Members of the Humane Society established in connexion with *Little Folks*. The July Part of this Magazine, in addition to the names of their Royal Highnesses, contains the names and addresses of between four and five thousand new Officers and Members. The *Little Folks* Humane Society, which was inaugurated at the commencement of the present year, now numbers nearly twelve thousand Officers and Members, and a large number of children are daily joining its ranks.

**LORD FITZGERALD.**—On the 27th ult., Baron Fitzgerald, of Kilmarnock, in the Co. Dublin, took the oath and his seat in the House of Lords.

## LAW STUDENTS' JOURNAL.

## UNIVERSITY INTELLIGENCE.

TRINITY COLLEGE, DUBLIN.

Examination for Degree of Doctor in Laws, held 19th and 20th June, 1882:—M'Arthur, William; Ponnott, H. M.; Woolcombe, R. L.; Wood, James; Seddall, Henry; Kane, R. R.; Broughton, Thomas; Moxley, Stephen.

## THE INCORPORATED LAW SOCIETY OF IRELAND.

SOLICITORS' APPRENTICES.

## NOTICE.

The SESSIONAL EXAMINATION will be held on Friday, the 30th of June instant, and Saturday, the 1st of July next, from 9 30 A.M. to 12 30 P.M. and from 1 P.M. to 4 P.M. on each day. Candidates desiring to be examined will have to enter their Names at the Secretary's Office, Solicitors' Buildings, Four Courts, not later than Tuesday, the 27th day of June instant, in order that the necessary arrangements may be made.

Candidates whose names begin with letters from A to F (inclusive), will be examined at 9 30 A.M. on Friday, the 30th of June instant.

Those whose names begin with letters F to K (inclusive) will be examined at 1 o'clock P.M. on the same day.

Those whose names begin with letters from K to P (inclusive), will be examined at 9 30 A.M. on Saturday, the 1st of July next.

The remaining Candidates at 1 o'clock P.M. on the same day.

Apprentices are requested to take notice that the Sessional Examination held at the end of the month of June, or the beginning of July, is the Examination held after each Course of Lectures under the 25th Rule of the Society, and that no Apprentice can be examined at any other time unless he has been hindered from attending at the regular Examination by illness, or some similar unforeseen mischance, to be proved to the satisfaction of the Council.

By Order,

WILLIAM HICKSON,  
Professor.

Solicitors' Buildings, Four Courts,  
Dublin, 21st June, 1882.

## SOLICITORS' APPRENTICES DEBATING SOCIETY.

At a general meeting of the above society, held on June 15th, the following gentlemen were elected to hold office for the coming session (1882-3):—

Vice-Presidents—Mr. T. E. Nelson, M.A., and Mr. H. Devereux; Auditor—Mr. H. C. Weir, LL.B.; Treasurer—Mr. J. P. Murphy; Secretary—Mr. M. P. Bannin.

## COURT PAPERS.

## LAND JUDGES.

Sittings for next Week so far as same are appointed.

Before the Rt. Hon. JUDGE FLANAGAN.

## MONDAY.

IN CHAMBER.—N. Ware, appoint guardian.—H. T. Rathborne, dismiss petition.—M. Quane, allocate.—A. Henkell, payment.

IN COURT.—G. H. Mayes, liberty to bid.—G. A. Bell, to be mentioned.—J. Spencer, do.—J. Graham, do.—Anderson, do.

Before EXAMINERS (Mr. Kennedy).

R. Chadwick, rental.

**TUESDAY.**

In COURT.—J. W. Garvey, final schedule.—Rev. J. Bradshaw, receiver.

**FRIDAY.**

SALES IN COURT.

P. HANLY - - - - - 1 lot.  
H. FITZGERALD - - - - - 3 lots.

Before the Rt. Hon. JUDGE ORMSBY.

**WEDNESDAY.**

Before EXAMINER (Mr. M'Donnell).

W. R. O'Byrne, rental.

**FRIDAY.**

Before EXAMINER (Mr. M'Donnell).

G. J. Kernan, rental.—Executors M. M'Namara, objection.—E. Turner, rental.

**COURT OF BANKRUPTCY.**

**ADJUDICATIONS IN BANKRUPTCY.**

The dates of Adjudications are first given, the Sittings follow in Italics.

- Allman, Daniel, of 8 Upper Sackville-street, in the city of Dublin, hosier. June 14; *Tuesday, July 11, and Friday, July 28.* D. & T. Fitzgerald, solr.
- Angel, Catherine, late of Golden-bridge, Richmond, in the county of Dublin, messwoman, but now of No. 78 Manor-street, in the city of Dublin, widow. June 9; *Tuesday, July 11, and Friday, July 28.* John T. O'Dowda, solr.
- Culhane, Maurice, of Ballincolly, in the county of Limerick, farmer. June 18; *Friday, July 14, and Tuesday, August 1.* R. Davoren, solr.
- Frewen, Thomas, of Boesborough, Tipperary, in the county of Tipperary, farmer. June 18; *Friday July 14, and Tuesday, August 1.* Jehu Mathews, solr.
- Grier, James E., late of Chelmsford-road, in the county of Dublin, esquire, now of Haytesbury-street, in the city of Dublin. June 6; *Tuesday, July 4, and Friday, July 21.* J. Ross Byrne, solr.
- Loughran, James, of No. 7 Lower Bridge-street, in the city of Dublin, hardware merchant. June 14; *Friday, July 14, and Tuesday, August 1.* John L. & W. Scallan, solrs.
- M'Kee, Eliza, of Latmaoollin, in the county of Armagh, spinster. June 18; *Friday, July 14, and Tuesday, August 1.* John L. & W. Scallan, solrs.
- O'Brien, Patrick, of No. 6 City-quay, in the city of Dublin, vintner. June 18; *Tuesday, July 11, and Friday, July 28.* F. Kennedy & H. S. Butler, solrs.

**BIRTHS, MARRIAGES. AND DEATHS.**

**BIRTHS.**

- DAVIS—June 26, at Sydenham-road, Dundrum, the wife of James Davis, Esq., solicitor, of a daughter.
- HORGAN—June 18, at The Laurels, Mardyke Walk, County Cork, the wife of M. J. Horgan, Esq., solicitor and county coroner, of a son.
- KELLER—June 26, at Grenape House, Kanturk, County Cork, the wife of Nicholas W. Keller, Esq., solicitor, of a son.
- SAMUELS—June 29, the wife of Arthur Warren Samuels, Esq., barrister-at-law, of a daughter.
- SEEDS—June 27, at Rutland-square, West, Dublin, the wife of Robert Seeds, Esq., Q.C., of a son (prematurely).

**MARRIAGES.**

FLEMING and KACKINNON—June 21, at St. Luke's Parish Church, Edinburgh, by the Rev. Ronald Macpherson, William Fleming, Esq., solicitor, Berkeley-street, Dublin, to Margaret Anne, widow of the late Captain Donald Mackinnon, and daughter of the late William Murray, Esq., of Glasgow.

**FUNERAL REQUISITES OF EVERY DESCRIPTION.**

49, WALLER, 50,  
DENZILLE-STREET.

**DUBLIN STOCK AND SHARE LIST.**

DESCRIPTION OF STOCK	J U N E					
	Sat. 24	Mon. 26	Tues. 27	Wed. 28	Thur. 29	Fri. 30
<b>*Paid Government.</b>						
— 3 p c Consols .. ..	99½	—	99½	99½	99½	—
— 3 p c Reduced .. ..	—	—	—	—	—	—
— New 3 p c Stock .. ..	99	98½	99-1	98½	99-1	99
<b>INDIA STOCK.</b>						
4 p c Oct. 1888 } Traffic at .. ..	—	103½	—	103½	103½	—
3½ p c Jan. 1881 } Bk. of Irel. .. ..	—	—	—	100	—	—
<b>Banks.</b>						
100 Bank of Ireland .. ..	314½	—	314½	314½	314½	314½
35 <i>Hibernian Banking Co</i> .. ..	—	—	—	—	31	—
20 <i>London and County (Ld'd)</i> .. ..	—	74½	—	—	—	—
15 <i>London Joint Stock</i> .. ..	—	—	—	—	—	—
20 <i>London and W'minster, W'd</i> .. ..	—	—	—	69½	—	69½
10 <i>Do. New</i> .. ..	—	—	—	—	59	—
3½ <i>Munster Bank (Limited)</i> .. ..	—	—	—	7	—	7½
10 <i>National Bank (Limited)</i> .. ..	—	—	—	23½	23½	—
10 <i>Royal Bank</i> .. ..	—	29	—	—	—	—
25 <i>Standard of B. S. A., N'd</i> .. ..	—	—	—	56½	—	—
<b>Steam.</b>						
50 <i>British &amp; Irish</i> .. ..	—	—	—	—	—	—
100 <i>City of Dublin</i> .. ..	—	100	—	—	—	—
50 <i>Dublin and Glasgow</i> .. ..	11½	—	—	—	—	—
10 <i>Dundalk (Limited)</i> .. ..	—	—	—	—	—	5½
<b>Mines.</b>						
4½ <i>Berehaven (Limited)</i> .. ..	—	—	—	—	—	—
1 <i>Killaloe Slate Co. (Ld'd)</i> .. ..	—	—	—	—	—	—
7 <i>Mining Co. of Ireland (Ld'd)</i> .. ..	—	—	—	—	—	—
2½ <i>Wicklow Copper</i> .. ..	—	—	—	—	—	—
<b>Miscellaneous.</b>						
10 <i>Alliance &amp; Dub. Cons. Gas</i> .. ..	—	—	—	15½	15½	—
8 <i>Do. do. New</i> .. ..	—	—	—	—	—	—
4 <i>Arnott &amp; Co. Limited</i> .. ..	—	—	—	6	—	6
20 <i>G. Dub. Brewery Co. (Lim.)</i> .. ..	—	—	—	—	—	—
8 <i>Gosling &amp; Co. Limited</i> .. ..	—	—	—	—	—	—
100 <i>Grand Canal</i> .. ..	—	—	—	—	45-1	—
25 <i>Ir. C. S. Building Society</i> .. ..	—	—	—	—	—	—
4 <i>National Discount, Irel., Ld'd</i> .. ..	—	—	—	—	—	—
25 <i>National Assurance</i> .. ..	—	—	—	—	—	—
9-4-7 <i>Patriotic Assurance</i> .. ..	—	—	—	10	—	—
<b>Tramways.</b>						
10 <i>Belfast Trams</i> .. ..	—	—	—	—	—	—
10 <i>Dublin United Tramways</i> .. ..	—	—	—	10½	10½	—
10 <i>Edinburgh Street Trams</i> .. ..	—	—	—	—	—	—
10 <i>L'pl Un'd'd Tram &amp; Bus L'd</i> .. ..	—	—	—	—	—	12½
<b>Railways.</b>						
100 <i>Dublin, Wicklow, &amp; W'ford</i> .. ..	—	—	—	—	—	—
100 <i>Great Northern (Ireland)</i> .. ..	—	—	—	—	—	—
100 <i>Gt. Southern and Western</i> .. ..	—	—	—	112½	112½	112½
100 <i>Midland Gt. Western</i> .. ..	—	—	—	88½	—	—
50 <i>Waterford and Limerick</i> .. ..	—	—	—	—	—	—
<b>Railway Preference.</b>						
100 <i>D., W., &amp; W., 5 p c (1860)</i> .. ..	—	—	—	—	—	—
100 <i>Gt. N'rh'n (Irish) 6½ d 4 p c</i> .. ..	—	—	—	—	—	—
100 <i>Do., 8½ p c</i> .. ..	—	—	—	—	—	—
100 <i>Waterf'd &amp; Limerick, 4 p c</i> .. ..	—	—	—	—	—	—
50 <i>Do., new red, 5 p c</i> .. ..	—	—	—	—	—	—
<b>Debtent. Stocks.</b>						
— <i>Belfast &amp; Miln's Co., 4 p c</i> .. ..	—	—	—	—	—	—
— <i>O'Leary and Larne 4 p c</i> .. ..	—	—	—	—	—	—
— <i>Dublin &amp; Wicklow 4 p c</i> .. ..	—	—	—	—	—	—
— <i>Do., 4½ p c</i> .. ..	—	—	—	—	—	—
— <i>Gt. Northern (Ireland) 4 p c</i> .. ..	—	—	—	109½	—	—
— <i>Do., 4½ p c</i> .. ..	—	—	—	—	—	—
— <i>Do., 5 p c</i> .. ..	—	—	—	—	131	131
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<b>Miscellaneous Debtent.</b>						
<i>Dub. &amp; Glas. S. P. Co. (1867) 5 p c</i> .. ..	100½	—	—	—	—	—
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# THE IRISH LAW TIMES AND SOLICITORS' JOURNAL.

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SATURDAY, JULY 8, 1882.

No. 806

## RAILWAY CARRIERS, AND THE CONTAGIOUS DISEASES (ANIMALS) ACT, 1878.—III.

*Lynch v. The Midland Railway Co.* came before May, C.J., and Barry, J., on demurrer by the defendants to certain replies pleaded by the plaintiff to defences of the defendants. The statement of claim (paragraph 1) alleged that the defendants were carriers of cattle for hire from Dublin and Drogheda to Lynn and March, in England. The 2nd paragraph alleged that the plaintiff delivered to the defendants, as such carriers, 45 head of the cattle to be by the defendants carried from Dublin to March, with all due and reasonable speed, and at March to be delivered for the plaintiff within a reasonable time. The 3rd paragraph alleged that at Liverpool it was agreed between the plaintiff and defendants that the defendants would carry 20 of the said 45 head of cattle to Lynn, instead of March, and there deliver them within a reasonable time. By the 4th paragraph it was stated that the defendants did not deliver the said 20 cattle at Lynn within a reasonable time, but delayed and detained them in trucks and waggons after their arrival at Lynn for a long and unreasonable time, whereby the cattle were injured, and the plaintiff put to expense in feeding them, and so forth. By the 5th paragraph it was alleged that the defendants did not deliver the 25 head of cattle destined for March within a reasonable time, but, on the contrary, delayed them for a long time in trucks and waggons on the journey between Liverpool and March, whereby they were injured, and deteriorated in value. The 14th paragraph of the defence, pleaded to the 4th paragraph of the statement of claim, alleged that the defendants were always ready and willing to deliver the 20 head of cattle at Lynn within a reasonable time, but were prevented from so doing by the causes thereafter mentioned. The defendants then referred to the Contagious Diseases (Animals) Act, 1878, and stated in substance that by an order of the Privy Council, made in pursuance of that Act, the county of Norfolk, in which Lynn is situate, was declared to be an area infected with foot and mouth disease; and that under the 4th schedule of the said Act and the orders of the Privy Council of Jan. 3, 26, 1881, it became unsafe to move the said cattle from the trucks in which the same had arrived at Lynn except by a licence of the Local Authority, granted on conditions prescribed by the orders in Council; and the defendants said that no such licence was forthcoming when the said cattle arrived at Lynn. The Local Authority of and for the county of Norfolk refused to allow the cattle to be, and prevented the same from being, moved out of the said trucks unless and until such licence as aforesaid was obtained and produced to their proper officer, and the defendants said that such licence was afterwards obtained and produced to the said officer, whereupon the Local Authority permitted the said cattle to be removed from the said trucks, and the defendants thereupon forthwith removed the same and delivered them to the plaintiff. The 15th paragraph of the defence, pleaded to the 5th paragraph of the claim, referred to the same sanitary Act and orders in Council. It stated that the defendants carried the said cattle with due and reasonable speed as far as the town of

Peterborough, which is on the borders of the county of Norfolk, and that it was unlawful to move or carry the said cattle from the said town of Peterborough unto the said town of March without a licence of the Local Authority of the said county of Norfolk, and that previous to the arrival of the said cattle at Peterborough the plaintiff had not obtained such licence, nor was any such licence given, and by reason of the premises it became unlawful to carry the cattle further on the said journey, and the cattle were prevented from being so carried for a time, and did remain at Peterborough for a time. To the 14th paragraph of the defence the plaintiff replied to the following effect, viz.—that one of the conditions prescribed by the Privy Council upon which the said licence would be granted was, that the owner of the cattle would make and sign a declaration, as in the schedule to the order set forth, and the plaintiff, as the owner of the said cattle, made and signed the said declaration, and at the request of the defendants, and before the said cattle were despatched from Liverpool on the way to Lynn, delivered the said declaration to the defendants, but the defendants did not forward the said declaration to Lynn with the said cattle, so as to have the same forthcoming when the said cattle arrived at Lynn or March, but, on the contrary, negligently made default in so doing; that the Local Authority at Lynn was always ready and willing to grant the said licence upon the production by the defendants of the said declaration, and the refusal of the Local Authority to allow the said cattle to be removed from the said waggons was occasioned by the neglect and default of the defendants in not producing the declaration to the said Local Authority. To the 15th paragraph of the defence the plaintiff replied to the effect that the licence there referred to was obtainable from the proper Local Authority on the arrival of the cattle at Peterborough by the production to the said Local Authority of a declaration in writing made by the plaintiff and delivered by him to the defendants before the departure of the said cattle from Liverpool, and which declaration the defendants negligently and improperly omitted to produce to the said Local Authority, by reason whereof a licence for the removal of the cattle from Peterborough could not for a long time be obtained, and the delay in the 15th paragraph mentioned was occasioned thereby. To those replies the defendants demurred, on the ground that they did not disclose any contract or obligation upon the part of the defendants to forward the declaration to the Local Authority.

Did any obligation rest on the defendants, by any contract express or implied, existing between them and the plaintiff, or by reason of any duty imposed on them and arising out of the facts alleged, to procure the licences necessitated by the Act and Orders? This appeared to the court to be the substantial question arising on the pleadings, and was determined in the negative, the demurrer being allowed accordingly. The reasoning by which May, C.J., arrived at this conclusion was as follows: On the pleadings there was no allegation that the declaration was delivered by the plaintiff to the defendants to be delivered by them to the Local Authority; nor even that they were informed of its nature and object, or were aware of the necessity

for its production. No facts were, therefore, stated from which such a contract could be implied, and no express contract having been alleged, it only remained to consider whether a duty otherwise rested on the defendants. They were sued simply in their capacity as common carriers; and the limit of their duty, as such, was to carry the animals safely and deliver them within a reasonable time. No additional duty rested on them, as such, owing to the exceptional fact of the place of destination being within an infected area. It is true that, if an absolute contract to do a certain act is entered into, the promisor is not discharged from his obligation by the supervention of circumstances rendering performance difficult or even impossible. But this principle did not here apply. The contract was not to carry and deliver at any specified time, but within a reasonable time; and whether they were so conveyed and delivered would depend on all the circumstances [see 14 Ir. L. T. 255]. They would not be responsible for delay occasioned by the regulations imposed or springing out of the Act and Orders, especially where these were known to the plaintiff; nor could the plaintiff be heard to complain of delay occasioned by the absence of the proper licence. The obligation to take the proper steps to procure the licence, rested, in the opinion of the Lord Chief Justice, not on the defendants but on the plaintiff, who was the owner of the cattle, and was aware that it was necessary, and had the power to take the proper steps to procure it. Barry, J., concurred in holding the replies bad; and with reference to the defence, he said:—"We were much pressed with an argument that the statement of defence admits an absolute and unconditional contract to carry and deliver within a reasonable time, and admits a breach of that contract; and that the defendants cannot rely on the want of the licence as they had not made it an express condition of the contract that the plaintiff should obtain the licence. This argument might, and most probably would have prevailed under the former system of pleading; but, I think, under the existing system we may interpret the defence in a more liberal spirit. And it seems to me that the fair result of the pleading may be held to be:—'True it is, there was a delay in the delivery of the cattle, but we, the defendants, did everything in due performance of our contract as carriers; we carried, and were ready and willing to deliver within a reasonable time, and the delay was solely caused by you (the plaintiff), failing to obtain the licence necessary by law for enabling you to take delivery of the cattle.' On this construction, I think the defence is a good one, though vaguely pleaded."

Without at present commenting on that decision (as it is now under appeal), we shall conclude by referring to another very recent case in reference to impossible performance, which we find in the *Reporter* (Amer.) of the 14th ult.: *Pennsylvania Ry. Co., app. v. Reichert*, resp. It there appeared that in 1879 the appellee was the owner of a lot of ground in the city of Cumberland, occupied by him as a coal dealer, upon which there was erected a trestle connected by a switch with the Cumberland and Pennsylvania Railroad, by which he received supplies of coal for his customers. The appellant, requiring to have a right of way across the lot for its railroad, caused proceedings for condemnation to be instituted, under which a part of the lot was condemned for the use of the appellant. In constructing the road of the appellant it was necessary to remove the trestle of the appellee. The inquisition returned by the jury awarded to the appellee the sum of \$600 as damages. It was also provided that the company should construct for Reichert a trestle as therein described, and should not charge more than one per

cent per ton for hauling coal, &c.; and for non-compliance the sum of \$1,500 was awarded to Reichert as damages. The inquisition was ratified by the consent and agreement of the parties. The appellant having failed to perform, the present suit was instituted, and resulted in a verdict for \$1,200 in favour of the appellee. Bartol, J., in delivering the judgment of the Court of Appeal of Maryland, said: "By the terms of the inquisition the appellant was bound to construct the trestle as located on the plat, a part thereof being located on the land of appellee; his consenting to the terms of the inquisition imposed an obligation upon him to permit the other party to enter upon his land for that purpose; a general averment of performance of everything on his part to be done implies that he consented to such entry on his land. If, on the contrary, he had withheld his assent, or prevented the appellant from performing the contract on its part, that was matter which the appellant might have pleaded in defence. The third and fifth pleas were ruled bad on demurrer. The former alleges as an excuse for the failure of the appellant to connect the switch or trestle of the plaintiff with the Cumberland and Pennsylvania Railroad, that the said railroad company refused to permit the appellant to make such connexion, although the appellant has ever since, with reasonable diligence, endeavoured to effect such connexion. And the fifth plea alleges that 'the plaintiff failed to obtain the permission of the Cumberland and Pennsylvania Railroad Company to have its tracks connected with said trestle, though the defendant requested him so to do.' According to the true construction of the contract, the duty of obtaining the assent of the Cumberland and Pennsylvania Railroad Company to the proposed connexion with its road did not rest upon the appellee, but was assumed by the appellant, and therefore the demurrer to the fifth plea was well sustained. The appellant having, by agreeing to the terms of the inquisition, undertaken unconditionally to make the connexion for the appellee with the Cumberland and Pennsylvania Railroad, cannot be excused by reason of the refusal of that company to permit such connexion. 'If the thing promised be possible in itself, it is no excuse that the promisor became unable to perform it by causes beyond his own control, for it was his own fault to run the risk of undertaking unconditionally to fulfil a promise, when he might have guarded himself by the terms of his contract': Benjamin on Sales, s. 570 (3d. Am. ed.); *Kribs v. Jones*, 44 Md. 406. There was no error in sustaining the demurrer to the third plea."

#### "LAW JOURNAL REPORTS" FOR JULY.

The monthly number of the *Law Journal Reports* for July contains pages 521 to 584 of the Chancery Division, pages 369 to 432 of the Queen's Bench Division, pages 41 to 56 of the Probate, Divorce, and Admiralty Division, and Chapters 1 to 14 of the Statutes of the Realm. In all, forty-seven cases are reported, of which twenty-five are from the Chancery Division, seventeen from the Queen's Bench Division, and five from the Probate, Divorce, and Admiralty Division.

Of the Chancery cases, *Ex parte Russell, in re Butterworth*, decides that a post nuptial settlement made by a certain baker, on his adding the business of a grocer to his trade, was void against creditors. In the case of *In re The Exchange Company* Vice-Chancellor Bacon decided that the Statute of Limitation did not bar a claim against directors for dividends paid out of capital; nor could they set off money due to them severally from the company against their joint debt. In *The London and South Western Railway Company v. Gomm*, the company sold a piece of land, subject to a covenant by the purchaser and his assigns to reconvey. The purchaser

sold to the defendant, with notice; but the covenant was held to create a void interest in the land. In *Curtis v. Sheffield*, an unsuccessful attempt was made to revive an action for the purpose of appealing against an order made forty-six years ago. In the case of *In re Walton, ex parte Walton*, a standing rule of a County Court to appoint the high bailiff receiver and manager in bankruptcy was held *ultra vires*. *Seddon v. The Bank of Bolton* is a case of ancient lights, in which the plaintiff failed to shift the burden of proof of obstruction on to the defendant. In *Cooper v. Crabtree* the Court of Appeal held that a reversioner on a weekly tenancy could not maintain an action for placing a hoarding on the demised property. In *The Corporation of Sunderland v. Alcock* paving expenses were enforced as "a charge on the premises," although the owner was not owner at the time of the works, and the summary remedies against the then owner had not been enforced. In *Hodges v. Hodges* payment was ordered, under section 39 of the Conveyancing Act, of the debts of a married woman past child-bearing out of realty represented by a fund in Court to which she was entitled in default of children. In *Glen v. Gregg* it was held that an action on the trusts of a building for religious worship cannot be commenced with the sanction of the Charity Commissioners under section 17 of the Act, in spite of the exception in section 62. In *Clare v. Clare* it was held by Vice-Chancellor Hall that a defaulting trustee, retained as party in an action, is entitled to his costs incurred after his bankruptcy, although the bankruptcy does not discharge him. In *Biggs v. Peacock*—a partition action—a sale was refused on the ground of want of jurisdiction, as it would interfere with the discretion of trustees. In *Ex parte Hall, in re Cooper*, pressure put on a debtor about to become bankrupt did not cure an otherwise fraudulent preference. In *re Dickinson, ex parte Rosenthal*, it was held that the deposit required before an appeal from a County Court in bankruptcy must be made within the twenty-one days limited for the appeal. In the case of *In re Maggi, Winehouse v. Winehouse*, it was held that the application to administrations of the bankruptcy rules by the Judicature Act does not affect creditors *inter se*. In *Prampton v. Stephens* it was held by Mr. Justice Fry that dower was barred by a decree of divorce obtained by the wife. In the case of *In re The German Dale Coffee Company* that company was ordered to be wound up, on the application of a minority of shareholders, as its primary object had been defeated through failure to obtain a German patent. In *Loosemore v. The Tiverton and North Devon Railway Company* it was held that where a railway company had given notice to take land, its right to the land was not defeated by the expiration of its compulsory powers. In *Fraser v. Cooper, Hall, & Co.*, where the plaintiffs sued as representing a class except the defendant, another defendant was added to represent others of the class dissenting from the plaintiffs. In *Worsley v. Swann* an injunction to restrain the building of a circus was refused against persons who had covenanted to use the premises as a private dwelling-house only. In *Wallis v. Smith* the creditors of the plaintiff in the action, who had obtained a garnishee order, were, after judgment, made parties to it, on the ground that a devolution of estate had taken place. In the case of *In re Harwood* an order was made under the Trustee Extension Act, vesting the right to transfer stock in a person in whose name it stood jointly with an infant beneficially entitled. In the case of *The Albion Assurance Society* an application to put non-registered assignees of a participating policy on the list of contributories of the company was refused by Mr. Justice Fry, on the ground that the directors had power to require evidence of assignment, and had not done so. In *Ex parte The Rector of Kirkstow* Vice-Chancellor Hall declined to allow a rent-charge on a glebe to be satisfied out of money paid into Court under the Lands Clauses Act in respect of the purchase of the glebe by a railway company. In *Cripps v. Wood*—an action by second mortgagees against subsequent incumbrancers and the mortgagor's trustee in liquidation, there being evidence that the sale of the property would leave a

very small margin for the subsequent incumbrancers, only one of whom appeared—one time certain was fixed for all the defendants to redeem or be foreclosed.

Of the Queen's Bench cases, it is decided by the Court of Appeal, in *Neilson v. James*, that when a shareholder employs a broker to sell shares, and the broker enters into a contract incomplete under 30 Vict., c. 29, the broker is liable for the price, but the shareholder cannot recover for calls paid on the winding up of the company. In *Turner v. Bridgett* the Court of Appeal decide that when a judge at chambers refers an interpleader summons to the Court, and the Court gives judgment and makes an order thereon without directing an issue, that order is final, and no appeal can be brought from that judgment. In *Scott v. Sampson* Mr. Justice Mathew and Mr. Justice Cave decide that, in an action of libel, general evidence of the plaintiff's character may be given in mitigation of damages, but not particular facts proved. In *Percival v. Hughes* the Court of Appeal, subject to the dissent of Lord Justice Holker, held a householder liable to his adjoining neighbour when the contractor had negligently and without authority cut into the party wall. In *The Chartered Mercantile Bank of India, London, and China v. The Netherlands India Steam Navigation Company, Limited*, Baron Pollock held that the clause in a bill of lading excepting "loss and damage from collision" does not apply to a collision with another of the defendant's ships, that ship being mainly to blame. In *Weston v. The Metropolitan Asylums District*, a landlord reserving an additional rent if an offensive trade were carried on, and also a right of re-entry, was held by the Court of Appeal entitled to re-enter. In *Suffell v. The Bank of England* the Court of Appeal held that the alteration of a number on a bank note avoids the instrument. In *Lumden v. Winter* it was held that a plaintiff not delivering his reply in time exposes himself to a motion for judgment on admissions under Order XL., Rule 11. In *Norden v. Defries* a shorthand note taken by the plaintiff, in an issue in which he was defendant, was held privileged on the ground that it was taken for the purposes of the action. In *Gordon v. Jennings* the secretary of a tramways company was held not a "servant, labourer, or workman" whose wages cannot be attached under the Act of 1870. In *Regina v. Gans* it was held that the clause in an extradition treaty excluding the surrender of the subjects of the surrendering Government does not help the subjects of a third Government. In the arbitration between *Walker v. Brown* it was held that "costs of the reference" in a submission included the costs of the award. In *Synde v. Gould* it was held that a motion by a sheriff for an attachment against a person who had removed goods from his hands must be by notice. In *Durrant v. Ricketts* a personal judgment against a married woman, obtained under Order XIV., was set aside, and a judgment for an inquiry as to separate property substituted. In *The Whitecross Wire and Iron Company v. Savill* it was held that pouring water into a ship to extinguish a fire in the hold, is a general average act, which entitles the owner of cargo which has been damaged by the water to contribution.

In the Probate, Divorce, and Admiralty Division, in *Gandy v. Gandy* the Court of Appeal decide that the adultery of the husband is of itself no ground for setting aside a separation deed, by which the wife undertakes not to compel alimony except as agreed. In *Morrell v. Morrell* a will bequeathing forty shares to a legatee was admitted to probate without the word "forty," it being proved that the word was inserted without the knowledge of the testator, who had instructed his solicitor as to all the shares. In *Williamson v. Williamson* a husband who, after his wife had served a term of imprisonment for larceny and returned to domestic service, declined to cohabit with her, was held not to have deserted her. In the *Douglas* the duty of those in control of a ship which has sunk, to take reasonable precautions against injury from the wreck, was laid down and enforced. In the *Miranda* it was laid down that Preliminary Acts will not ordinarily be amended. The number concludes with a not inconsiderable instalment of the legislation

of the session. Chapter 2 authorises the issue of reply post cards; chapter 9 gives documents printed by the Government Stationery Office the same authority as those printed by the Queen's Printers, whom it is apparently intended to relieve in times of pressure.—*Law Journal*.

#### THE DEVOLUTION OF TRUST AND MORTGAGE ESTATES AFTER DEATH.

Among the practical inconveniences of the distinction drawn by English law between real and personal property, not the least is the difficulty of deciding whether, in a given will, general words have passed estates in which the testator had no beneficial interest. Often, too, when the legal estate had passed to an heir-at-law, additional expense was caused and sometimes an application to the Court of Chancery rendered necessary. An important section of the new Conveyancing Act (44 & 45 Vict., c. 41) was passed to cure these evils. Sect. 80 provides that trust and mortgage estates of inheritance shall, upon the death of a person after the Act, in whom such estates were solely vested, pass to his personal representatives from time to time, notwithstanding his will, like chattels real. One of several executors or administrators can dispose of them like chattels real. Within the meaning of all trusts and powers, personal representatives shall be deemed "heirs and assigns" of the deceased. Sect. 4 of the Vendors and Purchasers Act (37 & 38 Vict., c. 78) and sect. 48 of the Land Transfer Act, 1875, are repealed. This section, including the repeals, applies only in cases of death after 31st Dec., 1881. It will be noticed that, in the devolution of trust and mortgage estates, this section assimilates the law of real to that of personal property. It also affects the Wills Act, though that Act is not placed in the list of those affected (schedule 1, part 1), as a testator can no longer dispose of this property, except by appointing the devisee executor for this purpose. The section only applies to "every estate or interest of inheritance or limited to the heir as special occupant, in any tenements or hereditaments, corporeal or incorporeal." Compare sect. 2 (ii) of the Act. It does not apply unless the estate has been solely vested in the deceased. This section will, in time, simplify titles, but at present it rather adds to the complications arising in the devolution of trust and mortgage estates by frequent legislation.

At common law, trust and mortgage estates of inheritance, of which a person died solely seized, passed to the heir-at-law just as if the estates had been his own, if he was intestate. He could, however, dispose of them by will. And they passed by a general devise of real estate, unless an intention to the contrary could be inferred from expressions in the will, or the purposes or objects of the testator: (*Lord Braybrooke v. Inskip*, 8 Ves. 417; *Tudor's Leading Cases, Conveyancing*, 3rd edit. 986.) As to what is sufficient to show a contrary intention, see as to trust estates *Brown and Sibley's Contract* (L. Rep. 3 Ch. Div. 156); *Bell's Trusts* (36 L. T. Rep. N. S. 644; L. Rep. 5 Ch. Div. 504), in which the previous case was dissented from. And, as to mortgage estates, *Packman and Moss* (34 L. T. Rep. N. S. 110; L. Rep. 1 Ch. Div. 214); *Smith's Estate* (35 L. T. Rep. N. S. 690; L. Rep. 4 Ch. Div. 70). See also *Re Brown* (35 L. T. Rep. N. S. 305; L. Rep. 3 Ch. Div. 156). It will be observed that the only question here was between the devisee and the heir; the personal representative, as such, had nothing to do with the legal estate. But by sect. 4 of the Vend. and Purch. Act, 1874, "The legal personal representative of a mortgagee of a freehold estate, or of a copyhold estate to which the mortgagee shall have been admitted, may, on payment of all sums secured by the mortgage, convey or surrender the mortgaged estate, whether the mortgage be in form an assurance subject to redemption, or an assurance upon trust." This section only applied to a case where the money was paid off; it was held in *Spradbery's Mortgage* (41 L. T. Rep. N. S. 82; L. Rep. 14 Ch. Div. 514) that it did not apply to a transfer of a mortgage, so that the

legal personal representative of a mortgagee could not, on receiving payment of the mortgage money, convey the estate to a transferee. This section is now repealed, but only as to deaths after 31st Dec. 1881, so it still applies to previous deaths. It is only permissive. It is a question whether it includes the case of a mortgagor, who, having been paid off, dies without reconveying: (*Dart, Vendor and Purchaser*, 5th edit., 16.) It would seem to be necessary that the mortgage debt be paid off after the Act (Aug. 7, 1874), but that the death may have occurred before.

With regard to trust estates, it was provided by sect. 5 of the Vendors and Purchasers Act, 1874, "Upon the death of a bare trustee of any corporeal or incorporeal hereditament of which such trustee was seised in fee simple, such hereditament shall vest like a chattel real in the legal personal representative from time to time of such trustee." This was repealed, as to England, except as to anything duly done thereunder before the 1st Jan., 1876, by sect. 48 of the Land Transfer Act, 1875; and is repealed, as to Ireland, with respect to deaths after 31st Dec., 1881, by 44 & 45 Vict., c. 41, s. 78. By sect. 48 of the Land Transfer Act, 1875 (38 & 39 Vict., c. 87), "Upon the death of a bare trustee intestate as to any corporeal or incorporeal hereditaments, of which such trustee was seised in fee simple, such hereditaments shall vest like a chattel real in the legal personal representative from time to time of such trustee; but the enactment by this section substituted for the aforesaid section (sect. 5) of the Vendor and Purchaser Act, 1874, shall not apply to lands registered under this Act." It will be noticed that these enactments only apply to "bare trustees," and are not extended to trusts in general like the new Act. A trustee without any active duties to perform, or any beneficial interest in the trust estate, is a bare trustee; a trustee with a beneficial interest is not. It is doubtful whether a trustee, without a beneficial interest, but with active duties, is a bare trustee: (*Christie v. Ovington*, L. Rep. 1 Ch. Div. 279; *Morgan v. Swansea Urban Sanitary Authority*, L. Rep. 9 Ch. Div. 582; and *Lysaght v. Edwards*, 34 L. T. Rep. N. S. 787; L. Rep. 2 Ch. Div. 499.) Compare Vendors and Purchasers Act, 1874, sect. 6. The Section of the Land Transfer Act only applies when the trustee died intestate. It does not apply to deaths after 31st Dec., 1881. The important section of the new Act which we have been discussing does not apparently apply to estates contracted to be sold, as to which see, however, *Lysaght v. Edwards* (*ubi sup.*), nor do the above-cited sections of the Vendor and Purchaser Act and the Land Transfer Act: (*Morgan v. Swansea Urban Sanitary Authority, ubi sup.*) The personal representatives of a deceased vendor have a permissive power to convey given them by sect. 4 of the new Act.—*Law Times*.

#### THE COURT OF APPEAL.

The short bill to amend the Judicature Acts, presented by the Lord Chancellor to the House of Lords on Tuesday, is likely a little to puzzle the profession through bad drafting and otherwise. The main object would appear to be to carry out the intention of the Lord Chancellor expressed last May, when he was understood to say that he intended to make the Lords of Appeal in the House of Lords available for service in the Court of Appeal. Clause 2 deals with this subject, and provides that, "on the request of the Lord Chancellor, any person who has held the office of Lord Chancellor of Great Britain, or of a judge of one of Her Majesty's Superior Courts of England, within the meaning of section 25 of the Appellate Jurisdiction Act, 1876, may, if he shall consent so to do, attend the sittings of the Court of Appeal." In the first place, do the words "who has held" include or exclude persons who have held and still hold the offices mentioned? It is probably intended to exclude them, but the expression of the intention is far from clear. The Lords of Appeal are, moreover, not necessarily the persons who may be asked to sit. The clause, as drafted, would apply to

Lord Blackburn, Lord Bramwell, and Lord Penzance; but not to Lord O'Hagan, Lord Watson, or Lord Fitzgerald. As to Sir Robert Collier, the qualification provided may perhaps reopen an old controversy. According to the present principle of selection of Lords of Appeal, the bill is never likely to apply to more than one, or, perhaps, when their number is further increased, to two, Lords of Appeal. The idea probably is, that Irish and Scotch judges ought not to sit in a purely English Court. Irish and Scotch judges may overrule English judges in the House of Lords, but not in the Court of Appeal. This restriction may be necessary, but it is anomalous; and it is hardly fair to the English Lord of Appeal to ask him to undertake duties to which his brethren are not liable. It, moreover, reduces the possible relief of the Court of Appeal to very slight dimensions. Only from the accident of Lords Bramwell and Penzance, and perhaps Sir Robert Collier, being available, it would give only one occasional judge to the Court of Appeal.—*Law Journal*.

SOLICITORS' FEES.

The following NEW RULES and ORDERS of the SUPREME COURT OF JUDICATURE have been made with the concurrence of the majority of the Judges, under the Jud. Act, s. 61:—

1. The fees set forth in the Schedule to Order VII. of "The Rules of the Supreme Court of Judicature (Ireland), April, 1878," and therein numbered 1, 19, 20, 21, 22, 23, 34, 35, 53, 59, 62, 74, 95, 101, 145, 161, 167, and the fees set forth in the Schedule to Rule 68 of "The Rules of the Supreme Court of Judicature (Ireland), of the 16th of June, 1879," shall not be henceforth charged or allowed.

2. Subject to the provisions of Order VII. of the said Rules of April, 1878, solicitors shall be entitled to charge, and shall be allowed the fees mentioned in the following Schedule.

SCHEDULE.

	Lower Scale		Higher Scale	
	£	s. d.	£	s. d.
1 Writ of Summons for the commencement of any action . . . . .	0	6 8	0	13 4
2 Summons to attend at Judges' Chambers . . . . .	0	3 4	0	6 8
3 Or if Special, at Taxing Officer's discretion, not exceeding . . . . .	0	6 8	1	0 0
4 Copy for the Judge when required . . . . .	0	2 0	0	2 0
5 Or if more than six folios, per folio . . . . .	0	0 4	0	0 4

SERVICES, NOTICES, AND DEMANDS.

6 Service through a Solicitor of any Summons, Interrogatories, Order, Notice, Demand, or other Document (not being a Writ of Summons or citation) on a party who has entered an appearance, if not authorised to be served through the Notice Department of the Consolidated Record and Writ Office . . . . .	0	1 0	0	1 0
7 Like service otherwise than through a Solicitor . . . . .	0	2 6	0	2 6
8 As to summons to attend at the Judges' Chambers, for each copy to serve . . . . .	0	1 0	0	2 0
9 Or, if more in the lower scale than three folios, or in the higher scale than six folios, per folio . . . . .	0	0 4	0	0 4

APPEARANCES.

10 If entered at one time for more than one person, for every defendant beyond three . . . . .	0	1 0	0	2 0
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INSTRUCTIONS.

	£	s. d.	£	s. d.
11 For Statement of Complaint . . . . .	0	10 0	1	11 6
12 For reply by plaintiff when defendant sets up a counterclaim . . . . .	0	10 0	0	15 0
13 For special accounts, statements, charges, and discharges . . . . .	0	6 8	0	6 8
14 For brief on Motion for Special Injunction . . . . .	0	13 4	1	0 0

DRAWING BRIEFS AND OTHER DOCUMENTS.

15 Drawing brief for trial or on hearing of cause, issue of fact, assessment of damages, examination of witnesses, demurrer, special case and petition before a Court or Judge, sheriff, commissioner, or officer of Court, when necessary and proper, to comprise necessary and proper observations, statement of case, testimony of witnesses, and abstracts of documents too long to brief, per folio . . . . .	0	0 9	0	1 0
16 Accounts, statements, and other documents for the Judges' Chambers or Master's Office when required, including copy for use and fair copy to leave, per folio . . . . .	0	0 8	0	1 4

PERUSALS.

17 Of accounts, statements, charges, discharges, or reports . . . . .	0	6 8	0	6 8
18 Or under special circumstances, not exceeding . . . . .	1	0 0	1	0 0
19 Of notice to produce or to admit by Solicitor of party served . . . . .	0	6 8	0	6 8

ATTENDANCES.

20 To bespeak and obtain certificate of pleadings (one fee only) . . . . .	0	3 4	0	6 8
21 To bespeak and obtain certificate or account of funds (one fee only) . . . . .	0	6 8	0	6 8
22 On a summons at Judges' Chambers when in the list for the day, and not reached . . . . .	0	6 8	0	6 8
23 On consultation or conference with Counsel . . . . .	0	13 4	0	13 4
24 In Court on every Special Motion when heard, each day, according to circumstances, not to exceed . . . . .	1	1 0	2	2 0
25 Term fee in agency cases when the town agent is a qualified Solicitor, and is named upon the papers, in addition to other fees allowed . . . . .	0	5 0	0	5 0
26 On hearing or trial in Dublin of any cause, or matter, or issue of fact, before a Judge, with or without a Jury— When in list for hearing, if not heard, each day . . . . .	0	10 0	0	10 0
27 When heard or tried, first or only day of hearing or trial . . . . .	1	1 0	2	2 0
28 Each succeeding day of hearing or trial, according to circumstances, not exceeding . . . . .	2	2 0	2	2 0
29 On hearing or trial, not in Dublin, of any cause, or matter, or issue of fact, before a Judge, with or without a Jury— When heard or tried—first or only day of hearing or trial . . . . .	3	8 0	5	5 0
When heard or tried—each succeeding day of hearing or trial . . . . .	2	2 0	2	2 0

3. Order VIII., Rule 2, of the Rules of the Supreme Court of Judicature (Ireland), April, 1878, and Order II.

of the Supplemental Rules under the Supreme Court of Judicature Act, (Ireland), 1877, made the 2nd day of July, 1881, shall be and the same are hereby respectively rescinded.

4. The following Rule shall henceforth be read with the said Rules of April, 1878, as "Order VIII., Rule 2." : In all cases in which a plaintiff shall have obtained a judgment by default, there shall be added by the officer to the principal sum for which such judgment is marked for the costs thereof, the following sums, and no more :—

	£ s. d.
That is to say—In all cases where the principal sum for which judgment is marked shall not exceed £10,	1 0 0
And if execution do issue, the further sum of . . . . .	0 3 8
	£1 3 8
And if more than one defendant served, a further sum of 3s. for each additional defendant.	
In all cases when the principal sum for which judgment is marked shall exceed £10 and shall not exceed £20,	1 17 0
And if execution do issue, the further sum of . . . . .	0 7 0
	£2 4 0
And if more than one defendant served, a further sum of 5s. for each additional defendant.	
In all cases when the principal sum for which judgment is marked shall exceed £20, if the writ is served in the city of Dublin,	8 14 0
And if the writ is served in the county of Dublin, or in any city (other than Dublin) or in any county town, in addition,	0 5 0
Or if the writ is served in any other county than Dublin, and not in any city or county town, in addition,	0 10 0
And if more than one defendant served, a further sum of 10s. for each additional defendant.	
Where, in consequence of the distance of the party to be served, it is proper to effect such service through an agent, for correspondence, in addition,	0 5 0
Where more than one attendance is necessary to effect service or to ground an application for substituted service, such further allowance may be made as the taxing officer shall think fit.	
And if registered under the 13th and 14th Vic., cap. 74, but only in cases when the principal sum for which judgment is marked shall exceed £20, for the costs of such registration,	1 0 0
And if such judgment shall be registered against more than one defendant, then, for the second registration, an additional sum of . . . . .	0 15 0
And if registered against three or more defendants, then for each registration in addition to the first two,	0 9 0

5. The following Rule shall henceforth be read with the said Rules of April, 1878, as Order X., Rule 8 (a).

In taxing the expenses and allowances of witnesses the Taxing Officer shall, in ordinary cases, have regard to the following scale :—

A. For labourers, journeymen, and other like witnesses—	
If resident within five miles of place of trial, or ten miles if there is a railway for three-fourths the distance, per day; not exceeding . . . . .	0 3 6
If beyond that distance, per day; not exceeding . . . . .	0 5 0

B. For master-tradesmen, farmers, and other like witnesses—

	£ s. d.
If resident within five miles of place of trial, or ten miles if there is a railway for three-fourths the distance, per day; not exceeding . . . . .	0 5 0
If beyond that distance, per day; not exceeding . . . . .	0 7 6

C. For mercantile and other clerks and assistants and other like witnesses—

If resident within five miles of place of trial, or ten miles if there is a railway for three-fourths the distance, per day; not exceeding . . . . .	0 7 6
If resident beyond that distance, per day; not exceeding . . . . .	0 10 0

D. For esquires, bankers, merchants, and other like witnesses—

If resident within five miles of place of trial, or ten miles if there is a railway for three-fourths the distance, per day; not exceeding . . . . .	0 10 0
If beyond that distance, per day; not exceeding . . . . .	1 0 0

E. For medical men, notaries, engineers, surveyors, and other professional witnesses—

If resident within five miles of place of trial, or ten miles if there is a railway for three-fourths the distance, per day; not exceeding . . . . .	1 1 0
If beyond that distance, per day; not exceeding . . . . .	3 3 0

F. For other witnesses, and for females according to their station in life, having regard to the foregoing scale.

The above scale includes in each case the board and lodging of the witnesses, but does not include reasonable travelling expenses actually paid, which may be allowed in addition.

In special cases the Taxing Officer may increase the above allowances on special grounds to be stated in his certificate.

#### MORTGAGING A LICENSE.

The English Court of Appeal on Wednesday, in *Rutter v. Daniell*, had to deal with a licensing difficulty which not infrequently arises, but which has seldom or ever been before the Courts. A license-holder mortgaged the licensed premises by sub-lease, without any express covenant in regard to the license. The mortgagee brought an action for foreclosure and sale, and a receiver was appointed. By a further order of Mr. Justice Fry, now confirmed by the Court of Appeal, the mortgagor was ordered to deliver the license to the receiver, and to do all necessary acts to transfer the license to him. The Court of Appeal held that the mortgagor is bound to do his best to transfer the license to the receiver, so that we have the anomaly of a license-holder applying to the justices to transfer his license against his will. The justices have jurisdiction to transfer under section 14 of the Licensing Act, 1838, when the licensed person "shall remove from or yield up the possession of the house." When the mortgagee takes possession there is no difficulty in saying that the license-holder has yielded possession; and the same may, we suppose, be said when the receiver, who acts neither for mortgagor nor mortgagee, but in the interests of both and for the Court, is put in possession. As to the unwilling acquiescence of the transferor of the license, it would seem to make no difference whether his good wishes go with the application, or whether he applies on the compulsion of a contract, so long as he does in fact apply, and the justices have no objection to the transfer itself or to the transferee.—*Law Journal*.

SUNDAY LAWS—WORKS OF NECESSITY.

The Judges of the Common Pleas Division have just decided in *Regina v. Taylor*, that it is unlawful for an ordinary barber to shave his customers upon Sunday; and this on the ground that he is a workman within the meaning of the Lord's Day Act (R. S. O. ch. 189, sec. 1.), and the shaving is a worldly labour or work done by him in the course of his ordinary calling as a barber, and is not a work of necessity or charity. Their Lordships were not prepared to say that a barber connected with an hotel would not be permitted to shave on the sacred day; for in such a case he might be looked upon as a servant kept in a private family to do work on Sundays as well as other days. The Court considered the Scotch case of *Phillips v. Innes*, 4 O. & F. 284, decided in 1837, and in which the House of Lords declared shaving on Sunday by a barber not a work of necessity or mercy, a binding decision.

The subject is not only an important, but also an interesting one. It has been considered by several Courts on the other side of the line. In *Commonwealth v. Jacobus*, 1 Penn Leg Gaz. Rep. 491, it was held that the business of a barber in shaving his customers on Sunday morning is "worldly employment," not "a work of necessity or charity." The Court said: "It is argued that as the law does not forbid a person to wash and shave himself on Sunday, and thus to prepare himself to attend public worship, or otherwise properly to enjoy the rest and recuperation which it was the purpose of the day to give, therefore, another may do it for him without incurring the condemnation of the law. This view is not sustained by the authorities.

It is further contended by the counsel for the defendant, that long-continued usage and customs of society, prove that the business of a barber is by common consent considered a necessity within the meaning of the law. . . . But is it a work of necessity? Many persons shave themselves on that day, who are shaved by a barber on other days of the week, and not one in ten who shave on that day employ the services of a barber." In this case *Jacobus* shut up his "tonsorial parlour" at 10 o'clock on Sunday morning; the Court thought that made no difference, and added, "if the closing of these shops on Sundays is an inconvenience to the public, the remedy rests with the Legislature and not with the Court.

Lord Brougham, by the way, in *Phillips v. Innes*, seemed to think that the shaving might be done in Dundee on Saturday, as the Glasgow people did it then. The magistrates of Dundee had held that shaving on the Sabbath was right, although it was "not lawful for the barber to work in the making of wigs on Sunday."

In another case in Pennsylvania, it was held to be illegal for a barber to shave on Sunday, even those who were sick on Saturday and could not come on that day to be cleansed; and the fact that he did not charge for his labour is considered no excuse. (*Commonwealth v. Williams*, Pearson's Decisions, p. 61.) Even so late as the middle of the eighteenth century "ministers were sometimes libelled" in Scotland "for shaving" themselves on the Lord's day. (Buckle, vol. iii., ch. iv., note 168.)

On the other hand, a barber at Tunbridge Wells was summoned for infringing the Act of Charles II., and he ingeniously pleaded that if any of his customers had no money they were shaved for nothing, thus making "the operation a work of charity," and further, that if a footman or waiter were not shaved on Sundays he would probably be discharged, and to serve him was therefore "a necessity." This satisfied the magistrate, and the summons was destroyed. (*The Graphic*, Nov. 27th, 1879.)

And in Tennessee, a couple of years ago, it was held that keeping open a barber's shop on Sunday is not indictable either as a misdemeanour or a nuisance. It was held not to be a misdemeanour, because a penalty for the violation of the Sunday laws is imposed. The question then was, whether it was a nuisance, and the

Court said: "It cannot be said that a barber's shop is something which incommodes or annoys, or which produces inconvenience or damage to others. On the contrary, the business of barbering is so essential to the comfort and convenience of the inhabitants of a town or city, that it may be regarded as a necessary occupation. To hold that it becomes a nuisance when carried on on Sunday, is a perversion of the term "nuisance." All that can be said of it is, that when prosecuted on Sunday it is a violation of the statute, and subject to be proceeded against as prescribed by law, but not subject to be indicted as a nuisance. It may shock the moral sense of a portion of the community, to see the barber carrying on his business with open doors on Sunday, but it produces no inconvenience or damage to others, and, therefore, cannot be regarded in legal contemplation "a nuisance." (*State v. Lorry*, 7 Baxt. 95.)

It appears that every State in the Union, except Louisiana, has a Sunday law; the original and model of most of them is the English Statute of 1676, passed when Charles II. was king. The laws differ greatly, therefore do the decisions; but the general principle of all is the same; ordinary business and labour is forbidden, except works of necessity and charity. In some of the statutes the laws contain special provisions against what we may assume to be the besetting sins of the inhabitants. The Arkansas Statute punishes Sunday indulgence in brag, bluff, poker, seven-up, three-up, twenty-one, thirteen cards, the odd-trick, forty-five, whist, or any other game at cards by a fine of from \$25 to \$50. California charges from \$50 to \$500 (in the shape of a fine) for attending any bull, bear, cock, or prize fight, horse-race or circus; or for keeping open any gambling house, or any place of barbarous or noisy amusement, or any theatre where liquor is sold on the Lord's day. In ages gone by in England bull-baiting or bear-baiting used to cost three shillings and fourpence, and wrestling and bowling five shillings, upon Sunday (1 Car. I.). The Florida law enacts that anyone disturbing a congregation of whites, is subject to a penalty of not more than \$100; or the offender may be whipped, the stripes not to exceed the orthodox forty save one; or be imprisoned for not more than six months.

South Carolina alone sticks to the old notion of compelling people to go to church. Her statute provides, "that all persons having no reasonable or lawful excuse, on every Lord's day shall resort to some meeting or assembly of religious worship, tolerated and allowed by the laws of the State, and shall there abide orderly and soberly during the time of prayer and preaching, on pain of forfeiture, for every neglect of the same, of the sum of one dollar."

In the original Sunday-go-to-Meeting Act, that of Elizabeth, every person had to repair to his parish church every Sunday, on pain of forfeiting one shilling for each offence; and anyone over sixteen who absented himself for a month, forfeited £20 a month. (*Eliz.*, c. 2. 28 *Eliz.*, c. 1.)

In Indiana the Act forbidding working, &c., on the day of rest, applies only to those over 14 years of age.

"Necessity" is a relative term, and the law does not mean that the work to be allowed must be "absolutely necessary." "If nothing but absolute necessity were intended, it would, in general, be unlawful to prepare a meal on the Sabbath, because it might without difficulty be previously prepared, or most people might safely enough fast for twenty-four hours. To supply gas light would be equally unlawful, for people might use candles previously provided, or might retire to bed at twilight."

The great object of all these laws is to make the day a day of rest; but some things are more important and necessary than even rest: and the doing of such things when indispensable is allowed. So it was held that the reasonable preparation of breakfast for her employer's family was such a work of necessity, as justified a maid-servant in travelling on Sunday morning (*Crossman v. Lyon*, 121 Mass. 301); and a servant may drive his

master's household to church in his master's carriage (*Com. v. Nesbit*, 24 Penn. St. 899). In fact "the law has never been regarded as applying to the proper internal economy of the family. It does not except the ordinary employment of making fires and beds, cleaning up chambers and fire-places, washing dishes, feeding cattle, and harnessing horses for going to church, because these were never regarded as the worldly business of the family, and therefore not forbidden to the head of the family, or to any of the domestics."

In Pennsylvania it was held unlawful to run street cars on Sunday (*Com. v. Jeandell*, 2 Gr. Pa. Cas. 506), or an omnibus (*Com. v. Johnston*, 22 Pa. St. 102), even if the omnibus is used partly by church-goers it will not help the case. Still, "if an invalid, or a person immersed for six days within the close walls of a city, requires a ride into the country as a means of recuperation, which is the true idea of rest; there is nothing in the Act of 1794 to forbid the employment of a driver, horses and carriages on Sunday to accomplish it. Equally lawful is the employment of the same means to go to the church of ones choice, or to visit the grave of the loved and lost to pay the tribute of a tear." (*Com. v. Johnston, sup.*) In Georgia, however, it was recently decided that the running of street cars in cities and their vicinity is a work of necessity (*Angusta and S. R. R. v. Rens*, 55 Ga. 126.)

Appropos of the labour of domestic servants. A doctor's boy, having declined to wash his master's gig on Sunday, had the pleasure of drawing forth from the judge of the Aberdeen and Kincardine Small Debt Court the following remarks:—"It is essential to bear in mind that in determining what is a work of necessity in a domestic establishment, a great deal must be left to the discretion of the master. Life would be intolerable in a house in which the servants were to refuse to do a certain piece of ordinary work on a Sunday, which their employer thought necessary, on the ground that they were of a different opinion. The Sunday work which a master may insist upon having done, must be reasonably incidental to work that is necessary. For example, I should hesitate to hold that the master was entitled to insist that Sunday should be the weekly washing day, or the day on which the silver plate, not in daily use, was to have its periodical scrubbing. On the other hand, a servant would be bound to see that such things as are in use at every meal are cleaned, even although that involve the operation of cleaning being done between the first Sunday meal and the second." The judge held that the boy should have obeyed his master, and that he was not excused by having offered on Sunday night to clean it. (*Scottish Law Magazine*, 1880.) Even the 29 Car. II. allowed the dressing of meat in families, inns, cook-shops, or virtually houses, and the crying of milk on a Sunday in the morning and evening.

The "necessity" intended is "not a personal necessity, but one arising out of the nature of the thing to be accomplished and the need of the community." Poverty and the need of money is no excuse for working on the Sabbath. What a farmer may do in one State he may not do in another; and what he may or may not do is sometimes very doubtful.

In Indiana a man may lawfully feed his hogs on Sunday; and, if according to the practice of good husbandry, it be necessary for him to gather the feed in the field and haul it to the feeding-place on that day, he may do it all without incurring any pains or penalties (*Edgerton v. State*, 67 Ind. 588). An honest yeoman may gather in his grain on the Sabbath day, if by leaving it in the field until Monday it is likely to be spoiled; progathered his wheat into his garner sooner than he did (*Turner v. State*, 67 Ind. 595). In that State, too, he can pick and haul to market his water melons—as a work of necessity—if otherwise they would spoil (*Wilkinson v. State*, 59 Ind. 416). The need of the community for water melons must be great! It appeared from the evidence in this case that Wilkinson was prosecuted for drawing a load of 100 melons to market on a Sunday. On that day he

had over 600 dead ripe and ready for market, and he lost all except the one load he marketed. Judge Hawk, in giving judgment on an appeal from the conviction for Sabbath breaking, said: "It would seem that a kind Providence had crowned the labours of the appellant with a bountiful harvest of melons. They were ripening and decaying much faster than he could get them to the market, twenty-six miles off." The learned judge then gave his ideas on water melons and works of necessity: "A ripe water melon in its season is a luxury; but there is nothing more stale, flat and unprofitable than a decayed or rotten melon. It seems to us that it was his duty as a prudent and careful husbandman to labour diligently to get as many of his melons as he could to market. Whatever was his duty to do in the premises, there was a moral necessity for him to do; and in the accomplishment of the main purpose of saving and securing the benefits of his crops, whatever labour he was reasonably required to do on Sunday must be regarded, as it seems to us, a work of necessity." The judge further remarked: "It is no desecration of the Sabbath to garner and secure on that day the fruits of the earth, which would otherwise decay and be wasted. It is not necessary for the protection of the Sabbath that men should abuse or overwork either themselves or their horses by midnight work."

Yet down in Arkansas (see above as to some of the provisions of their Sunday laws) there was a poor farmer named Goff, whose wheat was wasting from over-ripeness; but he had no cradle wherewith to cut it, and he waited to borrow one until Saturday night, as his poverty compelled him to work for his neighbours during the week. On Sunday he cut his own grain with the borrowed implement. The Court decided that there was no general necessity that wheat should be cut on Sunday, therefore no one might do it, and that the poor man was not justified in breaking the Sabbath (*State v. Goff*, 20 Ark. 289). The disciples of the Man of Nazareth, who not only gathered but also threshed the wheat for their daily bread on the Sabbath day, would have had small chance of an acquittal before this Court; as little chance as any of them would have had if he had been in the poor shoemaker's boots in Massachusetts. This wretched mortal had a garden patch where ill weeds had grown apace. For days he could not get away from his master's shop; at last he got a two days' holiday—Friday and Saturday. He worked hard at his crops, even by moonlight, until late on Saturday night. When he ceased a few hills remained unfinished, in a very bad condition and suffering from want of hoeing. On Sunday morning about eight o'clock, he spent half an hour in finishing these hills of corn. He was convicted for breaking the Sabbath, and the Court, on appeal, sustained the conviction. (*Com. v. Josselyn*, 91 Mass., 411; see also *Com. v. Sampson*, 97 Mass., 407.) The judges in this case must have belonged to that school of the Rabbis which insisted that it was a sin to eat an egg laid upon the seventh day; or have been lineally descended from the members of the Kirk session of Humber, who cited poor Margaret Brotherton before them "for that she did water her kail upon the Sabbath day," and ordered her, she having confessed her sin, "to give evidence in public of her repentance the next Lord's day." (Buckle, vol. iii., chap. iv., note 182.)

In Indiana (and even in Vermont, although the latter State is very near the unco' guid of Massachusetts) the Courts have considered that the collecting and the boiling down of maple sap is a work of necessity on Sunday where the sap is flowing freely and all the troughs are full; the maple sugar man having no way of saving his harvest save by emptying the troughs that are full. (*Morris v. State*, 31 Ind. 189; *Whitcomb v. Gilman*, 85 Vt. 297.)

Again in liberal Indiana, the brewer is allowed to turn or handle the barley which he is manufacturing into malt for his beer, as twenty-four hours neglect would make it unfit for use. The turning is a work necessary to accomplish the object which the brewer



has in view, and as the law authorizes the manufacture of beer the labour necessary to make it is lawful and a work allowable on Sunday. (*Crockett v. State*, 33 Ind. 416.)

In Ohio it was held that under special circumstances a miller might grind on that day. The Judge said he thought it would hardly be questioned that a gas company might supply gas, a water company water, and a dairyman milk to their customers on that day; for it is no part of the design of the law to destroy or impose ruinous restrictions upon any lawful trade or business. (*M'Gatrick v. Wason*, 4 Oh. St. 566.)

Again in Indiana an inn-keeper sold cigars from a stand which was a part of his establishment, and the Court held that he was not punishable. The Judge said:—"There is a daily necessity for putting a house in order, cooking meals, drinking coffee or tea, smoking a cigar by those who have acquired the habit, or continuing any lawful habit on Sunday, the same as there is on a work-day, and whatever is necessary and proper to do on Sunday to supply this constant daily need is a work of necessity within the meaning of the law. It is not unlawful to keep a hotel on Sunday in the same way that it is usually kept on a week-day, and if a hotel keeps a cigar stand, which is a part of its establishment, from which it sells cigars to its guests, boarders and customers on a week-day, to sell cigars from the same stand in the same way on Sunday is not unlawful. There is no difference legally between the act of selling a cigar under such circumstances and the act of furnishing a cup of tea or coffee, a meal of victuals, or supplying any other daily want to a customer on Sunday for pay." (*Carver v. State*, 69 Ind. 61.) Smokers therefore, cannot complain.

In Alabama, as in Ontario, all shooting is forbidden if it is not justified by necessity, and shooting a dog in mere mischief is not a necessity. (*Smith v. State*, 50 Ala. 159.) In Missouri, however, a man went out hunting on Sunday. He was prosecuted, but acquitted as the law only forbade working on the Sabbath day; the district attorney argued that "hunting" was "working," but the Judges could not see it in that light. (*State v. Carpenter*, 62 Mo. 594.)

In Massachusetts it has been held that cleaning out a wheel-pit on Sunday, to prevent the stoppage of mills employing many hands, is not a work of necessity within the meaning of the law. Nor can one who helped at this work as a matter of kindness protect himself by claiming that what he did was a work of charity. (*M'Grath v. Mervin*, 112 Mass. 467.) No wonder, when the law is such, that the poet wrote, "Alas for the rarity of Christian charity under the sun."

The consideration of works of charity must be deferred until some future time.

[See also, on above subject, *Seaman v. The Commonwealth*, 21 Am. Law Reg. N. S. 256.—Ed. C. L. J.]—*Canada Law Journal*.

THE CONVEYANCING AND LAW OF PROPERTY ACT, 1881. WHERE IT SHOULD BE ADOPTED, AND WHERE EXCLUDED.—XX

(Continued from page 313, ante.)

*Settlement of Land on Marriage, the Children taking as Tenants in Common in Tail.*

The limitations may be slightly shortened by use of the phrase "tenant in tail" (sect. 51); but we advise that the accruer clause be set out fully, and that the short accruer clause used in wills should not be used in deeds: (*Law Times*, April 8, p. 401.)

It will not be safe to rely upon sect. 42, which makes provision for management of land, and application of rents and profits during minority, unless a supplementary clause is added. The statutory power, unlike the common one, does not apply to the entire land when an infant has a share. It only applies to the infant's share. In any case it should be stated in the settlement that the powers of sect. 42 are given to the trustees. Power of leasing should be inserted. A power of sale

and exchange should be given, but in case of freehold land the details may be omitted in reliance upon 23 & 24 Vict., c. 145, Part I., and sect. 85 of the Conveyancing Act. But the statutory power is not quite satisfactory when the property consists of manors or copyholds. Also power to sell minerals apart from surface should be inserted if required. (*Law Times*, April 15, pp. 419, 420.)

Our remarks above as to trustee clauses apply here. As to covenants for title, see *Law Times*, April 22, p. 484. We advise usual covenants for further assurance. As to power of interim investment, see below.

*Settlement upon Marriage of Freeholds in Fee Simple with usual Clauses.*

Limitation of wife's jointure rentcharges may be shortened by omitting powers of distress and entry (sect. 44). It must be distinctly stated that it is an annual rentcharge: sect. 44 (1). Omit apportionment clause (33 & 34 Vict., c. 85, s. 2). There is no need either to limit a term or to empower the jointress to limit a term: sect. 44 (4). It may, however, be well to add a proviso preventing the representatives of the jointress limiting a term after the expiration of one year from her decease, and preventing in any case the limitation of a term exceeding 299 years. This is to oust the "long term" section (65). So the portions term may be restricted to 299 years for the like purpose. The limitations in tail and fee may be slightly shortened (sect. 51), but the cross-remainder clause should be set out as stated above. The trusts of portions term may be slightly shortened, but generally it will be best to set them out much as usual: (*Law Times*, April 29, pp. 453, 454.) The declaration as to receipt and application of rents and profits during minority may be much shortened (sect. 42). If the settlement contains limitations to tenants in common likely to come into practical operation, insert supplement to sect. 42 as above. The power of sect. 42 should be expressly given to the trustees. Statutory provision for accumulations needs a supplement sect.: 42 (5) (iii.) As to future wife's jointure, power of leasing, powers of sale and exchange, trustee clauses and covenants for title, see above. In settlements of considerable value, add clause expressly making power of sale and exchange overreach estates and charges, and, in any case, it will be well to give wider powers of interim investment than that given by Lord Cranworth's Act (sect. 7): (*Law Times*, May 6, pp. 5, 6.)

*Settlement of Leaseholds.*

In settlement of leaseholds as personality, the trust for sale may be shortened (sects. 55, 56, 58), receipt clause (sect. 36), maintenance, and accumulation clauses (sect. 43) omitted, and trustee clauses much abbreviated. In settlement of leaseholds upon trusts corresponding with those of freeholds caution will be needed to secure that the powers, implied by statute as to the freeholds, are extended to the leaseholds. Often special powers as to renewable leaseholds should be inserted. Sect. 42 applies to leaseholds, but it is not easy always to see effect of sect. 42 (5) (iii.) As a doubt has been raised as to whether Part I. of Lord Cranworth's Act applies to leaseholds, the best plan will be to give the trustee power to sell, exchange, and convey the lands. This will suffice for sales, even if Cranworth's Act does not apply. See sects. 35, 36 of Conveyancing Act: (*Law Times*, June 3, p. 78.)

*Settlement of Copyholds.*

Covenant to surrender will be necessary, but declaration of trust may be omitted: (*Re Cuming*, 21 L. T. Rep. N. S. 739; L. Rep. 5 Ch. App. 72.) Insert covenant for further assurance. Often special powers for applying sale money in purchasing enfranchisement will be needed. In settlements by reference to settlements of freeholds the same caution is needful as in similar settlements, by reference, of leaseholds. Sect. 42 applies, but sect. 42 (5) (iii.) will sometimes create a difficulty: (*Law Times*, June 3, p. 78.)

**Wills.**

Omit devise of trust and mortgage estates in consequence of sect. 30. Trust for sale may be shortened (sect. 35). Maintenance and accumulation clauses may be omitted if children are to be entitled at twenty-one, &c. (sect. 43). Trustee clauses may be shortened. Compare remarks on settlements. They should be set out fully if the will includes foreign property. Advancement and solicitor trustee clauses should be inserted if required: (*Law Times*, June 10, p. 96.)

**Copyholds.**

For partial list of sections affecting copyholds, see *Law Times*, June 3, p. 178. Sects. 2 (v.), 3 (2) (6), 7 (5), 21 (1), 34 (3) make some special reference to copyholds. Sect. 62 (easements) does not apply to them.

Conditions of sale may be shortened by reliance on sect. 3 (2). In covenants to surrender omit general words and all-estate clause, except they are on the court rolls. In conveyances on sale and mortgages, the statutory words may be used, and covenants for title omitted if there is a covenant to surrender, but not otherwise. Mention the "heirs" in surrenders. In mortgages, either insert power of sale, or at least give an express charge with the covenant to surrender: (*Law Times*, June 10, p. 96.) As to settlements, see above.

**Some additional Cautions as to Reliance upon the Act.**

Where it is intended to make the benefit or burden of a covenant run with the land, the word "assigns" should be mentioned, notwithstanding sect. 68. Before enlarging any long term under sect. 65, the new Conveyancing Bill now before Parliament should be read and considered, as it contains a retrospective provision. Be cautious as to reliance on the Act in case of settlements and wills where the trusts relate to property abroad.

We may add that, in many cases where the details of powers are omitted in consequence of the Act, it may be wise to give a power of investment of proceeds of sale money wider than that given by law.

**Conclusion.**

We have been unable in this series to discuss the subject of the enlargement of long terms, but hope to find an opportunity for this after the passing of the Conveyancing Bill before mentioned. Also it will be better to consider the effect of this Act on the law relating to married women after the fate of the Conveyancing Bill and Married Women's Property Bill have been decided. The Conveyancing Bill also makes great alterations with regard to powers of attorney, and the discussion of these likewise will be postponed.

**TEXT-BOOK ADDENDA.**

[From the *Law Journal*.]

*Beerhouse Act, 1869 (32 & 33 Vict. c. 27), s. 3.*  
*Lely and Foulkes on Licensing (2nd Edition), 72.*

Where the justices' clerk makes a minute of the grounds of the refusal of an off-licence for non-qualification, there is a sufficient specification in writing to satisfy the statute (*Regina v. Licensing Justices of Cumberland*, 51 *Law J. Rep. Q. B.* 142).

*Malicious Injury to Property Act (24 & 25 Vict. c. 97), s. 52.*

Malicious injury to the property of the owner of a right to the herbage is not committed by playing bowls on the turf (*Laws v. Eltringham*, 51 *Law J. Rep. M. C.* 13).

*Highways and Locomotives Amendment Act, 1878 (41 & 42 Vict. c. 77), s. 23.*

Justices held justified in finding that carting building material necessitating the use of "trails" down hill was not extraordinary traffic giving occasion for a claim for damages (*Pickering Highway Board v. Barry*, 51 *L. J. Rep. M. C.* 17).

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\* Resumed from p. 153, *ante*. The numerals with *Rep.* prefixed refer to the pages of the IRISH LAW TIMES REPORTS. The numerals with *Mis.* prefixed refer to the pages of the Miscellaneous portion of this Journal.

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Rentcharge (see *Will*).

**Sale:** (and see *Bankruptcy—Company—Specific Performance*.)

warranty; goods of vendor's own manufacture. *Johnson v. Raylton*—Mis. 154.

auction under order of Court; duty of solicitor to pay deposit into Court for auctioneer; defalcation by one of firm of solicitors; liability of others. *Biggs v. Bree*—Mis. 232.

Settlement: wife's personality; limitations in favour of her next of kin irrevocable. *Paul v. Paul*—Mis. 194.

Sheriff (see *Execution*).

Ship (see *Merchant Shipping Act, 1854—Negligence*).

Solicitor (see *Bill of Sale—Costs—Execution—Sale*).

Specific Performance: particulars of sale; misstatement of length of term for which tenant of vendor held; rental; misrepresentation. *Goddard v. Jeffreys*—Mis. 232.

misrepresentation; knowledge of untruth, or statement of non-reliance on representations. *Redgrave v. Hurd*—Mis. 289.

Summons (see *Assault—Pleading—Sureties to be of good behaviour*).

Sureties to be of good behaviour: inciting tenant not to pay rent; justice of the peace; jurisdiction; certiorari; practice; supplemental affidavits; 34 Ed. 3, c. 1. *Queen (Reynolds) v. Justices of Co. Cork*—Rep. 89.

inciting tenants not to pay rent; justice of peace; jurisdiction; summons or warrant; certiorari; 34 Ed. 3, c. 1. *Queen (M'Cormick) v. Justices of Co. Clare*—Rep. 91.

Survivorship (see *Death—Will*).

**Warrant** (see *Sureties to be of good behaviour*).

Warranty (see *Sale*).

Will: (and see *Probate*.)

"survivor or survivors;" construction. *Re Horner's Estate*—Mis. 220.

#### ADMISSION OF SOLICITORS.

The following gentlemen have been admitted solicitors of the Court of Judicature:—Messrs. Hugh J. Hayes, Thomas Rice, John C. Wakeham, Henry F. O. Stephens, William Shean, Thomas J. Bennett, and Gerald R. Fitzgerald.

#### THE LATE JUDGE KEOGH.

Mr. A. P. Sharp, of Great Brunswick-street, sends a photograph of a Celtic Cross which he has erected at Bonn, on the Rhine, to the memory of the late Right Honourable Judge Keogh. This latest sample of native art has been executed from a design by Mr. Thomas Drew, R.H.A., architect. The cross, which stands 18 ft. in height, is of Kilkenny limestone of finest quality, and is carved (as from the clearness of the photograph we

are well enabled to judge) in a style which does the sculptor the highest credit. The shaft is ornamented with the well-known interlaced patterns taken from old examples; while the upper part has symbolical heads in high relief. The following is carved in sunk letters on base:—

Underneath lies buried  
The Right Honourable  
WILLIAM KEOGH,  
Who died in Bonn, on the 30th day  
of September, 1878, Aged 60 years.  
He was for Ten years a member  
of the British House of Commons,  
and for Twenty years a Judge  
of the Court of Common Pleas,  
and Member of the Privy Council  
in Ireland.  
He was distinguished  
as an Orator, Statesman, and Judge.  
"Justum ac tenacem propositi virum."  
Friends and admirers have erected  
this Irish Cross to his memory.  
R.I.P.

—Irish Builder.

#### APPOINTMENTS AND PROMOTIONS.

NOTE BENE.—Information intended for publication under the above heading should reach us not later than Friday morning in each week, as publication is otherwise delayed.

Mr. John F. Moriarty, A.B., Barrister-at-Law, has been appointed a Crown Prosecutor for the Counties of Cork and Clars.

Mr. Edward Sullivan, A.B., Barrister-at-Law, has been appointed a Crown Prosecutor for the City of Cork.

Mr. John Ellard, Solicitor, has been appointed Clerk of the Peace and Crown for the County of Limerick.

#### BOOKS RECEIVED.

*A Summary of the Law on the Liability of Employers for Personal Injuries.* By W. HOWLAND ROBERTS, of the Middle Temple and Western Circuit, Esq., Barrister-at-Law; and GEORGE HENRY WALLACE, M.A., of Lincoln's Inn, Esq., Barrister at-Law. Second Edition, Enlarged. London: Reeves & Turner, 100 Chancery-lane, Law Booksellers and Publishers. 1882.

#### COURT PAPERS.

##### LAND JUDGES.

Sittings for next Week so far as same are appointed.  
Before the Rt. Hon. JUDGE FLANAGAN.

##### MONDAY.

IN CHAMBER.—Trustees Sir E. Hulse, confirm sale.—D. O'Callaghan, do.—Sir J. C. FitzGerald, allocate.—A. H. Goff, to declare purchaser.—Trustees Rotherham, allocate.

IN COURT.—Miscampbell, to vary order.—G. Graham, as to objection.

Before EXAMINER (Mr. Kennedy).

R. Chadwick, rental.

##### TUESDAY.

IN CHAMBER.—J. Trueman, confirm sale.

IN COURT.—J. M. Walker, final schedule.—O. Conolly, do.—Trustees W. Scully, do.—G. S. Roper, do.—L. H. Nuttall, do.—P. Holland, do.—P. Hanley, do.—Representative Church Body, as to letting.—R. L. Hunt, do.—R. Hall, payment.

Before EXAMINER (Mr. Kennedy).

A Sullivan, rental.

##### SALES.

CORPORATION OF LIMERICK - - 27 lots.

##### THURSDAY.

IN COURT.—G. A. Bell, from 6th.—H. Coulter, directions.—H. Coulter, objection.

**FRIDAY.**

**SALES IN COURT.**

J. CAREY	-	-	2 lots.
TRUSTEE DUBLIN LIBRARY	-	-	1 lot.
E. CROGHAN	-	-	1 "
L. CROSTHWAITE	-	-	3 lots.
TRUSTEE G. WEBB	-	-	1 lot.
A. D. BROWNE	-	-	1 "
J. M'ANUS	-	-	1 "

Before the Rt. Hon. JUDGE ORMSBY.

**WEDNESDAY.**

Before EXAMINER (Mr. M'Donnell).

Munster Bank, rental.—J. Morgan, to take account.

**FRIDAY.**

Before EXAMINER (Mr. M'Donnell).

W. W. Gray, as to map.

**COURT OF BANKRUPTCY.**

**ADJUDICATIONS IN BANKRUPTCY.**

*The dates of Adjudications are first given, the Sittings follow in Italics.*

- Bruce, Jonathan, of Sunville, Pallasgreen, in the county of Limerick, Esquire. June 16; *Friday, July 14, and Tuesday, August 1. R. Davoren, solr.*
- Feury, Patrick, of No. 12 Cook-street, and No. 16 Mary's-abbey, in the city of Dublin, publican. June 20; *Tuesday, July 18, and Friday, August 4. Frederick Sutton, solr.*
- Murphy, John, of Joy-street, Belfast, in the county of Antrim, contractor and measurer. September 16; *Tuesday, July 25, and Friday, August 11. Bennett Thompson, solr.*
- O'Brien, Peter, of 29 Essex-street, in the city of Dublin, grocer. June 20; *Tuesday, July 18, and Friday, August 4. Casey and Clay, solrs.*
- O'Neill, Andrew, of Barronstrand-street, in the city of Waterford, ironmonger. June 27; *Friday July 21, and Tuesday, August 8. Thomas Gerrard, solr.*
- Slattery, Harriett, of Thomas-street, in the city of Limerick, widow. June 18; *Tuesday, July 25, and Friday, August 11. Michael Larkin & Co., solrs.*

SOME years ago Col. V., who was a lawyer of this place, and a man of considerable self-esteem, argued one of his own cases before the Supreme Court of Georgia. In opening his address he said; "May it please your Honors, there is an old French maxim, that a 'lawyer who argues his own case has a fool for a client;'" and then went on to win his case, and, of course, to refute the "old French maxim." He requested Judge M., who was to remain in Atlanta a few days, to telegraph him at Augusta the decision in his case. The judge telegraphed: "As to old French maxim, affirmed; as to case, reversed."—*Central Law Journal.*

**BIRTHS, MARRIAGES, AND DEATHS.**

**BIRTHS.**

WHITE—July 6, at Gar.iner's-place, the wife of P. A. O'C. White, Esq., barrister-at-law, of a son.

**MARRIAGES.**

EYRE and ELLISON—July 5 at St. Marie's, Sheffield, Edmund W. Eyre, Esq., son of the late Edmund Moore Eyre, Esq., solicitor, Dublin, to Hilda Mary (Lily), youngest daughter of M. J. Ellison, Esq., Beech Hill, Sheffield.

**DEATHS.**

O'BRIEN—June 30, at the Convent of the Sacred Heart, Harcourt-street, Dublin, in her 44th year, and the 16th of her religious profession, Mother Margaret O'Brien, second daughter of the late Hon. Justice O'Brien.

**FUNERAL REQUISITES OF EVERY DESCRIPTION.**

49, WALLER, 50,  
DENZILLE-STREET.

3-7

**DUBLIN STOCK AND SHARE LIST**

DESCRIPTION OF STOCK	JULY						
	Sat. 1	Mon. 3	Tues. 4	Wed. 5	Thur. 7	Fri. 9	
*Paid Government.							
— 3 p c Consols .. ..	99½	—	100	99½	99½	99½	
— 3 p c Redneed .. ..	—	—	—	—	—	—	
— New 3 p c Stock .. ..	99½	99½	99½	99½	99½	99	
INDIA STOCK.							
4 p c Oct. 1882 } Trafal. at	103½	103½	103½	103	103-4	—	
5½ p c Jan. 1881 } Bk. of Irel. ..	100	100	100	100	100	—	
Banks.							
100 Bank of Ireland .. ..	315	314½	314½	—	—	314	
25 <i>Hibernian Banking Co</i> .. ..	—	—	—	—	—	—	
20 <i>London and County (Ltd.)</i> ..	—	—	—	—	—	—	
15 <i>London Joint Stock</i> .. ..	—	—	—	—	—	—	
20 <i>London and Westminster, Ltd</i> ..	—	—	—	—	—	—	
10 <i>Do. New</i> .. ..	—	—	—	—	—	—	
31 <i>Munster Bank (Limited)</i> .. ..	7	7	7	—	—	7	
10 <i>National Bank (Limited)</i> .. ..	24	24	—	—	—	—	
10 <i>National of Liverpool (Ltd)</i> ..	—	—	—	—	14½	—	
10 <i>Royal Bank</i> .. ..	—	—	29½	—	—	—	
25 <i>Standard of B. &amp; A., Ltd</i> ..	—	—	—	—	—	—	
Steam.							
50 <i>British &amp; Irish</i> .. ..	—	—	—	—	—	—	
100 <i>City of Dublin</i> .. ..	—	—	—	100	—	—	
50 <i>Dublin and Glasgow</i> .. ..	—	—	—	—	—	—	
10 <i>Dundalk (Limited)</i> .. ..	—	—	—	—	—	—	
Mines.							
4½ <i>Berehaven (Limited)</i> .. ..	—	—	—	—	—	—	
1 <i>Killaloe Slate Co. (Ltd)</i> .. ..	—	—	—	—	—	—	
7 <i>Mining Co. of Ireland (Ltd)</i> ..	—	—	—	—	—	—	
Miscellaneous.							
10 <i>Alliance &amp; Dub. Cons. Gas</i> ..	—	—	—	—	—	—	
8 <i>Do. do. New</i> .. ..	—	—	—	—	—	—	
4 <i>Arnott &amp; Co., Limited</i> .. ..	—	—	—	—	6	—	
20 <i>C. Dub. Brewery Co. (Lim.)</i> ..	—	—	—	—	—	—	
Tramways.							
10 <i>Belfast Trams</i> .. ..	—	—	—	—	—	—	
10 <i>Dublin United Tramways</i> ..	—	—	—	—	10½	—	
10 <i>Edinburgh Street Trams</i> ..	—	—	—	—	—	—	
10 <i>L'pl Un'ed Tram &amp; Bus Ltd</i> ..	—	—	—	—	—	—	
Railways.							
100 <i>Dublin, Wicklow, &amp; W'ford</i> ..	—	—	—	—	—	—	
100 <i>Great Northern (Ireland)</i> ..	117½	117½	117½	—	—	—	
100 <i>Gt. Southern and Western</i> ..	114	—	—	—	—	—	
100 <i>Midland Gt. Western</i> .. ..	—	—	—	—	—	—	
50 <i>Waterford and Limerick</i> .. ..	HOLIDAY	—	—	—	—	—	
Railway Preference.							
100 <i>D., W., &amp; W., 5 p c (1860)</i> ..	—	—	—	—	—	117	
100 <i>Gt. N'hn (Ireland) gt'd 4 p c</i> ..	—	—	—	—	—	—	
100 <i>Do., 3½ p c</i> .. ..	—	—	—	—	—	—	
100 <i>Mid. Great Western, 4 p c</i> ..	—	—	—	—	—	—	
100 <i>Do., 5 p c</i> .. ..	—	—	124	—	—	—	
100 <i>Watfd. &amp; Limerick, 4 p c</i> ..	—	—	—	—	—	—	
50 <i>Do., new red, 5 p c</i> .. ..	—	—	—	—	—	—	
Debenture Stocks.							
— <i>Belfast &amp; N'hn Cos., 4 p c</i> ..	—	—	105½	—	—	—	
— <i>C'fergus and Larne 4 p c</i> .. ..	—	—	—	—	—	—	
— <i>Dublin &amp; Wicklow 4 p c</i> .. ..	—	—	105½	—	—	—	
— <i>Do., 4½ p c</i> .. ..	108	—	—	—	—	—	
— <i>Gt. Northern (Ireland) 4 p c</i> ..	—	—	—	—	—	109½	
— <i>Do., 4½ p c</i> .. ..	113	—	—	—	—	—	
— <i>Do., 5 p c</i> .. ..	—	—	—	—	—	—	
— <i>Gt. North'n &amp; West'n 4½ p c</i> ..	—	—	—	—	—	—	
— <i>Gt. South'n &amp; West'n, 4 p c</i> ..	—	—	110	—	—	—	
— <i>Kilkenny Junction, A, 5 p c</i> ..	—	—	—	—	—	—	
— <i>Midland Gt. West'n, 4 p c</i> ..	105½	105½	105½	—	—	—	
— <i>Do., 4½ p c</i> .. ..	—	—	—	—	—	109½	
— <i>Do., 4½ p c</i> .. ..	—	—	—	—	114½	—	114
— <i>Waterford &amp; Central 5 p c</i> ..	—	—	—	—	—	—	—
— <i>Waterfd &amp; Limerick 4 p c</i> ..	—	—	—	104½	—	—	—
— <i>Do., 4½ p c</i> .. ..	—	—	—	—	111½	—	—
Miscellaneous Debent.							
Ballast Office Deb., £92 6s 2d, 4 p c	—	—	—	—	—	93	—
Dub. & Glas. S. F. Co. (1887) 5 p c	—	—	—	—	—	—	100½
Pipe Water Old, £92 6s. 2d.	—	—	—	—	—	—	—
Do. New, £100.	—	—	—	—	—	—	99

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

Bank Rate—Of Discount—8½ per cent. 23rd March, 1882  
Of Deposit—1 per cent. 23rd March, 1882

Name Days—July 12th and 27th, 1882.

Account Days—July 13th and 28th, 1882.

Business commences at 1 30 p.m.

The Stock Exchange and Brokers' Offices will be closed on Saturday during the months of July and August.

*Holloway's Ointment and Pills.*—Though it is impossible, in this climate of changing temperature, to prevent ill-health altogether, yet its form and frequency may be much mitigated by the early adoption of remedial measures. When hoarseness, cough, thick breathing, and the attending slight fever indicate irritation of the throat or chest, Holloway's Ointment should be rubbed upon th se parts without delay, and his Pills taken in appropriate doses, to promote its curat'ive action. No catarrhs or sore throats can resist these remedies. Printed directions envelope every package of Holloway's medicaments, which are suited to all ages and conditions, and to every ordinary disease to which humanity is liable.



# THE IRISH LAW TIMES AND SOLICITORS' JOURNAL.

VOL. XVI.

SATURDAY, JULY 15, 1882.

No. 807

## SOLICITOR'S LIEN FOR COSTS ON "PROPERTY RECOVERED OR PRESERVED."—I.

IN consequence of the decision in *Shaw v. Neals* (6 H. L. C. 581), denying the right of a solicitor to a lien for his costs on real estate recovered by him for his client, the legislature enacted, by 23 & 24 Vic., c. 127, s. 28, that, "in every case in which an attorney or solicitor shall be employed to prosecute or defend any suit, &c., it shall be lawful for the court or judge before whom any such suit, &c., has been heard, or shall be depending, to declare such attorney or solicitor entitled to a charge upon the property recovered or preserved, and upon such declaration being made such attorney or solicitor shall have a charge upon and against and a right to payment out of the property, of whatsoever nature or kind the same may be which shall have been recovered or preserved through the instrumentality of any such attorney or solicitor, for the taxed costs, charges, and expenses of or in reference to such suit, &c." And by section 3 of 39 & 40 Vic., c. 44, in identical terms, a like provision is extended to this country. Those enactments have formed the subject of construction and application in three very recent decisions, *Emden v. Carte* (before the English Court of Appeal, Nov., 1881), *M'Alahey v. M'Alahey* (before Chatterton, V.C., March 6, 1882), and *Cole v. Dawson* (before Palles, C.B., and Fitzgerald, B., on the 1st inst.), in reference, *inter alia*, to the terms "property recovered or preserved;" and we here propose to collate those cases, without going over the wider ground already covered by our papers on "solicitor's charging lien on moneys of client" (15 Ir. L. T. 465, 475, and see 16 *ib.* 29).

In the first place, however, it may be well to note some previous decisions (not elsewhere so fully collected) on the effect of the legislation in question. A petition (by which, or on summons, the application may be made: *Brown v. Trotman*, 41 L. T. N. S. 179; *Hamer v. Giles*, L. R. 11 Ch. D. 942, 48 L. J. Ch. 508) for a declaration of charge under those statutes (to be enforced by sale or otherwise: *Pilcher v. Arden*, L. R. 7 Ch. D. 318) must be intitled in the suit, where the costs have been incurred in one: *Twynam v. Porter*, L. R. 11 Eq. 181; *Hamer v. Giles*, *ubi supra*; and (although the suit may have been absolutely dismissed) the order must be made in the branch of the court to which it was attached: *Heinrich v. Sutton*, L. R. 6 Ch. D. 865; or before the judge who tried the action: *Owen v. Henshaw*, 7 *ib.* 385; and see *Higgs v. Schrader*, L. R. 3 C. P. D. 252; *Porter v. West*, 43 L. T. N. S. 569, 50 L. J. Ch. 231. It is not necessary that a judgment or verdict should have been rendered, a compromise being sufficient: *Jones v. Frost*, L. R. 7 Ch. 773; *Twynam v. Porter*, *ubi supra*; *cf. In re Hahn*, 13 Rep. (Amer.) 791. *Semble*, the petition should be served on all the parties to the suit, according to *Re Keane*, 19 W. R. 429; but, in *Brown v. Trotman*, 41 L. T. N. S. 179, it was held that where such an application is made for an order charging the defendants interest in the fund the plaintiff ought not to be served. As to the priority of the solicitor's claim over a subsequent garnishee order, see *Birchall v. Pugin*, L. R. 10 C. P. 397; *Re Jeff. Davis*, L. R. 2 A. & E. 1; *Shippey v. Grey*, 49 L. J. C. P. 524, 42 L. T. N. S.

673; and see further, as to priorities, *The Heinrich*, L. R. 3 A. & E. 505. The charge is not affected by an assignment of the property for value with notice that the solicitor's costs are unpaid: *Pilcher v. Arden*, L. R. 7 Ch. D. 318; *Faithfull v. Ewen*, *ib.* 495. In *Porter v. West* (50 L. J. Ch. 231, 43 L. T. N. S. 569) an action was brought against two defendants and a building society, in which the plaintiff claimed money standing in the name of one of the defendants on the books of the society, as his in his marital right as husband of the other defendant. Judgment was given for the defendants, and the solicitor for the first two defendants petitioned for a charging order on the fund. The society opposed on the ground that they had a lien on the fund for their costs—firstly, because they were in the position of trustees; but, Fry, J., held that they were in the position of debtors to one of the defendants, West, and not in that of trustees. And secondly, he said: "Another argument, however, which has been urged in their favour is that the Solicitors' Act gives the solicitor a charge for his costs on the property 'recovered or preserved.' The operative words are 'recovered or preserved,' and it is said that if the plaintiff Thomas Porter had won he would have got the fund less the costs of the building society, and that therefore what is preserved is the fund less the building society's costs, and that this is everything the defendants Mary West and Mrs. Porter can claim. I am of opinion that that contention is untenable. What is preserved is all the defendants get, which, if the plaintiff had succeeded, they would not have got. Here the whole sum is what the solicitor has preserved, because no order to pay any costs of any co-defendant or other person was made. The building society, therefore, are not entitled to deduct their costs from the fund before paying it over." In *Clover v. Adams* (L. R. 6 Q. B. D. 622), the defendant having paid money into court, the plaintiff's solicitor declined to proceed with the action, except on terms to which the plaintiff would not agree. The plaintiff obtained an order for change of solicitors, and afterwards his former solicitor obtained a judge's order charging the money in court with his costs in the action; and it was held that this order was rightly made. A town agent has been held entitled to such a charge for the unascertained balance due to him by the country solicitor: *Tardrew v. Howell*, 3 Giff. 381; see 16 Ir. L. T. 29. The lien is for taxed costs, and unless the client's right to tax has expired when the fund recovered is paid into court, such right is unaffected by subsequent lapse of time: *De Bay v. Griffin*, L. R. 10 Ch. 291. An order having been made for payment of taxed costs out of a trust estate, the solicitor was held not entitled also to have the amount declared to be a charge upon the trust estate pending its realisation, in *Re Viney's Trust*, 18 L. T. N. S. 851; see *Porter v. West*, *ubi supra*. In a suit on behalf of an infant to recover or preserve his real estate, the solicitor is not, it seems, entitled to a declaration of charge on the property until the infant has attained twenty-one: *Bonser v. Bradshaw*, 4 Giff. 260; *Baile v. Baile*, L. R. 13 Eq. 497; and see *Früchard v. Roberts*, L. R. 17 Eq. 222; *Catlow v. Catlow*, L. R. 2 C. P. D. 362. The costs of a married woman incurred in successfully defending a suit by her husband, to set aside a post-nuptial settlement assigning funds for

securing an annuity for her separate use without anticipation, have been so charged upon the annuity: *Re Keane*, L. R. 12 Eq. 115.

#### THE INCORPORATED LAW SOCIETY.

In our columns to-day (July 10) appears a report of the annual meeting of the [English] Incorporated Law Society. To many it will give for the first time a glimpse into the operations of a body which plays a not unimportant part, but of which little is known by outsiders. The Inns of Court are ancient and familiar institutions, and most of us know what they do, or are supposed to do. The Incorporated Law Society is but of yesterday as compared with Lincoln's Inn and the Temples. It boasts of no ancient library or hall, no silver plate coming from Tudor or Stuart times, no ranges of stately buildings, no rich endowments. About it is no halo of historic memories. The Society was established somewhere about 1827. Young though it is, it is not lacking in vigour; it has done considerable work; and the future in store for it may be greater than its past. Even if it did nothing more than act as examiner of the crowds of youths who press forward for admission into the ranks of solicitors—crowds which steadily increase—it would be doing important work. The history of the Incorporated Law Society is an epitome of the recent history of the fortunes of the profession which it represents. It established examinations at a time when there was no great demand for them, and when, in fact, any one who talked about legal education ran a risk of being thought a little crazy. Attorneys or solicitors had no corporate existence; they were divided and powerless. They had no societies, or none of any influence; the solicitors' inns were small clubs fast disappearing out of sight. At the time when the Incorporated Law Society was established few University men were admitted as solicitors. The education which was obtained at an office desk in copying common forms and making out bills of costs was thought good enough for them. The founders of the Incorporated Law Society set themselves to alter all this, and they seem to have done their work well. The Society sought to improve the education of those who were admitted into the profession. It has steadily encouraged the entrance of educated men, especially by consenting to the reduction of the term of probation for the benefit of those who have been at the Universities. It will always be a matter for honest pride to solicitors that they entered the field of legal education long before the Inns of Court, notwithstanding the rich endowments at the disposal of the latter, moved in a similar direction. The examinations established by the Law Society have the reputation of being severe; and now that illiterates are no longer admitted so freely as they were while the late Lord Chief Baron exercised a dispensing power the average level of professional and general knowledge is pretty sure to rise. Without troubling Parliament or making a fuss about the work in which it was engaged, this Society has silently brought about a considerable improvement in the position of solicitors. For a time its existence was not recognised by the Legislature. Gradually, however, important duties were confided to it. Thus it was called upon to act as registrar of solicitors and attorneys. The Legislature by-and-by saw the propriety of committing to it the task of conducting the examination of solicitors—no light duty, as shown by the multitude of names of candidates at the final and preliminary examinations, which we published on Saturday. Only about a third or fourth of the whole body of solicitors in England and Wales—some 12,000 or 13,000 in all—are members of the Incorporated Law Society; and other legal societies of considerable importance still exist in the provinces. It is true, too, that the action of the authorities in Chancery-lane does not always satisfy the bolder spirits of the profession. Nevertheless, the Society, such as it is, has greatly helped to give importance, the advantages of corporate existence, and

the strength of unity to a profession hitherto consisting of a multitude of isolated members; and the result of the change may soon be marked.

Twelve thousand men, most of whom are above the average in intelligence and activity, can do much even when they are scattered. They will do far more when they are acting together; and it is well to remember that solicitors think that they have good reasons for uniting. They have their grievances, of which we may some day hear much more than we have yet done. They complain that they are at once greatly trusted and needlessly suspected. The men into whose ears the most solemn secrets of life are whispered, to whom we resort in all troubles, are hemmed in by stringent regulations which most professions would resent as intolerable. They may not freely contract with their clients; and in the conduct of their business at all points their hands are tied by strict and often stupid Acts. Their bills are cut about by arbitrary taxing masters, of necessity imperfectly acquainted with the nature of the services which they appraise. If they deviate a hair's breadth from the paths of rectitude, they are not treated with the indulgence shown to an erring banker or accountant. They are struck off the rolls, or their certificate is suspended, or they are "attached" and put in prison for misconduct which might pass almost unmeasured in other walks of life. At the provincial meetings of the Incorporated Law Society, and other places in which the opinion of solicitors is heard, these restrictions and disabilities, savouring of prejudices which have passed away, are frequently the subjects of complaint. In many ways solicitors are showing their growing power, the result of united action. For example, they are making inroads into the domains of barristers at many points, and they are vigilant in frustrating measures of retaliation. They have secured right of audience in most inferior courts. If a new legal office happen to be founded, they insist that it be open to solicitors; and if a barrister be appointed to one of the posts—and they are but few—to which they are eligible—they take care to draw attention to the slight offered them. Our law reports frequently bear testimony to the steady efforts of the Incorporated Law Society, as the representative of solicitors, to punish unqualified persons who intrude upon their domain. At the present time they are engaged in a professional struggle with the law stationers, who are accustomed to send original wills and engrossed copies, together with the necessary affidavits, to the principal registry office at Somerset House, and to fetch away the probate. Unsuccessful in the Court of Appeal, they have resolved to carry the matter to the House of Lords. While the Benchers of the Inns of Court go their quiet decorous way, and the Bar seems to have lost almost the sense of corporate existence, solicitors are active and watchful as to the varying phases of their interests. And, to do their representatives justice, they have concerned themselves about other matters besides scales of costs and patronage. They have been zealous about education, and the result is that a generation of solicitors who know their books, and who are not dependent upon counsel, is growing up. Lord Campbell, in his autobiography, speaks of the pupils in Mr. Tidd's chambers throwing solicitors into raptures by "quoting statutes that were never passed, and citing cases that were never decided." The innocence thus practised upon would not now be easily found; and this improvement in professional knowledge is largely due to the efforts of the Incorporated Law Society. Perhaps even still more valuable is the fact that it has encouraged the discussion at its meetings of legal questions in no pettifoggish spirit, and has been instrumental in furthering important reforms. The suggestions of the Council with respect to legal procedure, the Settled Land Bill, the Partnership Bill, and bills of sale are well worthy of attention; and the annual meeting showed its sense of the fitness of things on Saturday by resolving to take into consideration the practice and procedure of County Courts in view of the growth of their jurisdiction.—*Times*.



## CORROBORATIVE EVIDENCE.

There is practically only one case, that of a trial for treason, where the law of England requires more than one witness to prove the crime. But in a large number of cases, both criminal and civil, it is necessary that the evidence of a witness, a complainant, or a plaintiff, should be corroborated. The nature of the corroboration required is frequently mistaken, and an instance which came to our notice a few days ago showing the commonest variety of mistake has induced us to lay before our readers, at the risk of telling many of them what they know already, a short account of the cases in which corroboration is necessary and the kind of evidence which amounts to corroboration.

One very important case in which the evidence of one witness must be corroborated is that of the hearing of a charge of perjury. The rule is thus stated by Stephen, J., in his "Digest of the Law of Evidence," "If, upon a trial for perjury, the only evidence against the defendant is the oath of one witness contradicting the oath on which perjury is assigned, and if no circumstances are proved which corroborate such witness, the defendant is entitled to be acquitted." Now it is to be observed that two witnesses are not necessary to disprove the fact sworn to by the defendant, "for if any material circumstances be proved by other witnesses in confirmation of the witness who gives the direct testimony of perjury, it may turn the scale and warrant a conviction," (3 Russell on Crimes, p. 72). As an example of what amounts to sufficient corroboration in perjury we may cite *Reg. v. Shaw*, 84 L. J. M. C. 169. In that case it appeared that one S. K. had been summoned before justices for selling beer during prohibited hours. The defendant was called on his behalf at the hearing and swore that he was not in the house on that particular day, and that he had not been in the township on that day or for a fortnight before. At the trial, a policeman, to prove the perjury, swore that he had seen the prisoner in S. K.'s house between three and five on the day in question, and to corroborate the policeman two other witnesses were called. One swore that he had seen the prisoner in the township at two o'clock on that day, another that she had seen the prisoner between three and four on the road leading to S. K.'s beerhouse, and close to the beerhouse. The court held that there was direct corroborative evidence of the one assignment of perjury that the prisoner had not been in the township on that particular day, and that there was also corroborative evidence of the assignment that the prisoner was in the house on that particular day from the fact that he was seen "near to and apparently in progress towards the door of the beerhouse." This case affords a good illustration of what corroboration ought to be. It is not necessary to prove the truth of every particular by additional evidence, it is sufficient to do so in one or more material points. And it is not necessary to do this by a witness. Thus in *Reg. v. Mayhev*, 6 O. & P. 815, it was held that to prove perjury, it is sufficient if the matter alleged to be falsely sworn be disproved by one witness, and in addition to the evidence of that witness there be proof of an account or a letter written by the defendant contradicting his statement on oath. A very remarkable case bearing on this subject is to be found in a note to *Reg. v. Harris*, 5 B. & Ald. 939. A defendant was charged before Yates, J., with having committed perjury. He had first made his information on oath before a justice of the peace, that three women were concerned in a riot at his mill which was dismantled by a mob on account of the price of corn. Afterwards at the sessions when the rioters were indicted, he was examined concerning the same women, and, having been tampered with in their favour, he then swore they were not in the riot. There was no evidence on the trial of the defendant for this perjury to prove that the women were in the riot (which was the perjury assigned), but the defendant's own original information on oath being produced and read, whereby he had sworn they were in the riot, the judge thought it sufficient to convict him. This is an admirable illustration of the

meaning of the phrase corroborative evidence. Here there was oath against oath and that of the same person, but there was corroboration in that there was evidence that the defendant had been tampered with to swear falsely on one occasion. In a very similar case, *Reg. v. Hook*, 8 Cox C. C. 5, when the defendant had made contradictory statements on oath at different times the statements of the defendant not made upon oath were held to amount to sufficient corroboration. This last case is worthy of careful perusal.

Closely connected with the principle of the above cases is the rule as to the evidence of accomplices. It is sometimes stated that the evidence of an accomplice is not alone sufficient to support a conviction, but that it must be corroborated. But such is not the case. A jury may lawfully convict on the testimony of an accomplice without corroboration. In *Reg. v. Stubbs*, 25 L. J. M. C. 16, Jervis C.J., said:—"It is not a rule of law that accomplices must be confirmed in order to render a conviction valid, and it is the duty of the judge to tell the jury that they may act on the unconfirmed testimony of an accomplice; but it is usual in practice for the judge to advise the jury not to convict on such testimony alone; and juries generally attend to the judge's direction, and require confirmation. But it is only a rule of practice." The extent of the confirmation which should be looked for in such cases was thus stated by Hallock, B., in summing up to the jury in *Reg. v. Barnard*, 1 C. & P. 88:—"It was not necessary that the accomplice should be corroborated on every material point; as then his evidence would be superfluous; but he must be confirmed in such and so many material points as to convince the jury that his statement was the truth." There is, however, an important limitation to this general statement. If there are two or three prisoners the accomplice should be confirmed as to each prisoner, for "the accomplice may speak truly as to all the facts of the case, and at the same time in his evidence substitute the second or third prisoner for himself in the narrative of the transaction" (per Jervis, C.J., in *Reg. v. Stubbs*, *supra*). In further illustration of this point, reference may be made to *R. v. Wilkes and Edwards*, 7 O. & P. 272. The prisoners were charged with stealing a lamb. One Gardner, an accomplice, proved the case against both prisoners, and stated that they threw the skin into a hole which he described. To confirm his evidence a constable was called who proved that he had found the skin in the hole described. Upon this, Alderson, B., pointed out that though there was corroboration of the accomplice's having been concerned in the transaction, there was none that the prisoners were. In summing up the learned judge said:—"The confirmation of the accomplice as to the commission of the felony is really no confirmation at all; because it would be a confirmation as much if the accusation were against you or me, as it would be as to the prisoners. You may legally convict on the evidence of an accomplice only if you can safely rely on his testimony; but I advise juries never to act on the evidence of an accomplice, unless he is confirmed as to the particular person who is charged with the offence." (See also *Reg. v. Fowler*, 8 O. & P. 107). It may be gathered from these cases that practically the rule as to corroboration applies to the evidence of an accomplice, viz., that he must be confirmed to an extent sufficient to justify the jury in believing in the truth of his statement, and that the jury ought to require some corroboration as to the person charged. It may be added before leaving this part of the subject that two accomplices are held not to corroborate each other (*Reg. v. Noakes*, 5 O. & P. 826). Nor does the evidence of the wife of an accomplice corroborate that of her husband, Taylor on Evidence, p. 814.

As all our readers know, there must be evidence in corroboration of the mother's statement in bastardy cases. By way of example under this head we may refer to *Reg. v. Percy*, 18 L. T. O. S. 286. There the corroborative evidence was the testimony of a witness who deposed to a conversation between himself and the defendant. He had told the defendant that the mother

alleged him (the defendant) to be the father of the child, and he added "you must keep it." There defendant replied that he would not, that he would rather go to America. It was held that this was sufficient corroboration, being in fact an admission of the paternity of the child. Very similar to this case is *Beesla v. Stern*, 2 C. P. D. 265, 42 J. P. 197. That was an action for breach of promise of marriage, another instance in which the law requires the statement of a party to be corroborated (32 & 33 Vict., c. 63, s. 2). There the sister of the defendant swore that she had overheard a conversation between the plaintiff and the defendant, in which the former said, "you always promised to marry me and you don't keep your word." To this the defendant made no answer beyond offering the plaintiff money to go away. It was held that this was sufficient corroboration for the reasons thus stated by Bramwell, L.J., in his judgment:—"The defendant made no answer. If we were to hold that that was no evidence of a promise, we should get rid of a great deal of evidence which is given every day at *nisi prius*. A claim is made on a man in respect of goods sold and delivered and he does not deny it. If a statement is such that a denial of it is not to be expected, then silence is no admission of its truth; but if two persons have a conversation, in which one of them make a statement to the disadvantage of the other, and the latter does not deny it, there is evidence of an admission that the statement is correct." Corroborative evidence may consist of proof of the acts or conduct of the defendant. Thus in *Cole v. Manning*, 46 L. J. M. C. 175, evidence was given of acts of familiarity on the part of the alleged father towards the mother having occurred several months before the child could have been begotten, and that in consequence he had been forbidden the house by her parents. It was also proved that the woman was a person of weak intellect. No corroboration in relation to the actual begetting of the child was given. Field, J., said, "All such evidence must be entirely for the magistrate to consider the weight of. There is no rule of law that because the circumstances took place some months before, they are not to be considered in the light of corroboration. I am very clearly of opinion that they ought." In *Reg. v. Berry*, 28 L. J. M. C. 86, Lord Campbell, C.J., in delivering the judgment of the court, said that the payment of money for the maintenance of the child was corroborative evidence of the paternity. But where proof of the payment of money by way of maintenance within the 12 months is required merely to give jurisdiction, the evidence of the mother as to such payments is sufficient without corroboration, *Hodges v. Bennett*, 29 L. J. M. C. 224. In that case Bramwell, B., said:—"The evidence of the mother must be corroborated in some material particular; that is, she must be corroborated to the satisfaction of the justices, but not as to the payment of money. No doubt under the 7 & 8 Vict., c. 101, s. 3, the justices must inquire into the fact of payment within the twelve months to ascertain whether they have jurisdiction, but not further."

Under the Divided Parishes Act, 1876, s. 34, which enables a person to acquire a settlement by residence it is provided that "an order of removal in respect of a settlement acquired under this section shall not be made on the evidence of the person to be removed without such corroboration as the justices or court think sufficient." No decision has been given upon the part of the section, but the principles we have already illustrated ought to be amply sufficient to determine any question which may present itself for decision. There must be some evidence beyond the pauper's statement, but any evidence which is legally admissible whether of witnesses, documents, or the like, may be tendered in corroboration; and such evidence must be upon some material point such as would convince the court of the truth of the rest of the statement. But it is not necessary that the corroboration should go to every point or even to every material point if the court is satisfied with the corroboration already given.—*Justice of the Peace*.

## PARTICULARS AND CONDITIONS OF SALE.

(Continued from page 313, ante.)

In our previous article, we stated our intention of providing some general conditions of sale. It will be essential for the success of our project that they are made generally acceptable. We propose, therefore, first to print a draft of them annotated and explained. We shall then be happy to receive any communications and suggestions from our readers with regard to them. We shall then, after making any improvements which may be necessary, print them in a continuous form as the *Law Times* conditions. The following conditions, therefore, are not the *Law Times* conditions, but only proposed ones. We mention this as it might lead to great inconvenience if different sets of conditions existed each bearing the same name. We have to express our obligations to the Common Form Conditions of Birmingham, Liverpool, and Sheffield, which were in use previously to the Act.

It will be convenient first shortly to mention the sections of the Vendor and Purchaser Act, 1874, and the Conveyancing Act, 1881, which bear on the subject. We shall cite the former Act as V. P. A. and the latter as C. A.

### Vendor and Purchaser Act, 1874.

Sec. 2 (1). On sale of lease or underlease (for years) title to freehold cannot be called for. Sec. 2 (2). Recitals and statements of facts, &c., twenty years old, are *prima facie* evidence. Sec. 2 (3). Equitable right to production of deeds is sufficient. Sec. 2 (4). Covenants for production to be furnished at purchaser's expense. Sec. 2 (5). If vendor retains part of the estate he retains the deeds. Sec. 8 cures non-registration of wills in Middlesex and Yorkshire in certain cases. These sections only apply to land, and sect. 2 (1) does not apply to lease for lives.

### Conveyancing Act, 1881.

Sec. 3 (1). On sale of underlease (for years), purchaser cannot call for title to lease. Sec. 3 (2). On sale of enfranchised copyholds, purchaser cannot call for title to make enfranchisement. Sec. 3 (3). Recitals of documents dated before the time for commencement of title to be deemed *prima facie* correct. No production of or information about such documents can be required. This applies to "property" generally. Sec. 3 (4). On sale of lease, it is to be assumed *prima facie* that it was duly granted, and receipt for last rent due to be *prima facie* evidence of performance of covenants. Sec. 3 (5). On sale of underlease, similar provisions as to underlease and superior leases. Sec. 3 (6). Expenses generally thrown on purchaser. Sec. 3 (7). Purchaser of two lots can only require common title.

Other sections in the Act relate to matters connected with the completion of sales; thus sect. 8 deals with the rights of purchaser as to execution of the deed; sect. 9 with production and custody of title deeds; sect. 14 renders proof of performance of covenants of leases of less importance; sect. 38 relates to trustees' receipts; sect. 56 to payment of purchase money to solicitor; sect. 61 to payment of advance on joint account.

### DRAFT PARTICULARS AND CONDITIONS OF SALE.

To be sold by auction, by M \_\_\_\_\_, at \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, at \_\_\_\_\_ o'clock, subject to the following conditions of sale.

#### PARTICULARS.

[Here insert a fair and accurate description of the property to be sold. Mention the tenure, and any incumbrances, &c., to which it is sold subject. See *Law Times*, June, 24, p. 136.]

#### DRAFT SPECIAL CONDITIONS OF SALE.

The property will be sold subject to the conditions following, and also to the *Law Times* General Conditions of Sale, 1882, a copy of which is annexed. If there is any variance or inconsistency between these conditions

and the said general conditions, these conditions shall prevail :

1. The title shall commence with—
  2. The day fixed for the completion of the purchase shall be the day of 18
- [Here follow other special conditions.]

**DRAFT GENERAL CONDITIONS OF SALE.**

*Rights of Vendor Reserved.*

"1. The vendor reserves to himself the following rights, viz. : (1) A right to bid by himself or one agent ; (2) a right to withdraw the property from sale, either in the event of a disputed bidding, or without offering the same for competition or declaring the reserved price ; (3) a right to arrange the property in other lots than those in the particulars, and to consolidate two or more lots into one."

As to this condition, see Dart, 118, 194 ; Pollock on Contracts, 174 ; and 30 & 31 Vict., c. 48. If the sale is without reserve, it should be so stated in the particulars or special conditions.

*The Auction.*

"2. The amount of each bidding shall from time to time be prescribed by the auctioneer, and no bidding shall be retracted. Subject to the rights hereinbefore reserved to the vendor, the highest bidder shall be the purchaser ; and, if any dispute arise concerning a bidding, the property shall be put up at a former bidding, or the auctioneer, whose decision shall be final, shall determine the same."

It is believed that the condition against retraction of any bidding only binds people who are in some way connected with the parties to the sale ; but it is usual to insert it : (Sug. V. & P. 14 ; Dart, 124.)

*The Deposit.*

"3. The purchaser shall, immediately after the sale, pay to the vendor or his solicitor a deposit of £10 per cent. on the amount of the purchase money, and sign an agreement in a form annexed to these conditions to pay the remainder of the purchase money, and complete the purchase according to the conditions of sale."

As to this, see Dart, 125. If deposit will be large, provision should be made, by a special condition, for investment at interest.

*Requisitions and Objections.*

"4. The purchaser shall deliver to the vendor's solicitor a statement in writing of all his objections and requisitions in respect of the title, and of all matters appearing on the abstract particulars or conditions of sale, within twenty-one days from the delivery of the abstract, and all further objections and requisitions arising out of the replies to any former objection or requisition within ten days from the delivery of such replies. In default of such objections and requisitions (if none), and subject only to such (if any) the title shall be deemed accepted, and all other objections and requisitions waived. Time shall be in all respects of the essence of this condition."

As to the above condition see Dart, 157, 159 ; *Re Tanqueray-Willams and Landau* (46 L. T. Rep. N. S. 542), and *Want v. Stallibras* (L. Rep. 8 Ex. 175). It should be noticed that no time is specified for delivery of the abstract. This omission is made advisedly : see *Wolst. & T. 111*, note, and compare *Dart*, 5th edit. 125, 126, and *Davidson* 1, 540, and see *Upperton v. Nicholson* (25 L. T. Rep. N. S. 4 ; L. Rep. 6 Ch. App. 486) ; and *Venn v. Cattell* (27 L. T. Rep. N. S. 469). Both *Wolstenholme* and *Davidson* omit the provision from their general conditions. In sales under the court it should be inserted as a special condition ; see 15 & 16 Vict., c. 86, s. 56, and *Alph. Pr.* 738. There is no need to insert condition as to giving one abstract in case of purchase of two lots under common title : *C. A.*, s. 3 (7). If time is by condition essence of contract extension of time is not an absolute waiver of such condition : (*Barclay v. Messenger*, 30 L. T. Rep. N. S. 350).

(To be continued.)

**A FAMOUS FRENCH CRIMINAL LAWYER.**

M. Lachaud, who exercised a magical influence over juries, was three years ago called upon to defend a girl named Marie Biere, who had shot at her paramour with a revolver and wounded him so dangerously that for weeks he lay at the point of death. Marie Biere was not an artless girl wreaking frantic vengeance on a man who had seduced her, but a person of worthless antecedents, who, having formed a *liaison* with a young gentleman of property, wished to induce him to marry her and shot him because he was going to marry some one else. It ought to have been regarded as an aggravating circumstance in her crime that her paramour had not sought to cast her off penniless, but had liberally settled an income of £144 a year on her for life ; and yet it was precisely on this fact that M. Lachaud based his most masterly defence of the girl and obtained her acquittal. He fully admitted how bad Mlle. Biere's antecedents had been ; "but," he asked, with his fiery eloquence, "what has that to do with it ? If this poor creature conceived a true and tender feeling of love for this man, if she had cherished the dream of becoming his wife and leading a life of purity thenceforth, was it not a most pitiable thing that her hopes of redemption should have been destroyed ? You saw how she spurned his money—her love had purified her—he had won her heart and his desertion made her desperate. Are you going now by your verdict to affirm that women who have once fallen shall never be allowed to love, shall never blot out the past, shall be subject all their lives to the degradation of offers such as this by which Marie Biere's lover sought, as he cynically said, to compensate her ? Compensation at the rate of 800*l.* a month for a broken heart ! Compensation by insult for a wrong most cruel, most worthy of good men's compassion !" There were numbers of fine ladies, actresses, authors—the author of the "Dame aux Camelias" among them—who wept in court during this stirring address ; and the bewildered jury brought in a verdict of not guilty, which was hailed with tremendous applause, waving of handkerchiefs and hats. Marie Biere, in leaving the court, received an enthusiastic ovation from the crowd in the *Salle des Pas Perdus*, and for several days afterward the girl's lodgings were beset by warm-hearted people, who brought her bouquets, cards, and more substantial gifts. But her acquittal produced most disastrous consequences. It led, in fact, to a very epidemic of shooting and vitriol throwing. In the course of the last two years, at least twenty girls have been arraigned at the assizes for seeking reparation for their blighted hopes *vi et armis*, and M. Lachaud's famous speech, repeated with every kind of variation suitable to particular circumstances, by barristers great and small, has always led to acquittals. In one of these cases, M. Georges Lachaud, nephew of the great Lachaud, had to meet the remonstrances of the public prosecutor, who plainly pointed out that the constant acquittal of adventuresses who had no object but to bring themselves into notoriety by committing murder, was really a public scandal and a danger to society. "I contend on the contrary, that such acquittals are tending unmistakably to moralize society," answered M. Georges Lachaud. "By proving that you have no sympathy with young men of loose morals, you are making them cautious. All laws have failed to make them virtuous, but one such verdict as you may render can frighten them into becoming so."—*Cornhill Magazine*.

A RETURN of the proceedings of the Land Commission up to June 30 shows that of 78,719 applications to have fair rents fixed, 1,068 were withdrawn, 1,714 dismissed or struck out, and in 9,845 cases "fair rents" were fixed. There were 9,869 cases in which fair rents were fixed by agreement. The applications to have leases declared void numbered 1,509, and of these 98 were declared void, 615 were struck out, and 808 withdrawn or compromised ; 2,699 applications were lodged, and 770 were disposed of.

## THE LEGAL PROFESSION IN FRANCE.

The legal profession in France is divided and subdivided much more minutely, and is much more closely restricted, than in England. There are *avocats* or barristers, *avoués* or solicitors, *agréés* or agents in commercial Courts, and *notaires* or notaries who alone draw wills and deeds. *Avocats* differ but little from barristers. They cannot sue for their fees; but they do not give credit, and their fees are not recoverable from the losing party. They have exclusive audience, but in their absence the *avoué* may be heard. They may personally be condemned in costs for a default. The number of *avoués* is limited; partnerships are forbidden, and entrance can be obtained into the profession only by waiting for a vacancy and buying the practice. Litigants must employ an *avoué*. *Aggréés* practice in the commercial Courts only, and are admitted on the presentation of a retiring member. Their number is limited to fifteen in Paris, although there were twenty-one in 1809. There are further sub-divisions. A litigant must employ an *agréé* in a commercial Court, an *avoué de première instance* in the civil Courts of first instance, an *avoué d'appel* in the Appeal Court, and an *avocat de cassation*, who is both *avoué* and *avocat*, in the Cour de Cassation, the highest Court in France. This is something like the state of things which existed with us in the days when sergeants had exclusive audience in the Court of Common Pleas, proctors and advocates in the Probate and Divorce Courts, when the City pleaders flourished, and before "Jacob Omnium" had his celebrated litigation in the Palace Court. It is obvious that the close relationship between a client and a solicitor, so important a feature in English life, cannot exist in France, where the legal profession consists of little but groups of officers attached to their respective Courts. The Americans' travestie of the division of labour between barrister and solicitor, as "being lathered in one shop and shaved in another," was nothing to this. On the other hand, the system of monopoly seems to keep down the cost of litigation in France. Business can always be done cheaply, if there is enough of it.—*Law Journal*.

## THE PUBLIC LIBRARIES ACTS.

The right to demand a poll as an incident of those meetings in which the ratepayers of a parish in vestry are assembled for purposes of deliberation is one of the elementary rules which most of us are supposed to know or learn almost instinctively. Wherever and whenever large numbers of persons meet for almost any purpose the whole class of persons invited or qualified seldom come forth; there are the maimed, the halt, and the blind, the old, the infirm, the negligent, the apathetic, who do not attend to the appointment. The building is never full; there are always some short of the total available strength of public opinion. And there are always a considerable percentage of persons who for urgent private affairs are elsewhere engaged, and cannot come at the time appointed. Hence whenever a matter of great interest is in hand, it is reasonable and proper that there should be some mode of bringing to bear, with the least inconvenience, the greatest possible number of votes, so as to satisfy the promoters of the movement. Such is the key to the whole art and mystery of a poll in a vestry meeting. The first meeting is rather of a tentative or experimental character. There may be a show of hands, and a rough and ready mode of guessing thereby how the total number of persons are inclined to vote. But it is better that there should be a further and better mode of eliciting the universal opinion in which the greatest possible number of persons may concur with the least possible inconvenience. Hence the whole doctrine is rather a conclusion of common sense than a mere arbitrary rule, the origin and object of which are so often inexplicable.

The soundness and universality of the right to demand a poll have often been somewhat ostentatiously

demonstrated in some of the decisions of the courts, as if it required elucidation. Thus in the case of *Anthony v. Sayer*, 1 Hagg. Cons. 13, it is laid down that where a poll is demanded the election commences with it, as being the regular mode of popular elections, the show of hands being only a rude and imperfect declaration of the sentiments of the electors. It often happens that on a show of hands the person has a majority who on a poll is lost in a minority, and if parties could afterwards recur to the show of hands there would be no certainty or regularity in elections. When a poll is demanded it is thus an abandonment of what has been done before. Everything anterior is not of the substance of the election nor to be so received. And as usual with many of the judgments of Tindal, C.J., what he said in the case of *Campbell v. Mound*, 5 A. & E. 879, well expresses the standard view taken of the same matter. That learned judge said, "We think such right to demand a poll is in point of law a necessary incident or consequence to the mode of election by show of hands, wherever it is not by special custom excluded. Independently of any authority upon the subject, the recourse to a poll where the population of the parish is large appears to be the only mode of ascertaining with precision the numbers of those who vote on each side, and the right of each elector to vote. Again it is under the same circumstances the only mode by which each individual elector can have the power of expressing his opinion at all; for in the case of populous parishes no vestry room can be large enough to contain the whole body. Still further where the election is carried on with any warmth of popular feeling it is the only mode by which a large portion of the community can express their opinion with freedom and security."

Thus the whole object of the poll is merely to get at the views of the greatest number of persons who will take the trouble to state them, and hence all the machinery must be devised in order to accomplish that one end. The right must be conceded to any ratepayer, and when conceded care should be taken to allow ample notice to all, so that the local orators may in the meantime bring to bear all their eloquence on the rival propositions. Some Acts of Parliament it is true have varied the mode of arriving at the sense of a vestry or meeting of qualified persons by restricting it to the greatest number of those who actually attend or by restricting the decision to a particular proportionate majority such as three or two to one. But unless some Act of Parliament has expressly or by necessary implication declared that the natural and ordinary right to a poll shall no longer be available, then it is good sense still to construe the Act as not excluding the best and only true way of arriving at the opinions of the largest number of persons, and that is of course in other words describing that there shall still be as a last resort the right to demand and secure the exercise of a poll.

To show how slow the courts are to construe a particular statute as impliedly revoking the right to a poll, reference may be made to *Reg. v. How*, 33 L. J. M. C. 53, where the Highway Act was considered in reference to that point. That Act said that a resolution should be come to by a majority of two-thirds of the votes of the vestrymen present at such meeting; and yet this was held not to exclude the right of any vestryman to demand a poll. And a like conclusion has been long ago arrived at under Sturges Bourne's Act and other statutes. In short unless a statute almost in so many words distinctly abolishes the right to a poll for some intelligible reason, it is difficult to find an instance of the right to a poll being abolished.

Two recent cases have, however, been stoutly fought under the Public Libraries Act where a mode of ascertaining the determination of the ratepayers as to the adoption of those Acts has been described, and the point has been discussed as to whether this supersedes the right to a poll. The Public Libraries Act, 1855, 18 & 19 Vict., c. 70, s. 8, enacts that upon the requisition in writing of at least 10 ratepayers of any parish of 5,000 persons, the overseers shall appoint a time for a public meeting of the ratepayers in order to determine

whether the Act shall be adopted for the parish. And if at such meeting two-thirds (now more than one-half according to 29 & 30 Vict., c. 114, s. 5) of the ratepayers then present shall determine that the Act ought to be adopted for such parish, the same shall come into operation in such parish; provided that in parishes of 8,000 inhabitants 10 ratepayers may deliver a requisition that the votes be taken according to the provisions of Sturges Bourne's Act, 58 Geo. 2, c. 69. It may be observed that the Amendment Act 29 & 30 Vict., c. 104, which assimilated the laws in England and Scotland, repeals so much of the Scotch Act as authorised the demanding of a poll. This seemed to show that the draftsman of the Act 29 & 30 Vict., c. 104, thought a poll had not been demandable under the English Act, 18 & 19 Vict., c. 70, s. 8; but then he may have misapprehended the construction, and his mistake would not have the effect of altering the true construction.

In the case of *R. v. St. Matthew, Bethnal-green*, 32 L. T. N. S. 558, a rule had been obtained to command a poll to be taken under the following circumstances. There had been a meeting called of ratepayers in a large parish of 17,000 ratepayers in order to determine whether they should adopt the Public Libraries Act. The meeting was duly held and a resolution to adopt the Act was put to the meeting, and on a show of hands was declared to be carried. Thereupon nine ratepayers demanded a poll which the chairman refused, and another meeting of ratepayers was held afterwards which declared the chairman's act of refusing a poll illegal, and that the determination of that prior meeting should not be acted upon. A rule was obtained for a *mandamus* by those who wished the Public Libraries Act to be adopted, and the point of law was argued whether the right to a poll was impliedly taken away by the Public Libraries Act. The Court, after hearing both sides, came to the conclusion that there was no such implied repeal; and that, in accordance with the series of former decisions and with common sense, the right to demand a poll remained as before unassailable. It was decided that any ratepayer who was dissatisfied with the resolution of the meeting might still ask for a poll, and was entitled as of right to it. And the Court boldly stated that the draftsman of the later Act of 29 & 30 Vict., c. 114, had been under a delusion as to the correct construction if he considered that the right to a poll had been taken away by the 18 & 19 Vict., c. 70.

Since this last decision, which was in 1875, another statute—namely, 40 & 41 Vict., c. 54, s. 1—had passed which recited the Free Libraries Acts for England and Scotland, and enacted that it shall be competent for the prescribed local authority in any place or community which has the power to adopt one of the above recited Acts to ascertain the opinions of the majority of the ratepayers either by the prescribed public meeting or by the issue of a voting paper to each ratepayer, and the subsequent collection and sorting thereof, and any expense in connexion with such voting papers shall be borne in the same way as the expense of a public meeting would be borne, and the decision of the majority so ascertained shall be equally binding.

Another case has very recently been brought before the Court as to the right to a poll when ratepayers deliberate on the adoption of these Acts. In *Reg. v. Wimbledon Local Board*, ante p. 292, a meeting of ratepayers had been duly summoned to consider the expediency of adopting the Public Libraries Act. A resolution to adopt the Acts had been carried after a show of hands. Two ratepayers then demanded a poll, but the chairman refused it, and then the meeting was dissolved. Afterwards a rule for a *mandamus* was applied for in order to compel the local board to carry out the resolution. And this was opposed by the local board on the ground that the right to a poll had been illegally refused and so that the resolution of the first meeting was void. Those who were anxious to enforce the resolution, contended before the Court that whatever may have been the law at the time of *Reg. v. St. Matthew, Bethnal-green*, that law had been now entirely changed by the recent Act, 40 & 41 Vict., c. 54,

which impliedly superseded it and directed in future that the majority should be conclusively discovered either by the public meeting or by the collection of voting papers. But the Queen's Bench Division, consisting of Denman, J., and Hawkins, J., thought that no such change had been effected by the recent Act, and that the matter remained as before leaving a right to a poll still inherent in each of the ratepayers. The case was taken to the Court of Appeal and more elaborately discussed. But that Court has also unanimously affirmed the judgment. Cotton, L.J., observed as to the late Act of 40 & 41 Vict., c. 44: "The voting may be by the prescribed public meeting in which case, if there was a common law right to a poll before the Act, it would continue to exist; or the local authority may dispense with the preliminary meeting of the ratepayers and may ask them to go to the poll and express their opinion without holding any such meeting. In my opinion this Act does not take away the common law right to demand a poll in cases where the meeting is held."

These cases, therefore, leave it uncontroversial that in meetings of ratepayers the right to a poll exists in full force. It is true that a public meeting should always be held, for by that means alone arguments on both sides can be urged. But in any case it must ultimately be left to the whole of the ratepayers by virtue of a poll, if demanded, to determine the matter conclusively.—*Justice of the Peace*.

#### LAWYERS ON LIBERTY AND PROPERTY.

At the recent meeting of the Liberty and Property Defence League, the following extracts from letters were read, among others: "My opinions," wrote Lord Bramwell, "of half a century standing, are as strong as ever. I like to be governed as little as possible, and what I like for myself I like for others. No one can know my wants as well as myself, and I am very sure that no one will take so much pains to gratify them." Lord Penzance wrote: "Since the gross departure from all principle has set the example in Ireland of fixing rent by law, numerous classes are beginning to turn their eyes to the Legislature to improve their position; and the sooner a firm stand is made in the assertion of those principles of fair dealing between man and man, which were once watchwords of the Liberal party, the better it will be for all classes."

#### QUOTATIONS IN COURT.

It is dangerous to quote in Courts of law, even when the quotation is familiar. In the course of the trial of *Doherty v. Loather*, Baron Huddleston remarked that he would have to interpret the rules of racing and of the Jockey Club, however incompetent to do so. Whereupon the defendant's counsel said gallantly, "'I would not hear your enemy say so,' my lord," quoting Hamlet's protest against Horatio's self-imputed "truant disposition." This was reported as "I do not hear, my lord, your enemies say so;" as if the judge had enemies who went about saying that he knew too much about racing, whereas, in truth and in fact, the learned baron has no enemies at all. Next day the report was corrected by substituting, "I would not hear your enemies say so," which scarcely mends the matter. It is hard that misquotations should be suffered at the hands of brother reporters by an eminent law reporter; for such Shakespeare, amongst other things, appears to have been, as one, at least, of his cases is preserved, and is confirmed by the report of Plowden.—*Law Journal*.

At a Court held by the Queen at Windsor on the 20th June, the Right Hon. John David, Baron Fitzgerald, Lord of Appeal in Ordinary, and Lord Justice Bowen were, by Her Majesty's command, sworn of Her Majesty's Most Hon. Privy Council, and took their places at the board accordingly.

## LAND TENURE IN ENGLAND.

At a meeting of the Dialectical Society, held last Wednesday, a paper was read by Sir A. Hobhouse on the "Law relating to the ownership and transfer of land." Professor Hunter occupied the chair. Sir A. Hobhouse said it could not be denied that among thoughtful men there was a growing dissatisfaction with the state of the Land Laws. While the population was increasing, the ownership of the land was falling into fewer and fewer hands, and it was impossible not to observe that the ugly phenomena of pauperism and prostitution were simultaneously increasing. Amongst the remedies suggested were the nationalisation of the land, the prohibition of mortgages, and the limitation of the areas of estates. With the first suggestion he could not sympathise, because it presupposed the existence of moral conditions to which mankind had not yet attained; nor was he inclined to agree to such a supervision of one's affairs as was represented by the other alternatives. What was wanted was less rather than extended interference. The mischief lay in shutting out living men from the full management of their own affairs, and he thought that an amendment of the law in this particular, coupled with the institution of greater facilities for the transfer of land, would remedy most of the evils complained of.

## SOME IMPORTANT WILL CASES.

Cases on the construction of wills are apt to turn on minute differences of expression; so that, amidst the infinity of cases distinguished and followed, there is often but little instruction to be obtained from them as to the general principles on which the court proceeds. Three recent cases, however, are of considerable value, as laying down and illustrating important and comprehensive principles of construction, and they are destined no doubt to be frequently discussed and applied.

The first of the decisions to which we refer is that of the Court of Appeal in *Re Bywater* (L. Rep. 18 Ch. Div. 17). The importance of that case consists in its having laid down what we believe to be a new rule of construction—viz., that where there is a gift in a will, followed by "a direction how that gift is to be paid, which direction is inconsistent with the language of the gift itself" the Court will strike out the direction "as a superfluous inconsistency and an inaccuracy," instead of relying upon the rule which makes the latter of two repugnant clauses in a will prevail over the earlier of them. The words which we have placed in quotation marks are from the judgment of Lord Justice James, which was concurred in by Lord Justice Brett. Lord Justice Cotton thus stated the principle on which the Court proceeded: "We must . . . not increase or alter the thing given by a direction as to the time of payment." The Court reversed the decision of the Master of the Rolls, who had held the two clauses to be absolutely inconsistent, and had therefore given effect to the later of them, according to the well-known principle already referred to.

It has often been laid down that a court of construction will struggle to avoid the application of the rule as to repugnant clauses, and will, if necessary, put a somewhat forced interpretation upon one of them, if it may so be made to harmonise with the rest of the will. This principle was strikingly illustrated in the second of the cases to which we refer, that of *Rhodes v. Rhodes* (46 L. T. Rep. N. S. 463; L. Rep. 7 App. Cas. 192). This was a case before the Privy Council, on appeal from the Courts of New Zealand, where the will the construction of which was in dispute had been the subject of much difference of judicial opinion. The solicitor who prepared the will had made no provision for future children of the testator, and it had been sent back to him to insert clauses providing for them which had been contained in a previous will. In inserting these clauses he had, without instructions, but in the *bona fide* belief that the words were proper to

be contained in the will, added the following introductory clause to certain subsequent provisions, "And from and after the decease of my said wife without having issue of our said marriage." The effect of these words, according to their obvious meaning, would have been to postpone the operation of certain provisions made by the will for a natural daughter of the testator till after the decease of his widow, a result certainly not contemplated by him or his solicitor. A less natural construction of the words was to restrict their effect to certain properties which were, by the subsequent clauses of the will, given to the widow for her life; and this construction was adopted by the Judicial Committee, whose judgment was delivered by Lord Blackburn. It was found, on going carefully through the will, that whilst this restricted meaning would harmonise with the general scope of the whole, the more obvious meaning was inconsistent with several of the provisions contained in the will, and would lead to very anomalous results. Several authorities in the House of Lords were referred to as laying down the principle that, whilst the words of a will must generally be taken in their natural meaning, notwithstanding the harsh and even absurd consequences which may arise, yet the fact that such consequences would follow is an argument in favour of adopting a more rational, though less natural, construction, if such other construction be borne out by the whole context of the will.

The third case, that of *Morrell v. Morrell* (46 L. T. Rep. N. S. 495; L. Rep. 7 P. Div. 68), involved another point which also arose in *Rhodes v. Rhodes*, though it had to be decided differently in the two cases. In *Rhodes v. Rhodes* it was sought to apply the principle thus stated in Lord Blackburn's judgment, that "when it is sufficiently proved that the instrument comprised his (the testator's) will; but that from fraud, or perhaps from inadvertence, such as that in *the Goods of Duane* (2 Sw. & Tr. 590) the instrument which he actually executed contained also something which was not his will, the latter part is to be rejected." The Judicial Committee, however, held that this principle could not be applied to the case before them, where the mistake was simply in the wording by which the draftsman sought to effectuate the testator's intention, and the will had been read over to the testator; obviously, if such an argument were acceded to, many wills would have to be rectified, and endless confusion would result. In *Morrell v. Morrell*, however, the principle above stated, which had been adopted by the House of Lords in *Fulton v. Andrew* (32 L. T. Rep. N. S. 209; L. R. 7 H. L. 448), was applied by Sir James Hannen. The jury in that case found that the word "forty" had been introduced, without instructions from the testator, by mistake, and without his knowledge, into a gift of shares to his nephew, and that the will had not been read over to him; and his Lordship directed the word to be struck out of the will accordingly. The only difference between the case before him and that of *Fulton v. Andrew* was, that in the latter case a whole clause was struck out, and his Lordship considered that the same principle must apply to a single word.—*Law Times*.

## VALUERS IN THE COUNTY COURTS.

At the hearing of *Fyffe* (tenant) *v. Beatty* (landlord), at Enniskillen, on the 30th ult., before Mr. BLAKE, Q.C., the learned County Court Judge said:—In this case I shall read this letter to show you how I have endeavoured to have facilities for ascertaining a fair rent. On April 1st, April Fool's Day—(a laugh)—this letter was written to the Clerk of the Land Commission in Dublin:—

"Peace Office, Enniskillen, 1st April, 1882.

"SIR,—I am directed by the County Court Judge to communicate with you. He has a number of Originating Notices coming before him at the present sessions, and he desires to appoint Mr. John Wray, as a person

in whom he has the most implicit confidence, as a valuer to the Court. The Judge wishes to know if Mr. Wray when appointed by him will be paid by the Treasury, and what are the usual fees allowed to valuers.

"I would feel obliged if you would reply by return, as the sessions commences for these cases on Tuesday.

"Your obedient servant,  
"J. W. HANRAHAN.

"D. Godley, Esq., Land Commission, Dublin."

Mr. Godley, the Secretary, in reply wrote:—

"The Irish Land Commission,  
"24 Upper Merrion-street, Dublin.  
"4th April, 1882.

"SIR,—I am directed by the Irish Land Commissioners to acknowledge the receipt of your communication, dated the 1st inst., and to inform you they have no power to pay a valuer appointed by the County Court Judge.

"The expense of employing a valuer, under the 37th section of the Land Law Act, must be borne by the parties as the Court may think just.

"The Commissioners are informed that the fees of valuers vary from two guineas to five.

"I am, Sir,  
"Your obedient servant,  
"DENIS GODLEY.

"J. W. Hanrahan, Esq., Clerk of the Peace  
"Co. Fermanagh."

On the day I opened the last Sessions at Newtownbutler, the 16th of June, I directed Mr. Hanrahan to write another letter:—

"Peace Office, Enniskillen, 16th June, 1882.

"SIR,—I am directed by the County Court Judge to communicate with you, as the officers of the Land Commission, respecting the appointment of a valuer for this county. Without the assistance of such a person the Judge cannot hope to discharge his duties under the Act, as such aid is as requisite for him as for the Commissioners, the Sub-Commissioners, and the County Court Judges to whose districts valuers have been sent. He desires me to request that you will communicate the contents of this letter to the Commissioners that they may take the necessary steps to provide him with a competent valuer. I shall feel obliged if you will at your earliest convenience let me know the result of this communication, as the Land Cases for this County will be heard next week, or early the week after.

"Your obedient servant,  
"J. W. HANRAHAN.

"D. Godley, Esq., Land Commission, Dublin."

Very promptly Mr. Godley answered it on the 17th as follows:—

"Irish Land Commission,  
"Dublin, 17th June, 1882.

"SIR,—I am directed by the Irish Land Commissioners to say that they regret that all their valuers being at present engaged they are unable to send one to the assistance of the County Court Judge of Fermanagh.

"I am, Sir,  
"Your obedient servant,  
"DENIS GODLEY.

"J. W. Hanrahan, Esq., Enniskillen."

Now as a matter of fact, two of the Commissioners, Judge O'Hagan and Mr. Vernon, were in Castlebar hearing cases on the 17th June, and only Mr. Commissioner Litton was in Dublin. Therefore it would be difficult to communicate directly with those Commissioners, although the Secretary says:—"I am directed by the Irish Land Commission." He says he is directed by them, they being at the time out of town. That appears by the newspapers—in the *Freeman's Journal*, and in it I find the presence of Judge O'Hagan and Mr. Vernon at Castlebar on the 17th, and they continued there till Monday the 19th. It may be that

when they have not a valuer that this is a stereotyped answer, and it is after the manner of other officials saying:—"I am directed by the Lords of the Treasury." However, I am without a valuer now, and I wish it to be seen how I cannot appoint a valuer, for he would have to go out, and I must mulct either the landlord or the tenant, and treat them in a different manner than the Sub-Commissioners and some of the County Court Judges are treating those who apply to them. Well, I think it an unreasonable thing to say that the landed proprietors and the tenants are to bear the costs of my sending out a valuer in whom I have confidence. I do not see why they should not get the same advantages of other counties. I have said this for the purpose of explaining my position. I am called upon, like the Israelites in Egypt, to make bricks without straw.

## NOTES OF CASES.

### SUPREME COURT OF JUDICATURE.

#### COURT OF APPEAL.

(Before LAW, C., MORRIS, C.J., DEASY and FITZGIBBON, L.JJ.)

#### HARPUR v. DAVIES.

April 27, 1882.—*Land Law Act, 1881, s. 58 (5)*—*Fixing judicial rent—Pastoral holding, what constitutes.*

Appeal, by tenant, from decision of Land Commission (Litton, Q.C.), setting aside originating notice to fix judicial rent. The circumstances are sufficiently explained in the judgment.

*Spaight v. Ir. Church Temp. Com.*, 11 Ir. L. T. Rep. 140, was cited.

Without calling on counsel for the respondent, the judgment of the court was delivered by

LAW, C.—It appears to us that this tenancy is one which falls within the terms of the exception in section 58, sub-section 3, of the Land Law (Ir.) Act, 1881, as being a holding which has been let mainly for the purpose of pasture. The contract of tenancy is embodied in a written instrument, dated the 13th April, 1865, whereby the lands were let to the appellant, subject to certain provisions, the most material of which for our present purpose are as follows:—After demising the lands of Naptown, containing about 172 statute acres, to be held from year to year at a certain rent, the agreement proceeds thus: "All the land that is not now under grass, to be properly sown by the tenant, this present spring, with clover and hayseed, with the exception of one field, which must be well and properly cleaned, and be put under green crop; and also with the exception of the paddock lying to the south of the farmyard, and the field adjoining it to the south-east;" describing the paddock and adjoining field as containing eight acres. It then further provides that the field which was to be cleaned and put under green crop the first year should in the next season be laid down with clover and grass-seed, whilst the eight acres, consisting of the specified paddock and adjoining field, might be kept in tillage, or laid down in grass, at the tenant's option. The natural meaning of this would seem to be that all the farm was to be kept in grass, with the exception of the eight acres just referred to. Subject to that exception, every field that was not already in grass the tenant bound himself to put into grass; and it cannot, therefore, be reasonably contended that when he had once done this he was to be at liberty forthwith to break it up and keep it in tillage if he pleased. That would be a very unnatural construction of the agreement, and inconsistent too with what is implied by the express permission to keep in tillage the eight acres. The plain meaning of the agreement, as it seems to me, was that, except the specified eight acres, all the farm was to be put into and kept in grass. But then it is argued that, even so, it does not follow that it was let to be used mainly for the purpose of pasture, and that if the contract admitted of the land in grass being all "meadowed," or used for the production of hay, the letting would not be one mainly for the purpose of pas-

ture. The agreement, however, contains some further provisions which, in my opinion, show that the use of the land for meadowing or hay-farming was not in the contemplation of the parties. It contains a clause in these terms:—"The tenant is not to remove nor allow to be removed any hay from the said farm, with the exception of such portion of the hay crop of the year 1866 over and above what he may require for consumption on the farm." It then provides that if the tenant breaks up any of the land then in grass, or *thereby agreed to be put under grass*, he is to pay £7 an acre for the land so broken up. And, finally, in consideration of the tenant putting the land under grass, the landlord agrees to allow the tenant £10 half-yearly for the first two years. It is plain to us, on the language of this agreement, that the parties to it contemplated a letting mainly for the purpose of pasture, and nothing else. It no doubt allowed of hay being made on the farm; but, as it did not permit that hay to be removed off the farm, the parties must be taken to have intended that only so much hay should be made as would be needful for supplementing the actual pasturage of the cattle on the farm. Speaking for myself, I think the test is not whether the landlord could or could not obtain an injunction against the tenant to prevent his breaking up any of the land that was in grass—though I have a strong opinion on that point too—but rather whether, on the whole of the written contract, the court is satisfied that the use of the land for pasture was mainly what the parties had in view. As to this we are all, I believe, clearly of opinion that, having regard to the terms of this contract of tenancy, the holding was let to be used mainly for the purpose of pasture, and that the appeal should therefore be dismissed with costs.

#### NOTES OF ENGLISH CASES.

[From the *Law Journal*.]

#### SUPREME COURT OF JUDICATURE.

COURT OF APPEAL.

(Before JESSEL, M.R., and LINDLEY, L.J.)

FORD v. KETTLE.

May 26.—*Bill of sale—Registration—Affidavit of execution and attestation—Bills of Sale Act, 1878, ss. 8, 10.*

A bill of sale was executed, on December 19, in favour of the plaintiff. The execution was attested by two witnesses, one of whom was a solicitor, and the other a solicitor's clerk. The attestation clause stated that the deed had been executed by the grantor in the presence of the solicitor, by whom the effect of it had been duly explained to the grantor. The bill of sale was registered on December 30, the affidavit filed on registration being made by the clerk, who deposed that the signatures of the attesting witnesses were in the respective handwriting of the solicitor and himself; but the affidavit did not state that the solicitor attested the execution of the deed, or that he was present at its execution.

On January 4 the goods comprised in the bill of sale were seized under an execution, on behalf of the defendants, who were creditors of the grantor. The plaintiff claimed the goods under the bill of sale; and the sheriff took out an interpleader summons. An issue was directed, and tried before Field, J. At the trial it was objected that the affidavit filed on registration was not sufficient under section 10 of the Bills of Sale Act, 1878; and a verdict was found for the defendants.

The plaintiff applied for a new trial. The application was refused by a Divisional Court; but the Court of Appeal granted a rule nisi for a new trial; and the rule now came on for argument.

*A. Charles, Q.C.*, and *Herbert Reed* for the defendants. *Crump* and *Banks* for the plaintiff.

Their LORDSHIPS discharged the rule; and held that the affidavit was insufficient, inasmuch as it did not state that the solicitor had attested the execution of the deed—*i. e.*, that he was present at the time of its

execution by the grantor. The objection was a highly technical one; but the words of the Act must be followed.

(Before JESSEL, M.R., LINDLEY and BOWEN, L.JJ.)

*In re STOREY. Ex parte POPPLEWELL.*

June 8.—*Bill of Sale—Agreement not to register—Increased bonus—Statement of consideration—Defeasance or condition—Misdescription of grantor—Bills of Sale Act, 1878, ss. 8, 10.*

This was an appeal from a decision of Bacon, C.J., confirming a decision of the Manchester County Court, whereby a bill of sale was held valid as against the trustee in bankruptcy of one of the grantors.

The grantors, who were a father and son, had applied to the respondent, who was a money lender, for a loan of £242, and offered to give a bill of sale as security. It was verbally agreed that the bill of sale should not be registered; and the sum of £100 was to be added by way of interest and bonus to the amount secured by the bill of sale, the bonus being larger than was usually demanded, in consequence of the agreement not to register. The consideration for the bill of sale was stated to be £242.

The bill of sale was, in fact, registered; and it, and the affidavit filed on registration, described the grantors by their true addresses, and added that they were both mantle manufacturers carrying on business together. They had been in partnership; but at the date of the bill of sale the business was carried on by the father alone, the son being in the position of a clerk. The property belonged to the father alone, though both executed the deed. The father filed a liquidation petition, and his trustee now appealed.

*Ambrose, Q.C.*, and *Bradbury*, for the appellant, contended, first, that the agreement not to register should either have been stated as part of the consideration, or registered as a defeasance or condition making the bill of sale void as against a trustee in bankruptcy or an execution creditor; and, secondly, that there was misdescription of the grantors.

*Winslow, Q.C.*, and *Yates*, for the grantee, were not called upon.

Their LORDSHIPS held that the agreement not to register was collateral, and not part of the consideration, and need not, therefore, be stated; neither was it a defeasance or condition which ought to be registered. They also considered that there was no sufficient misdescription of the grantors to affect the validity of the registration, because, as to the son, any misdescription was immaterial, he not being a bankrupt; and, as to the father, the statement that he was carrying on business with the son was mere surplusage, and not calculated to mislead.

#### HIGH COURT OF JUSTICE.

QUEEN'S BENCH DIVISION.

PULLING v. THE GREAT EASTERN RAILWAY COMPANY.

June 7.—*Administration—Personal injury to intestate occasioning expense—Damage to intestate's estate, action for—Loss of intestate's wages.*

This was a demurrer to a statement of claim, in which the plaintiff sued as administratrix of her late husband, who had, as was alleged, been run over by a train owing to defendants' negligence. The injuries he sustained prevented him from following his business, and he was wholly incapacitated until his death; and, meanwhile, incurred expenses for medical attendance and nursing, all which diminished the value of his personal estate.

*Lush Wilson* in support of the demurrer.

*W. H. Clay* for the plaintiff.

The COURT (DENMAN, J., and POLLOCK, B.) gave judgment for the defendants, holding that the alleged cause of action did not survive; and that the administratrix could not sue for damages to the estate occasioned by the expenses and loss of earnings.



**PARSONS (Appellant) v. BIRMINGHAM DAIRY COMPANY**  
(Respondents).

June 16.—*Sale of Food and Drugs Act, 1875 (38 & 39 Vict., c. 63), ss. 6, 12, 13, 14, 20, 21—Sale of Food and Drugs Amendment Act, 1879 (42 & 43 Vict., c. 30)—Analysis—Notification to Seller—Private Purchaser—Public Officer.*

Case stated by the stipendiary magistrate of Birmingham under 20 & 21 Vict., c. 43.

It appeared from the case that the respondents, to whom a certain quantity of milk had been sold by the appellant, kept a sample of it upon their premises for two days after delivery to them, before they notified to the appellant their intention of having it analysed.

The learned magistrate convicted the appellant, holding that section 14 of 38 & 39 Vict., c. 63, which enacts that "the person purchasing any article with the intention of submitting the same to analysis shall . . . forthwith notify to the seller . . . his intention to have the same analysed by the public analyst," did not apply to a purchase by a private purchaser, but was limited to one by a public officer.

*Vesey Fitzgerald* for the appellant.

*Baylis* for the respondents.

The COURT (FIELD, J., and CAVE, J.) reversed the decision of the magistrate.

**HETHERINGTON (Appellant) v. THE NORTH-EASTERN RAILWAY COMPANY** (Respondents).

June 20.—*Negligence—Action on behalf of relatives of person killed—Pecuniary interest in life of deceased—Evidence—9 & 10 Vict., c. 93.*

This was an action brought by the plaintiff, who was the father of the deceased, to recover damages under Lord Campbell's Act (9 & 10 Vict., c. 93) for the death of his son through the respondents' negligence.

At the trial in the County Court, the plaintiff, who was fifty-nine years old, deposed that his son was twenty-five; that he (the plaintiff) was nearly blind, and suffered from some injury to the leg; that the deceased was always kind to him, and used to contribute to his support some five or six years ago, when he (the plaintiff) was unable to work for six months.

At the close of the case, the plaintiff was nonsuited, on the ground that he had failed to show that he had suffered a pecuniary loss by his son's death sufficient to entitle him to maintain an action under 9 & 10 Vict. c. 93.

The plaintiff appealed.

*Stevenson* appeared for the appellant.

*Gainsford Bruce* for the respondents.

*Per Curiam* (FIELD, J., and CAVE, J.)—There was some evidence that the plaintiff had a reasonable expectation of pecuniary advantage from a continuance of his son's life, and it was for the jury to determine what was the value of it. The nonsuit must, accordingly, be set aside.

*New trial ordered.*

**COURT OF BANKRUPTCY.**

(Before BACON, C.J.)

*Re MOULSON. Ex parte KNIGHTLEY.*

June 19.—*Bill of sale—Registration—Affidavit of execution and attestation—Bills of Sale Act, 1878, ss. 8, 10.*

Appeal from the County Court at Bradford.

A bill of sale was attested by two witnesses, one of whom was a solicitor, and the other a clerk. The affidavit filed on registration was made by the clerk, who deposed to the signatures of the attesting witnesses and to the explanation of the effect of the bill of sale by the solicitor, "one of the attesting witnesses," before its execution by the grantor; but did not otherwise state that the solicitor was present when the bill of sale was executed.

*Winslow, Q.C., and Ashton Cross* for the appellant.

*Willis, Q.C., and F. Knight* for the respondent.

The CHIEF JUDGE held, on the authority of *Ford v Kettle*, "Weekly Notes," June 17, 1882, p. 90, that the affidavit was insufficient, that the registration was invalid, and the bill of sale consequently inoperative as against the trustee.

**ADMISSION OF A SOLICITOR.**

Mr. Hubert O. West, son of Mr. Henry J. P. West, North Great George's-street, and Richelieu, County Dublin, has been admitted a Solicitor of the Court of Judicature.

**CORRESPONDENCE.**

**SOLICITORS' FEES.**

TO THE EDITOR OF THE IRISH LAW TIMES.

SIR,—Will you please say in next issue what time the Schedule of Fees came, or will come, into operation. I refer to those in your issue of 8th inst.

Yours truly,

J. A. C.

July 11, 1882.

[The schedule in question was gazetted on the 27th ult., and is now in operation.—Ed.]

**"THE LAW OF TAXES."**

TO THE EDITOR OF THE IRISH LAW TIMES.

SIR,—I wish some intelligent and qualified member of either branch of the legal profession would take up the above subject and publish a handy manual on it. The subject is continually turning up in sales, particularly of house property. Some taxes are merely personal debts, others are charges upon the premises, and others are subject to restrictions as to time of recovery. A book distinguishing all these taxes, general and local, and the relative liabilities of owners and occupiers, vendors and purchasers, would be a great boon to the legal profession, but particularly to the profession of

Your obedient servant,

A SOLICITOR.

**BOOKS RECEIVED.**

*Wilson's Supreme Court of Judicature Acts, Appellate Jurisdiction Act, 1876, Rules of Court and Forms; with other Acts, Orders, Rules, and Regulations relating to the Supreme Court. With Practical Notes.* Third Edition. By M. D. CHAMBERS, of the Inner Temple, Barrister-at-Law, assisted by HERBERT LUSH-WILSON, of the Inner Temple, Barrister-at-Law. London: Stevens and Sons, 119 Chancery-lane, Law Publishers and Booksellers. 1882.

*Fugitive Offenders: being the Law and Practice relating to Offenders flying to or from this Country; including the Extradition Acts and Treaties.* By F. J. KIRCHNER, of the Criminal Investigation Department, Metropolitan Police. London: Stevens and Sons, 119 Chancery-lane, Law Publishers and Booksellers. 1882.

*A Manual of the Law regulating the Volunteer Forces, including the Volunteer Acts 1863 and 1865, and the other Acts relating to the Volunteers. With Forms of Complaint, Summons, and Order, in all Proceedings in Courts of Summary Jurisdiction under the Acts.* By WALTER ADAM BURN and WILLIAM THOMAS RAYMOND, of the Middle Temple, Esquires, Barristers-at-Law; Captains in Her Majesty's Volunteer Forces. London: Stevens and Sons, 119 Chancery-lane, Law Publishers and Booksellers. 1882.

*Legal Medicine.* Part I. By CHARLES MEYNOTT TIDY, M.B., F.C.S., &c., &c. London: Smith, Elder & Co., 15 Waterloo-place. 1882.

## CURIOSITIES OF THE LAW OF TREASON.

The antiquity and historical continuity of the law of treason is a fact which has hardly any counterpart in the history of law in modern Europe. The authority of precedent in it is so potent that it is always difficult to say what part of it is really obsolete. A layman who reads in the Act of 11 Victoria that nothing therein should affect the statute of Edward III., does not easily imagine what a code of pitiless learning, what a record of complicated doom was thereby reopened to the modern air. The 530 years which have passed since 25 Edward III. have each added something to the mass, and no part of it is quite converted into dust. Everything about it is at once archaic and alive. The barbarous French of the old Act, the procedure with its ancient forms, the old case law that broadens slowly down, from precedent to precedent, all impress the mind like some antique national epic. The history of our law of treason is as fine a poem as the "*Nibelungen-Lied*." When a State criminal is now tried for high treason he would ordinarily come before some successor of the Chief Justice who has sat on the King's Bench for more than six centuries; perhaps in the very hall where Red Rose and White Rose, Lollard, Papist, Non-conformist, and Nonjuror, Cavalier and Roundhead, Plantagenet and Stuart, Jacobite and Jacobin, have been tried; they would cite the old Norman French, or rather dog-French, which the courtiers used at the height of the first French wars; the counsel would rely on the dicta of men who saw the wars of the Roses, and the wars of religion, the Commonwealth, and the Revolution. Much of the old tragic ceremony would be rehearsed, sheared, for the most part, of its mediæval barbarity. But the "*quant homo fait compasser*," &c., has to us still all the sacramental mystery that the lines from the Twelve Tables had to a Roman of the Empire, "*caput obnubito, infelici arbori suspendito*." It is much to be regretted that this tremendous page of our annals is less familiar than it was. Perhaps our lawyers have small cause now to feel interest in those maxims of constitutional right which occupied so keenly the lawyers of some former times. Does the public, does anyone, now read the "*State Trials*," one of the most fascinating books in the historical library? The Macaulays, the Froudes, the Greens have nothing that touch them in dramatic history, while Freeman himself is not more terribly in earnest and not so voluminous. The trials of the Queens, Ann Boleyn and Mary Stuart, of Charles Stuart and of his Judges, of Harrison and Tonge, of Vane and Sidney, of College and Cornish, of Lady Lisle and Lord Preston, of Lord Gordon and Watson, and fifty more, are hardly exceeded in pathetic power by Shakespeare himself. Anyone who knew the whole of that mine of learning, text and notes, would have a pretty idea of constitutional law. Unfortunately this profoundly touching and most instructive collection is so vast as to be to many readers practically hopeless. Most men are baffled at the sight of thirty-four closely printed volumes, each having 1,200 pages of print, in double column, in a rather illegible type, and crammed with notes till the double columns overflow.—*Portnightly Review*.

## TEXT-BOOK ADDENDA.

[From the *Law Journal*.]*Public Health Act, 1875, s. 47.*

The offence of keeping pigs so as to be a nuisance does not require proof of injury to health (*Banbury Urban Sanitary Authority v. Page*, 51 Law J. Rep. M. C. 21).

*Robson on Bankruptcy (4th Edition), 354.*

Although the title of a trustee in bankruptcy relates back to the act of bankruptcy, yet where there have been mutual debts and credits, the title of the trustee to a credit does not accrue till the holder of such credit has notice of the act of bankruptcy (*Elliott v. Turquand*, 51 Law J. Rep. P. C. 1).

*Coote on Mortgage (4th Edition), 833.*

The purchaser of an equity of redemption takes subject only to existing equities, and as against him there can be no consolidation of a mortgage subsequently created by the vendor on another estate [*Tassell v. Smith*, 2 De Gex & J. 713; 27 Law J. Rep. Chanc. 694 overruled] (*Jennings v. Jordan and Price*, 51 Law J. Rep. Chanc. 129).

*Order XVI., Rule 7.*

*Wilson on the Judicature Acts (2nd Edition), 177.*  
*Lely and Foulkes on the Judicature Acts (3rd Edition), 154.*

A trustee sufficiently represents his *cestui que trust* for the purposes of a redemption action (*Jennings v. Jordan*, 51 Law J. Rep. Chanc. 129).

*Coote on Mortgage (4th Edition), 89.*

The heir-at-law of a testator (before the will was registered) by forgery and personation mortgaged the testator's lands to an innocent mortgagee, who registered his mortgage. Held, that, notwithstanding the heirship, the title of those claiming under the will prevailed over that of the mortgagee (*In re Cooper, Cooper v. Vesey*, 51 Law J. Rep. Chanc. 149).

## COURT PAPERS.

## LAND JUDGES.

Sittings for next Week so far as same are appointed.

Before the Rt. Hon. JUDGE FLANAGAN.

## MONDAY.

IN COURT.—M. O'Brien, to lodge money.—J. M. O'Connell, to examine witness.—H. W. Montgomery, receiver.—J. M. O'Connell, to make order absolute.—R. H. O'Brien, receiver.

Before EXAMINER (Mr. Kennedy).

G. S. Roper, vouch.—G. M. Hewson, rental.

## TUESDAY.

IN COURT.—C. Lewis, final schedule.—J. Ramsay, do.

## SALES IN COURT.

S. A. KELLY,	-	-	-	2 lots.
W. T. MURRAY,	-	-	-	3 "
T. MANLY	-	-	-	4 "

## THURSDAY.

Before EXAMINER (Mr. Kennedy).

G. Graham, rental.

## FRIDAY.

## SALES IN COURT.

M. WATSON, - - - 2 lots.

Before EXAMINER (Mr. Kennedy).

Sir J. Ferguson, rental.

Before the Rt. Hon. JUDGE ORMSBY.

## WEDNESDAY.

Before EXAMINER (Mr. M'Donnell).

D. M'Daniel, rental.—J. Wright, do.—J. Mallan, do.

## COURT OF BANKRUPTCY.

## ADJUDICATIONS IN BANKRUPTCY.

*The dates of Adjudications are first given, the Sittings follow in Italics.*

Taylor, Richard, of Clontough, Kenmare, in the county of Kerry, Esquire. June 2; Friday, July 28, and Tuesday, August 15. *James J. Malone, solr.*

ACTS OF PARLIAMENT.—Up to the present time 20 public and 96 local Acts have been passed in a session of five months.

DUBLIN STOCK AND SHARE LIST.

Table with columns: DESCRIPTION OF STOCK, JULY (Sat, Mon, Tues, Wed, Thur, Fri), and various stock entries including Government, India Stock, Banks, Mines, Tramways, and Railways.

\* Shares not fully paid up are given in Italics. † x d
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Of Deposit—1 per cent., 23rd March, 1882.
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BIRTHS, MARRIAGES, AND DEATHS.

BIRTHS.
CREAGH—July 10, at Listowel, the wife of Francis Creagh, Esq., solicitor, of a daughter.
KENNEDY—July 7, the wife of Peter V. Kennedy, Esq., solicitor, of a daughter.
MACNAB—July 10, at Rostellan Villa, Brighton-avenue, Rathgar, the wife of E. S. Macnab, Esq., solicitor, of a son.

MARRIAGES.
HILL and GAMBLE—July 12, at St. Peter's Church, Dublin, by the Rev. J. B. Keene, Rector of Navan, cousin of the bride, assisted by the Rev. Canon Wynne, Incumbent of St. Matthias's, Edward M. Hill, B.A., Oriel Coll., Oxford, to Louisa C., second daughter of R. W. Gamble, Esq., Q.C., J.P., County Court Judge, Fitzwilliam-square.

WALSHE and COPINGER—July 6, at Ghent, by special dispensation from Rome, Thomas Patrick Walshe, Esq., M.D., son of the late James N. Walshe, Esq., M.D., Ballinakill, to Kate, daughter of the late Christopher Copinger, Esq., Q.C., of Abbey View, Dalkey.

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5. Title Jurisdiction—Civil Bill Ejectment on the Title .. .. . 1d.
6. Civil Bill Ejectment for Overholding .. .. 1d.
13. Civil Bill Process in Replevin .. .. 1d.
14. Ordinary Decree .. .. 1d.
15. Decree by Instalments .. 1d.
16. Decree for Recovery of Lands .. .. 1d.
18. Decree in Ejectment for Non-payment of Rent .. 1d.
30. Ordinary Dismiss .. 1d.
31. Ejectment Dismiss .. 1d.
32. Affidavit or Affirmation of Default by Instalments 1d.
33. Affidavit or Affirmation of Renewal .. .. 1d.
35. Notice to Renew a Decree, or Dismiss, Affirmance, or Reversal .. .. 1d.
6. Renewal on Notice .. 1d.
8. Recognisance on the Defendant's Appealing from a Decree; or on the Plaintiff's Appealing from a Decree or Dismiss .. 1d.
47. Certificate of the Clerk of the Peace as to the Lodgment of Money by a Defendant or Rent and Costs in a Civil Bill Ejectment Case .. 1d.
55. Order of Replevin .. 1d.
59. Committal under the Debtors Act (Ireland), 1872 .. .. 1d.
62. Equity Civil Bill by a Creditor against an Executor for administration of the personal Estate of a deceased Debtor .. .. 1d.
63. Equity Civil Bill by a Legatee for the Administration of the Personal Estate of a Testator .. 1d.
80. Summons in Chamber .. 1d.
81. Notice to Creditor to prove his Claim .. .. 1d.
82. Notice to Creditor of Allowance of Claim .. 1d.
84. Notice that the Clerk of the Peace's Certificate may be inspected .. 1d.
99. Summons for Witness .. 1d.
110. Certificate of Clerk of the Peace in case of Money 1d.
111. Certificate in case of Transfer of Stock .. 1d.
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— Affidavit to obtain a Decree by Default .. 1d.
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# THE IRISH LAW TIMES AND SOLICITORS' JOURNAL.

VOL. XVI.

SATURDAY, JULY 22, 1882.

No. 808

## SOLICITOR'S LIEN FOR COSTS ON "PROPERTY RECOVERED OR PRESERVED."—II.

In order to entitle the solicitor (or his representative: *Baile v. Baile*, L. R. 13 Eq. 497) to a charge, there must have been an actual recovery or preservation of property: *Pinkerton v. Easton*, L. R. 16 Eq. 490; but see *Jones v. Frost*, L. R. 7 Ch. 773; and the charge extends only to the particular property in the recovery or preservation of which the costs were incurred: *Ex p. Thompson*, 3 L. T. N. S. 317; and see *Porter v. West*, *ubi supra*. On the question whether it is limited to, or exists irrespective of, the clients' interests in the property recovered or preserved, see *Berrie v. Howitt*, L. R. 9 Eq. 1, *contra* *Bailey v. Birchall*, 2 H. & M. 371; and see *Bulley v. Bulley*, L. R. 8 Ch. D. 479. In a partition action the lien is limited to the client's share in the property, and does not extend to the whole property, where the costs have been made costs in the action, and not (as yet) directed to be paid out of the proceeds: *Lloyd v. Jones*, 40 L. T. N. S. 514; and see *Prichard v. Roberts*, *ubi supra*; *Mildmay v. Quicke*, L. R. 6 Ch. D. 553. It applies to the interest in the mortgaged property of a plaintiff in a foreclosure suit: *Wilson v. Round*, 4 Giff. 416; and has been extended to the interest of a defendant in such a suit, whose right to a subsequent charge has been therein established; *Scholefield v. Lockwood*, L. R. 7 Eq. 83. In *Foxon v. Gascoigne*, L. R. 9 Ch. 654, it was held that an easement incident to property (*e.g.*, the right to ancient lights) is not property within the meaning of the Legislature. Mellish, L.J., said: "The suit was one relating solely to an easement. Now, first let us suppose that the plaintiffs entirely succeed in such a suit, that they sustain their right to the lights, and obtain an injunction preventing the defendant from obstructing them, could the plaintiffs' solicitor say that any property was recovered, so as to entitle him to a charge upon it? Would it be possible to say that the house was recovered, or that the house was preserved? It seems to me that it would be impossible to say so. The title of the plaintiffs to the property in these houses is not in question at all. All that can by any possibility be said to be recovered or preserved, whichever word you choose to employ, is the right to the lights. How is it possible to make a charge upon a right to the lights? A charge can only be made upon the property itself, which is recovered or preserved, and it cannot be made if the suit relates only to some incident of the property." In *Jones v. Frost*, *ubi supra*, it was held that a solicitor is entitled to a charge for his costs on property the subject of a successful suit, conducted by him against an incumbrancer, although the incumbrance be entirely valueless, provided it formed a cloud upon the title. And in *Birchall v. Pugin*, L. R. 10 C. P. 397, the question as to what constitutes such property again arose under the following circumstances: The defendant having recovered a sum of money in an action brought by him against M., B., the defendant's attorney in that action, had taken out a summons for an order charging his costs in such action upon the sum recovered. The plaintiff afterwards, having recovered judgment in his action against the defendant, obtained an *ex parte* garnishee order attaching the sum recovered by defendant against M. in execution. B.

claiming to have a charging order on the judgment-debt as property recovered, within the section, and the plaintiff claiming an order on M. to pay the sum attached to him, it was held that the sum recovered was property within the section; and that the attorney was entitled to priority (see 13 Ir. L. T. 52; "*The Leader*," L. R. 2 A. & B. 314; and cases cited *supra*), an order being made in his favour accordingly. "The words used in the section," said Lord Coleridge, C.J., "are of the widest possible character, and include all property of whatsoever kind; not only property known to the common law, but property of every kind. It seems to me that this is property of some kind: it is a chose in action."

In *M'Alveay v. M'Alveay*, also, we are glad to observe, the Act was liberally construed, in conformity with *Birchall v. Pugin*. A reference to arbitration having been made in the action, the arbitrator awarded that a certain sum should be paid by the plaintiff to the defendant, and the award was confirmed by the court. Before the amount awarded had been paid over to the defendant, his solicitor moved, under 39 & 40 Vic., c. 44, s. 3, for a declaration of his lien for unpaid costs upon the sum which the plaintiff had been adjudged to pay, as being property recovered or preserved for his client through his instrumentality. It was held, by Chatterton, V.C., on the 6th of March last, that the solicitor was entitled to the order sought.

In *Emden v. Carte*, an undischarged bankrupt, without the knowledge of the trustee in his bankruptcy, brought an action, claiming (*inter alia*) remuneration for services rendered by him since his bankruptcy as an architect to the defendant, and damages for wrongful dismissal. The defendant, without admitting any legal liability to the plaintiff, paid £360 into court. The plaintiff took out a summons to have the money paid out to him, but before the summons was heard the action came to the knowledge of the trustee, and he obtained an order joining him as co-plaintiff in the action, on the ground that the remuneration and damages claimed were his property. The bankrupt's solicitor then applied for a charging-order on the £360, in respect of his costs, charges, and expenses of or in reference to the action. And (reversing the order of Fry, J.) it was held by the Court of Appeal, as reported in the *Law Journal* (51 Ch. 371) for May last, that the bankrupt's solicitor was entitled to a charging-order for his costs properly incurred up to the time of the intervention of the trustee, on the fund in court, as being property recovered or preserved through the solicitor's instrumentality. "If the plaintiff has a sum of money in court which belongs to him, which he has only to ask for in order to get it, surely it is his property," said Jessel, M.R.: "It is property recovered by him or preserved for him in a Court of Justice, and it does appear to me that there is no fair interpretation reasonably possible to be given to the words 'recovered or preserved' in the 28th section of the Solicitors Act, 1860, which will not apply to money in this position." And it was further laid down that a judge was invested with a discretion as to making such orders; and that it would be his duty, in making an order, to limit it to the costs properly incurred, and to direct taxation thereof. But, where, in consequence of a change of solicitors, taxation could not be had, a charging-order was granted

in *Pilcher v. Arden* (7 Ch. Div. 318, 47 L. J. Ch. 479); and a like order, where the solicitor had been changed, was made in *Faithful v. Ewen* (7 Ch. Div. 495, 47 L. J. Ch. 457); see 12 Ir. L. T. 408.

In *Cole v. Dawson*, the most recent case on the subject, it appeared that C. had bequeathed a chattel interest in land to his widow so long as she continued unmarried. She married D., one of the defendants, and died intestate. The plaintiff, the eldest son of C., took out administration to his father's will, and brought an action to recover possession of the land, against D. and his two brothers. D. alone took defence. The trial was listed for hearing on Dec. 15, 1881, when the plaintiff's solicitor was informed that the action was settled by an agreement, and the case was struck out accordingly. By this agreement, signed by the plaintiff and the three defendants, the plaintiff was to abandon his claim, receiving from the defendants £120 and a promissory note for £20, each party paying his own costs. A few days before this compromise one of D.'s brothers had, as a legatee, instituted a civil bill action to administer the assets of C. The solicitor of the plaintiff applied to him without success for payment of the costs, and the plaintiff afterwards went to America. On March 2, 1882, the solicitor applied for payment to D., but alike without success. On June 29, ult., he moved for a charging order, or for an order that the defendant D. should pay the costs, the £120 having been paid in his own wrong. The applicant deposed that the agreement had been entered into without his knowledge, and with a view to defeat his claim; while, on the other hand, it was sworn that it had not been fraudulently entered into, nor in order to deprive him of his costs. See *Hill v. Hibbit*, 8 Ir. L. & S. J. 78. Palles, C.B., was of opinion that it was not necessary that there should have been a judgment recovered (see cases cited *supra*); that the agreement was equivalent to a purchase by D. of the plaintiff's equitable interest in the land, and that the solicitor's right to the costs could not be defeated thereby (see *Pilcher v. Arden*, 7 Ch. D. 318, *Baile v. Baile*, L. R. 13 Eq. 497, and *Hill v. Hibbit*, *ubi supra*, which were not cited); and that the property had been recovered or preserved, within the meaning of the statute. But then, neither the plaintiff nor the co-defendants of D. were before the court; and he thought that the right course would be to serve the conditional order on the co-defendants (see *Re Kaana*, 19 W. R. 429, and *Brown v. Trotman*, 41 L. T. N. S. 179, 12 Ch. Div. 880, which were not cited). "There has also," he added, "been great delay in application to the defendant; this has pressed upon me" (but, see *De Bay v. Griffin*, L. R. 10 Ch. 291, not cited); "and if it were a matter of discretion, it is a case in which I think I would not exercise it, but it is a right" (but see *Bmdes v. Carte*, *supra*, not cited), "and the time that has elapsed has not been sufficient to disentitle the applicant." On the other hand, Fitzgerald, B., appeared to regard the agreement as a mere release, and to consider that such would not be equivalent in effect to a sale of the property; he would not say that it is always necessary that the action should be prosecuted to judgment, but he could not see that the right of the plaintiff was established by this transaction. In consequence of this difference of opinion, the court pronounced no rule.

For our own part, we cannot help thinking that, in *Cole v. Dawson*, the property had been adequately recovered or preserved within the meaning of the statute, and that the plaintiff's right had been tangibly established by the transaction, consequent on the legal proceedings. The application was referred to as being the first under the Act that had been made in Ireland; but, it had been preceded by *M'Alcavy v. M'Alcavy* (*supra*),

which was not mentioned, where, on a rightly liberal construction of the Act, a more satisfactory result was arrived at, in reference to a mere award on an arbitration, which had been made a rule of court, but under which the amount awarded had not been paid over; but, we do not doubt that the order asked for as against the defendant, in reference to the £120, could not properly be allowed (*cf. Pringle v. Gloag*, 10 Ch. Div. 676, not cited). And while, of course, the language of the Act should not be extended beyond its proper and natural meaning in order to meet particular cases (as Lord Selborne observed in *Pinkerton v. Boston*, L. R. 16 Eq. 490, not cited), we agree with Lord Romilly's remark in *Scholesfield v. Lockwood* (L. R. 7 Eq. 88, not cited), that "the Act is intended to be construed liberally, and solicitors ought not to be deprived of their lien in these matters where there has been a good deal of work done."

#### THE NEW LAND COMMISSIONER.

On Thursday last, Mr. Gladstone announced that Lord Monck is to be appointed a Commissioner under the Arrears of Rent (Ireland) Bill. We believe he had already been offered, and refused a Land Commissionership under the Act of 1881, but his accession now will certainly add considerably to the effective strength of the Land Commission.

Charles Stanley, 4th Viscount Monck, to which title he succeeded in 1849, is the eldest son of Charles Joseph Kelly, 3rd Viscount, and Bridget, daughter of the late John Willington, Esq., of Killoshane, Co. Tipperary, and was born in October, 1819. He was called to the Bar in Michaelmas Term, 1841; and in 1844 married Lady Elizabeth Louise Mary Monck, third daughter of the 1st Earl of Bathdowne. He entered Parliament as member for Portsmouth (1852-57) and was appointed a Lord of the Treasury (1855-58). In 1861 he was appointed Governor-General of Canada, and in 1867 of the Dominion of Canada. He was appointed a Commissioner of Church Temporalities in Ireland, in 1869, and in the same year was sworn of the Privy Council of Ireland and created G.C.M.G. He was appointed a Commissioner of National Education in 1871, and became Lord Lieutenant and Custos Rotulorum of the Co., and Co. of the City of Dublin, 1874, and Deputy-Lieutenant of the Co. Wicklow.

Liberal and moderate in his views, Lord Monck has always displayed an anxiety for the practical advancement of the country, and has succeeded in winning public esteem and respect; and, judging from his distinguished antecedents, we doubt not that, identifying himself energetically with the administration of the Land Law, he will establish a still higher reputation, winning alike popular confidence and professional approval.

#### TEMPORARY LAWS.

Is Parliament growing distrustful of its wisdom and powers? Has it come to admit, that for the most part making laws is vanity of vanities, labour unprofitable, and often mischievous? One might be half inclined to think that this was so if one looked into a Parliamentary paper, just published, which gives a list of the temporary measures in force, and the dates at which they expire. This long list is published in consequence of the recommendations of a Select Committee of the House of Commons which sat about 1866. They thought that a register should be kept by some officer of the House which would show the duration of all temporary Acts and the dates of their expiry, so as to render unnecessary in future Sessions the appointment of a Select Committee upon Expiring Laws. The inconvenience attending such legislation has been considerably lessened

by an enactment to the effect that if a Bill be in Parliament for the continuance of a temporary measure, and the latter expires before the Royal assent is given to the Bill, the Act does not lapse. Obviously some record must be kept of these expiring powers. As a merchant must have his bill-book to tell him of the time when his own or other persons' engagements mature, the Legislature must have a reminder of its obligations. They might well escape attention, for they are not a few. We question whether thirty years ago there would have been materials for such a list as that which is now published. Then there were few temporary laws of consequence—with the exception, of course, of the Mutiny Act and a few measures relative to the service of each year. Parliament boldly professed to legislate for all time. It had no qualms or apprehensions as to the propriety of what it did. It was sure that it knew what was good for posterity; and Acts of Parliament were passed as if they were to endure for ever. Nowadays legislation is marked by modesty. If we introduce a new principle into the statute-book, we are pretty sure to do so tentatively and temporarily. Finality, measures are out of fashion, and wherever a really novel measure is not avowedly temporary it is probably permissive. Looking at the history of our legislation, Bentham thought that he could trace in it two or three stages—one a time in which the law was the mere expression of the reigning king's will, operative only so long as he lived; a second period during which the duration of a law was unsettled and left to chance; and a third period during which people aspired to give eternal duration to statutes. We are far away from this last phase. Parliament is much less fond than it was of this species of dogmatism; and it is a very durable statute indeed which lasts for a whole reign. The Corrupt Practices Acts are striking examples of the brevity of the life of modern legislation. Since 1854, to go no further back, Parliament has been engaged upon this subject. Scarcely a year has passed without a new measure affecting it becoming law. But no measure aspiring to be final has been passed; and the chief statute now in force expires at the end of the present year. The same course has been pursued in regard to the Parliamentary election law introduced in 1880. When Parliament decided in 1868 to commit the trial of election petitions to a rota of judges, it did not boldly say that such and such was to be the case for all time. It timidly confined the operation of the Act to three years. Tentative, temporary measures have been in favour as to this subject; and one of the chief measures which at present regulate it expires on the 31st of December next year. For years the ballot was discussed in and out of Parliament. It was not adopted hastily or without long consideration. Never was a public question more copiously debated. Yet when Parliament at length assented to the ballot, its operation was limited to eight years. An equally conspicuous example of this modern characteristic is the Employers' Liability Act, passed in 1880. It became law after full discussion. The principle of the Bill was generally agreed to. Yet, unless renewed, the Act does not endure beyond the Session of 1887. The regulation of railway rates, to take another instance, has been dealt with in the same timid spirit. It is a question upon which much difference of opinion prevails, and Parliament is drawn opposite ways. On the one hand, it is naturally inclined to leave companies to manage their own affairs and to give preponderant weight to the arguments against interference. On the other hand, it cannot be deaf to the complaints of traders as to the exorbitance of the power of railways and the danger of permitting monopolists to order their charges as they think fit. Under the stress of these influences, it has hitherto refrained from making the powers of the Railway Commissioners perpetual. It began by giving them a short spell of power, the Act by which they were established being operative for only five years. These were innovating, experimental measures, for the temporary nature of which there were reasons. No ingenuity, however, can account for the temporary character of some of the Acts which are

included in the list just published. Why, for example, should a measure passed to remove restrictions on the negotiation of promissory notes and bills of exchange be originally in force only for three years? What was the reason for confining to a short period the operation of an Act passed to restrict prosecutions under the Sunday Act of Charles II? Why should habitual drunkards be the subject of Parliamentary solicitude until 1890 and then be left to shift for themselves? We fail to understand why steam locomotives should be deemed a matter of national importance from 1865 to 1881 and should then be lost sight of. There may be significance in the fact that the Acts to facilitate the improvement of landed property in Ireland are inoperative after 1881. But there cannot, one would say, be rhyme or reason in the termination of statutory powers as to salmon fishing in Scotland after 1881. What is not without deep significance is the circumstance that out of the fifty temporary Acts included in the list a dozen specially relate to Ireland. What a testimony to the variability, the perplexity, and real despondency of Parliament as to the ever-present problems of that country! What a melancholy train of reflections is called up by the recital of ephemeral statutes which Parliament did not even venture to hope could be durable! These short-lived Acts are the records of experiments ending too often in mortification and disgust; alternate essays of magnanimity, coaxing, and intimidation, the rays of prosperity and tranquillity always seeming to be about to pierce a wintry sky, but somehow failing to do so.

Perhaps this proneness to pass temporary laws, this confession of lack of prophetic power, is indicative of true wisdom. We belong to generations which have been often deceived by the specious promises of law-makers, which have often experienced the bitter turning sweet, and boastful measures intended to cure a multitude of ills proving shallow quackery, and we cannot be so sure as we would fain be that a crowd of four or five hundred gentlemen sitting at Westminster will judge infallibly of the requirements of future ages. Each of them is very human and erring in the conduct of his own affairs; and it is much if with their concentrated intelligence they see ahead five years, not to say fifty. If modern legislation be written on tablets of wax and not graven on brass, it is, perhaps, well, and betokens becoming modesty; for as time goes on most of us are more and more impressed with the sense that there are as many misses as hits in legislation, and that the work done at Westminster with so many formalities and flourishes of trumpets is very much guesswork and shooting at random. Who knows that avowedly temporary statutes will not yet become, as we learn the limitations of legislation, the most prevalent form of it? No one nowadays supposes that the statute-book contains what used to be called irrevocable laws; in fact, the term is never heard of, except when somebody applies it to a measure which he is very much afraid has little chance of lasting long. The term turns up at St Stephen's and elsewhere when some institution is about to be abolished. No one doubts that Parliament, in its omnipotence, can repeal any Act, even though the generation which passed it pronounced anathemas on the heads of those whose impious hands should touch it. Bentham long ago routed this fallacy out of the field. The very Acts which are worded as if they were to co-exist with the solar system, to endure while two and two make four and the planets arrange themselves according to Kepler's laws, may be repealed if the Opposition gain a few seats and come into power. If ever Parliament limits the operation of Acts to the exact period which it can see ahead, what will be their duration? And, to put another relevant question, if a list could be prepared of the Acts which are really temporary, though worded differently, would they be only fifty in number?—*Times*.

THE "noble" (6s. 8d.), introduced by Edward III., is the origin of the solicitor's well-known fee

## PARTICULARS AND CONDITIONS OF SALE.

*(Continued from page 335, ante.)**Power to Rescind.*

"5. If the purchaser shall insist on any objection or requisition as to the title, or abstract or evidence of title, particulars, conditions, conveyance, possession, receipt of rents, surrender or otherwise (not being a claim to compensation under condition below), which the vendor shall be unable or unwilling to remove or comply with, the vendor may, by notice in writing, notwithstanding any intermediate or pending negotiation, or litigation, in respect of such obligation or requisition, or any attempt made to comply therewith, rescind the contract, unless within ten days after delivery of such notice the purchaser shall, by notice in writing, withdraw such objection or requisition, and upon such rescission the purchaser shall be entitled to receive back his deposit money, but without any interest, costs of investigating title, or other compensation, or payment whatever, and the purchaser shall thereupon return the abstract and other papers furnished to him. For the purpose of any objection or requisition the abstract of title shall be deemed to be perfect if it supply the information suggesting the same though otherwise defective."

As to provision enabling vendor to rescind, see Dart, 157, and *Jackson and Oakshott* (41 L. T. Rep. N. S. 719; L. Rep. 14 Ch. Div. 851). It is important that it should cover objections as to conveyance, and should apply notwithstanding negotiations (Dart, 158, 161). As to last clause of this condition, see Dart, 127. The above condition will not apply where the vendor fails to show any title whatever: (*Bowman v. Hyland*, 39 L. T. Rep. N. S. 90; L. Rep. 8 Ch. Div. 598.) As to compelling purchaser to accept doubtful title, see Dart, 1103; *Palmer v. Locke* (45 L. T. Rep. N. S. 229; L. Rep. 18 Ch. Div. 381).

*Easements, &c.*

"6. The property is sold subject to all rights of way and water, and other easements (if any), land tax, tithes, tithe commutations, and other outgoings, and to all tenancies from year to year, or for any less period, whether mentioned in particulars of sale or not, and to all rights and claims under such tenancies, whether arising during the continuance or after the expiration thereof, and as to any land which in the particulars is stated to have been formerly waste or common, subject to the provisions of any inclosure Act, order, or award, affecting the same. If the property is subject to any chief or quit rent not mentioned in the particulars, compensation shall be allowed in accordance with condition below, but the sale shall not be annulled on account thereof."

Heriots and quit or chief rents should be stated, where they exist, in the particulars, see Dart, 116, 118. If the property is free from the common burdens of tithe, or land tax, it will be well to state it, to improve the sale. As to tithes, see Dart, 288, 295. As to above condition, see Dart, 158. As to conveyance subject to quit rents, see *Gale v. Squier* (36 L. T. Rep. N. S. 632; affirmed L. Rep. 5 Ch. Div. 625). As to compulsory redemption of quit rents, see O. A. s. 45. This last provision makes the existence of quit rents of much less importance, and affords a ready means of making property "freehold" in the popular sense, which had formerly been so only in accordance with the legal meaning of that term. Condition , to which reference is made above, will be printed in another article. As to "outgoings," see *Midgley v. Coppock* (40 L. T. Rep. N. S. 870; L. Rep. 4 Ex. Div. 309).

*Identity.*

"6. The purchaser shall admit the identity of the property purchased with that comprised in the muniments offered by the vendor as the title to such property upon the evidence afforded by a comparison of the descriptions in the particulars and muniments, and of a declaration to be made (if required) at the purchaser's

expense that the purchased property has been enjoyed according to the title for twenty years."

As to this condition, see Dart, 153; Sag. V. & P. 26; David. i. 558. It is taken from David i. 610. It has only a limited effect, and does not provide for entire absence of evidence or for repugnance. To meet these a special condition may be needful. For such special conditions, see David i. 678-688.

*Dower and Freebench.*

"7. The purchaser shall assume that every former owner whose wife or widow (if any) might be entitled to dower or freebench—and is not mentioned in the title—was unmarried when he ceased to be the owner."

As to dower, see Dart, 513-516. As to freebench, see Ib. 274, 576; David ii. 205; Scriven, 6th edit. 70; Tudor, Leading Cases Conveyancing, 77. Since the New Wills Act a general devise of copyholds, or of lands, will pass the copyholds freed from freebench (*Lacey v. Hill*, L. Rep. 19 Eq. 346—i.e., where surrender would formerly have barred such freebench, but not where the concurrence of the widow in the surrender was necessary for that purpose. This is mentioned here, because *Lacey v. Hill* is sometimes misunderstood.

*Stamps and Registration.*

"8. No objection shall be made on account of any document dated twenty years or upwards before the day fixed for completion, being unstamped, or insufficiently stamped. Any stamping or re-stamping required by the purchaser shall be done at his expense. Where the property to be sold comprises land in Middlesex or Yorkshire, any document which may not have been registered, or properly registered, in the register of the county or riding, and of which registration or re-registration may be required by the purchaser, and be practicable, shall be registered or re-registered at the vendor's expense if dated within twelve years before the day fixed for completion, and not being a will or codicil, but in every other case at the purchaser's expense, but the purchaser shall not make any other requisition or objection in respect of such non-registration or insufficient registration; nor shall the completion of the purchase be delayed with a view to such registration or re-registration."

As to registration in county registry, see Dart, 679. By sect. 8 of V. P. A., where a will has not been registered in due time, an assurance by a devise, or someone deriving title under him, will, if registered first, obtain priority over assurance from testator's heir-at-law. This often cures non-registration of wills. For recent case discussing the operation of the doctrine of constructive notice in connexion with registration, see *Kettlewell v. Watson* (46 L. T. Rep. N. S. 88).

*(To be continued.)*

## RECTIFYING MISTAKES IN WILLS.

The case of *Morrell v. Morrell* is of importance, as showing how mistakes occasionally creep into a will, and interesting as an example of the refined distinctions to be found in the law on the subject. The broad result of the case is, that a will by which on the face of it the testator disposed of forty shares in a company was admitted to probate with the word "farty" omitted wherever it occurred, with the effect of disposing of four hundred shares, being all which the testator had. The decision barely stated is likely to produce some surprise. A will which is not ambiguous in any sense, but which in the clearest words bequeaths one thing, has been made to bequeath another. The word "farty" is held to have found its way into the will by mistake; and although it has all the sanction of the signature of the testator and of the attestation of the witnesses, it has been disregarded. On the other hand, it was clear that the testator meant to deal with all his shares, amounting to 400, and his instructions to his solicitor were express on this head. Sympathy is all on the side of the decision; so that, if the omission of the word



"forty" can be reconciled with general legal principles, the lawyer will have a leaning to adopt that course.

John Morrell, the testator, was a Liverpool provision merchant, who had converted his business into a limited company, of which he was chairman, and in which his four nephews, who had before taken part in the business, were employed. He had 400 "B. shares," fully paid up, and, in instructing Mr. William Alfred Jevons, his solicitor, to prepare his will, he directed that all his B. shares should be given to his four nephews. A draft was prepared in which the words "all my B. shares" were used in dealing with the shares bequeathed to the nephews. The draft was sent to London to be settled by counsel. The counsel, it is stated, "inadvertently" inserted the word "forty" after "my," so that the bequest was of "all my forty shares." The counsel does not appear to have been called as a witness, and it is difficult to see how he could have put in the word "forty" by inadvertence. Why "forty," of all numbers in arithmetic? In all probability he knew from some source the number of the shares belonging to the testator, and confused forty with four hundred. It is remarkable that this matter was not more fully investigated, as, in Sir James Hannen's opinion, much turned upon it. When the will was engrossed for execution Mr. Jevons read it, and noticed the word "forty;" but it did not occur to him that the insertion was material. Whether he knew the number of the testator's shares does not appear; but he probably did. When the will was executed, it was not wholly read over to the testator. In summing up to the jury Sir James Hannen told them in effect that if words were left out, there was plainly no remedy, and if words were put in by fraud they could plainly be discarded; but the case in which one man employs another to make his will for him, and that person inserts a word by mistake, was intermediate. The main question left to the jury was whether the mistake consisted in putting in the "forty" or in omitting the "four hundred." The judge plainly intimating his opinion that in the latter case the accident could not be cured. The jury in the result found that the words "forty" repeated several times were inserted by mistake; that the mistake consisted in the insertion of the words; that the testator did not know of the insertion of the words; that the will was not read over to him; and, lastly, that he meant his nephews to have all the shares. This last finding was immaterial, as the question was one of form and not of intent, and the learned judge took time to consider his judgment, as it was supposed that a similar case was pending in the Privy Council. Eventually he ordered the will to be admitted to probate with the omission of the word "forty" wherever inserted. Sir James Hannen does not appear to have had any hesitation as to the right course to pursue. He said that the verdict of the jury had disposed of the whole matter, and referred to the case of *Fulton v. Andrew*, 44 Law J. Rep. P. & M. 17, in the House of Lords as an authority. This case cannot, however, be said to settle the law on the subject satisfactorily. It is true that the learned lords were of opinion that a certain residuary clause might be omitted from the probate; but their arguments are mainly addressed to some imperfections in the form of the proceedings. It is possible that Sir James Hannen thought it best not to attempt to generalise. The subject is one which it is difficult to put in comprehensive language, and which, when so put, is very apt to mislead. At the same time, when all the facts are ascertained by a verdict, it is not very difficult to say on which side of the line the case falls. In this instance the rejection of the words in question seems to have been rightly allowed.

The matter is apt to be a little confused by the fact that a solicitor and counsel were employed to make the will. For any mistake made by them in their art or mode of carrying his intention into legal effect, the testator would, doubtless, be held responsible himself; but in regard to the word "forty," they were only in the position of amanuenses? They had no authority to insert the word "forty" in the will at all. Suppose

the testator had dictated his will to his valet, and this worthy, believing he knew the number of shares, belonging to his master, wrote "all my forty shares," when the testator said, "all my shares," would the fact that the testator afterwards signed the document without reading it, bring about a result which was very far from the testator's intentions? Suppose the converse case, that the testator dictated "forty of my shares," and the amanuensis wrote, through carelessness, "my shares," the forty, although it can be abstracted from the will, cannot be inserted. Nothing but the attested signature of the testator can make a word part of a will, but proof that a word was inserted by mistake may take it out of a will. In other words, the Probate Court cannot make a man's will for him, but it can prevent anything that is not really part of a man's will being given to the world as his, if that part can be severed from the rest. It may be said that in reality it is making a will to abstract words from the signed document, and so it is in a certain sense. The distinction stated in its result is a fine one, but it arises from a conflict between the duty of the Court to allow only a man's true will to be proved and the requirements of the law that certain formalities shall be regarded. Even when these formalities have been duly performed, the Court will sometimes disregard that which has obtained their sanction, but it cannot in any case dispense with those formalities. It can clear a duly executed will of foreign matter which should not be there, but it cannot introduce matter which should be there when such matter has not had the sanction of due execution.—  
*Law Journal.*

#### RESTRICTIVE COVENANTS AS TO LAND.

In many leases it is not uncommon for landlords to insert a covenant on the part of the lessee not to use the premises for the sale by retail of intoxicating liquors. It is not difficult to understand the motive of such an agreement. Few people care to live next door to a public-house where the spectacle of pewter pots carried to and fro with a head on them, and the Bacchanalian shouts of customers towards midnight vex the ear and eyes. And if the landlord has other property adjoining, this consideration becomes much more important. Even if the premises were to be sold in the market, the existence of such a covenant in a going lease must operate favourably to the vendor, for it keeps up the respectability of the neighbourhood. Hence landlords act prudently in keeping a tenant tied down by such a restriction, which, however, the landlord can waive, if he think fit. One remarkable instance of this kind of covenant recently occurred in a Scotch town, most of which belonged to the Earl of Zetland. His predecessors had granted long leases, or what are called fens in Scotland, which are, indeed, nearer to a fee-simple than a lease, and in all the deeds a covenant of the above kind had been inserted. The tenant or purchaser had sold and re-sold the premises, but the same covenant was repeated at each reconveyance. There were 15 public-houses, and most of the original conveyances were about 70 years old. The landlord had never hitherto enforced the covenant until quite recently, when he began to consider that half of the public-houses were adequate for so small a town. He then sought the aid of the court to prohibit the other half of this number of tenants from keeping a public-house. The tenants contended that the covenant was void, or, at least, had been waived or abandoned. And the Scotch court went the length of holding that the defence was good. Two of the judges held that the covenant was void in law as inconsistent with freehold property, and tended to create a monopoly, and other two judges held that the landlord had, at all events, no sufficient legal interest to support his action. The Earl appealed to the House of Lords, and that High Court reversed the judgment of the Court below. The law lords said it was a very proper and competent covenant to insert in such conveyances; that it was not invalid; and though, of course, the landlord might waive it, still it lay on

the tenants to prove that he had done so. And this plea of waiver was the only plea in defence that the tenants could competently set up.

This decision, or rather the difficulty involved, turned on the peculiarity of the Scotch conveyancing, as the kind of estate created was something between a lease and a conveyance of the freehold. But the subject received much consideration, and the doctrines of the English courts, both as regards leasehold and freehold property when like covenants are inserted, were inquired into and treated as guides. In such cases it was urged that there was a distinction to be made between leases and freeholds, and that though a tenant might easily, and often is found to be, subjected to such a restriction, yet it was not quite so easy to enforce it in case of freehold property, the purchaser of which might get rid of the restriction by selling it to another who might not be affected by the same burden.

Such cases, however, occasionally arise even as to sale of freehold property by virtue of the covenant being made one which will run with the land. And on this subject some niceties are to be observed. Only a year ago a case of *Thornévell v. Johnson*, 50 L. J. Ch. 861, arose of a property being sold in lots, and the purchasers being put under a covenant of this description. The British Land Company, Limited, had a building estate at East Dulwich, and cut up the estate into lots for sale by auction according to a plan and conditions setting forth various stipulations. The purchaser of one of the lots was Thomas Firninger, and one of the stipulations was that the trade of an innkeeper, victualer, or retailer of wine, spirits, or beer, was not to be carried on upon any lot. It was also stipulated that the conveyance of each lot shall contain covenants by the vendors and purchaser to observe the above stipulations, with a proviso limiting the liability of each covenantor to the period of ownership. The covenant by the purchaser was to be with the vendors and the other owners for the time being of the land to which these stipulations relate and also with some neighbouring owners. Afterwards an indenture was executed, and thereby Thomas Firninger covenanted for himself, his heirs, executors, and administrators, and assigns, with the British Land Company, and the owners of any other land to which the benefit of the stipulations was attached, and their respective heirs and assigns, for the proper observance of the same. Afterwards Firninger granted a long building lease of this lot to Dean, who built a house. It was not proved whether Dean knew of the above covenants. Dean then granted a lease for three years of the house to the defendant Johnson. The lease said nothing about the covenant or any similar restrictions, and it was not known whether the defendant knew anything about the restrictions. At a subsequent sale another lot was purchased from the British Land Company exactly opposite to the defendant's house by the plaintiff, who entered into the same covenant as Firninger had done.

Such being the way in which the plaintiff and defendant came to occupy houses opposite to each other it happened that the defendant opened a shop and obtained a license to sell beer and wine to be consumed off the premises. The plaintiff complained of this as a breach of covenant and a nuisance to his own house, and he brought an action for an injunction to restrain the selling of beer and wine. The defendant set up the defence that the original covenant entered into by his landlord's predecessor did not bind him, and that he had no notice of the same. To this the answer was that the covenant ran with the land and bound all who became the possessor of the premises. Vice-Chancellor Bacon held that it was part of the original contract for the sale of the land that the land should be always subject to certain restrictions, one of which was that there was to be no retailing of wine or beer on the premises. The covenants were properly framed with this object, and the restriction was therefore inherent to the possession of the property into whose hands soever it might ultimately come, and notice or no notice made no difference. In short, this was the case of a covenant

running with the land. The effect of such covenant was to bind subsequent owners. If it were not so, any purchaser had only to make over the property to some man of straw who might set up a soap factory or any other noisome trade, and say that he had no notice of the restrictions. So the defendant was restrained from carrying on his beer-house.

The doctrine of Covenants running with the land has several times of late years come into question, and the courts have not been quite consistent in the doctrine, as will be seen from one or two cases. In *Morland v. Cook*, L. R. 6 Eq. 282, the following state of things occurred. In 1794 certain property had been divided under a deed of partition between different owners, and a covenant was entered into by the owners for themselves, their heirs, and executors, that the cost of maintaining a sea wall should be borne and paid by them, their heirs, and assigns, out of the lands so partitioned according to certain proportions. Part of this property was conveyed in 1829 to Sir Edward Knatchbull, and by him in 1862 portions were again conveyed to the defendants, who knew nothing about the covenants, and their conveyances said nothing about them. A suit was instituted by some of the owners against the defendants, to compel the latter to contribute their share of the expense of repairing the sea wall, and the defence set up was that the covenant did not bind the defendants. The Master of the Rolls held the defendants to be liable. He said that the cases of covenants running with the land usually arose as between landlord and tenant, or vendor and purchaser, and that this was a peculiar case. Every one of the five persons filled the double character of vendor and purchaser, because the original deed was one of partition. Here the defendants had sufficient notice to set them on inquiry, and where a man acquires property with notice that the person under whom he claims has entered into a mutual covenant with the adjoining owners that the property shall not be used in a particular manner, or that it shall contribute to the support of a common protection, he cannot afterwards dispute his liability to perform the condition imposed by the previous owner. And the learned judge said there was no distinction between abstaining from using his property and contributing his quota to a common benefit.

Another case arose of *Cook v. Chilcott*, 8 Ch. Div. 694, where in 1849 Farmer purchased from Hinton certain premises of freehold land on which was a well, and covenanted for himself and his assigns to supply water to all houses erected or to be erected on Hinton's adjacent land, which had been laid out for building purposes. And Hinton covenanted to insert in the conveyances to purchasers covenants by them to take water from Farmer at a fixed price. Hinton subsequently sold to the plaintiff the adjoining land, and Farmer sold his land to the defendant, both parties knowing about the covenants, but the defendant refused to supply the water. An action being brought the Vice-Chancellor *Malins* held that the covenant ran with the land: at all events the defendant bought the premises with notice of the covenant, and in either view the defendant was liable.

The latest case on this interesting subject is that of *Haywood v. Brunswick Building Society*, ante, p. 356. A plot of land was conveyed, subject to a rentcharge, the grantee covenanting for himself, his heirs and executors with the grantor, his heirs and assigns, that he the grantee will erect and at all times keep in good and tenantable repair on the said plot of land such good and substantial buildings as shall be of the annual letting value of double the amount of the rentcharge. The plaintiff was the assignee of the grantor, and he sued the defendants, who were the assignees of the grantee, claiming damages for breach of the covenant to repair. Buildings had been erected but were not kept in repair, and the question raised was whether this was a covenant which ran with the land, and which could be enforced. Stephen, J., held that the covenant ran with the land, and that the defendants were liable. But the Court of Appeal reversed the judgment, one of

the Lords Justices dissenting. The court drew a distinction between covenants of a restrictive kind and covenants which bound the covenantee to expend money. All the cases in which an assignee took with notice of a restrictive covenant affecting the land, and was bound by his covenant, were covenants which could be enforced without any outlay of money. And the court discredited the above case of *Cook v Whitcott*, and said the judge was mistaken in holding that that covenant ran with the land.

This last case opens up difficulties and niceties in applying the doctrine relating to covenants running with the land, and that law must be applied with caution, at least when outlay is undertaken by the original covenantee.—*Justice of the Peace.*

**A REASONABLE DOUBT.**

Probably no principle of the law is more universally understood by the class of persons who serve on our juries than this: That the prisoner on trial for a crime is entitled to an acquittal if the jury have a reasonable doubt as to his guilt. What is a reasonable doubt is very difficult of a clear definition. It has perplexed jurymen; and courts, in their attempts to explain it, have found it a stumbling block in their paths. In many cases, attempts from the bench to elucidate the term and give to it a definition, have been productive of more evil than good; and have led the jury to an acquittal when there should have been a conviction. Often the juries have mistaken the meaning of a reasonable doubt, believing it to be the least imaginary doubt which might enter their minds, and have acquitted the defendant when the evidence was strong against him. There is a distinction to be made between civil and criminal cases in this respect; in the one, the jury weigh the evidence on both sides, and decide accordingly; but, in criminal cases, the defendant's guilt must be proved beyond a rational doubt, or the jury cannot convict. It is chiefly to criminal cases that we shall confine ourselves in treating the subject of a reasonable doubt, as in these it more frequently arises, and has been more frequently adjudicated upon by the superior courts.

Some definitions which the courts have laid down as to what should constitute a reasonable doubt, might not be out of place. Chief Justice Shaw has defined it to mean, "Not a mere possible doubt, because everything relating to human affairs, and depending upon moral evidence, is open to some possible or imaginary doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition, they cannot say they feel an abiding conviction, to a moral certainty, of the charge."<sup>1</sup>

This reasonable doubt should be actual and substantial, and not based upon a mere possibility or imagination. It must be such a doubt that the jury can give a reason for.<sup>2</sup>

If the guilt of the prisoner be established by a chain of circumstances, and the jury have a reasonable doubt as to any one of the links in the chain; it ought not to have any influence with them in making up their verdict.<sup>3</sup> It is such a doubt as would cause a reasonable and prudent man to pause and hesitate before acting in the more important affairs in life, or that would cause him to act with the same degree of caution if acting in his own more consequential affairs.<sup>4</sup>

This doctrine is at variance somewhat with the weight of authority, the courts holding that a charge that if the evidence is such that a man of prudence

would act upon it in his own affairs of the greatest importance, is erroneous; that it requires nothing more than a mere preponderance of evidence to convict the prisoner.<sup>5</sup> California courts define a "reasonable doubt of the guilt of a person" to be "that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition, that they say they cannot feel an abiding conviction, to a moral certainty, of the truth of the charge."<sup>6</sup>

In a Mississippi case it is said; "That which amounts to a mere possibility only, or to conjecture or supposition, is not what is meant by a reasonable doubt. The doubt which should properly induce a jury to withhold a verdict, should be such a doubt as would reasonably arise from the evidence before them."<sup>7</sup>

The Supreme Court of Alabama has condemned the practice of giving definitions of a reasonable doubt, saying: "We think all such efforts, to say the best for them, are unsafe, indiscreet, and oftener than otherwise, distract and confuse juries, and may lead them to acquit where they ought to convict."<sup>8</sup> It is not necessary that the whole jury should have a doubt as to the prisoner's guilt; if a reasonable doubt exists in the mind of any one juror as to the defendant's guilt, there should be no conviction.<sup>9</sup> The definition given by Chief Justice Shaw has been almost universally accepted as being less liable to confuse the jury than some of the others; but we cannot but agree with the Alabama Court, who condemn the practice of explaining to the jury the meaning of a reasonable doubt. The simple statement to a jury of average intelligence, that the doubt must arise in the case before them, or that nothing occurring outside the proof in the case should influence their verdict, would generally be sufficient to enable them to understand the meaning of a reasonable doubt.

It is more frequently a question to be left solely to the jury, as to what must constitute a reasonable doubt, and the circumstances of each particular case must control their verdict. That which might be sufficient to raise a reasonable doubt in one case, might in another, where connected with different circumstances, not be of ample consequence to cause the shadow of a doubt to cross the minds of the jurors.

Each individual juror must be governed by his own sense of morality and sound judgment, and his verdict should be accordingly. A biased juror in favour of the prisoner would always have a reasonable doubt, but it would exist the same were the court to define a reasonable doubt, and endeavour to elucidate its meaning.

It is, then, for the jury to determine, without aid from the court, whether such a doubt exists as will warrant an acquittal of the prisoner, and no tribunal can ever know whether they acted wisely or unwisely.—

*Central Law Journal.*

**A FRENCH ASSIZE.**

Prisoners sentenced to death stand in quite a different position to that of English convicts in the same case. They receive no intimation of the date when their execution will take place. The Court of Cassation to which they have appealed may perhaps not call up their case for a couple of months; and after that some more days will be occupied in forwarding a *recours en grace*, or petition for mercy, to the President of the Republic. M.

(1) *Commonwealth v. Webster*, 5 Cush. 320; *Commonwealth v. Goodwin*, 14 Gray, 66.

(2) *Commonwealth v. Harmon*, 4 Barr. 270; *Pate v. People*, 3 Gillman, 84; *United States v. Foulke*, 5 McLean (Cir. Ct.), 349; *Giles v. State*, 5 Ga. 283; *State v. Schoenwald*, 31 Mo. 147; *Winter v. State*, 20 Ala. 28; 3 Greenl. Ev., sec. 29; *Earle v. People*, 73 Ill. 329.

(3) *Sumner v. State*, 5 Blackf. 679; *Houser v. State*, 58 Ga. 78; *Jarrell v. State*, 58 Ind. 293; *State v. Hayden*, 45 Iowa, 11; *State v. Felker*, 32 Iowa, 53; *Smith v. People*, 74 Ill. 144.

(4) *May v. People*, 60 Ill. 119; *Miller v. People*, 39 Ill. 457.

(5) *People v. Dransan*, 47 Cal. 96; *People v. Ah Ling*, 51 Cal. 378; *State v. Oscar*, 7 Jones (N. C.), 305; *Jane v. Commonwealth*, 2 Met. (Ky.) 30; *Anderson v. State*, 41 Wis. 430; *State v. Bour* (Nev.), 3 Law & Eq. Reporter, 423, overruling *State v. Witham*, 5 Nev. 409; *Bradley v. State*, 31 Ind. 492; *State v. Bruce*, 43 Ia. 580; *State v. Northrup*, 43 Ib. 683.

(6) *People v. Ash*, 44 Cal. 282. See, also, *People v. Finney*, 38 Mich. 482; *Webster's Case*, 5 Cush, 320; *Commonwealth v. Carey*, 3 Brews. (Pa.) 404.

(7) *Bowler v. State*, 41 Miss. 571. See *Wise v. State*, 2 Kan. 419; *State v. Ford*, 21 Wis. 610; *State v. Shettleworth*, 18 Minn. 309; *State v. Fligate*, 27 Mo. 335. But see *Dismore v. State*, 67 Ind. 303.

(8) *McAlpine v. State*, 47 Ala. 78; *Therrell v. State*, 40 Ala. 715.

(9) *State v. Rodaback*, 19 Ia. 154; *State v. Stewart*, 2 Hawley's Crim. Rep. 603.

Grévy is opposed to capital punishment; but not so determinedly opposed to it as never to have signed a death warrant. He has allowed three men to be guillotined out of about sixty who have been sentenced to death since his accession, and this proportion, small as it is, is sufficient to prevent murderers from feeling absolutely reassured as to the fate awaiting them. They hear nothing of what is being done for or against them outside the prison walls. The *avocats* who defended them draw up the *recours en grâce*, but the convicts are not supposed to know what chances there are of these petitions being entertained or rejected. If a convict is to be executed, the first certain intimation which he receives of the painful fact comes about a quarter of an hour before his head drops into the sawdust basket of the guillotine. Some morning—it may be two or three months after his trial—he is aroused at break of day by the governor of the prison entering his cell and saying kindly:—"A—, your appeal has been rejected, and your petition dismissed: the moment has arrived . . ." The unhappy man, rolling out of bed and staggering to his feet, sees the gaol chaplain, who has walked in behind the governor, and two or three warders who assist him hastily to dress. From this moment everything is done with the utmost celerity. The prisoner has wine pressed upon him; three minutes are allowed him to make his shrift, then he is led out and plighted. Next moment he is half conducted, half pushed, into the open air, where the guillotine stands surrounded by dense squares of mounted troops and police, behind whom are massed large crowds straining their eyes, with not much effect, to see what is about to take place. The modern guillotine is not erected on a platform, but is placed on the ground. The convict makes half a dozen steps; the executioner's assistants seize him, push him roughly against an upright board, which falls forward, pivoting under his weight, and brings him in a horizontal position with his neck between the grooves, above which the knife is suspended. The executioner touches a spring; the knife flashes as it falls; and all is over. Watch in hand it has been reckoned that when all the preliminaries of execution are smartly conducted, no more than fourteen minutes ought to elapse from the time when the convict is startled out of sleep to the instant when his head and body part company. From the Christian point of view it is certainly deplorable that a convict having a sure knowledge of his impending death should never be able seriously to prepare his mind for it. But the French act upon the principle of making things as easy as possible for the doomed man. Even the prison chaplain thinks it his duty to hold out hopes of a commutation, though he may have no good reason for feeling that the sentence will not be carried out. The convict then passes his last weeks of existence in a fool's paradise. He is encouraged to smoke, he is allowed enough wine to make him, if not drunk, at least merry—that is a quart a day—and the warders in his cell play cards with him as much as he likes—it being their chief care to keep the man from moping and giving them trouble.—*Cornhill Magazine.*

#### THE EUROPEAN CONCERT.

The doctrine of a balance of power in Europe was exploded many years since. The European concert has taken its place. Both may in some measure agree in origin and objects; they operate by a different procedure and amid different circumstances. The balance of power was positive, and worked by positive means. Nations combined actively to put down the attempt of another to overstep its boundaries. Concerts are of various kinds. The European concert is of a very peculiar sort indeed. It resembles the effect produced by the intrusion of an explorer into a cavern tenanted by bats and other night birds, or by the approach of a boat within gunshot of a rocky haunt of sea-fowl. There may have been silence solemn and profound the instant before. In a moment the air rings and vibrates with hundreds and thousands of screams. At the European concert the performers are fixed at their

posts. They are mute, or if they touch their instruments the result is as faint as a whisper. But they are always ready to burst into a tumult of sound. They are waiting only for some one to stir, though it be but a member of their own company roused by a disturbing dream.—*Times.*

#### MALICIOUS PROSECUTION.

When a person has been charged with a criminal offence, and been tried and acquitted, the first thing that the defendant thinks of, or is persuaded to think of, is whether he cannot turn his misfortune to some advantage, and turn the tables on the prosecutor. It is too easily assumed by the acquitted defendant that because he has been acquitted, the other party must have been altogether in the wrong, and may be brought in turn to justice. But at this stage he encounters several difficulties. He finds out that it is not enough that he has been acquitted; but that he must show something very difficult to show in most cases, namely, that the prosecutor was animated by pure spite or malice, and that he had no reasonable and probable cause for the accusation. Indeed, sometimes he is met by a further difficulty, namely, that he may have no opponent at all to attack, for there may be no prosecutor in the common acceptation of the term, but the law may have been set in motion by some official who can scarcely be got at owing to the protection surrounding him.

This last point has given rise to many nice questions. It is often the case that the leading witness, on whose evidence the accusation rested, was nothing more than a witness, and if so he is invulnerable. In a case of *Darby v. Dearsley*, 43 L. T. N. S. 603, where a master had given a servant into custody for stealing some clip-pers from his stable, the defence was, that the defendant was not the prosecutor. The Court said that there was not in the books any express authority as to what a prosecutor was. He might be instrumental in putting the law in force. But all that this defendant had done, was to state what he knew to the constable, and then what followed as to the arrest and charge was the act of the constable. As Lindley, J., put it, "It has been said that the defendant so acted that he intended the plaintiff to be arrested by the constable, or as it was said, to use the common phrase, he set the stone rolling. Now what stone has he set rolling? It is simply a stone of suspicion. There was no direction to the constable to arrest and to prosecute. He no doubt suspected the plaintiff and described the things to the constable, but there is not the slightest evidence that the defendant either prosecuted or directed anyone else to prosecute."

One noted class of cases where this kind of difficulty is found is where a prosecution for perjury is ordered by a judge. In *Fitzjohn v. Mackinder*, 9 C. B. N. S. 505, an important question arose as to whether the defendant was liable to such an action when the county court judge directed the plaintiff to be prosecuted, and made an order to that effect pursuant to the statute 14 & 15 Vict., c. 100, s. 19. The case went to the Exchequer Chamber, and the judges were divided. Three, being the majority, held that though the judge ordered the prosecution, yet this was done as a consequence of the false swearing of the defendant, and that the defendant had by his perjury procured the order of the Court. On the other hand, the two judges in the minority held that the defendant was a mere witness and nothing more, and was not responsible for the judge making the order, and which order was according to the jury's mistake of the judge's own, and not of the defendant's.

As, however, there are many cases of malicious prosecution where the difficulty as to who is the prosecutor is not raised, it is next to be considered what the plaintiff is obliged to make out in order to succeed in this action. A leading case was decided in 1870 of *Lister v. Perryman*, L. R. 4 H. L. C. 585, and being by the House of Lords is of the highest authority. It was an action for false imprisonment and not for malicious prosecu-

tion, the burden of proof being different in the two cases, but the substantial defence is much the same. Perryman was a stranger, and had been charged with stealing a rifle of the defendant, Lister. One Hinton, the coachman of Lister, told his master that another man, Robinson, had seen this rifle in Perryman's barn, that Robinson and Hinton had gone to Perryman and taxed the latter with having the rifle, that Perryman denied it, and produced a rifle which was not that which the man Robinson had seen in Lister's barn. Perryman was given into custody but discharged by the magistrate, and then an action was brought for false imprisonment. Lord Chelmsford said the question was not whether the master might have obtained more satisfactory grounds of belief by applying to Robinson for direct information, but whether the facts brought to his knowledge furnished reasonable and probable cause for his believing that the plaintiff had dishonestly possessed himself of his rifle, and justified him in acting in that belief without further inquiry. The master had information both from his servant Hinton and from Robinson that the missing gun had been seen in the possession of Perryman, though Perryman denied it and said it was another gun. The question thus came to be, as Lord Chelmsford said, whether in an action like that for a malicious prosecution where a person is proved to have acted upon the information of a trustworthy informant, he can be said to have acted without reasonable and probable cause because he has not made inquiry of someone else who could have repeated and confirmed what was told him. And Lord Westbury said it was not law that you can never proceed on hearsay evidence when you have a good opportunity of testing the accuracy of the hearsay evidence by examining the person who is represented to have said such-and-such things. In that case the result was that a new trial was directed, and it was laid down that a prosecutor may act honestly and with reasonable and probable cause, though he proceeded solely on hearsay evidence; and, indeed, it is often impossible to do otherwise in a great majority of cases, than proceed on the faith of such hearsay statements.

An important contribution to the learning of this subject has recently been made in the case of *Hicks v. Faulkner*, ante, p. 420. The defendant was a landlord of a house in a London suburb, and the father of the plaintiff was tenant of the house. In February, 1879, the defendant, as landlord, sued for rent in the county court. The defence was, that before the rent became due the plaintiff surrendered possession, and the key of the house was delivered to and accepted by the defendant. To support this defence the plaintiff was called as witness for his father, and swore that he, at the defendant's request, gave up the key to the defendant. This was a material fact, if proved. After the determination of the action the defendant caused the plaintiff to be indicted for perjury, and the plaintiff was acquitted, and then commenced this action for malicious prosecution. At the trial the defendant denied the plaintiff's statement about giving up the key, and in confirmation of his testimony referred to his diary and other corroborating circumstances. Huddleston, B., the judge, after stating the more simple suppositions as to the law of the case, told the jury that it might be they would come to the conclusion that the plaintiff did, in fact, deliver up the key as he swore, and that the defendant had a very treacherous memory and had forgotten all about it, and went on with the prosecution under the impression that he never had the key. Nevertheless, if that was an honest impression, the upshot of a fallacious memory, and acting upon it he honestly believed the plaintiff had sworn falsely and corruptly, no jury would be justified in saying that the defendant maliciously and without reasonable or probable cause prosecuted the plaintiff, because the best probable and reasonable cause would be that he honestly believed it. The jury returned a verdict for the defendant.

A new trial was afterwards moved for on the ground of misdirection. The main contention of the plaintiff's counsel was, that where a defendant relies on his memory

for the facts which go to make up probable cause he must prove to the satisfaction of the jury that his memory of the facts was accurate, and he must stand or fall by its accuracy. He must take the risk of his forgetfulness, and it was no excuse to say that his memory was treacherous. The court, consisting of two judges, Huddleston, B., and Hawkins, J., examined this position carefully as to the treacherous memory, and a most interesting review of that faculty was given so as to determine whether a man might honestly be led astray by it. On this subject Hawkins, J., in the judgment thus put the matter. The question of reasonable and probable cause depends in all cases not upon the actual existence but upon the reasonable *bond fide* belief in the existence of such a state of things as would amount to a justification of the course pursued in making the accusation complained of. It cannot of course be laid down as an abstract proposition that an accuser is justified in acting either upon the credited statement of an informant or upon his own memory. The question must always arise according to circumstances whether it was reasonable to trust either the one or the other. A person who acts upon the information of another trusts the veracity, the memory, and accuracy of that other, in each of which he may be completely deceived; his informant's veracity may be questionable; his memory fallacious; and his accuracy unreliable; yet it does not follow that it was unreasonable to believe in his information if he never had cause to doubt him. In like manner a man may be deceived by his own memory, yet it does not follow that it was unreasonable to trust it if he never before knew it to be defective. Why, if he may rely upon the memory of another, may he not rely upon his own? The reasonableness or otherwise of their reticence is for the jury to determine.

The upshot of the learned judgment was that a man may be very honest and reasonable and yet have a slippery memory, and he ought not to be made responsible for the slip. This is a conclusion which most people have arrived at for themselves. The new trial was accordingly refused; and on appeal the judges held that they could not see anything wrong in what had been laid down on this matter by the judge at the trial, and by the Queen's Bench Division on the motion for a new trial.

The point is one of considerable value in a practical point of view. The world abounds in slippery memories, and it is to be feared that this decision will give too great encouragement to the slippery tribe of witnesses. Nevertheless there will be always a jury to check any abuse of this tendency, and with this qualification we cannot help feeling some relief that the *non mi ricordo* defence will sometimes win in these speculative actions.

—Justice of the Peace.

#### THE LAW OF COPYRIGHT.

The old principle that there can be no copyright in an advertisement was intelligible so long as an advertisement usually meant no more than the name and address and trade of the advertiser. There can be no reason why literary and artistic skill should be without protection against piracy because they are used in producing an advertisement instead of a work intended for sale. This doctrine was applied to original letterpress in a bookseller's catalogue by Vice-Chancellor Wood, in the case of *Hotten v. Arthur* (9 L. T. Rep. N. S. 199; 1 H. & M. 603); but, for some reason not very clearly appearing in his judgment, the late Master of the Rolls held, in the case of *Cobbett v. Woodward* (37 L. T. Rep. N. S. 260; L. Rep. 14 Eq. 407) that it did not apply to the illustrations of furniture in a dealer's catalogue. Vice-Chancellor Hall refused to follow this case in *Grace v. Newman* (L. Rep. 19 Eq. 628), where he held that a book of pictures of sepulchral monuments collected and made for a cemetery mason to be shown to customers ordering a monument, was the proper subject of copyright. The Court of Appeal have now in the case of *Maple v. The Junior Army and Navy Stores* (noted in our last number) adopted the decision of Vice-Chancellor Hall, and disapproved that of Lord Romilly, holding that the pictures

in an illustrated catalogue of furniture are the subject of copyright though there happen to be no letterpress in the catalogue for which copyright can be claimed. The elaboration with which these catalogues are frequently got up must make them a valuable property, and the decision of the Court of Appeal is important to tradesmen as definitely bringing the law into accordance with the plain justice of the case.—*Law Times*.

### NOTES OF ENGLISH CASES.

[From the *Law Journal*.]

#### SUPREME COURT OF JUDICATURE.

COURT OF APPEAL.

(Before JESSEL, M.R., LINDLEY and BOWEN, L.JJ.)

QUILTER v. MAPLESON.

June 20.—*Landlord and Tenant—Breach of covenant to insure relief against forfeiture—The Conveyancing and Law of Property Act, 1881, s. 14—Order LVIII., Rules 2; 5.*

Appeal from the decision of Coleridge, C.J., in an action by a landlord against a tenant to recover possession of the demised premises, on the ground of breach of the tenant's covenant to keep the premises insured at all times from loss by fire for the sum of £14,000.

The policies had lapsed on March 25, 1880; but new policies for the full amount were effected on May 14, 1880.

On July 4, 1881, Coleridge, C.J., gave judgment for the plaintiff, the landlord, but stayed execution in order to allow the defendant to appeal.

*The Solicitor-General (Sir J. Herschell), W. G. Harrison, Q.C., and Harmanworth for the appellant.*

*Webster, Q.C., and H. D. Green for the respondent.*

The questions raised were—(1) whether section 14 of the Conveyancing and Law of Property Act, 1881, applied to a forfeiture in respect of which an action had been brought and judgment given before the passing of the Act; and (2) whether the Court of Appeal could give any other judgment than that which the Court below ought to have given at the time when it did give judgment.

Their Lordships, on the first point, held that section 14 was retrospective both as regards the rights of parties and as to procedure, and applied to any case in which the lessor had not recovered actual possession of the property before the Act passed. It therefore, included the present case. On the second point, their lordships were of opinion that, as every appeal was now a rehearing, they had jurisdiction under Order LVIII., Rules 2 and 5, to give any judgment and make any order which ought to have been made. Relief was accordingly granted against the forfeiture on the terms of the defendant's effecting an insurance in accordance with the covenant, and paying the plaintiff the amount he had paid for premiums, with interest, and the costs of the action and appeal.

#### COURT OF BANKRUPTCY.

(Before BACON, C.J.)

*Re ROPER. Ex parte BOOTH.*

June 26.—*Bill of Sale—Registration—Setting forth of consideration—Affidavit of execution and attestation—Bills of Sale Act, 1878, ss. 8, 10, subs. 2.*

Appeal from the County Court at Liverpool.

In October 1879, Roper, the debtor, contracted to purchase from Booth a brewery for £2,250. On completion of the purchase £250 was paid in cash, and a mortgage over the brewery and stock-in-trade and after acquired property was given by Roper for £2,000, the balance of the purchase-money. The mortgage, which was dated October 22, 1879, contained a recital that the mortgagees "had agreed to lend" the mortgagor £2,000. This mortgage was duly executed as a bill of sale, the attestation clause stating that, before the execution, the effect had been explained to the grantor by C. E. Lake, the attesting solicitor. The affidavit

filed on registration was made by C. E. Lake, who deposed to the correctness of the copy-mortgage, and of every attestation and execution thereof, and that it was given on the day it bore date; that he was present and saw Roper sign and execute the deed; and that at the time of his execution he resided at—; and that the name "C. E. Lake, set and subscribed as attesting the due execution" of the said mortgage, was in the deponent's handwriting; and that he resided at Stockport, and was a solicitor of the Supreme Court.

The trustee contended that the bill of sale was void as against him—(1) because the consideration was not truly stated; (2) because there was no verification on oath of the fact that the effect of the bill of sale had been explained to the grantor previously to its execution. The County Court judge held these objections fatal. The bill of sale holder appealed.

*Winslow, Q.C., and Taylor for the appellant.*

*Horton Smith, Q.C., and Walton for the trustee.*

The CHIEF JUDGE was of opinion that the consideration was truly stated; that it was not necessary that the affidavit filed on registration should contain a specific statement that the bill of sale had been previously explained to the grantor; that in the present case the attestation was regular, the explanation certified in due form, and that the affidavit sufficiently complied with the requirements of the Bills of Sale Act, 1878, s. 10, subs. 2.

*Appeal allowed, with costs.*

*Re HEWER. Ex parte KAHEN.*

July 10.—*Bill of sale—Registration—"True copy"—Clerical error—Description of residence of maker—Bills of Sale Act, 1878, ss. 8, 10 (2), and 20.*

Appeal from the County Court at Exeter.

Hewer was an innkeeper. On April 8, 1882, Hewer executed a bill of sale of his furniture, stock-in-trade, and effects in favour of Kahen for £100. The bill of sale provided for the re-payment of the £100, with a bonus of £50, "by twelve consecutive monthly instalments," each payment "to be made on the 8rd day of each month, and the first instalment to become due and payable and be made on the 8rd day of May."

On April 5 Hewer committed an act of bankruptcy by departing from his house and going abroad.

On April 6 a petition in bankruptcy was presented, and a receiver appointed, who forthwith took possession of the bankrupt's estate. On the same day the affidavit of the due execution of the bill of sale was made by the attesting solicitor, in which the debtor's residence was given as of "North Devon Inn, 58 Paul-street."

On April 8 the bill of sale was registered. The copy bill of sale filed on registration was an exact copy, except that in the proviso for repayment the words "8rd day of each month" was omitted.

The County Court judge on June 15 decided that, the act of bankruptcy having been committed before registration of the bill of sale, the chattels comprised therein were not protected by the Bills of Sale Act, 1878, s. 20.

The bill of sale holder appealed.

*Winslow, Q.C., and F. C. Willis for the appellant.*

*Cress*, for the trustee, besides supporting the judgment of the Court below, also argued that the bill of sale was void on the grounds (1) that the copy bill of sale filed on registration was not "a true copy;" and (2), on the authority of *Button v. O'Neill*, 48 Law J. Rep. O. P. 868, L. R. 4 O. P. Div. 854, that the description of the residence of the maker of the bill of sale, at the time of swearing the affidavit by the attesting solicitor when the debtor was abroad, had not been given.

The CHIEF JUDGE held that registration any time within the period prescribed by section 8 of the Bills of Sale Act, 1878, gave the bill of sale holder the benefit of section 20; that the omission in the copy bill of sale was a mere clerical error, which could mislead nobody, and did not make the copy other than "a true copy" within section 10, subs. 2; and, distinguishing *Button v. O'Neill*, that the description of the residence at the time of the execution was sufficient.

**CRUELTY TO ANIMALS.**

The Act for preventing cruelty to animals, which was passed in 1849, applies to domestic animals. It is proposed, in a bill introduced by Mr. Anderson, M.P., to extend the statute to all "vertebrate animals, whether of domestic or wild nature, kept in confinement or captivity." The bill, moreover, proposes to impose penalties on those who keep or use places for the purpose of shooting at birds liberated from traps, &c.

**TEXT-BOOK ADDENDA.**

[From the *Law Journal*.]

*Lely and Foulkes on the Judicature Acts (3rd Edition), 226.*  
*Wilson on the Judicature Acts (2nd Edition), 153.*

A judgment against a firm is binding upon all the partners who were members of the firm at the time when the liability sued upon was incurred; but such a judgment cannot be enforced in bankruptcy by a debtors' summons against a partner who has retired from the firm before action commenced, and who has not been personally served with the writ (*In re Young, ex parte Young*, 51 Law J. Rep. Chanc. 141.)—C. A.

*Croote on Mortgage (4th Edition), 863.*

Where the Court declares priorities, it must order title deeds to be delivered up accordingly, even by an innocent holder (*In re Cooper, Cooper v. Vesey*, 51 Law J. Rep. Chanc. 149).

*White and Tudor's Leading Cases, vol. i. 318.*

A mother by voluntary deed conveyed her farm and all the rest of her property to her two daughters who covenanted to pay the farming debts and to maintain their mother. Held that the deed was not void under 13 Eliz. c. 5 (*Golden v. Gillam*, 51 Law J. Rep. Chanc. 154).

*Order XLV, Rule 3.*

*Lely and Foulkes on the Judicature Acts (3rd Edition), 232.*  
*Wilson on the Judicature Acts (2nd Edition), 291.*

A debt to be available for attachment under Order XLV., Rule 2, must be a debt actually due, and not merely payable on a condition (*Hovell v. Metropolitan District Railway Company*, 51 Law J. Rep. Chanc. 158).

*Theobald on Wills (2nd Edition), 391.*

An annuity given to A. for life, and after her death to B., held to be limited to the life of B. [*Braun v. Walker*, Law J. Rep. 3 Chanc. Div. 211, disapproved] (*Blight v. Hartnoll*, 51 Law J. Rep. Chanc. 162).

**COURT PAPERS.**

**LAND JUDGES.**

Sittings for next Week so far as same are appointed.

Before the Rt. Hon. JUDGE FLANAGAN.

**MONDAY.**

IN CHAMBER.—J. M. Lynch, reference.—R. Carew, transfer carriage.—Trustees W. St. J. Corbett, allocation.

IN COURT.—M. M. Apjohn, receiver.—P. Callan, payment.—R. Harte, as to action.—J. Doyle, make order absolute.—G. F. O'Grady, receiver from 17th.

Before EXAMINER (Mr. Kennedy).

F. Blake, rental.

**TUESDAY.**

IN COURT.—Trustees Sir E. Hulse, final schedule.—H. G. Smith, receiver.—W. Griffith, do.

Before EXAMINER (Mr. Kennedy).

G. H. Mayes, vouch.—R. B. Booth, do.

**WEDNESDAY.**

Before EXAMINER (Mr. Kennedy).

C. M'Causland, rental.

**THURSDAY.**

IN CHAMBER.—J. O'Shea, proposal.  
IN COURT.—H. E. Odium, receiver.

Before EXAMINER (Mr. Kennedy).

T. Barry, rental.—G. Graham, do.—P. Hanly, vouch.

**FRIDAY.**

SALES IN COURT.

P. LAWLESS,	-	-	-	1 lot.
S. DAVIS,	-	-	-	3 lots.

Before the Rt. Hon. JUDGE ORMSBY.

**WEDNESDAY.**

Before EXAMINER (Mr. M'Donnell).

T. W. Browne, for deeds.

**THURSDAY.**

IN COURT.—E. L. Hartstonge, final schedule.—J. Bury, ditto.

**LAND JUDGES' COURT.**

SALES.

June 30.—Before the Right Hon. Judge FLANAGAN.

Co. CAVAN.—Estate of Robert Bell Booth, owner and petitioner. The rental was prepared for a sale in two lots. Both lots were, however, put up together, and were sold to Michael and Bernard Sheridan for £4,700.

Lot 1.—Part of the lands of Drumcarban, containing 234a. 2r. 89p. statute measure, held in fee; annual profit rent, £238 5s. 7d.; Griffith's valuation, £171 15s.

Lot 2.—Other part of said lands of Drumcarban, containing 123a. 2r. 5p. statute measure, held in fee; annual profit rent, £77 19s.; Griffith's valuation, £64 15s.

Both lots were sold subject to an annuity of £80 for a life aged 81.

Solicitors, Messrs Barlow & Orr.

July 7.

Co. GALWAY.—Estate of Patrick Hanly, jun., and others, owners; the Most Rev. John M'Evilly and others, petitioners.

The lands of Carrowmanagh, and part of the lands of Carrowgorm, containing together 205a. 1r. 26p. statute measure, held in fee; estimated annual profit rent, £94 2s. 5d.; Griffith's valuation, £77 15s. Sold to Roderick Quin for £1,920.

Solicitors, Meldon & Co.

COUNTY OF THE CITY OF DUBLIN.—Estate of Hugh Fitzgerald and others, owners; Patrick Walsh, petitioner.

Lot 1.—Building ground, houses, and premises on the North Strand-road, held under lease for 999 years; annual profit rent, £143 10s.; tenement valuation, £71. Sold to Matthew Dunne for £1,100.

Lot 2.—Other building ground, houses, and premises, also situate on the North Strand-road, held under lease for 999 years; annual profit rent, £56 6s. 8d.; tenement valuation, £392. Sold to B. T. Wislaw and Rev. D. G. Westropp for £375.

Solicitor, John Thornton.

CITY OF COBK AND CITY OF DUBLIN.—Estate of Joseph Ramsey, owner and petitioner.

Lot 2.—House and premises, 98 Patrick-street, Cork, held under lease for 800 years; annual profit rent, £37 16s. 11d.; tenement valuation, £57. Sold to Robert Day for £520.

Sale of Lots 1 and 3 adjourned.

Solicitor, Robert Meeready.

We have great pleasure in announcing that E. BROUGHAM LEECH, Esq., Professor of International Law in the University of Dublin, has been admitted and sworn in a Senior Fellow of Gonville and Caius College, Cambridge.

## HIGH COURT OF JUSTICE.

## CHANCERY DIVISION.—LAND JUDGES.

List of Petitions presented to the Land Judges in the month of June, 1882.

DATE	TITLE OF MATTER	OBJECT OF PETITION	COUNTY	PROFIT RENT	SOLICITOR
June 1	William Mahon, owner; <i>Andrew Lighton, petitioner</i>	Sale	Roscommon	£ s. d. 478 11 8	<i>Archibald Robinson and Son</i>
" 5	John Grady, owner; <i>William Wellwood and another, petitioners</i>	Sale	Roscommon	82 8 0	<i>William Whitton</i>
" "	Assignees of the Court of Bankruptcy and Lieut. Col. Wm. Thomas Murray, owners; <i>Rev. H. R. Bayly, petitioner</i>	Sale	Meath	142 4 8	<i>Ellis and Barlow</i>
" 8	Robert Langley Hunt, owner; <i>Philip W. Kennedy and another, petitioners</i>	Sale	Tipperary	142 0 0	<i>A. H. Bland</i>
" "	Andrew Enright, owner and petitioner	Sale	Clare	In owner's possession	<i>James B. Moloney</i>
" 12	James M'Cully Johnstone, owner and petitioner	Sale	Down	164 16 8	<i>Cunningham and Dickey</i>
" "	Philip William Creagh, owner; <i>Lord Baron Clonbrock and others, petitioners</i>	Receiver and sale	Cork and Kerry	649 18 2	<i>Edward Roper</i>
" 18	Thomas Haseard Montgomery and another, owners and petitioners	Sale	Down	Not stated	<i>H. and W. Stanley</i>
" "	Hugh Lyons Montgomery and another, owners; <i>James Hope and others, petitioners</i>	Receiver and sale	Leitrim	8,658 10 6	<i>Whitney and Armstrong</i>
" 14	John B. C. Justice, owner; <i>The National Bank, petitioners</i>	Sale	Cork	In owner's possession	<i>Reuben T. Harvey</i>
" 15	Bridget Hughes, owner; <i>Joshua T. Russell, petitioner</i>	Sale	Dublin	142 0 0	<i>Thomas Falls</i>
" "	Assignees of James Guiler and another, owners; <i>The Bank of Ireland, petitioners</i>	Receiver and sale	Antrim	128 0 0	<i>E. H. De Moleyns</i>
" 17	Anne Lawrence and others, owners; <i>Samuel Lawrence, petitioner</i>	Sale	Antrim and Londonderry	875 14 4	<i>Bennett Thompson</i>
" 19	George Beresford Hearn, owner; <i>Francis O'Donnell Murphy and another, petitioners</i>	Partition	Waterford	887 5 4	<i>Pierce William Kelly</i>
" 20	William Edge, owner; <i>George K. Crampton and another, petitioners</i>	Receiver and sale	Queen's Co.	1,109 19 4	<i>Samuel and R. C. Walker</i>
" 21	James Daly and another, owners; <i>William F. Littledale, petitioner</i>	Sale	Cork	Rent and Valuation 144 0 0	<i>William F. Littledale</i>
" 22	Isabella Petrie, owner; <i>Joshua Brereton, petitioner</i>	Sale	Fermanagh	In owner's possession	<i>Joshua Brereton</i>
" 23	Cornelius A. Keogh, owner; <i>The Bank of Ireland, petitioners</i>	Receiver and sale	Roscommon	140 5 0	<i>E. H. De Moleyns</i>
" 24	John William Drought, owner; <i>Edmund M. Kelly, petitioner</i>	Sale	King's Co.	896 10 0	<i>Alexander D. Kennedy</i>
" "	Sarah Jane Maxwell, owner; <i>Thomas Ferguson and another, petitioners</i>	Sale	Co. Down	78 15 0	<i>George G. Tyrrell</i>
" "	William H. Peyton and others, owners; <i>Randle Peyton, petitioner</i>	Sale and parti- tion	Leitrim	Griffith's Valuation 58 16 0	<i>Davis and Montfort</i>
" 26	John Thomas Davys, owner; <i>Frances Boyd, petitioner</i>	Sale	Roscommon	858 17 2	<i>Archibald Robinson</i>
" 28	Martin Francis O'Flaherty, owner; <i>John Pike and another, petitioners</i>	Receiver and sale	Galway	268 16 0	<i>S. P. Redington</i>
" 29	Henry A. Dickson, owner; <i>William Guest Lane, petitioner</i>	Sale	Cork	876 0 0	<i>James and W. G. Lane</i>
" 30	The Earl of Desart, owner; <i>Thomas H. Preston, petitioner</i>	Receiver and sale	Kilkenny	5,708 10 8	<i>John Julian</i>
" "	John Weldon Creaghe, owner; <i>William Fry, petitioner</i>	Sale	Co. Tipperary	1,211 16 1	<i>William Fry and Son</i>
" "	John Joseph Emerson and another, owners; <i>John Robert Boyd and another, petitioners</i>	Sale	King's Co.	827 11 5	<i>Archibald Robinson and Son</i>
" "	Michael H. J. Roberts, owner; <i>Una G. Weston and another, petitioners</i>	Sale	Cork	162 6 10	<i>James and W. G. Lane</i>



DUBLIN STOCK AND SHARE LIST.

DESCRIPTION OF STOCK	JULY					
	Sat. 15	Mon. 17	Tues. 18	Wed. 19	Thur. 20	Fri. 21
<b>*Paid Government.</b>						
3 p c Consols ..	99½	99½	99½	99½	—	—
3 p c Reduced ..	—	—	—	—	—	—
New 3 p c Stock ..	99½	99½	99½	99½	99½	99½
<b>INDIA STOCK.</b>						
4 p c Oct. 1882 } Traffic at ..	102½	—	102½	—	102½	—
3½ p c Jan. 1881 } Bk. of Irel. ..	100½	—	—	—	—	—
<b>Banks.</b>						
100 Bank of Ireland ..	—	—	313	—	313	313
25 <i>Elster's Banking Co.</i> ..	—	—	—	—	—	—
20 <i>London and Agency (Ld.)</i> ..	—	—	—	—	—	—
15 <i>London Joint Stock</i> ..	—	—	—	—	—	—
20 <i>London and W'minster, M'd</i> ..	—	—	—	—	—	—
10 <i>Do. New</i> ..	—	—	—	—	—	—
34 <i>Munster Bank (Limited)</i> ..	7½	7½	—	—	—	—
— <i>Nat. Prov. of England, Imp.</i> ..	—	40	—	—	—	—
10 <i>National Bank (Limited)</i> ..	23½	—	—	—	—	—
10 <i>National of Liverpool (Ld.)</i> ..	—	—	—	—	14½	—
25 <i>Provincial Bank</i> ..	—	—	—	—	—	—
10 <i>Royal Bank</i> ..	29	—	—	—	—	—
25 <i>Standard of B. &amp; A., M'd</i> ..	—	—	57½	—	58	—
<b>Steam.</b>						
50 <i>British &amp; Irish</i> ..	—	—	—	—	—	—
100 <i>City of Dublin</i> ..	—	—	100½	—	100½	—
50 <i>Dublin and Glasgow</i> ..	—	—	—	—	—	—
10 <i>Dundalk (Limited)</i> ..	—	—	—	—	—	—
50 <i>Peninsular and Oriental</i> ..	—	—	56	—	—	—
<b>Mines.</b>						
4 <i>Berehaven (Limited)</i> ..	—	—	—	—	—	—
1 <i>Killaloe Slate Co. (Ld.)</i> ..	—	—	—	—	—	—
7 <i>Mining Co. of Ireland (Ld.)</i> ..	—	—	—	—	—	—
<b>Miscellaneous.</b>						
10 <i>Alliance &amp; Dub. Cons.' Gas</i> ..	CLOSED	—	—	—	—	—
8 <i>Do. do. New</i> ..	—	—	—	—	—	—
4 <i>Arnott &amp; Co., Limited</i> ..	—	—	—	—	—	—
20 <i>C. Dub. Brewery Co. (Lim.)</i> ..	—	—	—	—	—	—
<b>Tramways.</b>						
10 <i>Belfast Trams</i> ..	—	—	—	—	—	—
10 <i>Dublin United Tramways</i> ..	—	—	—	—	—	—
10 <i>Edinburgh Street Trams</i> ..	—	—	—	—	—	—
10 <i>Lpl Un'd Tram &amp; Bus L'd</i> ..	—	—	—	—	—	—
10 <i>Nth Metr. Tramway, Lond.</i> ..	13½	—	18½	—	—	13
<b>Railways.</b>						
50 <i>Belfast and County Down</i> ..	—	—	46	—	—	—
20 <i>Cork, Blackrock &amp; Passage</i> ..	—	—	—	—	—	—
100 <i>Dublin, W'klow, &amp; W'ford</i> ..	—	—	—	—	—	—
100 <i>Great Northern (Ireland)</i> ..	—	—	—	116½	—	117½
100 <i>Gt. Southern and Western</i> ..	112	112	—	—	—	—
100 <i>Midland Gt. Western</i> ..	—	—	—	—	—	81½
100 <i>Waterford &amp; Cont. Ireland</i> ..	—	—	—	—	—	—
50 <i>Waterford and Limerick</i> ..	—	—	—	—	—	—
<b>Railway Preference.</b>						
100 <i>D., W. &amp; W., 5 p c (1880)</i> ..	—	—	—	—	—	—
100 <i>Gt. Nth'n (Ireland) gt'd 4 p c</i> ..	—	—	107	—	—	—
100 <i>Do., 3½ p c</i> ..	—	—	—	—	—	87½
100 <i>Gt. South'n &amp; West'n 4 p c</i> ..	—	—	—	—	—	—
100 <i>Mid. Great Western, 4 p c</i> ..	—	—	—	—	—	—
100 <i>Do., 5 p c</i> ..	—	—	—	—	—	—
100 <i>Watfd. &amp; Limerick, 4 p c</i> ..	—	—	—	—	—	—
50 <i>Do., new red, 5 p c</i> ..	—	—	—	—	—	—
<b>Debenture Stocks.</b>						
— <i>Dublin &amp; Wicklow 4 p c</i> ..	—	—	—	—	—	—
— <i>Gt. South'n &amp; West'n, 4 p c</i> ..	—	—	—	—	—	—
— <i>Kilkenny Junction, A, 5 p c</i> ..	80	—	—	—	—	—
— <i>Midland Gt. West'n, 4 p c</i> ..	—	—	—	—	—	—
— <i>Do., 4½ p c</i> ..	—	—	—	—	—	—
— <i>Waterfd &amp; Limerick 4 p c</i> ..	—	—	—	—	—	—
— <i>Do., 4½ p c</i> ..	111	—	—	—	—	—
<b>Miscellaneous Debent.</b>						
— <i>Ballast Office Deb., 292 6s 2d, 4 p c</i> ..	—	—	93	—	—	—
— <i>City Deb. of 292 6s 2d, 4 p c</i> ..	—	—	94	—	93	—
— <i>Dub. &amp; Glas. S. F. Co. (1887) 5 p c</i> ..	100	100	—	—	—	—
— <i>Pipe Water - Old, 292 6s. 2d.</i> ..	—	—	—	—	—	—
— <i>Do. New, 100.</i> ..	—	—	—	—	—	—

\* Shares not fully paid up are given in Italics. † x d

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BIRTHS, MARRIAGES, AND DEATHS.

BIRTHS.

FITZGERALD—July 17, at the residence of her mother, Lower Mall, Tralee, the wife of William J. Fitzgerald, Esq., solicitor, Mallow, of a son.

MALONE—July 14, at Kildare-street, the wife of James J. Malone, Esq., solicitor, of a son.

MARRIAGES.

ARMSTRONG and ATKINS—April 6, at St. George's Church, Malvern, Australia, by the Rev. H. A. Langley, Henry Charles, youngest son of the late William Armstrong, of Woodlodge, County Cavan, to Zarinia, youngest daughter of the late John Roberts Atkins, Esq., B.A., barrister-at-law, Toorak.

BREMNER and GRAHAM—July 12, at Christ's Church, Albany-street, London, by the Rev. J. C. Rust, Vicar of Soham, Cambridge-shire, assisted by the Rev. J. W. Festing, Vicar of the Parish, Harry J. Bremner, Lieutenant Royal Munster Fusiliers, eldest son of John Trull Urcuhart Bremner, Deputy Inspector-General of Hospitals and Fleets, Chatham and Walmer, to Edith, youngest daughter of John Graham, Esq., B.C.S., Enniskillen.

M'INALLEY and MOORE—July 11, at the Church of All Saints, Ballymont, by the Rev. J. Lynch, P.P., V.F., assisted by the Rev. J. M'Allister, C.C., Lisburn, Thomas M'Inalley, son of J. M'Inalley, Glasgow, to Mary Josephine, elder daughter of the late James Moore, Esq., solicitor, Ballymena.

DEATHS.

CHURCH—July 16, at Oatlands, near Linnavady, Alicia Hartley, the beloved wife of James Church, Esq., barrister-at-law.

MOORE July 6, at Clonroher, near Maryborough, the Very Rev. Arthur Moore, Dean of Achonry, aged 68 years, eldest grandson of the late Right Hon. Arthur Moore, a pulsive Judge of the Common Pleas, the companion of Plunket, and the contemporary of Norbury and Curran.

MOORE—June 25, at Wordsworth-road, Penge, Henry Moore, Clerk of the Peace for County Limerick, in his 61st year.

ROE—July 2, at her residence, Carrolton, County Galway, after a long illness, Arabella, widow of the late William Roe, Esq., solicitor, of this city.

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The Irish Land Commissioners have, in conformity with Rule 104, ordered a Schedule of Agreements fixing Fair Rents to be inserted in the *Dublin Gazette* of the 21st July, 1882. A copy of this Schedule, in which are entered all agreements lodged during the month of June, 1882, will be sent to any person who applies for the same to the Secretary, Irish Land Commission, 24 UPPER MERRION-STREET, DUBLIN.

By Order,  
DENIS GODLEY.

19th July, 1882.

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# THE IRISH LAW TIMES AND SOLICITORS' JOURNAL.

VOL. XVI.

SATURDAY, JULY 29, 1882.

No. 809

## PRESUMPTIONS OF LIFE AND DEATH.—I.

THE *Times* of the 12th inst. reports a remarkable case of presumption of death on cumulative circumstantial evidence (*In re Murray*), which, in connexion with our previous papers on the subject in the current volume, is worth recording. It came before Sir James Hannen on an application for probate of a will executed on the 12th of January last. The testator was a market gardener, and on the night of the 24th of January, following, left his house at Sunderland. Before doing so he placed on a table his purse, which contained £12 in gold and silver. As to take a walk at night was by no means an unusual occurrence with him, his going out on this particular night caused no surprise or suspicion to the members of his family; but he did not return, and, being unable to find any tidings of him in the morning, they issued an advertisement giving a description of him and of the clothes he was wearing when he left home. Subsequent inquiries led to the discovery that an elderly man answering to the description of Mr. Murray had hired a cab in Sunderland on the night of the 24th of January and rode in it to Hullwell Mill, close to which are lime kilns. The cabman recognised a photograph of Mr. Murray as one of the men who took that ride to Hullwell Mill, and a woman living close to the kilns stated that she saw a man in every way answering to the description of Mr. Murray walk towards the kilns just after Mr. Murray alighted from the cab. It was further shown that on the night of the 24th of January the lime kilns were filled with burning material, and that when in a lime kiln the fire reaches the surface the latter becomes white. On the morning of the 25th of January a man attending to the kilns observed on the surface of one of them what appeared to him to be a dark shadow in the shape of a man's figure. He summoned a police-constable, and, in presence of the latter, applied a rake to the figure. The result was that he drew from the surface of the kiln a number of bones, some copper money, two heel-plates, part of a pocket-knife, a button, and a buckle. A surgeon who examined the bones gave his opinion that they were human, but whether those of a man or of a woman he could not say. The heel-plates, the pocket-knife, the buckle, and the button were proved to have belonged to Mr. Murray. The bones were produced as an exhibit, but Sir James Hannen refused to take them into account, as he could not recognise them as those of Mr. Murray. But, he said, the circumstances proved in the case left no doubt in his mind that Mr. Murray was the person who perished in the lime kiln; there was nothing to show whether the death was accidental or what was the state of his mind when it occurred; it was to be presumed that he died on the 24th of January; and probate of the will was granted accordingly. Now, undoubtedly, the evidence derived from burnt remains must, as a rule, at best be unsatisfactory, as Dr. Tidy maintains in his valuable work on "Legal Medecine," Part I of which has just been published; but, here the articles found along with the remains, and identified, supplied abundant evidence to fortify the conclusion suggested by the other circumstances of the case. Not that we regard the articles found along with the remains as in themselves conclusive; as a case arising out of the Ashtabula Bridge

catastrophe, in 1876, will serve to illustrate. The only alleged relics of her husband which Mrs. Webber, of Rochester, N. Y., could find in the wrecked train, were a piece of cloth belonging to his coat, and a bunch of keys, one of which fitted a clock in her house, another a chest, and another a door. The (Lake Shore) company offered her \$4,000, but she wanted \$5,000, and so the case went to trial. Two men swore to having seen the "deceased" in the train; but, the defendants established that a man of his name, exactly answering his description, and who said he had a wife and children in Rochester, was still alive and safe in the Wisconsin soldiers' home, and that he had not been at or near the disaster. And so, though the sincerity and truthfulness of the "widow" and her witnesses were undoubted, the company saved their money, the woman lost the sum offered, and a neighbour who had advanced the sinews of war to carry on the suit has become forcibly persuaded of the glorious uncertainty of the law. In *re Murray*, however, though in other respects the evidence of identity was hardly stronger, if so strong, there was no suggestion that a *fac-simile* Murray was still extant, so that we are the less suspicious even of the button. Many a complication would be prevented if death were always so clearly established; and fiction itself, such as Anthony Trollope's "Dr. Whortle's School," would be deprived of a large portion of its sensational stock if its characters would only take equally adequate steps to determine the actual demise of inconvenient husbands, *et alios*, who stand in the way. But, even a register of death is no absolute proof of death. In the case of *Vital Donat*, a man shortly before his bankruptcy insured his life with a Paris Insurance Company for 100,000 francs. His bankruptcy was subsequently declared fraudulent. He then came to England, purchased a coffin, procured a certificate of death from the registrar, and (like Charles V., assisting at his own obsequies) followed the coffin, which he had loaded with lead, to the grave, where it was duly interred. This done, his wife went to Paris and presented to the company copies of the registry of the death and burial of her husband, and claimed the amount of the insurance. But, the coffin being exhumed, the deceased was taken into custody at Antwerp, and the fraud frustrated, unlike that of Udderzook and Goss, which will be found referred to in some previous papers by the present writer ("Life Insurance Frauds," 8 Ir. L. T. 399, 412).

It is but the other day, indeed, that Mr. Justice Harrison and a common jury succeeded in bringing a dead man to life, in *Nolan v. Kelly* (*ante*, p. 205). The corpse, after being conclusively "waked" and buried at Glencullen, was shown, by evidence sufficient even to satisfy the counter-protesting "widow," to be not so dead as it seemed. Then, there is the case of *Church v. Smith* (Exch., Dec. 1853), in which the question whether the plaintiff, who had not heard from her husband for twelve years, was a widow and competent to sue in her own right, was summarily determined in the negative by reason of the appearance of the missing man in the witness box; like the old case before Lord St. Leonards, where the quietude of a Chancery administration suit was disturbed at the last moment by a noisy person who insisted, as the fact was, that he was the intestate. More awkward still

was the reappearance of the real Martin Guerre, after an absence of eight years, as we read in the *Causés Célèbres* before the Parliament of Toulouse, 1560. In this case another man had succeeded in passing himself off as the genuine Guerre, lived with the widow and had children by her, and took possession of the property; but on the subsequent trial, the imposture was made manifest by Martin himself coming forward and establishing his identity. An absence of even thirty years did not suffice to frustrate a similar effort on the part of Cassali to establish his identity; and Baronet was equally successful after twenty-two years' absence, though he had first to endure some years servitude at the galleys, as an impostor: see Foderé, "Traité de Méd. Légale," ch. 2.

#### LAND VALUERS IN THE COUNTY COURTS.

In the House of Commons, on the 24th inst.,

Mr. TOTTENHAM asked the Chief Secretary whether his attention has been drawn to a report of the case of *Fyfe v. Beatty*, in the IRISH LAW TIMES of the 15th inst., where the County Court Judge of the County Fermanagh applied to the Land Commissioners to pay a valuer appointed by him to assist him, but was informed that they had no power to do so, and that the expense must be borne by the litigants; whether it is the case, as reported, that he then remonstrated with the Commissioners on this decision, and requested to be provided with a competent valuer, as was done in the cases of Sub-Commissioners and other County Courts, but was informed that all their valuers were engaged; whether this was the result of the joint action of all the Commissioners or of Mr. Commissioner Litton alone; and whether the County Court Judge strongly animadverted on the position in which he was left and the injustice to litigants.

The CHIEF SECRETARY—I have seen the report referred to in the question of the hon. member, and am informed that it is correct. The Land Commissioners have no power to pay a valuer appointed by a County Court Judge. The case of a County Court Judge requiring the services of an independent valuer is provided for by the 37th section of the Land Act. Under that section the costs must be paid by one of the parties or by both conjointly. The Land Commissioners have been most anxious to assist the County Court Judges and to relieve them from the necessity of employing valuers, and whenever the services of a court valuer has been available they have been placed at the disposal of the judges, but for some time back they have not found it possible to spare any of their valuers, as the services of all have been imperatively required in the appeal cases. The Land Commission acted in this matter on the general instructions of all the Commissioners. I see from the number of the IRISH LAW TIMES referred to by the hon. member, that the County Court Judge is reported to have made certain animadversions, which, however, appeared to be directed against the law rather than against the Land Commission.

#### THE LEGAL POSITION OF THE SUEZ CANAL.

International rights over artificial water-ways from sea to sea, and their relation to those of the power owning the territory in which such ways are situated will probably form an important branch of the international law of the future. At present there are hardly any instances upon which a discussion of such rights can be founded. But in view of the important questions which must soon be settled as to the Suez Canal, it may be interesting to examine what the legal position, so far as law can be held to apply to a subject matter so new and so anomalous, of that undertaking is.

The relations of the company to the Egyptian Government and its suzerain are defined by concessions granted by the Khedive in 1854 and 1856, and finally ratified by the Sultan's firman of the 22nd Feb., 1856.

The most important articles provide that the canal shall be kept open at all times as a neutral channel to the merchant ships of all nations without distinction or preference, the company being allowed to charge a toll not exceeding ten francs per ton. The company is declared to be an Egyptian one, and all disputes between it and the Egyptian Government or third parties are to be decided by the local tribunals according to the laws of the country and to treaties; but as regards its internal affairs, and the rights of its shareholders, it is declared to be a French Société Anonyme, and subject to the laws regulating such societies. The canal and its dependencies are made subject to the police of the Egyptian Government, in the same manner as the rest of its territory. Certain land upon the banks is given up to the company, but the Government reserve power to take back and occupy any points of strategic importance, agreeing not to interfere with the navigation of the canal. The concession terminates at the end of ninety-nine years, unless a fresh agreement is entered into, and it is provided that the 15 per cent. share of profits given to the Khedive is to be increased by 5 per cent. on every such fresh agreement till it has reached 35 per cent.

There is nothing in this concession which in any way abandons the sovereign rights of the Egyptian Government or its suzerain, the Sultan, over the canal, nor which gives any rights to any other Power. It is simply a private contract between the Khedive and the company, ratified by the Sultan. Acting upon this view, the company, soon after the opening of the canal, obtained leave from the Sultan to charge a sur-tax of one franc per ton for the passage of vessels, and they then further increased the toll, without such leave, by charging upon what they considered the actual capacity instead of, as at first, upon the registered tonnage of vessels using the canal. The Sultan, pressed by the Powers to put an end to this exaction, called a Conference in Oct. 1873, at Constantinople, to agree upon a general standard of tonnage. The Conference wisely refused to embark upon this general question, but agreed upon a mode of measurement which they considered fair for the Suez Canal, and recommended the Porte that the company should be compelled to adopt this measurement, and, at the same time, should be allowed to charge a sur-tax of three francs per ton, to be reduced upon a sliding scale as the tonnage of ships using the canal increased. The Porte accepted these recommendations, and at the same time voluntarily declared that the Turkish Government would not allow any increased toll to be levied without its consent, and would come to an understanding with the principal Powers interested before coming to a decision.

The Powers throughout the negotiation recognised the absolute right of the Porte to regulate the tolls, and the recommendations of the Conference were carried out as the act of the Porte. The company refused to accept the terms agreed upon, and even issued a notice that the canal would be closed. They only yielded under pressure of the despatch of an Egyptian force to seize the canal; and accepted the new dues only under protest until 1876, when an agreement was come to slightly modifying in the company's favour the terms imposed by the Conference. About the same time a dispute arose as to jurisdiction, the company claiming to have all disputes in which they were concerned tried by the French Consular, instead of the Egyptian Court. The French Government, however, repudiated any claim that the company was solely under French jurisdiction, and the controversy came to an end on the establishment of the international tribunals in Egypt in 1874. The purchase of the Khedive's shares by the English Government, though it gave that Government a *locus standi* to enforce the rights of the company in the agreement with the Khedive and the Sultan, could not affect its international position, and some negotiations, which were started shortly before that purchase, for the handing over the management of the canal to an International Commission, fell to the ground before the decided opposition of the Porte. At the outbreak of the Russo-

Turkish war, M. de Lesseps proposed a general agreement between the European Governments that the canal should at all times be open for ships of war as well as of peace, the disembarkation only of troops and munitions of war being forbidden. Lord Derby, however, refused to entertain the proposal of any such agreement, and contented himself with a notice to both of the belligerent governments that any attempt to stop the canal would be incompatible with the maintenance by Her Majesty's Government of passive neutrality. It would seem, therefore, that there are no special international obligations affecting the Suez Canal at all. It is simply a part of the territory of Egypt and her suzerain the Sultan, subject in all respects to their control, but leased for ninety-nine years to a company formed under and governed by French law, upon terms which, in so far at least as regards the tolls to be levied for passage, the Sultan has voluntarily declared he will not alter without consulting the Powers. It is also subject to whatever rights of user can be claimed over it by international law in consequence of its being one of the highways of the world, and the only passage between two open seas, which rights have been to some extent recognised by the voluntary declaration of the Sultan above referred to. What the measure of such rights may be it is impossible to say, but they cannot be greater than those which obtain in a natural strait between two seas where both shores are in the territory of the same power. It seems to be the accepted opinion of jurists that in such a case, while the territorial power has no right to prevent the passage of merchant ships, no other power has a right to claim passage for ships of war, or troopships. In law, therefore, as well as in fact, the canal can only be kept open for English troopships and ships of war either by special treaty with all the European Powers, or by England's possessing in some form or another the control of the territory within which the canal is situated.—*Law Times*.

#### THE BILLS OF EXCHANGE BILL.

It is not impossible that the present session of Parliament, although not productive of measures requiring public discussion, may yet produce some Acts of great importance to the lawyer. The House of Commons, in its corporate capacity, has not been making great progress; but select committees have been working assiduously. The Bankruptcy Bill has been abandoned; and probably the only important bill generally interesting to lawyers, and raising questions about which there is great difference of opinion, which is likely to pass, is the Bills of Sale Bill. But there is another class of measure of which two examples are very far advanced. The Criminal Code raises momentous questions which are not likely to be settled for some sessions to come, but the Partnership Bill and the Bills of Exchange Bill have some prospect of passing this session. The Bills of Exchange Bill professes to be almost entirely a code of the existing law. It has been two sessions before Parliament, and, after undergoing the ordeal of a select committee of the House of Commons, has passed that House. It was introduced on Tuesday to the House of Lords by Lord Bramwell, who, without undertaking to guarantee it, gave it a very high character. It is to be read a second time on Tuesday next. It is not likely to undergo much discussion among the peers as a body. It deals with bills of exchange known to the business world, and but little with that spurious form known as an accommodation bill, in which peers may be not uninterested on behalf of sons or nephews, or in legislating for which the experience of younger days might be useful. The real tribunal which the bill ought to satisfy is a select committee composed largely of law lords. The reference to such a committee would of course shelve the bill until next session; but there is no hurry for it. It is, so far as we know, the first effort at codification which has come within a reasonable distance of passing. If the bill is passed, and turns out a failure, a serious injury will be done to the cause

of codification. Moreover, the House of Lords is the legislative body to which the public look in the case of such bills as the present. A committee thoroughly competent as lawyers to criticise the bill can be formed in that House such as is impossible in the Lower House. The bill, before it is passed, ought to satisfy mercantile men and lawyers of the highest class. It has, in the House of Commons, run the gauntlet of mercantile men of the highest kind available in the country. The highest class of lawyers can only be found in the House of Lords, and they can only bring their knowledge to bear in the form of a select committee. To such a tribunal, therefore, we think the bill ought to go.

No one can read the bill without being impressed with its high value. It was drafted under the directions of the Institute of Bankers, and introduced last session by Sir John Lubbock, Mr. Cohen, Sir John Holker, Mr. Lewis Fry, and Mr. Monk. It was reintroduced this session, and referred to a select committee, over which the Solicitor-General presided. It, therefore, appears before the House of Lords with good credentials, and even a casual perusal of it discloses its merits in point of brevity and clearness. It consists of 105 clauses, and in this short space compresses, so far as can be judged, all the law of bills of exchange, promissory notes, and cheques. The side-notes give the cases and statutes relied on to support the propositions in the text. They are not, of course, to appear in the Act, if that stage be reached, but are intended to help the critic. The reader is attracted, at the commencement of the bill, by the brevity of its interpretation clause. Thirteen words are defined; and it is the highest praise we can give to the clause to say that it is unnecessary. The words defined, with insignificant exceptions, bear the meanings attributed to them. The bill, therefore, does not swim on bladders, like the bills of bad draftsmen, but relies only on natural means for attaining its end. After a definition of a bill of exchange, and a description of its parties, we are told (clause 8): "A bill is payable to order which is expressed to be so payable, or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it should not be transferable." Whether intentionally or not, the second branch of this sentence alters the law. According to English law, a bill payable to A. B. is not negotiable. This result is due to a logical use of language. Looking at the words of the document, a bill payable to A. B. does not suggest negotiability. It may, however, well be a convenience to mercantile men to make such bills negotiable. If such is the case, probably their convenience will prevail, as it prevailed in the case of the acceptance of a bill by signature alone without words of acceptance. There seems some doubtful drafting in clause 20, sub-clause 3: "Where the bill when complete is negotiated to a holder who knows that it was sent forth in an incomplete state, such knowledge operates as notice that the bill was filled up without authority, or in contravention of the authority given, if such be the fact, and shall deprive him of rights given to the holder in due course." "Sent forth" is not a clear phrase; and "in contravention" probably means "in excess," or should have those words added to it. Clause 26 of the bill does not very successfully deal with a vexed subject. It provides that "where a person signs a bill as drawer, indorser, or acceptor, and adds words to his signature, indicating that he signs for or on behalf of a principal, or in a representative character, he is not personally liable thereon; but the mere addition to his signature of words describing him as an agent, or as filling a representative character, does not exempt him from personal liability." Words describing the person who signs as filling a representative capacity are not to prevent personal liability; words indicating that he signs in a representative capacity prevent personal liability. Are we any further forward? To what class does "signed Jones, agent for Smith" belong? Would it be different if the signature were "as agent for Smith?" In fact the test shadowed out, although it may be of use in an agreement, is not of much use

where, as on a bill of exchange, there is nothing but a signature.

A close and deep examination of the bill will doubtless disclose many points of doubt; or where, at least, it is capable of improvement. Lawyers look upon bills of this class with no great favour. It is supposed that they send us all to school again. Before such a bill passes, the lawyer assumes that he knows the law of bills of exchange, and after that he is doubtful. This, however, is not really the case. Very few lawyers know all the law on a subject like bills of exchange. Let them test their knowledge by reading this bill, and see if they do not learn something. Bills of this kind, in fact, facilitate the lawyer's knowledge, and make him able at once to lay his hand on his authority when consulted. To some extent, perhaps, codes make men their own lawyers; but no lawyer believes that he has anything to fear from that result. After the bill has passed through the fire of criticism from the law lords in committee, it may be confidently accepted as an admirable contribution to the codification of commercial law.—*Law Journal*.

### BLASPHEMOUS PUBLICATIONS.

There seems to be a general feeling among the public that proceedings such as those lately initiated against the *Freethinker* for the publication of blasphemy, are at the present day ill-advised and out of place, and their utility in suppressing the abnoxious literature doubtful. It is, at any rate, certain that within recent times the powers which the State possesses of punishing such offences have rarely been invoked, and that the sources from whence the law is derived, must be sought in the statutes and reports of the 17th and 18th centuries rather than in those of the present age.

Blasphemy, it is to be observed, may be regarded in two aspects; either spiritually, as an offence against the Deity, or temporally, as it affects the peace and good order of civil society. It is of course in the latter relation only that it is cognizable by municipal law; in other words, its punishment is founded on the dangerous consequences likely to arise from the removal of religious and moral restraints. On this ground it seems to be well established that blasphemy against God by denying his being or providence, contumelious reflections upon the life and character of Christ, and all scoffing or indecorous comments upon the Scriptures, are indictable offences at common law, punishable with fine and imprisonment, and also, it is said, with "infamous" corporal punishment.

Of the leading cases on this subject the earliest on record is that of one Atwood, in 15 Jac. 1, who was convicted of speaking words reflecting on religious preaching—viz., that it was "but prating, and the hearing of service more edifying than two hours preaching." Notice may also be made of the trial of one Taylor (Vent. 298), for uttering gross blasphemies, in the course of which Chief Justice Hale observed that to say religion is a cheat is to dissolve all those obligations whereby civil society is preserved; that Christianity is part of the laws of England, and therefore to reproach the Christian religion is to speak in subversion of the law. On the same ground a conviction was sustained in the case of *R. v. Woolston* (Str. 834), where the libel stated that Christ was an impostor and fanatic, and his life and miracles were turned into ridicule. In 1763, again, one Annett was convicted of publishing a libel called "The Free Inquirer," tending to ridicule the Scriptures, and particularly the Pentateuch, by representing Moses as an impostor; and a similar result followed the case of *R. v. Williams*, in 1797, for publishing Paine's "Age of Reason," in which the authority of the Old and New Testament was denied, and the prophets and Christ were ridiculed. The same doctrine has been fully recognised in other cases, one of the latest, perhaps, being that of Carlile (3 B. & Ald. 161), who, in 1820, was sentenced to pay a fine of £1,500, to be imprisoned for three years, and to find sureties for his good behaviour during life.

But, besides the common law, the Legislature itself has made certain provisions against this kind of offence. The statute 1 Edw. 6, c. 1, for example, enacts that persons reviling the sacrament of the Lord's Supper by contemptuous words or otherwise shall suffer imprisonment. By 1 Eliz., c. 2, again, if any minister shall speak anything in derogation of the Book of Common Prayer, he shall be punishable, as there mentioned, by imprisonment and loss of benefice. So also, by 3 Jac. 1, c. 21, whoever shall use the name of the Holy Trinity profanely or jestingly in any stage-play or show, is made liable to a fine of £10. Lastly, by 9 & 10 Will. 3, c. 30, it is enacted that, if any person educated in, or having made profession of, the Christian religion, shall by writing, teaching, or advised speaking, assert that there are more gods than one, or deny the Christian religion to be true, or the Scriptures to be of Divine authority, he shall, upon the first offence, be incapable of holding any office or trust; and on the second conviction shall be for ever incapable to bring any action, or to bear any office or benefice, and further shall suffer imprisonment for three years. It has been held, moreover, that the effect of this enactment is cumulative, and that an offender against it is still punishable at the common law.

But it is not of course true that every publication which tends to weaken a religious argument is illegal; nor is there any doubt as to the general right of inquiry and discussion, even upon the most sacred subjects, provided the license be exercised in a spirit of moderation and fairness, without any intention to affront or injure religious sentiments. It is, however, impossible to draw the boundary with certainty; general principles alone can guide to a correct decision. It is to be remembered, as an eminent authority (Starkie on Libel) has well observed, that in such cases "a malicious and mischievous intention, or what is equivalent to such intention, in law as well as morals—a state of apathy and indifference to the interests of society—is the broad boundary between right and wrong." If, therefore, it can be collected from the circumstances of the publication that the author's design was to occasion the mischief to which the libel tends, "to destroy or weaken men's sense of religious or moral obligations, to insult those who believe by casting contumelious abuse and ridicule upon their doctrines, or to bring the established religion and form of worship into disgrace and contempt," then the offence against society is complete, and the offender liable to the consequences the law prescribes.—*Law Times*.

The proceedings at the Mansion House with reference to the *Freethinker* are likely to strike many persons as being, on the whole, ill-advised. If the case ever goes before a jury, they may take a serious view of the guilt of those concerned in the publication, and the judge may feel it his duty to pass a severe sentence. That, however, would not be a complete justification of such a prosecution. Whatever be the result in a court of law, there is still reason to apprehend that it may do more harm than good. On the surface lies the fact that proceedings of this kind give publicity to people who sedulously court it. We know that whenever such a prosecution is started familiar figures will be certain to appear upon the stage, and will steadily keep possession of it. It is, too, the penalty paid for these efforts in the interest of public morals that they bring prominently before one thing which have been unnoted by most of us, or which one would fain forget. A prosecution for blasphemy begun at the Mansion House and continued at the Old Bailey accentuates breaches of good taste and decency which would otherwise have been quickly forgotten. In this instance a periodical which, we hope, may be described without offence as somewhat obscure, and little likely to be much sought after if left to itself, is advertised widely, and the very object of the prosecution, which is, no doubt, to suppress such literature, is pretty certain to be defeated. It is difficult for the most zealous friend of public morality to be enthusiastic about prosecutions the clearest effect

of which is to increase the sale of the publications which are complained of. The propriety of putting in operation the common law as to blasphemy, even against publications which shook all right-minded men, is not always clear. That law was constructed long ago, and it is not surprising that it fails to be in accordance with modern notions. It is terribly comprehensive and sweeping. It is somewhat too dangerous a weapon for general use. It cannot be handled by every one with safety. When a novice rushes to the Mansion House and asks for a summons in order to put this law in force against some notable heretic, it is for all the world like a child taking down an old blunderbuss which has long hung over the fire and levelling it without much caring to know whether it is loaded. Inoffensive bystanders in both cases are not unlikely to suffer. To waken the sleeping terrors of this half obsolete part of our law is to expose the community to the risk of ill-judged and, indeed, mischievous prosecutions. It is alarming to consider the possibility of setting in motion the powers which slumber in the Statute-book, or in the Common Law. To call in question the formularies of the Church of England may be blasphemy. To speak anything in derogation of the Book of Common Prayer is an offence which may be punishable in a layman, on the third occasion, by imprisonment for life. Our fathers prosecuted Carline with such effect that a hero naturally not particularly attractive became known even among those who had no liking for his opinions, as "the martyr of irreligion." Perhaps the last prosecution for blasphemy was that of Pooley, a half-crazy well-inker, in Cornwall. He had persistently scribbled on a gate foul and blasphemous words. For this he was tried before the late Mr. Justice Coleridge at Bodmin Assizes. He was found guilty and sentenced to imprisonment for twenty-one months. Symptoms of insanity unmistakably declared themselves after he was confined, and he was pardoned. But the trial left in most minds an impression that the prosecution was ill-advised, and ought not to be imitated. The aversion to such prosecutions springs not merely from experience of their failure to promote the objects which good men have at heart. But most of us have long ceased to believe that it is right to punish men for their convictions, however mistaken. Whether from growth of obarity, or indifference, or perplexity, or experience of the mischievousness of persecution, most men are not inclined to put in prison the apostles of the views which they most detest, and they are rather at a loss what to do with persecuting laws which remain unrepealed. Yet it is not at all necessary to deprecate every prosecution for blasphemy. A man may show by his conduct that he intends to insult and outrage the feelings of others. He may be even less desirous of proselytising than giving offence to tender consciences. Such a person cannot fairly appeal to the principle of toleration if he be summarily put down as a public nuisance. It is no interference with liberty, rightly understood, to prevent him noisily and offensively vending his publications in such a manner as to annoy needlessly those who regard as sacred the subjects at which he scoffs. He would be the first, we may be sure, to complain if the meetings of his own sect were disturbed by the protests of a member of the Salvation Army. This consideration suggests a rough test of the circumstances in which such prosecutions are at all expedient or justifiable. They may be reluctantly employed against a well-known publication which wantonly insults and wounds the most cherished sentiments of multitudes. But their policy is always doubtful, their utility always uncertain, when they are the means of making known to the public the very literature which they are employed to put down. They have, on the whole, done so little good hitherto, that every new proceeding of the kind must be a cause of anxiety to thoughtful men.—*Times*.

BARON FITZGERALD has tendered his resignation. He was appointed a Baron of the Court of Exchequer in 1861.

## THE LAW OF DISTRESS.

The committee on this subject, which has sat for nearly four months under the chairmanship of Mr. Goschen, have concluded their labours. Their report has been adopted, and it will shortly be presented to Parliament. The main recommendation of the committee is that a landlord should only be allowed to levy a distress for twelve months' rent instead of for six years' arrears, as is now permitted by the law, except in cases where the debtor has become insolvent or executed a deed of assignment. It was urged during the discussion of the report, and in some of the evidence heard from week to week, that the commercial interest was unfairly prejudiced by the existing conditions of the law, and on this ground several members urged that distress should be altogether abolished; but the majority of the members thought a substantial modification of the law would be more equitable. The report also refers to the excessive and unregulated charges often made for the levy of a distress, and urges that these should be subject to taxation by the county court judge or some other competent authority. At the instance of Mr. Duckham a new sub-section was added, which sets forth that the present law of distress enables the landlord to distrain for the full amount of rent due, without allowing for any counter-claim which a tenant may have secured to him under agreement against his landlord; that some cases of great hardship had been given in evidence where tenants had to resort to actions at law for the recovery of their claims; and that provision should be made to meet this difficulty.

## PARTICULARS AND CONDITIONS OF SALE.

(Continued from page 318, ante.)

### As to Leasehold Property.

"9. Where the property is of leasehold tenure the receipt for the last payment of rent accrued previously to the completion of the purchase shall be accepted by the purchaser as conclusive proof that the rent reserved by, and the covenants and conditions contained in, as well as the original lease as the derivative leases (if any) under which the property is held, have been paid; observed, and performed up to the time of the completion of the purchase, or that any breaches of such covenants and conditions up to that time have been waived, and no evidence shall be required as to the right of the person by whom, or on whose behalf, such receipt was given, to receive the rent therein expressed to be paid. The lease, whether original or derivative, by the conditions of sale made the root of title, or a copy thereof, shall be produced and may be examined at the office of the vendor's solicitor at any time between the hours of 10 a.m. and 4 p.m. on the three days (other than Saturday or Sunday, or day on which solicitors' offices are usually closed), immediately preceding the day of sale, and shall also be produced at the time of sale, and the purchaser, whether he examines the same or not, shall be deemed to have bought with notice of the covenants and conditions therein contained. The sale of property of leasehold tenure is subject to the consent of the reversioner being obtained when necessary, and the consent fee shall be paid by the vendor."

There is no need to insert condition that purchaser shall assume the lease to be duly granted. This is supplied by sect. 3 (4), and in case of underlease by sect. 3 (5). But the statutory provision made in the same subsections, that the receipt for last rent due shall be *prima facie* evidence of performance of covenants, is not quite sufficient. Our condition, therefore, makes it conclusive evidence. Mr. Dart's opinion is that even in this stronger form it would only cover breaches unknown to the vendor, or which he had good reason to believe waived: (Dart, 169; see also *Edwards v. Wickwar*, L. Rep. 1 Eq. 68.) As to evidence of performance of covenants to which purchaser was entitled, under open contract before the C. A., where the receipt for last rent could not be produced, see *Ringer v. Thompson* (Weekly

Notes, Nov. 12, 1881, p. 188; 45 L. T. Rep. N. S. 680). Sect. 14 of C. A., authorising relief against forfeiture in most cases, renders breach of covenant often of less consequence than before the Act. In *Lawrie v. Lees* (42 L. T. Rep. N. S. 486; L. Rep. 14 Ch. Div. 247; affirmed by House of Lords, 46 L. T. Rep. N. S. 210; L. Rep. 7 App. Cas. 19) a purchaser was held bound by a condition such as the above, although he objected that there might be a forfeiture after completion for a continuing breach of covenant. There clearly were in that case breaches of covenant, but the lessors had been receiving rent with knowledge of this. It was a case with special circumstances, so we must refer the reader to the Reports for full information. In *Broad v. Munton* (40 L. T. Rep. N. S. 828; L. Rep. 12 Ch. Div. 131) a certain condition excluding a known defect was held to be misleading. In *Brookes v. Drysdale* (87 L. T. Rep. N. S. 467; L. Rep. 3 O. P. Div. 52) a statement that the lease was subject to "usual covenants" was held misleading, it being shown that the lease required, under penalty of forfeiture, all underleases and assignments to be registered with the landlord's solicitor and a fee paid. It is far better to let the purchaser examine the lease as is provided in the above condition.

#### As to Property Sold subject to Leases.

"10. Where the property to be sold is stated in the particulars to be sold subject to any tenancy greater than a yearly one, counterparts or copies of the leases or agreements (if in writing) under which the tenants hold can be inspected during the fortnight previous to the sale at the office of the vendor's solicitor, or at the time of sale in the saleroom, and the purchaser is to be deemed to have notice of and to take subject to the terms of all the existing tenancies, whether arising during the continuance or after the expiration thereof, and such notice shall not be affected by any partial or incomplete statement in the particulars with reference to the tenancies."

As to yearly or shorter tenancies, see condition 6, above, *Law Times*, July 15th, page 192. And as to notice of terms of existing tenancies and collateral agreements connected therewith, see *Phillips v. Miller* 82 L. T. Rep. N. S. 688; L. Rep. 10 O. P. 420. As to whether notice of a tenancy is notice of the length and terms of the tenancy, see *James v. Lichfield* (L. Rep. 9 Eq. 51) and *Oballare v. Henty* (80 L. T. Rep. N. S. 814; 9 Ch. App. 447.)

#### As to Property subject to Incumbrances.

"11. Where the property to be sold is subject to incumbrance, no release by a separate instrument of any incumbrance shall be required, nor shall any objection be made, on the ground of expense, complication, or otherwise, to any incumbrancer joining in the conveyance to the purchaser."

See, as to this condition, Dart, 501, and compare form in Wolstenholme, 121.

#### Compensation.

"12. If any error, misstatement, or omission in the particulars be discovered, the same shall not annul the sale, but if pointed out before the completion of the purchase, and not otherwise, shall form the subject of compensation, such compensation to be made to or by the purchaser as the case may require, and the amount thereof to be settled by the auctioneer, whose decision shall be final."

See also condition 6, above (*Law Times*, July 15th, p. 192) as to condition for compensation, and its effect, see Dart, 184, 142, and see the cases cited in our article of June 24th, page 186. Compensation after conveyance was ordered in *Turner v. Skelton* (41 L. T. Rep. N. S. 668; L. Rep. 18 Ch. Div. 180), but this case was dissented from in *Allen v. Richardson* (41 L. T. Rep. N. S. 614; L. Rep. 18 Ch. Div. 524).

#### Interest on Purchase Money.

"13. If from any cause whatever, other than the wilful default of the vendor, the purchaser fails to complete his purchase on the appointed day, he shall pay

to the vendor interest on the balance of the purchase money (and also on the valuation for timber, fixtures, and other matters, if by the special conditions of sale provision is made for such valuation) at the rate of 25 per cent per annum from that time until actual completion. Provided always that if the delay in completion shall arise from the default of the vendor, or the state of the title, and if the purchaser shall, at his own risk and expense, deposit the remainder of his purchase money in any bank in London or Westminster, or within twenty miles of the place of sale, on a deposit account bearing interest, or shall, at his own risk and expense, invest the same on any security, and shall forthwith give notice of such deposit or investment to the vendor, the vendor shall from the time of receiving notice of such deposit or investment be entitled to such interest only as shall be actually produced thereby."

For explanation of the words "from any cause whatever," &c., see *Williams v. Glenton* (84 Beav. 528; affirmed L. Rep. 1 Ch. App. 200 Dart, 636, 641). Interest may be reserved so as to increase on delay: (*Herbert v. Salisbury, &c., Railway Company*, L. Rep. 2 Eq. 221.) As to appropriation of purchase money, see Dart, 627, 634; and *Kershaw v. Kershaw* (4 L. T. Rep. N. S. 651; L. Rep. 9 Eq. 56). As to conditions for valuation of timber, see Dart, 183; David i. 607; Wolstenholme, 113; and as to what is timber, see David. "Settlements," iii. 280, and *Honywood v. Honywood* (80 L. T. Rep. N. S. 671; L. Rep. 18 Eq. 806). In *Lowndes v. Norton* (Weekly Notes 1876, p. 221) Vice-Chancellor Hall said that the expression "timber-like trees" was not very clearly defined, but that he could not construe it as going beyond "timber," except so as to include trees which, in due course of growth, would become timber. See also *Lowndes v. Norton* (L. Rep. 6 Ch. Div. 139). Mr. Dart states that a grant of timber and timber-like trees includes trees which, by local custom, are considered timber, and even "thinnings" and probably sound pollards. As to valuation of fixtures, see Dart, 182, 222, 566. If there is no condition as to payment for timber, of course it will pass to the purchaser without payment. This is also the case with common fixtures, including such as are not strictly fixtures: (Dart, 182; and see notes to *Elwes v. Mawe*, 2 Smith L. C. 200.) As to liability of purchaser to interest if he exercises acts of ownership, even though delay is due to the vendor, see *Ballard v. Skutt* (48 L. T. Rep. N. S. 178; L. Rep. 15 Ch. Div. 122.)

(To be continued.)

#### BARRISTERS AND SOLICITORS.

The annual meeting of the Incorporated Law Society has once more called attention to the strange contrast between the two branches of the Legal Profession in respect of their corporate or quasi-corporate character. Solicitors are represented by a powerful, active, and vigilant body. No Bill in Parliament, and no measure of legal administration that in any way touches their interests, escapes the scrutiny of the Law Society. The eyes of the council are equally open to such matters of principle as the scale of professional remuneration, and such points of particular convenience as the accommodation provided for solicitors in the still unfinished portion of the new Courts of Justice. The point of view taken by the solicitors of the kingdom as a body on the greatest and the least of these things is constantly and effectively brought to the notice of those who have charge of them; in the first instance, most naturally, and by no means improperly, on behalf of solicitors and in their special interest, but likewise in many cases for the public good. If the Incorporated Law Society were nothing but a trade union, it would still be of great use to statesmen and legislators in the same way that trade unions are—by making known the wishes and opinions prevailing among its members. Turning to the higher branch of the Profession, as it is called, we find a widely different state of affairs, which, indeed, would be incredible if we had not experience of it. The Bar is nominally governed by four distinct and independent societies, which have no regular means of



intercourse or common action. The governing bodies of these societies, again, are in no way representative, and if their administration possesses in any degree the confidence of the Bar—which we cannot say it does in at least one of the Inns—it is by accident. Practically the benchers are co-extensive with Queen's Counsel; in other words, they are persons nominated by the Crown at their own request and for purposes to which the government of the Inns of Court is quite subordinate. As a rule, a successful and busy Queen's Counsel takes little or no part in the affairs of his Inn. A man who gets up at five or six in the morning to read briefs is at work in court from ten to four, and in consultation from four to six, and goes home to read more briefs after dinner, has not much room left for the exercise of public spirit; nor indeed, it may be whispered, for many other of the things which in some people's opinion make human life really having. The result is that the acting benchers of the Inns of Court are, with few exceptions, men past their best days, men who have been comparative failures at the bar, or (worst of all) fussy persons who have crochets in architecture or what not, and think they have a genius for administration. It is impossible to say that the general interests of the Bar are adequately represented by them; and the body of junior barristers (which, the lay reader must understand, means not only young men, but all barristers, old or young, who are not Queen's Counsel or serjeants), have no voice whatever in the government, and no means of making themselves heard. Even in such a matter as the adaptation of new buildings to professional convenience they are helpless. The benchers engage an eminent architect and turn him loose. The eminent architect produces a goodly pile of bricks and mortar, and the barrister who seeks quarter in it is as likely as not to find that it never occurred to his eminent mind to make the simplest inquiries about the manner in which barristers' chambers are occupied and used. If the Incorporated Law Society possessed commanding sites and built solicitors' offices on them, things would be far otherwise managed. It may be said that the disorganised condition of the Bar is not a fault to be thrown upon the Benchers, but rather proceeds from the want of public spirit among the junior barristers themselves; and there is only too much truth in this. The engrossing character of successful practice at the bar is one cause; the overgrown numbers of the profession, and the considerable number of merely nominal barristers it includes, are others. In any case, the present state of things is a public mischief. If the Incorporated Law Society is a good thing, the formless and nerveless condition of the Inns of Court must be a bad thing. It is difficult, however, to see any present remedy. The recent establishment of common-rooms in the several Inns of Court may do some little good; but the separation of the inns, which is the root of the evil, is not only untouched, but made more prominent by it. Already there are those who begin not only to think that one day the distinction between the two branches of the Profession may be broken down, but to think of it with equanimity. Men who are now reading for the Bar may live, unless an effectual reform is taken in hand, to see the Inns of Court annexed by the Incorporated Law Society.—*Pall Mall Gazette*.

#### OFFENCES AGAINST THE DEBTORS ACT.

The Debtors Act which was passed in 1869 consolidated and enlarged the enactments relating to debtors and their creditors. New views were then introduced and extension of the bankruptcy jurisdiction to non-traders at the same time gave a better tone to the mode of treating a somewhat delicate subject. Several decisions have been arrived at in the interpretation of the statute, and from the latest it seems that there are things in it which the public are little aware of, and yet which are salutary in their bearing on the habits of debtors.

The Act 32 & 33 Vict., c. 62, is short, but sums up in a small compass several characteristic delinquencies

of those who are insolvent. With the civil aspect of the law and the extent and power of committal to prison for debt, it is not at present intended to refer. It is enough to confine our attention to the sections dealing with the punishment of fraudulent debtors. The 11th section groups together a variety of acts of misconduct, each of which is a misdemeanour and may be punished with two years' imprisonment. The person who is adjudged a bankrupt must fully discover to the trustee administering his estate for the benefit of his creditors all his property, and when he disposed of the latest portions in other than the ordinary course of trade. He must deliver up all his property and all his books and documents relating thereto. He must not conceal or fraudulently remove such property. He must state his accounts fairly—must not mutilate or falsify his papers or make false entries. He must not within four months of the bankruptcy fraudulently part with such property, or by false or fraudulent statements acquire more property on credit, and not pay for the same. The 18th section is also important, for a misdemeanour is committed punishable with one year's imprisonment, if any person in incurring debt has obtained credit by false pretences, or if he has with intent to defraud his creditors made a gift of or a charge upon his property, or if he has with intent to defraud his creditors concealed or removed any part of his property since or within two months before the date of any unsatisfied judgment or order for payment of money obtained against him.

These are enactments of extensive application and as usual there have been disputes as to the construction and bearing of some of them. A case of fraudulent removal of property arose in 1874. In *Re Creese*, L. R. 2 C. C. 106, the defendant was indicted under section 11, sub-section 5, for removing his property in the following circumstances. In October, 1873, he filed his petition for liquidation of his affairs by arrangement, and a trustee was duly appointed. In the previous December, 1872, he had assigned his property to two creditors, Lakin and White, one of whom had advanced money for carrying on the debtor's business. The assignment was for the benefit of the scheduled creditors. There were other creditors besides those scheduled. On the two days before filing his petition he had fraudulently removed portions of the property so assigned to Lakin and White, and it was in respect of these removals he was indicted. The deed of assignment had not been registered under the Bills of Sale Act, and the point raised for the defendant was whether the property removed was his property within the meaning of the Act. The case was tried at the Worcestershire quarter sessions, and a verdict of guilty passed, but the point was reserved, and ultimately the Court for Crown Cases Reserved said there were two flaws in the indictment. In the first place the deed was said to be void against assignees in bankruptcy, because it was not a deed for the benefit of all the creditors, but only for the benefit of the scheduled creditors. It ought therefore to have been registered as a bill of sale, and the deed being void, the moment the petition for liquidation was presented, the property became the property of the trustee, and even before the petition it was no longer the property of the debtor. As therefore he did not remove his own property he was not within the section of the Act, and the conviction was accordingly quashed.

In another case of *R. v. Knight*, 42 J. P. 166, the defendant was charged, being a trader, with obtaining from Westwich & Co., spice merchants, of London, and others, five cases of Cochin ginger, tea, bacon, cheese, &c., upon credit, under the false pretence of carrying on business, and dealing in the ordinary way of his trade, and not having paid for the same, all this being done within four months next before the commencement of the liquidation by arrangement of his affairs. It was proved at the trial that he filed his petition for liquidation on 19th June, 1877, trustees were duly appointed, and the liquidation proceedings were still pending. He had obtained the things in May and June, 1877.

The jury found him guilty. After the verdict was returned, but before sentence was passed, the defendant's counsel moved to quash the indictment, because there was no averment of any offence under the Debtors Act, there was no averment that he was adjudged bankrupt, or was a person whose affairs were in liquidation, or that a petition for liquidation had been filed. The judge reserved these points for the consideration of the Court for Crown Cases Reserved. On argument in the latter court it was said by the judges, that it could not be disputed that these allegations ought to have been made in the first instance in the indictment as being essential to the charge. If the objection had been taken on demurrer, the defendant must have succeeded. But after verdict the rule was to make every reasonable intendment so as to sustain the indictment. The allegation that the acts were done within four months before adjudication was held by the court to necessarily imply that there had been a liquidation. As Manisty, J., observed, how could the offence be said to be committed within four months next before the commencement unless the act which constituted the commencement had been done? So the court in that case sustained the indictment as good after verdict.

In *R. v. Wilson*, 5 Q. B. D. 28, the prisoner was charged under section 12 with having feloniously within four months before the presentation of a bankruptcy petition against him, quitted England, and taken with him his money to the amount of £20 and upwards, which ought by law to have been divided amongst his creditors, with intent to defraud. The prisoner was a Baltic merchant at Hull. On 19th October, 1878, he drew out of his bank the sum of £128 in cash, and on the 27th October quitted England for Sydney, arriving at the latter place in February, 1879. On 30th November, 1878, within the four months of the prisoner quitting England, a petition in bankruptcy was presented against him, and he was on the same day adjudicated a bankrupt. On that day he was on the high seas on his way to Sydney, being near the Equator. On 2nd December, 1878, an order to prosecute the prisoner was made, and in February, 1879, he was arrested, charged with the offence, and gave up £96 to the officer as part of the money he had taken with him from England. He was afterwards tried at Hull, and it was proved that he was an infant of only 19 years of age—and that none of the debts proved against his estate were for necessities. It was contended that by reason of his infancy he could not have any creditors among whom his property ought to have been divided, for since the Infants Relief Act, 1874, 37 & 38 Vic., c. 62, contracts by infants were void, and thus he never was liable at law or equity for the debts. The judge reserved the points for the Court for Crown Cases Reserved. One point was whether the quitting England must occur after being made bankrupt. The second point was whether an infant could be said to have any creditors. This last point was almost conceded in the infant's favour, and as the court was clear that an infant could not be indicted under the statute, it was not considered necessary to determine whether the quitting of England must be after the adjudication. The words of section 12 are, "if any person adjudged bankrupt within four months before the presentation or adjudication, quits England, &c." This last point will therefore remain for future elucidation.

The next case was one of considerable practical importance. In *Reg. v. Mitchell*, 45 J. P. 289, the indictment turned on the 11th section, sub-section 1, "if he does not to the best of his knowledge and belief fully and truly discover to the trustee all his property, real and personal, and how and to whom and for what consideration, and when he disposed of any part thereof, except such part as has been disposed of in the ordinary way of his trade, or laid out in the ordinary expense of his family." One matter proved against the bankrupt was that he was made bankrupt in 1879, and he was asked about goods bought in 1877 from one Keightley, and immediately afterwards sold by the bankrupt at a loss. The prisoner's counsel contended that the bankrupt was

not bound to give discovery as to any goods except those which he had at the date of the bankruptcy. It was contended that the word "property" must mean such property as was divisible among the creditors. The evidence as to previous transactions being objected to and admitted the Court for Crown Cases Reserved had to decide which of the two constructions was correct. The court held, without much difficulty, that the word "property," as used in the 11th section, was not confined to property divisible among the creditors, but had a wider signification, and meant all property present or past. So the conviction was held to be valid in this case.

Another very recent case of *Reg. v. Rowlands*, ante p. 437, touches on a point which comes home to all debtors. A judgment had been obtained against the defendant on 8th November, 1881, for a sum of £18 4s. 8d. Upon the night of the same day he, with the assistance of two men named Williams, removed his goods under circumstances which justified the conclusion at which the jury arrived, namely, that the removal was effected with the object of defeating and delaying the execution creditor from obtaining the fruits of his judgment. The goods in question were a pony, a chest of drawers, furniture, and stock-in-trade. After the removal the house was shut up, and the county court bailiff could not effect service on the defendant. At the trial of the indictment it was contended that a person could not be liable under the 13th section, unless he was either a bankrupt or a person whose estate was in liquidation, and here the defendant was neither. It was further contended that there was no evidence that he intended to defeat all his creditors, but only to defeat the judgment creditor. These objections were overruled by the chairman of quarter sessions, and the points were submitted to the Court for Crown Cases Reserved. The court came to the conclusion that the section applied to all debtors and was not confined to bankrupts. The other objection, however, prevailed, namely, that there was no evidence that all the creditors were intended to be delayed. At the same time the court said that the jury might reasonably infer from such a solitary case against one creditor that all the creditors were thereby also intended to be defeated. This, however, had not been so found by the jury. And, therefore, the court held the conviction could not be sustained. Thus a valuable decision has been arrived at which will no doubt come often in future into requisition.—*Justice of the Peace.*

#### DEFRAUDED VENDORS OF CHATTELS.

Fraud upon the vendor of goods and chattels, such as enables him to invoke the remedies which are within his legal grasp, usually consists in misrepresentations concerning the pecuniary standing of the purchaser.<sup>1</sup> The ordinary criterion governing cases of deceit applies to such fraudulent statements. They must be false, and known to be such, material and effectual.<sup>2</sup> They must not be mere expressions of opinion or judgment.<sup>3</sup> They may consist of positive representations, as where the buyer procured the sale of the goods by means of bogus representations and guarantees,<sup>4</sup> false statements of prosperous financial condition and the like; or they may consist of mere concealment, as where the purchaser fails to disclose the pendency of a suit against him, which involves a greater amount than the value of all his property.<sup>5</sup> The distinction is important where the purchaser is insolvent, and knows himself to be in such condition. In that event, the earlier decisions, which are still followed in certain jurisdictions, held that he was not guilty of fraud by merely concealing his condition. It was essential in order to hold him guilty of fraud, that he should have resorted to trick or artifice to obtain the goods. Without fraudulent representa-

(1) *Lucky v. Roberts*, 25 Conn. 786.

(2) *Gregory v. Schoenell*, 55 Ind. 101.

(3) *Morse v. Shaw*, 124 Mass. 59.

(4) *Mowrey v. Walsh*, 8 Cow., and cases cited in note.

(5) *Devoe v. Brandt*, 53 N. Y. 462.

tions on his part, or the use of false pretences, felonious or otherwise, the seller could not treat the sale as fraudulent and subject to rescission or such other remedies as the law affords to defrauded vendors.<sup>6</sup> But an overwhelming majority of the later decisions hold that it is sufficient to charge the buyer with fraud, that at the time of the purchase he has no intention of paying for the goods. Such at least is the result of the American authorities.<sup>7</sup> The British decisions favour the same view, though the subject has been but scantily considered in the cases.<sup>8</sup>

The prevailing American opinion, that a preconceived design not to pay for the goods is sufficient, is also adopted by the Federal courts.<sup>9</sup> It has been thought that it would be otherwise if the determination to avoid payment were conceived subsequently to the purchase.<sup>10</sup> The factor which the insolvency of the buyer makes in the transaction, is not that of an essential element. Subsequent insolvency may show the previous fraudulent intent, but it is by no means conclusive. The insolvency may be known to the buyer and may be concealed by him; he may have no reasonable expectation of being able to pay for the goods, and yet the fraudulent intent may be lacking. The insolvent may still act in good faith, believing that he will be enabled to retrieve his fortunes. It is not enough that he does not intend to meet his promise to pay upon a particular day, or that he does not expect to be able to pay all his indebtedness. The fraudulent purpose may also be entertained by a person who is perfectly solvent, but has no idea of paying for the goods he buys. The only important effect of absolute misrepresentations or concealment of financial standing by the purchaser, is to render his fraudulent purpose easier of proof.

The views just sketched as preponderating in the United States, have been announced in Connecticut,<sup>11</sup> Delaware,<sup>12</sup> Kentucky,<sup>13</sup> Maine,<sup>14</sup> Maryland,<sup>15</sup> Massachusetts,<sup>16</sup> Missouri,<sup>17</sup> New Hampshire,<sup>18</sup> New York,<sup>19</sup> Vermont,<sup>20</sup> and Wisconsin.<sup>21</sup> In *Stewart v. Emerson*,<sup>22</sup> the prevalent position has received its fullest exposition. On the other hand, the contrary view has been maintained in Pennsylvania, where it has been ruled, in the cases of *Smith v. Smith*,<sup>23</sup> and *Backettos v. Speicher*,<sup>24</sup> that the intention of the purchaser not to pay for the goods, and his concealment of his insolvency, do not of themselves constitute such fraud as will vitiate the sale; but that there must be artifice intended and fitted to deceive, practised by the buyer upon the seller.<sup>25</sup>

In North Carolina it has been lately held that the vendor was entitled to reclaim the property, and that facts warranted a finding that the purchase was made with fraudulent intent, under these circumstances. The purchaser carried on business in North Carolina. Knowing himself to be insolvent, he bought goods of the agent of a Baltimore house. When asked for reference as to solvency, he gave names of New York firms only. Im-

mediately on receipt of the goods he went into bankruptcy.<sup>26</sup>

In cases where the purchaser makes false and fraudulent representations as to his solvency and means of paying for the goods he buys, it has been laid down that he acquires no right either of property or of possession, and that the vendor would be justified in retaking the property.<sup>27</sup>

But as will be seen later, it is not universally agreed that the fraudulent purchaser gains no title whatever, and therefore replevin would seem to be the proper remedy for the recovery of the specific property, especially since recaption has become so largely obsolete. But if the goods can no longer be retaken or replevied, the vendor may either treat the acts of the fraudulent vendee as a conversion, and bring an action of trover for the value of the goods, or he may bring an action on the case for deceit, or he may even ratify the transaction and bring *assumpsit* for the proceeds of the articles sold by the defrauding purchaser.<sup>28</sup> The limitations upon these remedies will be considered later.

The same remedies would be available where the fraud concerns the subject matter of the sale, its character and condition or its price. But in such cases it is often difficult to determine when the purchaser is guilty of fraud such as renders the sale subject to rescission. Without misleading words or conduct by the buyer, the sale is binding, although the purchaser concealed the existence of a mine on the land sold, or any valuable element of a chattel of which the vendor was ignorant.<sup>29</sup> The same is true where the vendee had private information (which he was under no obligation to divulge), as news of peace, during the supposed existence of war, or of a great rise in the foreign market; and he should, concealing his knowledge, buy articles, the value of which would be greatly enhanced by such a fact, of a person ignorant thereof.<sup>30</sup>

So the sale is regarded as fraudulent when the purchaser buys at auction and deters others from bidding, by combinations designed to stifle competition, unless such association was rendered necessary by the magnitude of the sale, or has any other object than that of depressing the price of the property below the fair market value.<sup>31</sup> The sale is also treated as fraudulent if made in stolen goods or counterfeit money.<sup>32</sup> So, if the goods are paid for in worthless checks or fictitious or forged paper.<sup>33</sup> In these cases there is not only a failure of consideration, but a fraudulent contrivance to procure the property; and the fact that such false pretences may, under the statutes of various States, be regarded as a felony, does not place the transaction on the same footing as larceny, for the goods are obtained under colour of a sale.<sup>34</sup>

Another mode in which a fraudulent sale may be effected is by the purchaser's false impersonation of another party, or where he represents himself to be the clerk or partner of a firm in good standing. If the goods are sold in that belief, the sale is subject to rescission for fraud; and the fraud is even of a more pronounced character if they are sold on the personal credit of the purchaser, irrespective of any name he may use, or business he may pretend to act for. In the latter case the transaction stands on the same footing as larceny, treat-

(6) See Story on Sales, 4th ed., sec. 176, and cases cited.  
 (7) See the cases cited later.  
 (8) *Ex parte Whitaker*, See *In re Shackleton*, L. R. 10 Ch. App. 446.  
 (9) *Biggs v. Barry*, 2 Curt. 262; *Parker v. Byrnes*, 1 Low, 539; *Conyers v. Ennis*, 2 Mason, 236.  
 (10) *Dows v. Burke*, 28 Barb. 157.  
 (11) *Thompson v. Ross*, 16 Conn. 71.  
 (12) *Mears v. Waples*, 3 Houst. 581; affirmed, 4 Houst. 62.  
 (13) *Wood v. Yeaman*, 15 B. Mon. 271.  
 (14) *Cross v. Peters*, 1 Greenl. 378.  
 (15) *Powell v. Bradlee*, 9 Gill. & J. 220.  
 (16) *Kowley v. Bigelow*, 12 Pick. 307; *Dow v. Sanborn*, 8 Allen, 181; *Wiggin v. Day*, 9 Gray, 97; *Kline v. Baker*, 99 Mass. 263.  
 (17) *Hidault v. Wales*, 20 Mo. 546; *Fox v. Webster*, 46 Mo. 181.  
 (18) *Stewart v. Emerson*, 52 N. H. 301.  
 (19) *Andrew v. Dietrich*, 14 Wend. 81; *Ash v. Putnam*, 1 Hill, 302; *Cary v. Holaday*, 1 Hill, 311; *Barnard v. Campbell*, 65 Barb. 286; *Fish v. Payne*, 14 N. Y. 686; *Henneguin v. Taylor*, 34 N. Y. 139; *Paddon v. Taylor*, 44 N. Y. 681.  
 (20) *Redington v. Roberts*, 25 Vt. 694; *Hodgdon v. Hubbard*, 18 Vt. 501.  
 (21) *Rice v. Outter*, 17 Wis. 362; *Garbutt v. Bank of Prairie du Chien*, 22 Wis. 384.  
 (22) 52 N. H. 301.  
 (23) 21 Pa. St. 367.  
 (24) 31 Pa. St. 324.  
 (25) Compare, however, *Rodman v. Thalheimer*, 76 Pa. St. 232.

(26) *Wilson v. White*, 50 N. C. 230.  
 (27) Story on Sales (4th ed.), sec. 173a, citing *Hodgdon v. Hubbard*, 18 Vt. 504; *Johnson v. Peck*, 1 Woodb. & Minot, 334; *Mason v. Crosby*, 1 Woodb. & Minot, 343.  
 (28) *Hawkins v. Appleby*, 2 Sandf. (S. C.) 421.  
 (29) *Fox v. Macbeth*, 2 Bro. C. C. 420; *Pidcock v. Bishop*, 3 B. & Cr. 605; *Prescott v. Wright*, 4 Gray, 461; *Harris v. Tyler*, 24 Pa. St. 347.  
 (30) *Turner v. Harvey*, 1 Jacob. 178; *Laddlaw v. Organ*, 2 Wheat. 178; *Fox v. Macbeth*, 2 Bro. C. C. 420; *Prescott v. Wright*, 4 Gray, 461; Story on Sales (4th ed.), sec. 175.  
 (31) *Phitppen v. Stichep*, 3 Met. 367; *Jenkins v. Frink*, 30 Cal. 378; *Smith v. Greenlee*, 2 Dev. 128; *Small v. Jones*, 1 Watts & S. 128; *Switzer v. Skiles*, 3 Gillm. 529.  
 (32) *Tilcomb v. Wood*, 38 Me. 588; *Green v. Humphrey*, 50 Pa. St. 212; *Lee v. Portwood*, 41 Miss. 109.  
 (33) *Cochran v. Stewart*, 21 Minn. 435; *Hawse v. Crows*, Ryan & M. 414; *White v. Garden*, 10 C. B. 919; *Bristol v. Wilmore*, 1 Barn. & Cress. 514.  
 (34) *Williams v. Green*, 6 Gratt. 268.

pass or conversion by a bailee, and there is no sale to the defrauding person, and no semblance of a title gained by such fraudulent possessor of the goods.<sup>35</sup>

Where the sale is tainted with fraud in any of its countless forms, the vendor has the right of rescission and the privilege of ratification. He may affirm the contract by bringing *assumpsit* for the price of the goods; but he cannot bring such action before the term of credit has expired, for in affirming the contract he is bound by its terms.<sup>36</sup>

Ratification may also be effected indirectly by delay in rescinding, or by accepting the benefits of the sale in any shape, or other acts of acquiescence in the fraud or indorsement thereof. But mere delay (as waiting a few days before the presentment of a cheque), will not operate as a ratification unless it clearly indicated an intention not to rescind.<sup>37</sup> Having once affirmed the sale, however, by bringing *assumpsit*, the vendor cannot then change his mind, abandon his suit, demand the goods and proceed in trover, under the claim that he has rescinded the sale for fraud.<sup>38</sup> He is not, however, precluded from setting up the fraud as against the plea of a discharge in bankruptcy made by the purchaser.<sup>39</sup> Nor does the proof of a claim and the receipt of a dividend in bankruptcy, upon notes given for the goods, prevent the maintenance of an action for the fraud perpetrated in procuring the sale.<sup>40</sup> While the defrauded vendor has the alternative of ratifying the contract of sale, his option may be exercised in favour of rescinding the sale. But he cannot thus disaffirm the sale and yet retain any consideration received for the transfer, but must restore such consideration or make a tender of the same, so that if his offer is refused, he may be able to allege performance of all obligations on his part.<sup>41</sup> But if the article is absolutely valueless, it would be a nugatory act to return it.<sup>42</sup> Nor is it necessary to make reimbursements of moneys expended in furtherance of the fraud, as in paying the government tax on whiskey which had been placed in a United States bonded warehouse, where such sums were advanced in order to procure the possession of the property, by a party acting in collusion with the defrauding purchaser.<sup>43</sup> But it has been laid down,<sup>44</sup> and the statement is presumably applicable to a defrauded vendor, that a party having an election to rescind an entire contract must rescind it wholly or in no part.<sup>45</sup> He cannot avoid it to retain his property, and, at the same time, enforce it to recover damages.<sup>46</sup> The contract cannot be rescinded as to one party, and be kept in force as to the other.<sup>47</sup>

The restoration, or an offer equivalent thereto, must, like the rescission, be made promptly. The notes of a third party must be surrendered before suing in tort the fraudulent vendee who has given them in payment.<sup>48</sup> But when the notes of the defrauding purchaser are given for the goods, the vendor may, upon discovering the fraud, bring trover or replevin without first surrendering the notes; but he must do so either before the trial,<sup>49</sup> or on the trial.<sup>50</sup>

(35) *Kingsford v. Merry*, 1 H. & N. 503; *Hallins v. Fowler*, 7 Eng. & Gr. App. 757; *Hardman v. Booth*, 1 H. & C. 804; *Moody v. Blake*, 117 Mass. 23; *Dean v. Yates*, 22 Ohio St. 389; *Barber v. Dinmore*, 73 Pa. St. 427; *Cundy v. Lindsay*, 3 App. Cas. 459.

(36) *Bulter v. Hildreth*, 5 Met. 49; *Kellogg v. Turpie*, 2 Brad. (Ill.) 55; *Mortuary v. Stofferan*, 89 Ill. 428; *Stewart v. Emerson*, 52 N. H. 301; *Bicknell v. Buck*, 58 Ind. 334.

(37) *Hodgson v. Barrett*, 23 Ohio St. 63.

(38) *Bulkeley v. Morgan*, 46 Conn. 693; compare *Dalton v. Hamilton*, 1 Hazey (N. B.), 422.

(39) *Stewart v. Emerson*, 52 N. H. 301.

(40) *McBean v. Fox*, 1 Brad. (Ill.) 177; compare, to similar effect, *Moller v. Tucker*, New York. Notes of Cases, December 13, 1831; mentioned in 13 Reporter, 912.

(41) *Horrin v. Libbey*, 36 Me. 357; *Willoughby v. Moulton*, 47 N. H. 205.

(42) See *Norton v. Young*, 3 Greenl. 33, note.

(43) *Suckenheimer v. Asperline*, 81 N. Y. 394.

(44) *Benj. on Sales* (3d. Am. ed.), sec. 452, note a.

(45) *Minor v. Bradley*, 22 Pick. 457; *Voorhees v. Earl*, 3 Hill (N. Y.), 292, 298.

(46) *Jumblin v. Simpson*, 14 Me. 264; *Weeks v. Robie*, 49 N. H. 816.

(47) *Coolidge v. Brigham*, 1 Met. 550; *Fuller v. Reville*, 3 Hun, 600.

(48) *Norton v. Young*, 3 Greenl. 33, note.

(49) *Coghlin v. Boring*, 15 Cal. 214; *Wells v. Bradley*, 1 Sand. 580.

(50) *Norton v. Young*, 3 Greenl. 33, note.

The disaffirmance of the contract of sale may be made as late as during the trial, if the fraud is then for the first time discovered.<sup>51</sup> Indeed, the general principle is, that the defrauded vendor must rescind with due diligence, and within a reasonable time after the discovery of the fraud. He may keep the matter open so long as he has done nothing in the way of ratifying the transaction.<sup>52</sup> But he may lose his right to rescind by delay if, in consequence of such delay, the position of the wrongdoer is altered; and he will lose it absolutely if, during the interval between the delivery of the goods and the disaffirmance of the sale by the defrauded vendor, the goods have been sold to an innocent third party for a valuable consideration.<sup>53</sup>

The *bona fide* purchaser, in such a case, who pays actual value and is free from knowledge or notice of the fraud, stands in a better position than the original owner who has allowed himself to be deceived. Such a *bona fide* purchaser is protected in his right to the property for which he has paid in ignorance of the fraud perpetrated by his vendor. This protection is established by the authorities.<sup>54</sup> It has been declared by the courts of California,<sup>55</sup> Connecticut,<sup>56</sup> Delaware,<sup>57</sup> Georgia,<sup>58</sup> Kansas,<sup>59</sup> Kentucky,<sup>60</sup> Illinois,<sup>61</sup> Indiana,<sup>62</sup> Iowa,<sup>63</sup> Maine,<sup>64</sup> Maryland,<sup>65</sup> Massachusetts,<sup>66</sup> Minnesota,<sup>67</sup> Mississippi,<sup>68</sup> New Hampshire,<sup>69</sup> New York,<sup>70</sup> Ohio,<sup>71</sup> Pennsylvania,<sup>72</sup> Tennessee,<sup>73</sup> Virginia,<sup>74</sup> Wisconsin.<sup>75</sup> In England, the protection of the innocent purchaser from a fraudulent vendee is also established.<sup>76</sup>

The principle, or process, by which the defrauded vendor is divested of his title, and it becomes established in the *bona fide* purchaser from the fraudulent vendee, is not fully agreed.<sup>77</sup>

The American annotator of Benjamin on Sales fitly remarks on this point:—"In some cases it is assumed that when a sale of goods is procured by fraud of the vendee, no title passes to him, but the vendor still retains the legal right in the goods, and hence it is concluded that a person who has no title to goods can convey none."<sup>78</sup> But, at the same time, it is agreed that a third person may acquire a good title from a fraudulent vendee by giving him value for the property, or incurring some responsibility upon the credit of it, without notice of the fraud. In such a case, it is said that the superior equity of the innocent purchaser is

(51) *Clough v. London, &c., R. Co.*, L. & R. 7 Exch. 26.

(52) *Ibid.*

(53) See *Barnard v. Campbell*, 58 N. Y. 75.

(54) See 15 Am. L. Rev., 387.

(55) *Page v. O'Neal*, 12 Cal. 488; *Sargent v. Sturm*, 22 Cal. 389.

(56) *Thompson v. Ross*, 16 Conn. 71; *Williamson v. Russel*, 29 Conn. 408.

(57) *Mears v. Waples*, 4 Houst. 62; affirming a. c., 3 Houst. 561.

(58) *Kern v. Thurber*, 57 Ga. 172.

(59) *Wilson v. Fuller*, 9 Kan. 76.

(60) *Arnott v. Cloudes*, 4 Dana, 300; *Wood v. Fastman*, 15 B. Mon. 271.

(61) *Chicago Dock Co. v. Foster*, 48 Ill. 507; *Ohio, &c.; R. Co. v. Kerr*, 49 Ill. 558.

(62) *Sharp v. Jones*, 16 Ind. 314.

(63) *Oswego Starch Factory v. Lendrum*, December 20, 1861; 10 N. W. Rep. 900.

(64) *Ditson v. Randall*, 23 Me. 202; *Titcomb v. Wood*, 28 Me. 563.

(65) *Powell v. Bradlee*, 9 Gill & J. 520; *Hall v. Hinks*, 21 Md. 508.

(66) *Rowley v. Bigelow*, 12 Pick. 307 (1832); *Hoffman v. Noble*, 6 Metc. 68; *Moody v. Blake*, 117 Mass. 23.

(67) *Cochran v. Stewart*, 21 Minn. 435.

(68) *Lee v. Portwood*, 41 Miss. 109.

(69) *Kingsbury v. Smith*, 13 N. H. 109; *Willoughby v. Moulton*, 47 N. M. 205.

(70) *Root v. French*, 3 Wend. 570; *Barnard v. Campbell*, 58 N. Y. 75; *Stevens v. Brennan*, 79 N. Y. 254.

(71) *Dean v. Yates*, 22 Ohio St. 388; *Combes v. Chandler*, 23 Ohio St. 178.

(72) *Thompson v. Lee*, 3 Watts & S. 479; *Sinclair v. Healey*, 40 Pa. St. 417.

(73) *Avandale v. Morgan*, 5 Sneed, 708; *Hawkins v. Davis*, 5 Jere Baxter, 698.

(74) *Williams v. Owen*, 6 Gratt. 268; *Steamship Co. v. Durchhardt*, 31 Gratt. 684.

(75) *Shufeldt v. Pass*, 16 Wis. 689; *Rice v. Cutler*, 17 Wis. 872; *Singer Manufacturing Co. v. Sammons*, 49 Wis. 316.

(76) See the cases reviewed by Benjamin, and the latter decisions of *Attenborough v. Dock Co.*, 3 C. F. D. 450 (1875); and *Babcock v. Lawson*, 4 Q. B. D. 894, affirmed 5 Q. B. D. 284 (1880).

(77) *George v. Kimball*, 24 Pick. 241, per Morton, J.

(78) The words "hence it is concluded," should rather read, "it is also declared."

allowed to overcome the legal rights of the owner; and it is said to be the single instance in which our law divests the title to property without the owner's consent or default.<sup>79</sup>

"The difficulty," remarks the commentator, "consists in tracing the title and reconciling the right of the defrauded vendor to reclaim his property in the hands of his fraudulent vendee, with the vesting of the title in such purchaser. This difficulty is obviated, however, by adopting the doctrine of the text—that the contract is not void *ab initio*, but is voidable at the option of the vendor, as between him and the vendee, and those claiming under him, without consideration, or with notice of the fraud. The reference in these comments is to the English doctrine embodied in the authorities already cited herein as establishing the protection of *bona fide* purchasers from fraudulent vendees.

The same view, that the fraudulent vendee has a title, though it is voidable and defeasible at the option of his vendor, widely prevails in America. It was clearly announced in the case of *Rowley v. Bigelow*,<sup>80</sup> has been explained in other cases,<sup>81</sup> and has been adopted not only in Massachusetts, but also in New Hampshire,<sup>82</sup> Maine,<sup>83</sup> Delaware,<sup>84</sup> and Virginia.<sup>85</sup> It has also received support directly and indirectly in New York.<sup>86</sup> But the prevailing tendency in that State, as well as in Maryland<sup>87</sup> and Ohio,<sup>88</sup> is to lay most stress upon the principle that the rightful owner is estopped from asserting his right when the act of conferring upon his vendee the possession (and the *indicia* of title), has led to the payment by an innocent purchaser. At the same time, the superior equity of the innocent purchaser is regarded as an element of importance, and even, in the latest instance, his defeasible title.<sup>89</sup> It would unduly extend the limits of the present article to show the scope and limits of the term "*bona fide* purchasers" in this connexion, but these particulars may readily be presumed from similar transactions in conveyances of real property and transfers of negotiable paper.—*Central Law Journal*.

#### THE ASSOCIATED LAW CLERKS OF IRELAND.

The usual weekly meeting of the committee of this association was held on Monday evening. The attendance included Messrs. Maonamara (in the chair), Jervise, O'Brien, Dodd, Condell, Dowling, Shelly, &c. The secretary announced a donation by Mr. John Falconer, of Sackville-street, to the library, of Mr. M'Dermott's work on the Land Act. On the motion of Mr. Jervise, seconded by Mr. O'Brien, a warm vote of thanks was given to Mr. Falconer for his continued assistance to the association. The president announced that in compliance with the wish of the committee their meetings would be adjourned until the first Monday in October, but he trusted that they would be able to attend the usually monthly meetings, and accordingly moved that the monthly meetings stand adjourned to Monday the 7th August, which having been seconded, the motion was carried. The meeting shortly afterwards adjourned.

The Corrupt Practices Bill has been abandoned for the present session.

(79) *Fancher, J.*, in *Barnard v. Campbell*, 65 Barb. 288, 289; s. c., 53 N. Y. 73; *Root v. French*, 13 Wend. 570; *Monroy v. Walsh*, 8 Cow. 286; *Hoffman v. Carrow*, 23 Wand. 218; *Ash v. Putnam*, 1 Hill (N. Y.) 307; *Hester v. Hudson River Iron and Machine Co.*, 30 Barb. 493; *Williams v. Birch*, 6 Bosw. 299.

(80) 12 Pick., 312.  
(81) *Stevens v. Hyde*, 33 Barb. 180; *Somers v. Brewer*, 2 Pick. 184, 201; *Ayras v. Hest*, 19 Me. 281.

(82) *Kingbury v. Smith*, 13 N. M. 109.

(83) *Nicombe v. Wood*, 35 Me. 553.

(84) *Mears v. Waples*, 3 Houst. 581; s. c., 4 Houst. 63.

(85) *Williams v. Green*, 6 Grant. 268; *Steamship Co. v. Burchhardt*, 31 Grant. 664.

(86) See *Keyser v. Harbeck*, 3 Duer. 373; *Stevens v. Hyde*, 33 Barb. 180; *Padden v. Taylor*, 44 N. Y. 371.

(87) *Holt v. Hinks*, 21 Mid. 418.

(88) *Combes v. Chandler*, 33 Ohio St. 184.

(89) *Barnard v. Campbell*, 53 N. Y. 73.

#### EVIDENCE BY EXPERIMENTAL TESTS.

At the trial of *Williams v. The Festiniog Ry. Co.*, at Carnarvon, on the 14th inst., in which the plaintiff claimed damages for negligence,

Mr. *Sudenhams*, Q.C., who appeared for him, asked Huddleston, B., to allow the plaintiff to walk across the court before the jury, with a view to convince them that the lameness alleged was not assumed.

His LORDSHIP declined to allow this test, and said that ever since he had been reported to have said, during the hearing of the case of *Bell v. Lawes*, that he should allow the plaintiff to make a bust of himself in court, he had been pestered to allow all kinds of tests to be gone through in court before the jury, and he wished it to be known that the Press had entirely misrepresented him in this matter, and that he had never indicated that he should allow such a course to be taken.

#### TEXT-BOOK ADDENDA.

[From the *Law Journal*.]

*Theobald on Wills (2nd Edition)*, 433.

A power to appoint among such grandchildren as should be living at a time which might or might not be ascertained within the prescribed period, held void under the rules against perpetuities (*Blight v. Hartnoll*, 51 Law J. Rep. Chanc. 162).

*Dart on Vendors and Purchasers (5th Edition)*, 768.

Where, on a sale of lands, the vendor covenants that other lands shall not be sold except subject to a restrictive covenant, the purchaser is entitled to the benefit of any such restrictive covenant to which any vendee or sub-vendee of the other lands may have become liable (*Nicoll v. Fenning*, 51 Law J. Rep. Chanc. 166).

#### APPOINTMENTS AND PROMOTIONS.

Mr. Garrett Eagle, barrister-at-law, has been appointed a stipendiary magistrate for the county of Cavan.

Mr. Philip Thomas Lyster, barrister-at-law, has been appointed a temporary stipendiary magistrate for the county of Galway.

#### BOOKS RECEIVED.

*A Summary of the Law and Practice in Admiralty. With an Appendix, containing a List of the Statutes relating to Admiralty; an Epitome of the Merchant Shipping Acts; Admiralty Rules and Forms; the County Court Rules and Forms relating to Admiralty; Fees paid and allowed in the Admiralty Division; and Forms of Bottomry and Respondentia Bonds.* By T. EUSTACE SMITH, of the Inner Temple, Barrister-at-Law, &c. Second Edition. London: Stevens and Haynes, Law Publishers, Bell-yard, Temple-bar. 1882.

*Cassell's History of England from the earliest period to the present time.* With about 2,000 Illustrations. Part 83. London, Paris, and New York: Cassell, Petter, and Galpin.

*Milton's Paradise Lost.* Illustrated by Gustave Doré. Edited, with Notes and a Life of Milton, by the late ROBERT VAUGHAN, D.D. London: Cassell, Petter, Galpin, & Co.

*Contemporary Review.* August, 1882. London: Strahan and Co., Limited, Paternoster-row.

On Thursday, after Mr. Recorder Falkiner had dismissed a civil bill process, brought by John Fitzpatrick, a tutor, the plaintiff produced a revolver, and exclaimed, "By heavens, won't you give me justice? I'll show you." The man was seized by the police, and said he did not intend to injure Mr. Falkiner, but only to protest against the decision.

## COURT PAPERS.

## LAND JUDGES.

Sittings for next Week so far as same are appointed.

Before the Rt. Hon. JUDGE FLANAGAN.

## MONDAY.

IN CHAMBER.—J. O'Shea, proposal.—P. Hanly, allocate.—J. Truseman, from 27th.

IN COURT.—M. Meares, payment by receiver.—C. Lewis, final schedule.—W. Rowland, receiver.—R. Hall, payment.—W. J. Griffith, receiver.—H. G. Smith, do.

Before EXAMINER (Mr. Kennedy).

B. Hagerty, vouch.

## TUESDAY.

Before EXAMINER (Mr. Kennedy).

M. Horgan, rental.

## WEDNESDAY.

IN CHAMBER.—A. Noble, confirm sale.

Before EXAMINER (Mr. Kennedy).

Trustee C. St. George, reference.—J. M. Cochrane, do.

## THURSDAY.

Before EXAMINER (Mr. Kennedy).

G. Graham, rental.

Before the Rt. Hon. JUDGE ORMSBY.

## MONDAY.

IN CHAMBER.—M. Hall, payment.—T. Manly, proposal.—W. T. Murray, do.—T. J. Nolan, to discharge receiver.

IN COURT.—T. Manly, final schedule.—H. St. George, receiver.—N. Butler, do.—Armstrong v. Armstrong, to extend receiver.—R. Ramsay, as to order.—J. Bury, final schedule.—E. L. Hartstonge, do.—J. W. Madden, carriage.

## TUESDAY.

IN CHAMBER.—M. A. Moore, delay.—E. Hogan, as to conveyance.

IN COURT.—P. H. Hora, final schedule.—R. J. Montgomery, to amend schedule.—R. Kellett, from 29th.—D. V. Mullins, receiver.—M. Thora, to make order absolute.—G. Warburton, to discharge purchaser.—J. Fenton, objection.—S. D. Wright, for surrender.—J. Gill, receiver.—T. Rossingrane, to let lands.

## THURSDAY.

IN CHAMBER.—C. Langdale, payment.

IN COURT.—M. J. M'Kee, confirm sale.—E. S. Brennan, adjourned motion.—T. Higwell, final schedule.—G. E. Lambert, receiver.—G. E. Lambert, cross notice.—As-signees Bolton, payment.—O. Burns, final schedule.

## FRIDAY.

## SALES IN COURT.

R. BURKE,	-	-	-	2 lots.
T. M'GLYNN,	-	-	-	1 lot.

Before EXAMINER (Mr. M'Donnell).

M. H. Jordan, rental.

## LAND JUDGES' COURT.

## SALES.

July 11.—Before the Right Hon. Judge FLANAGAN.

CITY OF LIMERICK, AND COUNTIES OF LIMERICK AND CLARE.—Estate of the Mayor, Aldermen, and Burgesses of the Borough of Limerick, owners; John Stephens, petitioner. All held in fee.

Lot 1.—The Great Lax Weir and Fishers' Stent, near Limerick; yearly profit rent, £295; government valuation, £600; sale adjourned.

Lot 2.—Gas works and premises at West Watergate, Limerick; yearly profit rent, £86 10s. 8d.; government valuation, £101 10s.; sale adjourned.

Lot 3.—Houses and premises at West Watergate, Limerick; yearly profit rent, £26 8s.; government valuation, £27. Sold to Stephen Hastings for £255.

Lot 4.—Gortacklina, or Mulgrave-street, in city of Limerick; yearly profit rent, £41 15s. 4d.; government valuation, £446. Sold to T. M' Mahon Cregan for £780.

Lot 5.—House and premises at Mungret-street, city of Limerick; yearly profit rent, £12; government valuation, £20. Sold to Patrick Riordan for £140.

Lot 6.—Houses and premises at Robert-street and Carr-street, city of Limerick; yearly profit rent, £3 8s.; government valuation, £108. Sold to T. M' Mahon Cregan for £50.

Lot 7.—The lands of Rhebogue, in the city of Limerick; containing, 77a. 8r. 8p.; yearly profit rent, £105 19s. 9d.; government valuation, £116 10s. Sold to Timothy and Thomas Hartigan for £1,950.

Lot 8.—The lands of Clino, barony of Clanwilliam, county of Limerick; containing, 94a.; yearly profit rent, £92 6s. 2d.; government valuation, £118 5s. Sold to Edmond Keane for £1,665.

Lot 9.—Spittal Land, in the same barony and county; containing, 12a. 2r. 18p.; yearly profit rent, £9 10s. 8d.; government valuation, £37 15s. Sold to John Stephens for £165.

Lot 10.—St. Lawrence's Cemetery, in the same barony and county; containing, 13a. 3r. 16p.; yearly profit rent, £67 16s. 8d.; government valuation, £35 5s. Sold to Rev. D. Fitzgerald for £1,230.

Lot 11.—Part of Gortnamanagh, in the same barony and county; containing, 10a. 0r. 9p.; yearly profit rent, £31 8s. 10d.; government valuation, £22. Sold to Patrick Kelly for £570.

Lot 12.—Corkanree, in the barony of Pubble Brien, and county of Limerick; containing, 91a. 0r. 30p.; yearly profit rent, £266 19s. 8d.; government valuation, £160. Sold to Patrick Riordan for £4,865.

Lot 13.—Pennywell, partly in the city and partly in the county of Limerick; containing, 1a. 2r. 3p.; yearly profit rent, £10 10s. 2d.; government valuation, £20 15s. Sold to T. M' Mahon Cregan for £145.

Lot 14.—Houses, &c., at O'Halloran's-lane and Thomondgate, city of Limerick; yearly profit rent, £4 4s. 8d.; government valuation, £10 5s.; sold to Mary Anne Dooley for £100.

Lot 15.—Eight houses at Thomondgate, Limerick; yearly profit rent, £9 10s.; government valuation, £14. Sold to John Goggin for £135.

Lot 16.—Houses and premises at Thomondgate, Limerick; yearly profit rent, £16 10s.; government valuation, £21 10s.; not sold.

Lot 17.—Houses, &c., at Thomondgate, Limerick; yearly profit rent, £13 7s.; government valuation, £18 10s. Sold to G. W. Bassett for £70.

Lot 18.—House at Thomondgate, Limerick; yearly profit rent, £12; government valuation, £18. Sold to Edmond Keane for £190.

Lot 19.—Ground and premises at Osmington-terrace, Limerick; yearly profit rent, £10; government valuation, £88. Sold to Mr. Trousdell for £270.

Lot 20.—Houses at Thomondgate, Limerick; yearly profit rent, £7 2s.; government valuation, £43. Sold to Wm. Vaughan for £160.

Lot 21.—Houses at Thomondgate, Limerick; yearly profit rent, £15; government valuation, £18. Sold to Wm. Ellard for £125.



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# THE IRISH LAW TIMES AND SOLICITORS' JOURNAL.

VOL. XVI.

SATURDAY, AUGUST 5, 1882.

No. 810

## PRESUMPTIONS OF LIFE AND DEATH.—II.

IN the Scottish case of *Rhind's Trustees v. Bell* (5 S. C. 527), it appeared that a sailor, born in 1805, sailed in June, 1842, for the West Indies. He was in hospital at Kingston in 1843, and was never heard of since then. He was of intemperate habits. He was not known to have married. In the division of a succession, it was held (Jan. 1878) that he should be presumed to be dead on 1st June, 1850. The Lord Ordinary (Curriehill) held that the presumption was that he had died in 1843. Lord Moncrieff said: "The man has not been heard of since March, 1843—a period of *thirty-four* years. It is not necessary to go into the general question of presumption of life. As has been said in the cases quoted, it is always a question of circumstances in each particular case. In accordance with the presumption arising from the facts here, we must hold that the man is now dead, but cannot be held to have died in the same year in which he was last heard of." But, as we have formerly mentioned, there is now a special statute dealing with the subject of presumption of life in Scotland; and this statute came under consideration in the recent case of *Rainham* (Dec. 2, 1881), where it was held not to apply to an absentee who had never been in Scotland, although alleged to have succeeded to heritable property there. The statute relates to "the case of any person who has been absent from Scotland, or who has disappeared for a period of seven years and upwards;" and in reference to the contention that the latter clause covered the case presented, the Lord President said that the obvious construction of the clause is "that to come within the operation of the Act, the case must be that of a person who has been in Scotland once, or who has either been absent from Scotland seven years or has disappeared; that is to say, the alternative is that the petitioner must prove that the person whose succession is in question has been absent from Scotland for the period mentioned in the statute, or if it cannot be proved that he ever left Scotland, that he has disappeared and not since been heard of. But to apply the Act to a foreigner who has never been in Scotland, and had no connexion with it, would be a strained and unnatural construction." In the recent Canadian case of *McDonald v. Forbes* (1 C. L. T. 333), where there was evidence of a negative sort, which, though not conclusive, was sufficient to warrant the presumption of the death of certain parties, and also that they had died intestate, the Court, in the absence of positive proof, refused to presume that they had died unmarried and without issue.

Another remarkable Canadian case is *McArthur v. Eagleson* (43 U. C. R. 406, referred to in 2 C. L. T. 295). There, the plaintiff went away temporarily, leaving his wife on his land. He did not return for thirty years, nor did he communicate with his wife. Within seven years of his departure his wife, believing him to be dead, took another husband, and they lived together on the plaintiff's farm, and had a large family. On his return the plaintiff recovered the land in ejectment. There was no question of presumption in the case, but Harrison, C.J., said—"A man, after seven years, although presumed to be dead, is not con-

clusively proved to be dead, or compelled to stay presumptively dead contrary to the fact, for the benefit of a person who may have, during his absence, dealt either with his property or his wife upon the supposition of his death. Notwithstanding the inconvenience of the reappearance of such a man under such circumstances, I know of no principle of estoppel which can be properly held, on the facts of this case, to preclude his reappearance, and upon his reappearance, the assertion of all his legal rights." But, on other facts, there might be such an estoppel, according to the American decision (1877) in *Rosenthal v. Mayhew*, where the points determined were as follows:—(1). If a husband leaves his family and usual place of residence, and goes to parts unknown, or a distant State, and is not heard from for a period of seven years, a presumption arises that he is dead. (2). Where such presumption exists, and where the husband has abandoned his wife and minor children, without other means of support than the house and lot on which he resided before such abandonment, she may enter and contract as a *feme sole*. (3). If in fact the husband is not dead, yet, in such case, she is capable of binding herself, by way of equitable estoppel, by her acts and contracts as fully as if she were a *feme sole*. (4). And if she join with the children, who have come of age, in order to induce a sale of said real estate for their mutual benefit, in representing that he is dead, and thereby, and for value received, effects a sale of such real estate, and also joins them, as widow, in a conveyance in fee with covenants of general warranty, and the contract is fully executed by the purchaser: Held, that although the husband be living, and although such conveyance does not operate as a release of her inchoate right of dower, yet she is barred by way of equitable estoppel from treating her contract as a nullity, and from asserting her right to have dower assigned upon the actual death of her husband. (5). It is not necessary, to constitute such equitable estoppel, that a party should design to mislead; it is enough if the act or declaration was calculated to and did in fact mislead another who acted in good faith and with reasonable diligence. Probably, the court would hold that an estoppel of this kind would be created in such a case as that narrated in one of Lever's novels, where a gentleman submitted himself to a mock funeral in order to escape his creditors, if the "widow" went into mourning.

But, in the words of the Book of Maccabees, "to collect all that is to be known, to put the discourse in order, and curiously to discuss every particular point," in reference to a subject so prolific, is rather the duty of a professed text-book; and, as concerning the other cases bearing on it, are they not collected in our previous papers, which "if we have done well, and as it becometh the history, it is what we desired, but if not so perfectly, it must be pardoned us." At all events, we may apply an anecdote, extracted from a source so out of the way as a book on Etiquette, published forty-five years ago. "I once," saith the writer, "sat next to a foreigner, who had endured with exemplary patience a tedious concerto, and who, when it was finished, applauded vehemently, then, turning round to me with a droll expression of countenance, said—'Perchè si finisce.' Approve—for we, too, have finished.

## THE VACANT JUDGESHIP.

Nowadays on the instant when a vacancy on the Irish Bench has been whispered of as likely to occur, either we may say from a probable mortal event or the rarer incident of a healthy resignation, the Press busies itself with the choice of a successor, and very confident paragraphs suggest the strength of this or the other lawyer's chances, from motives in each case that it would not be useful to analyse. It might not be easy to defend this modern practice, and we fancy that some of those whose names are wafted about the Hall on a breeze expected to reach the newspaper office can have no great reason to be thankful to their occasional friends for the injudicious patronage often extended to them. There is apt to be created thereby such a sitting of claims as leads to a rapid discrediting of some inferior pretensions which would have been respectable in lower place. Never in the history of the Irish judiciary was it more necessary than in present circumstances that the Bench should be recruited on opportunity arising by men possessed of a mental and physical energy fitting them for hard and constant work and heavy responsibility; men besides of established discretion, and breadth of view and sympathy; good lawyers, but something more than lawyers, having besides professional qualifications superior powers of clear and calm exposition—such as, exhibited with dignity, will have a public effect in moments when in other respects the legal process may fail. Such men are not to be found at any corner; and those on whom the selection falls have a task the importance of which we could not exaggerate. Clumsiness of expression, narrowness of mind, hardness of nature, are all grave objections to an aspirant to the judicial office in this country. Our judges have vastly more of an influence in their power than those who sit on the English Bench, and their best qualities are more frequently and strongly tested than is the case in England. It follows that no considerations, personal or party, should be suffered to warp the choice of such a functionary. The duty is too grave to endure mistake. It may be expected, then, that when the Irish Government come to decide upon the vacancy now existing they will take care to secure the service as a Judge of one who will bring to his functions adequate intellectual and moral strength, and experience in tasks of Government which give the best training for quick discrimination, intense care, and knowledge of the country and people. During the past two years, a period of exceptional, probably unparalleled, difficulty, the country has been served with extreme fidelity and success by the law officers whom the Irish Administration called to its aid. No fault has been found in or out of Parliament with their action. No single imprudence has been imputed to them. Neither undue severity nor want of vigour has been charged in any instance to their discredit. Their judgment in critical matters has been upheld, and their advice has been of admitted value in all matters lying within their province. It is but just to say what the opportunity is only given very occasionally for saying in a manner so direct and necessary. It is known also that the burden has lain less upon the shoulders of the law officers who have been almost constantly occupied in Parliament than upon those daily in attendance at the Castle, to whose energy, diligence, and courage the nation owes not a little. It is in this quarter, first of all, we should say that the proper qualifications would be sought for in a judge whose further duties would in so much be but a continuation of the exercises that have occupied him. To wander into other external places for as yet not entirely used-up material would be a rashness that we could not expect to be committed. The Government have no need to make a search for the proper occupants for the vacant seats. One is designed for the Attorney-General, and cannot in reality be spoken of as a vacancy; but in dealing with the other, which is open, they have it in their power to do justice to those who have served them with energy during the whole of the trying period we have mentioned.—*Irish Times*.

## JUDICIAL CHARACTER AND HABITS.

Without some attention to public matters, some interest in current events, there is danger of the approach of that destroying malady of those who would be "altogether judges," which perhaps may not be inaptly termed judicial crystallisation—a sort of metempsychosis of the mind by which it passes from the state of personal consciousness and natural sympathies to a condition of morbid abstraction and abnormal devotion, and, relinquishing all other aims and aspirations as unworthy, heroically dedicates itself to the perpetual contemplation of judicial ends and essences, as if their proper study required a sacrifice, and they were arbitrary and abstract principles, perfectly ascertained, and to be uniformly applied as contained in the repositories of judicial learning, and were not simply the collected results of human experience, reduced to systems of government and rules of conduct ever undergoing modification and change in the progress of civilisation, and to be as carefully sought and as profitably studied on the latest pages of the open volume of life, as in the dusty tomes of libraries whose precedents perish with their coverings along the pathway of the generations. Instances of such consecration and absorption are frequent, but the cause is generally misapprehended. That habitual absence of mind which is popularly regarded as an indication of fixed and fathoming thought, is but the listless reverie of mental *crasi* or enervation, proceeding with legitimate certainty from the strain of a mind unrelieved or overwrought in the investigation and exposition of exclusive subjects. Strong, active minds, invigorated by diversified thought, have no such infirmity. And busy men of the world experience no such weakness in grasping the actual of life's concerns. It is the offspring of weariness and apathy, and wherever detected is an evidence of impaired faculties, of diminished powers, of incipient intellectual retroversion. If it would be avoided by the Bench, the functions of the judge and the faculties of the man must be equally and evenly exercised, and the senses of the body must be indulged with healthful excitement, even in direct opposition to the inclinations or prejudices of the mind. The soul draws its inspiration from the senses, which it refines and elevates; and when, in obedience to the behests of virtue, it seeks to gain the ascendancy by denying them proper gratification, it does but waste its own vitality, weaken its power over the propensities, and, by precipitating psychomachy, destroy all. To preserve *mens sana in corpore sano*, sustain the judge and succour the man, there must be equilibrium of the mental and physical forces and union of the judicial and personal characters. Where this rule occurs there is true greatness; where it does not, there is chance result.—*Judicial Record of Ch. J. Chase, by John S. Benson.*

## DISTRESS FOR RENT.

The report of the select committee of the House of Commons on the law of distress amounts, in the main, to an approval of Sir Henry Holland's bill, and a disapproval of Mr. Blennerhasset's. It was unfortunate that the subject of distress was not referred *simpliciter* to the committee instead of its being referred "especially as regards agricultural landlords and tenants." The committee have given great weight to the "especially." No witness seems to have been examined in reference to urban tenancies. No recommendation is made by the committee in regard to houses property, although some few of the suggestions necessarily apply to all forms of tenancy. No reference is made in the report to any interest but that of agriculture, except a brief paragraph referring to the existence of the Lodgers' Goods Protection Act, and some few exemptions allowed in the interest of trade. The constitution of the committee was favourable to the development of the agricultural side of the question. No one can complain of the interests of agriculture largely deter-

mining the character of future legislation, if there is to be any; but there is danger of this subject, like so many others in recent times, being treated in parts, and not as a whole.

The most important of the recommendations of the committee are those directed to the right of a landlord to seize goods which do not belong to the tenant. They desire to throw special protection round registered stock, machinery not the tenant's property, and animals temporarily on the premises for breeding purposes. The true criticism on these recommendations is that they do not go far enough. Special considerations may arise with regard to the goods of under-tenants and of persons holding a bill of sale; but with regard to mere strangers, what show of right or equity has the landlord to take their goods for the debt of someone else? It may be that the landlord ought to be protected against a *bona fide* mistake on his part in seizing the goods of a stranger; but that is the limit of his just rights in this respect. With regard to agisted stock, the committee recommend the application of the rule introduced in 1867 by the Hypothec Amendment (Scotland) Act. By that Act, agisted cattle are liable to hypothec "to the extent of the payment" due from their owner to the tenant, and no further. With regard to the machinery of strangers, the committee merely suggest that "provision be made for its protection;" and, with regard to animals used for breeding, that they be exempt. The case of other people's cattle fed on the land may require exceptional treatment of the same kind as the case of a sub-tenant; but, with regard to other people's machinery and stud horses, they ought to be included in one rule of law which will protect them from being seized for rent, and which will equally apply to the horse and carriage of a visitor who may be taking luncheon with the tenant. The recommendation that the right of distress be limited to one year's rent is also tainted with narrowness of view, besides suggesting a Hibernicism. The report suggests that "the right of distress be restricted to one year's rent, and that this right should only be exercised within six months after the said year's rent has become due." As most rent is payable quarterly, it is difficult to see how a year's rent can be distrained for six months after its becoming due. It is odd that members of Parliament of so much experience, should apparently have assumed that all rent was payable yearly. Striking out, however, the reference to six months, so as to make the recommendation intelligible; we think it would be a mistake to introduce further complications into the law on this subject. At present, the limitation on the right to distress in point of time is a branch of the law of limitation. The landlord may distress for six years' arrears, as he may sue for them. An acknowledgment within six years, of rent due longer than six years ago, will justify a distress, just as it will justify an action. To limit the landlord's right to distress to a year's rent will give rise to the notion that after a year has elapsed the rent is forgiven. It is difficult to see the policy of forcing a landlord to distress. If this recommendation were adopted, the landlord must either distress when his tenant is a year behind, or not at all; whereas one of the advantages of the law of distress is that the landlord has some security, so that he can give time to his tenant, as, for example, in bad seasons. There is, in fact, no good reason why there should be a different limitation of time according to the remedy pursued, whether distress or action; but there are reasons why the right of distress, which is correlative to giving credit, should be coextensive with the debt itself. The rest of the recommendations are on minor subjects. It is proposed to extend 57 Geo. III., c. 93, regulating the cost of distresses for rent not exceeding £20, to distresses for rent not exceeding £50, with power to raise the possession money from half-a-crown to five shillings. With regard to distresses for a larger amount, it is proposed to give the registrar of the County Court power to tax the expenses. Probably the Act of Parliament referred to might be so regulated as to apply to distresses to any amount. It is proposed

also to give the tenant fifteen days, instead of five, during which he may postpone the sale on finding security.

It will be seen that a large majority of the committee were in favour of distress as a general principle. Mr. James Howard proposed a report, recommending the abolition of distress; but it was negatived by a majority of eleven to four. It was agreed on all hands that, if distress is to be abolished, there ought to be greater facilities for the landlord to re-enter. The committee state that the law of distress—which they refer to that general receptacle for misunderstood laws, the feudal system—"although varying from time to time under various influences, has been implanted in the ideas and habits and contracts of the people during many generations." Mr. James Howard proposed to omit this sentence; but he had only two followers against twelve on the other side. The "influences," however, have rather been uniform than "various," all of them gradually extending the privileges of the landlord. In support of the law of distress, the committee produce some analogies which are not sound. They say that "the principle of satisfaction by distress is the one general remedy now existing in all cases of rent, assessment, and charge, when property is the basis of liability." We know of no such principle. "In modern statutes," we are told, "whether for the recovery of the rent-charge, recovery of rates of every class, or recovery of penalties, the remedy of distress is generally the one provided in the first instance, and, in some cases, the only remedy. With respect to rates and penalties generally, no procedure can be taken against the individual until the power of distraint has been exhausted. The Crown's remedy for recovery of Crown debts is by distress." All that is beside the mark. The only similarity between the landlord's power of distress and these is, that they are both called distress; but the landlord's right differs from them all in the fact that his is a private remedy, which he can enforce without appealing to a Court of law. All the other cases cited, including the remedy for Crown debts, are cases of execution after judgment obtained, it may be summarily, but in no useful respect analogous to the landlord's right of distress. Distress for nonpayment of poor rates is analogous to a *fi. fa.* and not to distress for rent, which, among other advantages, gives the landlord the start of every other creditor, because he has to ask no one's leave. The only analogy between rent and the debts cited is that both have, in some instances, priority over other debts but this is because, in the case cited, the debts are public. The committee are, however, right in saying that we are used to distress for rent, and no case has, as yet, been made out for its abolition. They put in a good word for the codification of the law of the subject, which is rapidly becoming a common form with all laymen who attempt to master the intricacies of any branch of law. If reform is needed, however, it will be better not to wait for a code.—*Law Journal.*

THE EXTRADITION ACT, 1870.

The preliminary steps required by the Extradition Act, 1870 include what is called a "requisition." The Act requires that a requisition for the surrender of a fugitive criminal of any foreign state who is suspected of being in the United Kingdom, shall be made to a Secretary of State by some person recognised as a diplomatic representative of that foreign state. If the Secretary of State is satisfied that the offence is non-political, he then duly signifies to a police magistrate that such requisition has been made, and requires him to issue his warrant for the apprehension of the fugitive criminal. The term "police magistrate" is defined in the Act as the chief magistrate at Bow-street, or one of the magistrates of that court. On receipt of the said order of the Secretary of State a warrant may be issued by a police magistrate, on such evidence being laid before him as would, in his opinion, justify the issue of the warrant if the crime had been committed, or the crimi-

nal convicted in England. It is not, however, at all necessary that the requisition should precede the warrant, for it is expressly provided by 33 and 34 Vict., c. 52, s. 8, sub-sect. 2, that a warrant may be issued "by a police magistrate, or any justice of the peace in any part of the United Kingdom, on such information or complaint, and such evidence, or after such proceedings as would, in the opinion of the person issuing the warrant, justify the issue of a warrant if the crime had been committed or the criminal convicted in that part of the United Kingdom in which he exercises jurisdiction." But the Act requires that when a warrant is issued without any order from a Secretary of State, the police magistrate or justice must forthwith send a report of the fact of such issue, together with the evidence and information or complaint, or certified copies thereof, to a Secretary of State, who can, if he thinks fit, quash the warrant and order the discharge of the person detained. The Act goes on to provide that "a fugitive criminal, when apprehended on a warrant issued without the order of a Secretary of State, shall be brought before some person having power to issue a warrant under this section, who shall by warrant order him to be brought, and the prisoner shall accordingly be brought before a police magistrate." The fugitive criminal, on being brought before a police magistrate, must be discharged, unless, within a reasonable time, the magistrate receives from a Secretary of State an order signifying that a requisition has been made for the surrender of such criminal. It would certainly seem, therefore, that a fugitive criminal must in every case be arrested on a warrant, and that he has a further right, when the warrant has been issued without an order from a Secretary of State, that a report of the fact and the evidence on which it was granted, shall be laid before a Secretary of State.

The non-compliance with the Act of Parliament in the matter of the warrant formed the ground of an application to a divisional court, consisting of Lord Coleridge and Mr. Justice Grove, on Monday, the 10th inst., for a *habeas corpus* in the case of one Jacob Weale. The facts were shortly as follows: On the 25th May last Weale arrived in Queenstown Harbour on board the *Servia* from New York. He was then apprehended by Maguire, a detective officer of the Cork police, but without a warrant. The prisoner was taken before Mr. Starke, a justice of the peace for the county of Cork, and evidence was given that a private detective, living in London, had received an intimation from New York that the prisoner would arrive by the *Servia*, and had telegraphed accordingly to Maguire, who, acting upon that intimation, had arrested the prisoner. Mr. Starke remanded the prisoner, and subsequently issued his warrant as required by sect. 8 of the Extradition Act directing him to be brought before a police magistrate at Bow-street. On the 2nd June the prisoner was brought up before Sir James Ingham, and remanded again and again until the 22nd, when depositions were, for the first time, taken, and objection made by counsel appearing for the prisoner that he was not legally in custody, having been arrested without a warrant. The objection was overruled, and the prisoner again remanded until the 29th. Subsequently an order of the Secretary of State, setting out that a requisition had been made for the extradition of the prisoner, and directing the magistrate to act "in conformity with the Act," was received at Bow-street, thereupon Sir James Ingham issued his warrant under sect. 8, sub section 1. On the 29th June the prisoner was finally brought up and committed, the warrant issued by Sir James Ingham having been read, and some further depositions taken. Application was first made to Mr. Justice Dentman at chambers for a rule for a *habeas corpus*, but that learned judge, considering the matter of great importance, directed that the application should be renewed before the full court. It was then argued that up to the 29th June the prisoner was improperly in custody, as he was apprehended without a warrant, and that the subsequent warrant would not cure the original informality, especially as there was not, even on the 29th June, a

formal apprehension; that depositions being taken on the 22nd June, before the prisoner was legally before the court, and the court finally committing upon those depositions, as well as those subsequently taken, the committal was illegal; that the court could not discriminate as to what particular part of the evidence operated upon the magistrate's mind and which did not; that the order of the Secretary of State was insufficient, as it merely directed the magistrate to act "in conformity with the Act," and did not require him in terms "to issue his warrant" (see sect. 7 and form in schedule at end of Act referred to in sect. 20). The Divisional Court refused the application, and the prisoner appealed to the Court of Appeal, and the matter was re-argued before them on Thursday, the 13th inst., but the decision of the Divisional Court was affirmed.

The Master of the Rolls, in giving judgment said: "There is a serious question which will have at some time to be considered, if the case should ever arise, viz., whether having regard to the Judicature Acts this court has jurisdiction to entertain an appeal from a divisional court in a case of this kind, which is of a criminal nature; but it becomes unnecessary to determine that point now, because we are all of opinion that, granting that we have jurisdiction, no ground has been shown for the exercise of it. The question before us turns upon the proper construction of sect. 8 of the Extradition Act. All the proceedings in this case were strictly regular with the exception of the fact that the original arrest had been made without warrant. The whole objection then was that the subsequent warrant of Sir James Ingham was not a warrant for the 'apprehension' of the prisoner within the meaning of the Act. I am of opinion that such a construction would place too narrow a meaning upon the word 'apprehension.' Strictly, no doubt, it means seizing or laying hold of a man and detaining him with a view to his surrender; but I am not prepared to limit it to detaining a man not already in custody, because to do so would be to hold that a man already in lawful custody could not be arrested at all under the Act, unless he was first set at liberty. I am therefore of opinion that this appeal must be dismissed."

Lords Justices Brett and Cotton concurred.—*Law Times*.

#### THE LIABILITY OF BUILDING OWNERS.

During the short time that Lord Justice Holker was on the bench he differed more than once from his colleagues. His mind was vigorous and independent; and the opinions expressed on these occasions are interesting and instructive. Probably he was not right on either of the reported occasions on which he differed. Although his habit of thought was logical and fearless, it may be doubted whether he possessed the instincts without which lawyers, when they go wrong, generally go very wrong indeed. We have already commented on the case of *Gibbs v. Guild*, in which Lord Justice Holker differed from the rest of the Court of Appeal, holding, in opposition to the view of the majority, that the concealment of a fraud did not prevent the Statute of Limitation from running. In the July number of the *Law Journal Reports*—a number particularly rich in interesting cases in the Queen's Bench Division—is to be found, in *Percival v. Hughes*, another case in which the late Lord Justice was unable to concur with the majority. It was one of those cases in which the sometimes perplexing question is raised, whether the defendant is liable for an act of negligence, or whether the contractor, to whom he had delegated the work, and whose servants were guilty of the act complained of, alone is liable. Lord Justice Holker is found, in this case, in favour of the defendant; while Lords Justices Baggallay and Brett decide that he is still liable, notwithstanding the contract.

The damage complained of was caused in rather a remarkable manner; although, up to a certain point, the history of the case is very commonplace. The defendant was pulling down and rebuilding his houses,

and employed a contractor who was to hold him harmless in respect of any damage. The main portion of the rebuilding was completed without accident, but it became necessary to make a staircase from the basement to the ground floor. The new house was lower than the neighbouring houses on either side, one of which was the plaintiff's, but the workmen were ordered not to cut into the party wall. In making the staircase, however, the workmen did cut into the party wall of the house which was not the plaintiff's. The effect was that the house, the party wall of which was cut into, fell; the girders of the defendant's house were displaced, and the plaintiff's house, on the other side, was injured. The defendant relied on the doctrine that a man is not responsible for the negligent acts of his contractor, as he is for his servant; while the plaintiff relied on the exception to that rule contained in *Bower v. Peate*, 45 Law J. Rep. Q. B. 446, as confirmed by *Angus v. Dalton*, 50 Law J. Rep. Q. B. 689. The effect of these cases was accepted by all the Lords Justices as being that, where a man directs on his land an operation likely to be dangerous to his neighbour, he is bound to see that his neighbour suffers no injury. The mere fact of his authorising the contractor to pull down the house raised a duty on his part to insure that no injury was done to his neighbour's house. If a labourer, engaged in building a man's house, drop his hod on the head of a passer-by, the owner of the house is not liable; but if the scaffolding erected on the instructions of the owner is negligently put together by the contractor, so that it falls and injures the passer-by the owner is liable. He is bound so to manage his property that he does not injure others. Lord Justice Baggallay pronounces that this positive obligation lay on the defendant until the house was completely finished. Lord Justice Brett admits that, if the defendant had only authorised the erection of a staircase not to be affixed to the wall, and the workmen had, contrary to orders, cut into the wall, the defendant would not have been liable; but he considers the case in question a different case. Both judges agree in treating the pulling down and rebuilding of the house, staircase, and all as one transaction.

Lord Justice Holker, on the other hand, views the matter as two transactions. He admits that the owner of a house is liable for the act of a contractor when a dangerous operation is authorised, although the particular act is not authorised; but he argues that the dangerous operation in this instance was over. The question which he puts to himself is, whether the erection of the staircase was a hazardous operation; and, answering that in the negative, he pronounces the defendant not liable. In support of this view, he points out that it would be "a strange consequence if, after a house had been pulled down and built up again, and after everything but a few trifling matters had been completed, some work is ordered to be done which in itself is not of a hazardous character, that the owner of the house should be liable, but that he should not be liable if that work had been delayed for a few months." The judgment of the reader will probably be that the obligation of the building householder cannot be thus split up. If he orders his house to be pulled down and rebuilt, he must guarantee his neighbour until the last pane of glass is put into the windows. The staircase would never have been wanted at all unless the house had been pulled down and built up again; and, therefore, the erection of the staircase was part of the whole transaction. This result seems the only conclusion which can be arrived at without introducing further refinements into this branch of the law, and without unduly cutting down the duty to one's neighbour.—*Law Journal*.

#### ADMISSION OF A SOLICITOR.

Mr. Michael M. Murphy, of Kensington Lodge, Monkstown, Co. Dublin, has been admitted a Solicitor of the Court of Judicature.

#### PARTICULARS AND CONDITIONS OF SALE.

(Continued from page 364, ante.)

##### Completion.

"14. The purchaser shall pay the remainder of his purchase money at the time appointed by the special conditions of sale for the completion of the purchase at the office of the vendor's solicitors, and, upon such payment, the vendor and all other necessary parties (if any), will execute a proper assurance to the purchaser, but such assurance and every other assurance which shall be required by the purchaser for getting in, surrendering, or releasing any outstanding estate, right, title, or interest shall be prepared by and at the expense of the purchaser, and the expense of perusal on behalf of, and execution and (if needful) acknowledgment by the vendor; and all necessary conveying parties, of such assurance or assurances shall be borne by the vendor. The grossment of such assurance or assurances shall be tendered or left by the purchaser not less than seven days before the day appointed for the completion of the purchase at the office of the vendor's solicitor."

It is usual to specify date of completion: (Dart. 127.) This is done by the special condition. There is no need to state to whom the purchase money is to be paid; it must be paid to some one who can give a valid receipt. By C. A. 1881, s. 36, receipts in writing of trustees are sufficient discharges. This applies to trusts created either before or after the commencement of the Act. By sect. 56, a receipt in a deed, or indorsed receipt by the person entitled to give the receipt, is a sufficient authority for payment to the solicitor producing such deed or receipt. In case of deed without indorsed receipt, the deed must be executed by the person entitled to give receipt. As to receipts by mortgagees, see C. A. 1881, s. 22. "It is usual to provide that the purchaser shall be at the expense of getting in and procuring the surrender or release of any outstanding legal estate or term:" (Dart. 156.) "The purchaser (in the absence of any express agreement) prepares and pays for the preparation of his conveyance, but the costs of perusal and execution by all necessary conveying parties fall on the vendor, including, it is conceived, the costs of all matters essential to the validity of the deed as a perfect conveyance—e.g., the acknowledgment by married women," &c.: (Dart. 707.) Probably there will soon be no necessity for such acknowledgment.

##### Trustees, &c.

"15. A trustee, incumbrancer, or other person who sells, or concurs in any assurance merely in a fiduciary capacity shall only be required to enter into a covenant that he has not incumbered, and, in case he retains any title deeds, to give to the purchaser an acknowledgment of his right to production of such title deeds, and to delivery of copies thereof. The expenses of preparation and perusal of such an acknowledgment shall be in accordance with condition 16 below."

This acknowledgment is under C. A., s. 9. By subsect. (6), "An acknowledgment shall not confer any right to damages for loss or destruction of, or injury to, the documents to which it relates, from whatever cause arising." Hence a trustee may safely give such an acknowledgment.

##### Title Deeds.

"16. The vendor will retain such muniments of title as relate to any part of the property sold, and also to other property in which the vendor retains any estate or interest. Such of the muniments of title as relate exclusively to any one lot shall be delivered to the purchaser of that lot, and such as relate exclusively to any two or more lots mentioned in the particulars shall, on the completion of all the purchases to which the same relate, be delivered to the largest purchaser in value, whether he buy at the present sale or previously or subsequently thereto. The vendor (not being a person such as is described in condition 15) and every other person having the custody of muniments of title under this condition shall, at his own option, either

enter into the usual defeasible covenant for the production thereof, or give the proper statutory acknowledgment of right to production and delivery of copies, and the proper statutory undertaking for safe custody thereof, to every purchaser of property comprised in such muniments of title who shall require the same; such covenant or such acknowledgment and undertaking shall be prepared by and at the expense of the covenantee, but the covenantor shall bear the expense of the perusal on his part, and the execution thereof by him."

On a sale of land there is now no need for any condition that the vendor shall keep the deeds relating to land of which he retains any part: (V. & P. Act, ss. 2, 5). But this does not apply to other kinds of property, and there is considerable doubt whether it applies to incorporeal hereditaments: (Dart, 148; but see Lord Brougham's Act, defining "land," 13 & 14 Vict. c. 21, s. 4; Fish. Dig. 8326). In any case it makes the condition more complete to insert this paragraph. By V. & P. Act, s. 2, (4), the purchaser has to pay the cost of "furnishing" covenants for production of deeds on sale of "land," and C. A., s. 8 (6) extends this rule to sales of all "property," s. 2 (i.), and uses wider language. But it would seem that, in the absence of any condition, the vendor would not only have to pay the costs of his own perusal of such covenants when made by himself, which is reasonable, but he might also, in case of a sale in lots, where some of the deeds were handed to one of the purchasers, be bound to pay for the perusal by such purchaser of covenant to produce to another purchaser: (V. & P. Act, s. 2 (4)). It is well to avoid the risk of this. See, however, *Strong v. Strong* (4 Jur. N. S. 948) and Dart, 877; Sug. V. & P. 451; and compare *Prideaux*, 11th edit. i. 48. The statutory acknowledgment and undertaking are under C. A. s. 9. It is slightly better for the covenantor to enter into the statutory obligation, but it seems desirable in these Conditions to give him his choice. As to vendor's obligation to enter into covenant to produce independently of stipulation, see Seton, 1311; Dart, 142, 676; C. A. ss. 9 (8) and 9 (11). As to delivery of title deeds, see Seton, 1311, and as to their custody, Fish. Dig. 3526. For other forms of condition under the new Act, see Wolst. & T. 122; Concise Davidson, 12th edit. 104.

#### Apportionment of Rents and Outgoings.

"17. The rents and profits or possession will be received or retained, and the outgoings discharged, by the vendor up to the day appointed for completion; and as from that day the rents or possession shall be taken, and the outgoings discharged by the purchaser, and such rents and outgoings shall (if necessary) be apportioned between the vendor and purchaser for the purpose of this condition, and the proper apportioned part shall be paid with or deducted from the purchase money."

The outgoings will, on a sale of leaseholds, include an apportioned part of the current rent: (*Lanes v. Gibson*, L. Rep. 1 Eq. 135). Also "outgoings" include charge for street improvements: (*Midgley v. Coppock*, 40 L. T. Rep. N. S. 370; L. Rep. 4 Ex. Div. 309.) Where sanitary works or street improvements have been ordered by the authorities in respect of the property, but have not been completed or paid for, a special condition should be inserted, throwing the cost either upon vendor or purchaser as may be deemed expedient. Under a condition such as the above, when the vendor is in and retains possession, the purchaser is entitled to a fair occupation rent from the time fixed for completion: (*Metropolitan Railway Company v. Defries*, 39 L. T. Rep. N. S. 494; L. Rep. 2 Q. B. Div. 189, 387.)

#### Accidents and Insurance.

"18. The property shall, from the time of sale, be at the risk of the purchaser as respects loss or damage by fire, the dropping of lives, and other accidents; and, when the property is insured against loss or damage by fire, the purchaser shall be entitled to the benefit of such insurance, but shall, upon the completion of the purchase, pay to the vendor a proportionate part of

current premium. This condition shall not impose upon the vendor any obligation to keep up any insurance, or render him subject to any liability for neglect in respect of the same."

The earlier part of this condition is taken from the Liverpool form. It is obviously improper that a vendor should be able, in case of fire, to take both the full price from the purchaser and yet keep the insurance money paid by the insurers. Yet this would seem to be the law unless there is some condition, express or implied, as to the purchaser receiving the benefit of the insurance: (*Raynor v. Preston*, 44 L. T. Rep. N. S. 787; L. Rep. 18 Ch. Div. 1; *Castellain v. Preston*, 48 L. T. Rep. N. S. 569; L. Rep. 8 Q. B. Div. 613; *Poole v. Adams*, 12 W. R. 683; 33 L. J. 639, Ch.; 10 L. T. Rep. N. S. 287; and see Dart, 812; 2 Smith, L. C. 293.)

#### Breach of Contract by Purchaser.

"19. Should the purchaser neglect or fail to comply with any of the special conditions or of these conditions his deposit money shall be forfeited to the vendor, who, without being obliged previously to tender an assurance to the purchaser, may sell the property either by public auction or private contract, and subject to such special or other conditions as he may think fit, and the deficiency of price, if any, on such resale, together with all expenses attending the same, shall be immediately paid to the vendor by the defaulter; and in case of nonpayment, the same shall be recoverable by the vendor as liquidated damages; but any surplus on such second sale shall be retained by the vendor for his own benefit."

In *Best v. Hamand* (40 L. T. Rep. N. S. 769; L. Rep. 12 Ch. Div. 1) a railway company sold under a strong condition that purchaser should admit their power to sell. It was afterwards found that prior owners had not waived their right of pre-emption. It was held that the condition was binding, and that the purchaser could not maintain an action for the return of the deposit. There was a forfeiture condition. See also *Want v. Stallbrass* (29 L. T. Rep. N. S. 293; L. Rep. 8 Ex. 175). In *Ex parte Barrett* (33 L. T. Rep. N. S. 115; L. Rep. 10 Ch. Div. 512) it was held that, as the contract had gone off by the default of the purchaser, the deposit was forfeited, although there was no condition to that effect. See, as to the above condition, Dart, 162. A purchaser cannot elect to forfeit the deposit and avoid the contract (Ib. 192) except under very special circumstances on sales by the court (Ib. 1927). In *Rosenberg v. Cook* (L. Rep. 8 Q. B. Div. 162) the defendant purchased from a railway company land over a tunnel which the company had no power to sell. Plaintiff agreed to purchase it as "freehold building land." The conditions allowed seven days only for requisitions, and sold the property subject to certain covenants with the railway, and gave the buyer the opportunity of seeing the conveyance. The vendor had possession, but "the conveyance from the company to him was *ultra vires* and void." The conditions also provided for forfeiture of the deposit; the plaintiff was held unable to recover it, as his objection was not sent in till after the seven days. The phrase "freehold building land" was considered to be explained by the reference to the conveyance from the company made in the conditions.

#### Interpretation Clause.

"20. In the above conditions the expressions "vendor" and "purchase" shall apply to several persons as well as to one person, and the word person, in this clause, shall include "corporation." Words importing the masculine gender shall be deemed to include the feminine. When any property is offered for sale in lots the above conditions shall apply to each lot."

In our next article on this subject we shall give the form of memorandum which should be annexed to the conditions, and explain what are its essential contents.

(To be continued.)

## THE LIMITS TO LITERARY AND ARTISTIC CRITICISM.

(From the *Southern Law Review*.)

A good many years ago it was announced from the bench, by an English chief justice, that a person who publishes a book must expect to have his feelings hurt by criticism.<sup>1</sup> "Liberty of criticism must be allowed, or we should neither have purity of taste nor of morals," said, at the beginning of the present century, a great and distinguished judge—Lord Ellenborough—to whose lot it fell to first announce the law touching the right of literary criticism, and who, in his endeavour to guard that right, in the interest of good taste, morality, and religion, laid down a wider privilege than succeeding judges have been willing to acknowledge. Nevertheless, the courts have never lost sight of the fact that it is of the utmost importance to society that works published for general perusal should be such as are calculated to improve and not demoralise the public mind. A man who publishes a book, or who produces any work of art, challenges criticism. If it tends to his praise, he rejoices in it, and it redounds to his fame and fortune. Therefore he is obliged to submit to it if, instead of favourable, it is adverse; and he cannot complain of a legal wrong unless the critic has gone beyond the legal boundary, and exceeded the just limits to privileged criticism.<sup>2</sup> To ascertain exactly what these limits are, by a review of all the reported adjudications on the subject, has proved a task to a legal author at once interesting and instructive.

The earliest case in the English reports in which we find a judicial exposition of the limits to criticism is *Tabart v. Tipper*,<sup>3</sup> which was tried in the King's Bench, before Lord Ellenborough, in 1808. Tabart was a publisher of, and a dealer in, children's books; while Tipper was the publisher of a periodical called the *Satirist*, or *Monthly Meteor*. Tabart alleged that, although he always dealt in books of the most moral kind, and on no occasion allowed anything not having a useful and proper tendency to influence the minds of the youth in a right direction, to leave his press or store, yet had Tipper so far forgotten himself, in a malicious endeavour to do injury to his good name and character, as to cause it to be suspected and believed that he published and vended books of an absurd, immoral, and improper tendency, for children. On the trial it appeared that the libels, which the wicked critic had inflicted on the good Tabart, were published in the *Satirist*, in the form of a mock panegyric upon certain poems which Tabart had published, and ending with a travesty, thus:—

"Not to tire your numerous readers with needless prolixity, I proceed to the magnificent poem—

"There was a little maid,  
And she was afraid  
Her sweetheart would come to her;  
She bound up her head  
When she went to bed,  
And she fastened her door with a skewer."

Garrow, for the defendant, in cross-examining one of the plaintiff's witnesses, asked him whether the plaintiff had not published certain books, with a view of showing that the alleged libel was a fair stricture upon the ordinary rank of the plaintiff's publications. The plaintiff objecting, he argued in support of his question, citing Anthony Pasquin's case, as in point, where, in an action for libel upon an author, Lord Kenyon admitted evidence of the character of the plaintiff's works; and, it appearing that they were of the most libellous and scandalous description, Lord Kenyon was reputed to have thrown his parchment at the unlucky plaintiff's head, and to have dismissed him from the court with contumely. The evidence was admitted, Lord Ellenborough, in his ruling, taking a resolute stand in the

interest of literary criticism, in language which has become historical: "The main question here," said he, "is *quo animo* the defendant published the article complained of—whether he meant to put down a nuisance to public morals, or to prejudice the plaintiff? To ascertain this, it is material to know the general nature of the plaintiff's publications to which the libel alludes; and I therefore think, that the evidence is receivable. The plaintiff is bound to show that the defendant was actuated by malice, and the defendant discharges himself by proving the contrary. Liberty of criticism must be allowed, or we should neither have purity of taste nor of morals. Fair discussion is essentially necessary to the truth of history and the advancement of science. That publication, therefore, I shall never consider as a libel, which has for its object, not to injure the reputation of any individual, but to correct misrepresentations of fact, to refute sophistical reasoning, to expose a vicious taste in literature, or to censure what is hostile to morality." Subsequently, several questions of pleading having been gone into, the defendant admitted that the plaintiff had not published the poem imputed to him, but urged that the travesty was intended as a just specimen of his publications. Lord Ellenborough instructed the jury that it was actionable to impute to a bookseller that he had published a poem of the kind shown, to which, in fact, he was a stranger, as the natural tendency was to hurt him in his business; and the plaintiff had a verdict with one shilling damages.

In the same year, in the same court, and before the same judge, the subject received a more thorough discussion.<sup>4</sup> Sir John Carr, a writer whose works are now forgotten, was the author of several books of travel: one entitled "The Stranger in France;" another, "A Northern Summer;" a third, "The Stranger in Ireland." Relying upon *Tabart v. Tipper*, he alleged that the sale of these works brought him large sums of money; but that the defendant Hood, intending to expose him to contempt and ridicule, had published a malicious and defamatory libel concerning him, in the form of a book, entitled "My Pocket-Book, or Hints for a Right Merrie and Conceited Tour; to be called the Stranger in Ireland, in 1805; by a Knight Errant." The book, it appeared, contained a print, intending to ridicule the plaintiff, called "The Knight leaving Ireland with Regret." It depicted Sir John in the form of a man of ridiculous and ludicrous appearance, holding a pocket-handkerchief to his face, and appearing to be weeping; and, behind him, another caricature of a man, bending under the weight of three large books, one of which had the word "Baltic" printed on its back. The man also held a pocket-handkerchief by the corners, on which was printed the word "wardrobe." The plaintiff alleged that, by reason of this publication, he had been prevented from selling, for the sum of £600, the copyright of a book of which he was the author, containing an account of a tour by him through a part of Scotland. As the trial was proceeding, Lord Ellenborough intimated an opinion that if the book published by the defendant only ridiculed the plaintiff as an author, the action could not be maintained. Garrow, the plaintiff's counsel, admitted "that when his client came forward as an author, he subjected himself to the criticism of all who might be disposed to discuss the merits of his works; but that criticism must be fair and liberal. Its object ought to be to enlighten the public, and to guard them against the supposed bad tendency of a particular publication presented to them, not to wound the feelings and to ruin the prospects of an individual. If ridicule was employed, it should have some bounds. While a liberty was granted of analysing literary productions, and pointing out their defects, still he must be considered as a libeller, whose only object was to hold up an author to the laughter and contempt of mankind. A man with a wen upon his neck, perhaps could not complain if a surgeon, in a scientific work, should minutely describe it, and consider its nature and

(1) Lord Abinger, C.J., in *Fraser v. Berkeley*, 7 Car. & P. 624.

(2) "Nothing is more important than to draw the line daily between fair discussion, for the promotion of the truth, and publications for the aspersion of personal character." Earle, C.J., in *Zobbs v. Wilkinson*, 1 Fost. and Fin. 610.

(3) 1 Camp. N. P. 351.

(4) *Carr v. Hood*, 1 Camp. N. P. 355 (1808).

the means of dispersing it; but, surely, he might support an action for damages against anyone who should publish a book to make him ridiculous on account of his infirmity, with a caricature print as a frontispiece. The object of the book published by the defendant clearly was, by means of immoderate ridicule, to prevent the sale of the plaintiff's works, and entirely to destroy him as an author. In the late case of *Tabart v. Tipper*, his lordship had held that a publication by no means so offensive or prejudicial to the object of it, was libellous and actionable. Lord Ellenborough said: "In that case the defendant had falsely accused the plaintiff of publishing what he had never published. Here the supposed libel has only attacked those works of which Sir John Carr is the avowed author; and one writer, in exposing the follies and errors of another, may make use of ridicule, however poignant. Ridicule is often the fittest weapon that can be employed for such a purpose. If the reputation or pecuniary interests of the person ridiculed suffer, it is *damnum absque injuria*. Where is the liberty of the press, if an action can be maintained on such principles? Perhaps the plaintiff's 'Tour Through Scotland' is now unsaleable; but is he to be indemnified by receiving a compensation in damages from the person who may have opened the eyes of the public to the bad taste and insanity of his compositions? Who would have bought the works of Sir Robert Filmer, after he had been refuted by Mr. Locke? But shall it be said that he might have sustained an action for defamation against that great philosopher, who was labouring to enlighten and ameliorate mankind? We really must not cramp observations upon authors and their works. They should be liable to criticism, to exposure, and even to ridicule, if their compositions be ridiculous; otherwise, the first who writes a book on any subject will maintain a monopoly of sentiment and opinion respecting it. This would tend to the perpetuity of error. Reflection on personal character is another thing. Show me an attack on the moral character of this plaintiff, or any attack upon his character unconnected with his authorship, and I shall be as ready as any judge who ever sat here, to protect him; but I cannot hear of malice on account of turning his works into ridicule." The counsel for the plaintiff still complaining of the unfairness of this publication, and particularly of the print affixed to it, the trial proceeded. The attorney-general having addressed the jury on behalf of the defendant, Lord Ellenborough said: "Every man who publishes a book commits himself to the judgment of the public, and everyone may comment upon his performance. If the commentator does not step aside from the work, or introduce fiction for the purpose of condemnation, he exercises a fair and legitimate right. In the present case, had the party writing the criticism followed the plaintiff into domestic life, for the purpose of slander, that would have been libellous; but no passage of this sort has been produced, and even the caricature does not affect the plaintiff, except as the author of the book which is ridiculed. The works of this gentleman may be, for aught I know, very valuable; but, whatever their merits, others have a right to pass their judgments upon them—to censure them if they be censurable, and to turn them into ridicule if they be ridiculous. The critic does a great service to the public who writes down any vapid or useless publication, such as ought never to have appeared. He checks the dissemination of bad taste, and prevents people from wasting both their time and money upon trash. I speak of fair and candid criticism; and this everyone has a right to publish, although the author may suffer a loss from it. Such a loss the law does not consider as an injury, because it is a loss which the party ought to sustain. It is, in short, the loss of fame and profits to which he was never entitled. Nothing can be conceived more threatening to the liberty of the press than the species of action before the court. We ought to resist an attempt against free and liberal criticism at the threshold." The Chief Justice concluded by directing the jury, that if the writer of the publication complained of had not travelled

out of the work he criticised, for the purpose of slander, the action would not lie; but, if they could discover in it anything personally slanderous against the plaintiff, unconnected with the works he had given to the public, in that case he had a good cause of action, and they should award him damages accordingly. The jury returned a verdict for the defendant.

In *Straus v. Francis*,<sup>5</sup> the plaintiff was the author of a novel called "The Old Ledger;" the defendant, the publisher of the *Athenæum*; and the action was brought for the publication therein of the following *critique* upon the book:—

"Our first impression, on opening this production, was, that so many italics and inverted commas were never congregated into the same space before. Our last, on closing it, is, that it must be the very worst attempt at a novel that has ever been perpetrated. It cannot even claim the utility of an opiate. Its inanity, self-complacency, and vulgarity; its profanity; its indelicacy (to use no stronger word); its display of bad Latin, bad French, bad German, and bad English; the perpetual recurrence of abuse, or, as the author more euphemistically expresses it, "slightly digressive reflections" on great men, living and dead, and wholly unconnected with the subject, all make the reader even more indignant than weary; and how much this means can wholly be conceived by an operation which few are likely to receive—that of reading the book." The case was tried in 1866, before Erie, C.J., and a jury. The defendant's counsel, in opening his defence, contended that an author who sent his book to a newspaper for review, invited criticism and must submit to it even if wrong, if not also malicious. He proposes to show that the book in question justified the criticism; that it contained revolting attacks upon the private character of persons living and dead, and that it was of a nature utterly unsuited for family perusal. He was then proceeding to read and comment upon passages in the novel, when the plaintiff's counsel, seeing the impression produced by the extracts upon the jury, withdrew the case. But it did not end here. In a subsequent issue, the *Athenæum*, referring to the conclusion of the trial, said: "We found the book abominable, and we said so. Our readers, we may assume, were satisfied with our verdict, since it is alleged that the sale was instantly arrested." The criticism was reprinted, and the article concluded: "Our object was attained; we had vindicated the rights of free criticism. We wished for nothing more. In such a case as ours the question of costs was a minor consideration, and we had every reason to fear that our only award from the court would have been our costs on paper." The plaintiff again brought an action, and now alleged that he was an interpreter and translator, and that the criticism had greatly injured him in character and reputation as a literary man, particularly the passage in the last as to his ability to pay costs. Cockburn, C.J., who presided on the second trial, told the jury that the question for them was, whether, as a whole, the criticism was fair, or was prompted by malicious motives. Concerning the allusion to the plaintiff's inability to pay costs, he said: "If you think the allusion was brought in only to make an attack upon the circumstances or character of the plaintiff, it would be malicious and actionable; but if it was adverted to merely in order to explain and vindicate the course taken by the defendants; then you would probably think that it was not unfairly introduced. And, in the result, if you think the article, on the whole, was not unfair and malicious, find for the defendant; if you think it was so, then for the plaintiff." The jury took the former view, and the defendant had a verdict.

In New York, in 1840, James Fenimore Cooper sued the editor of the *New York Commercial Advertiser*, for a libellous publication contained in a criticism which appeared in that paper upon his "History of the Navy of the United States."<sup>6</sup> The offensive *critique* was as follows:

(5) 4 Post. & Fin. 939.

(6) *Cooper v. Stone*, 24 Wend. 442.



"COOPER'S NAVAL HISTORY.—Although the same courtesy has not been extended to us in regard to this book by its publishers which we uniformly experienced from them on similar occasions, before we committed any criticisms upon Mr. Cooper or his works, and what we have since continued to experience with respect to the works published by them of other authors; yet we felt so much interest in the subject as to induce us, notwithstanding this neglect, which, as we do not impute it to the worthy booksellers, is upon the whole rather flattering, to obtain this last work of Mr. Cooper's in spite of his prohibition, and to give it early, deliberate, and candid perusal. Little as we owe to the author on the score of personal consideration, and great as had been our disappointment from many of his late publications, the expression of which had, as we found, provoked his resentment, we still cherished the hope that with the elevated theme he had now chosen, he would rise above the personal feelings and political prejudices that disfigure those of his preceding works to which we have alluded. We had hoped that on this occasion Mr. Cooper—to use a sea phrase as he does, in a sense that a seaman never used it in—would "go aloft" instead of remaining in the cook-pit. We even believed it possible that finding the subject congenial with his early tastes and pursuits, he would, if not animated by it to the noblest efforts, at least avoid the rocks and quicksands, which had already well-nigh made shipwreck of his reputation as a writer, and regain a footing upon that strand, whence he first launched his gallant little bark upon a sea which to young and rash adventurers, especially if they belong by nature as well as by profession to the *irritable genus*, is apt to prove a "sea of troubles." We must confess, however, that we were not without some misgivings. We had heard it rumoured that the "Naval History of the United States" was to contain, if not a vindication of the conduct of Capt. Elliott in the action on Lake Erie, at all events a much more favourable view of it than had been presented to the public by his commanding officer, Com. Perry. But with all our experience of the waywardness, inconsistency, and love of paradox which had distinguished the author of "Home as Found," we could hardly persuade ourselves that he had become so utterly regardless of justice and propriety as a man, so callous to the perceptions of good taste as a writer, so insensible to his obligations and responsibility as a historian, and so reckless of his character as a public candidate for literary distinction and immortal fame, as to forego and disregard the opportunity of retrieving in some degree the reputation and standing which he must have been conscious of having lost. We were certainly not prepared to find that the infatuation of vanity or the madness of passion could lead him to pervert such an opportunity to the low and paltry purpose of bolstering up the character of a political partisan, an official sycophant, and to degrade the name and object of history in a work claiming by its title to be national in its design, by salving the wounded reputation of an individual who, from the time of the transaction referred to by his apologist, has been regarded as one doing at best but doubtful credit to his profession, and who owes his continuance in the service, after the events of that day, solely to the forbearance and magnanimity of his superior, which he subsequently requited with ingratitude and perfidy. We have, indeed, been disappointed, however faint were our hopes; and we acknowledge that we were deceived in our estimation of the discretion, taste, judgment, tact, and sensibility of Mr. Cooper, however doubtful we had felt as to his possession of any one of these qualities. But we must console ourselves with the reflection, that the power of sympathy is sometimes irresistible. Not content with leaving the character and conduct of Capt. Elliott where his gallant commander was content to leave them—to be judged by the official report of the engagement in which most assuredly he distinguished himself—his advocate, by travelling beyond that record, and ascribing to him at least an equal meed of glory with that which, as a historian, he assigns to Capt.

Perry, has but repeated the insane attempt which his hero had before resorted to—of provoking an inquiry. But the patron is worthy of his client. Neither of them, it seems, was satisfied to let the cause rest upon the documentary evidence, and both of them we suspect, will live to repent their indiscretion. We had supposed that such had long been the case with the latter, but the zeal of his apologist affords evidence of a relapse. Can either of them have forgotten the exposure extorted some eighteen years ago from Com. Perry and his friends? As to Capt. Elliott, anxiously as he may have desired it, he must have found it impossible. But perhaps both he and his defender, have imagined that the memory of the public was not so tenacious. The latter cannot be allowed to plead ignorance, as all the documents relative to the subject are to be found on files of the navy department, to which he had access. The conduct, therefore, both of the author and of the actor of this occasion, can be accounted for only on the supposition that *quem Deus vult perdere prius dementat*; and our readers will be better enabled to decide upon the justice of applying to them this familiar adage, by the extracts which we shall hereafter give from some of these documents."

And the following in a subsequent issue of the same paper:—

"But Mr. Cooper, who has long been regarded as his own worst enemy, has on this occasion proved himself the worst enemy also of his friend. After the lapse of eighteen years he has thought proper to revive the memory of events which, for the reputation and interest of that friend, should have been buried in oblivion; and after a whole generation nearly has passed away, and many of the witnesses of the transaction had gone with it, he has deliberately penned an account of it, intended for posterity, from the statements of Capt. Elliott, and the evidence of his witnesses, and quoted in their support the official encomium of Com. Perry, without affording the least hint or intimation to the readers of his history that the former had been falsified, and the latter retracted. Unfortunately for his purpose, but most providentially for the fame of one of the most able and gallant of our naval heroes, he was provoked in his lifetime to perpetuate the testimony which we have now adduced, to vindicate his conduct, not from the aspersions of a malignant rival—for his envenomed shafts had fallen harmless from the panoply of truth and honour in which the character he assailed was armed—but from the partial and deceptive representations, and the gratuitous and insidious defence of one who has assumed the office and responsibility of a historian, and hopes that his work may be appealed to as an authentic record, by future generations and to the latest age. It shall not be our fault if the bane be not accompanied by the antidote."

The first publication appeared in the *Advertiser* of June 8, 1839; the second, in the same paper of June 19th. There were two counts in the plaintiff's declaration, the first, upon the alleged libel of June 8th; the second, upon that of June 19th. The case went to the Supreme Court on a demurrer by the defendant to both counts. There the plaintiff had judgment on the demurrers. Cowan, J., who delivered the opinion of the court, after repeating the first of the charges contained in the offensive articles, said: "We are thus presented with a series of remarks, distinctly imputing to the plaintiff a disregard of justice and propriety, an insensibility to his obligations as a historian, the infatuation of vanity, the madness of passion, and low and paltry purposes. They present him as holding an affinity, and standing on a level with, and vindicating and bolstering up the character of an official sycophant, an officer unworthy of his place, a man guilty of ingratitude and perfidy. With such a man the sympathy of the plaintiff is represented to be irresistible, the patron as worthy of his client; and, finally, the plaintiff is accused more directly of palming falsehood upon the world in the name of history. The slander is somewhat diluted, by being mixed up with a small portion of what may, perhaps, be legitimate commentary on that branch of

the history in which it professes to have found alimen<sup>t</sup> for its grossness. The defamatory matter is, however, easy of extraction, and, when concentrated, fully answers to the definition of a libel upon a private person. This deflition may be found in any book which treats of the subject. It means a contumelious or reproachful publication against a person; any malicious publication, tending to blacken his reputation, or expose him to public hatred, contempt, or ridicule. In the second count, the defendant represents the plaintiff as deliberately penning an untrue account of the battle, intended for posterity and derived from evidence which had been falsified or retracted, without the least hint or intimation of the latter. The defendant speaks of its being unfortunate for the plaintiff's purpose that Com. Perry had himself disclosed the truth; and declares the defendant adduced the statements of Com. Perry to vindicate him from the partial and deceptive representations, and the gratuitous and insidious defence instituted by the plaintiff, who had assumed the office and responsibility of a historian. The libellous matter set forth in this count is less extended and less loaded with epithets than the first. It is, however, sufficiently obvious. It charges the plaintiff with falsehood, an imputation which, when published in a written or printed form, has been holden libellous ever since *Austin v. Culpepper*<sup>7</sup> was decided, in 35 Car. II." Referring to Lord Ellenborough's language in *Carr v. Hood*, the court held it "unnecessary to pronounce whether that case may not have gone too far, because no one will pretend that the privilege of the press can warrantably be perverted to the purposes of wilfully and falsely assailing the character of any man. To say that he is an author, editor, or reviewer, is but saying that he is engaged in a profession which has been and may be made eminently useful to mankind, and which would therefore seem to call for particular protection and encouragement. That the law should allow his productions to be criticised with great freedom, is not denied. If he has made himself ridiculous by his writings, he may be ridiculed; if they show him to be vicious, his reviewer may say so. But the latter has no right, therefore, to violate the truth in either respect. The difficulty of sustaining this demurrer lies in its admitting that the plaintiff's moral character has been falsely and maliciously assailed by the defendant. This being imputed in the declaration, it behooved him to show that what he said was true, or at least, that it was no more than a fair deduction from the plaintiff's works. The question is one of good faith. It is always so in case of the highest and most absolutely privileged communications. The claim of privilege can, therefore, be settled only by a jury. I do not speak of criticism upon the works of an author in the abstract; for this, I admit, no action can lie. Certainly not unless the criticism be grossly false, and work a special damage to the proprietor of the book at which the strictures are levelled. The book cannot be plaintiff. I speak of attacks on the moral character of the author; and I will not stop to weigh the argument which would disfranchise him because he happens to be an author."

(To be continued.)

#### TEXT-BOOK ADDENDA.

[From the Law Journal.]

*Prideaux's Precedents in Conveyancing (11th Edition), 12.*

A covenant not to use premises as a beer-shop, is broken by selling beer by retail to be drunk off the premises (*Nicoll v. Fenning*, 51 Law J. Rep. Chanc. 166.)

*Davidson's Precedents in Conveyancing (4th Edition), vol. ii., pt. i., 230.*

Where the Parcels in a conveyance were described by reference to coloured parts of a plan, a yard delineated but not coloured was held to pass under the general word "yards" (*Willis v. Watney*, 51 Law J. Rep. Chanc. 181).

(1) Skin. 124.

#### APPEALS FROM DISCRETIONARY ORDERS.

The Court of Appeal had to consider the question of appeals from the exercise of a judge's discretion in two cases of considerable importance which we have lately reported (*Ormerod v. Todmorden Joint Stock Mill Company*, 46 L. T. Rep. N. S. 669; L. Rep. 8 Q. B. Div. 664, which was heard by the division of the court sitting at Westminster; and *Re Martin; Hunt v. Chambers*, 46 L. T. Rep. N. S. 399; L. Rep. 20 Ch. Div. 365, which was disposed of at Lincoln's-inn). In both cases the appeal was from an order made by a judge of first instance as to the mode of trial of the action, and in each it was contended by the respondents, on the authority mainly of the judgment of Lord Justice James in *Ruston v. Tobin* (40 L. T. Rep. N. S. 111; L. Rep. 10 Ch. Div. 558), that the Court of Appeal had no jurisdiction to deal with such an order, or, at all events, ought not to interfere with it, unless it could see that the court below had exercised the discretion conferred upon him by the Judoicate Act on an erroneous view of the law on the subject.

Our readers will hardly need to be reminded that, in the case of *Ormerod v. The Todmorden Company*, the appeal was from an order made by Baron Pollock at the Manchester Assizes last January, referring the case, which was an action for pollution of a mill stream, to an official referee, against the protest of the one party, and without the desire of the other. We have already expressed our satisfaction with the decision of the majority of the court (Lords Justices Brett and Holker), who reversed the order of the learned Baron; and this, notwithstanding the dissenting opinion of Lord Coleridge, who whilst agreeing that the order ought not to have been made, thought that the Court of Appeal could not interfere with it. The case of *Re Martin* came before the court at Lincoln's-inn, consisting of the Master of the Rolls and Lords Justices Cotton and Lindley, on appeal from a decision of Vice-Chancellor Bacon, refusing an application of the defendant, that the case might be tried before a judge and jury, and the decision was reversed, mainly on the ground that the plaintiff had shown no sufficient reason for depriving the defendant of his *prima facie* right to a jury, the Court holding that a mistake had been made as to the burden of proof, and that the Vice-Chancellor had consequently exercised a discretion different from that which the Judoicate Rules conferred. But on the general question of the jurisdiction of the Court of Appeal in purely discretionary cases to interfere with the mode of exercise of that discretion in the court below, the three learned judges present all laid down that such a discretion exists, much in the same terms as had been done already at Westminster by Lords Justices Brett and Holker.

The chief difficulty on this point, in both cases, arose from some strong expressions in *Ruston v. Tobin*, and in one or two earlier cases, on applications to strike out pleadings as embarrassing, by Lord Justice James. In the first of these cases (*Golding v. Wharton Saltworks Company*, 34 L. T. Rep. N. S. 474; L. Rep. 1 Q. B. Div. 374), his lordship laid down the rule that, as had formerly been the case in the Court of Appeal in Chancery, "on a question which depends on the discretion of the judge, the Court of Appeal does not, in general, interfere with that discretion." The Lord Justice pointed out, in forcible terms, the evil that would arise by encouraging appeals on such questions, but he made the express reservation, "Not that the Court of Appeal has not complete jurisdiction over such cases, or that the decision of the court would not be overruled where serious injustice would result from that decision." In the case of *Davy v. Garrett* (38 L. T. Rep. N. S. 77; L. Rep. 7 Ch. Div. 473) Lord Justice James concurred in reversing an order of Vice-Chancellor Hall, who had refused to strike out as embarrassing a very prolix statement of claim. The Lord Justice observed that, "if pleadings such as this are to be allowed, the gentlemen who took such pains in the preparation of the rules may say, as Oliver Cromwell

did after an unsuccessful attempt to reform abuses, 'The sons of Zeruiah be too hard for me.'

The effect of the two decisions to which we have referred is to apply the same rule to appeals from the judge's discretion in giving directions as to the mode of trial. Such appeals are not to be encouraged, and will not be readily admitted, but "where serious injustice would result" from the decision of the judge of first instance, the Court of Appeal will not hesitate to overrule his discretion.—*Law Times*.

## REVIEWS.

*Legal Medicine.* Part I. By CHARLES MEYMOTT TIDY, M.B., F.C.S., &c., &c. London: Smith, Elder & Co., 15 Waterloo-place. 1882.

FORENSIC MEDICINE is defined by Chitty as "the evidence and opinions necessary to be delivered in courts of justice, relative to criminal and other matters to be there determined." Is it a science? "It is assuredly a scientific study, but it is not to my mind a science in the sense in which we call Chemistry, Anatomy, and Physiology sciences," maintains Dr. Maclagan, the present professor of Medical Jurisprudence in the University of Edinburgh. "It is in fact," he adds, "the application of the whole range of sciences peculiar or ancillary to medicine to the elucidation of questions which fall to be determined in courts of law." But, strange to say, while it has long formed a necessary part of the studies of every gentleman who is called to the Scottish Bar, there is no provision in England or Ireland for insuring that lawyers should study forensic medicine at all. Opportunities of doing so they possess, no doubt. They might, for instance, attend such lectures as those delivered by Dr. Tidy at the London Hospital last year, the basis of which consisted of the subjects dealt with in his present work on Legal Medicine. Or, they may if they choose enter on a course of independent reading; and on the whole, this seems to be about the best way practically open to them. Certainly, there is no scarcity of works on the subject. To say nothing of the mass of foreign medico-legal literature, from the work of Zacchias published *circa* 1621, or that of Foderé which appeared in 1796, numerous indeed are the English volumes on medical jurisprudence, from Dr. Farr's book, published in 1783, down to the work of the late Dr. Taylor, which made its first appearance in 1844. The earlier writings on the subject, however, were but speculative and theoretical, and the systematic use of medical jurisprudence for practical purposes is virtually of modern origin—a use to which such latter-day inventions as the microscope (as perfected by Dollond) and spectroscope, together with the advance of analytical chemistry, have so largely contributed that, under consequently changed conditions, legal medicine has assumed an aspect so novel and a range so much enlarged that the labours of its primitive professors have sunk into comparative insignificance. In fact, as Professor Maclagan remarks, "its progress and its rise in public estimation is simply commensurate with the progress of those sciences which it turns to forensic uses."

Hence, on the one hand, a field is open for the labours of fresh writers on the subject, and, on the other hand, while newer works thus advantaged possess, *prima facie*, a superior claim to attention, they need at once the utmost caution and reserve, without verging on unscientific timidity, and an intrepidity of opinion that yet will not partake of scientific venturesomeness. The work of Dr. Tidy (Part I.) appears to us to display this description of treatment. That degree of scientific certainty which only the coward esteems as uncertainty our author treats without hesitation; and that degree of scientific uncertainty which only the boldness of ignorance ignores he deals with in the spirit of a medical jurist conscious of the true limits of exact scientific knowledge. To his aid he has brought all the resources of modern research, while, in order to clear up

what was ambiguous and to reconcile what was contradictory, he himself instituted new inquiries and conducted fresh experiments in most of the subjects discussed. His, indeed, is the work of an expert, highly skilled, painstaking, cautious, and impressed by a sense of that most solemn responsibility without which such a work should never be undertaken. "If anything I write," he observes, "should hereafter be quoted to condemn the innocent or to gain a verdict against right, then indeed most truly could I wish the book had remained unwritten."

In the interests of justice we are glad that Dr. Tidy has been induced to publish this work. Unquestionably, it will prove of special value both to the lawyer and physician; and it appears to us to be eminently trustworthy, and characterised by just such qualities as should ensure respect in judicial investigations. Here we shall not meet with aught of strange or startling beyond what is not only possible but probable. A Dickens would not find in Dr. Tidy a believer in "spontaneous" combustion; and Dr. Tanner will be angry to find that his remarkable return of appetite has raised, in Dr. Tidy, some doubt as to the genuineness of the notorious fasting exhibition. Nor would he, doubtless, have placed much faith in Joan Dotter, of Scania, who was reputed to have lived for several months without any other nourishment than water—a feat which induced Charles XII., as we read in Voltaire's history, to try how long he too could fast without fainting—only five days proving enough for the Swedish hero. Yet, the case of the forty days' fast of Cicely Ridgway is a matter of judicial record (see 14 Ir. L. T. 421). By the way, Dr. Tidy enumerates, among the symptoms of death from starvation, an aspect of great hebetude and "depression." But, naturally to be expected as is such a symptom, and strictly accurate as is the general statement that it is to be found present in such cases, even that appearance is not invariable, as a passage from Napier's *Battles of the Peninsula* (book iv.) would seem to exemplify:—"In the hills was found a house where thirty women and children were lying dead from hunger, and sitting by the bodies fifteen or sixteen living beings—only one a man—so enfeebled by want they could not devour the food offered to them. All the children were dead; none were emaciated, but the muscles of their faces were invariably dragged transversely, as if laughing, and unimaginably ghastly." Sometimes, though usually not inclined to attach too much weight to doubtful facts, Dr. Tidy appears, to our thinking at least, hardly strong enough in his words of caution or warning; for instance, in reference to evidence derived from footprints—a subject treated with great acuteness; and in reference to questions of likeness (as to which see 12 Ir. L. T. 386, 12 Ir. L. T. Dig. 15, *State v. Smith*, 54 Iowa, 104). Sergeant Ballantyne, by the way, tells a good story on the latter subject, in his "Experiences of a Barrister," which is worth repeating here. He appeared before Mr. Broderip, a magistrate, for a client who was suggested to be the father of an infant, about which there was an inquiry. Mr. Broderip, he says, "very patiently heard the evidence, and notwithstanding my endeavours, determined the case against my client. Afterward, calling me to him, he was pleased to say: 'You made a very good speech, and I was inclined to decide in your favour, but you know I am a bit of a naturalist, and while you were speaking I was comparing the child with your client, and there could be no mistake; the likeness was most striking.' 'Why, good heavens!' said I, 'my client was not in court. The person you saw was the attorney's clerk.' And such truly was the case." Dr. Tidy, after alluding to the *Douglas Peirage* case, and the *Tieborne* case, observes that the true difficulty in such cases appears to be to gauge the exact value to be attached to evidence of this nature, the power of seeing likenesses being essentially peculiar. But there is much more that, had we space, we should like to quote also from his chapter on "Personal Identity" (*e. g.*, his remarks on photographs as evidence, as to which see 13 Ir. L. T. 438); and in a former issue

(ante, p. 359) we had occasion to approve of his opinion with regard to burnt human remains as a means of identification. The whole chapter, indeed, is well worthy of consideration, while certainly capable of still more expansion, and the subject possesses great interest (see 1 Southern Law Journal 391, and Fuller's "Adventurers and Impostors"). Again, Dr. Tidy's observations on evidence as to handwriting might serve to provoke a much longer discussion than we can here indulge in (see 15 Ir. L. T. 428, 442, and some able papers in 18 Amer. Law Reg. 278, 21 *ib.* 425). Dr. Piper, of Chicago (the author of the papers lastly referred to) has, also, investigated with extreme care the subject of the microscopical examination of blood, and we cannot but regret that his researches and writings in reference to it (see 17 Amer. Law Reg. 554, 19 *ib.* 529, 593) seem to have escaped the notice of Dr. Tidy, whose views might, otherwise, have been modified. This, too, however, is a topic needing far more extensive treatment than we could here devote to it. Indeed, in dealing with such a volume (upwards of 600 pages), though we have really read and studied it most carefully throughout, we can at best express our opinion only in generalities. From a strictly legal point of view, it appears to us reliable in a remarkable degree, and from a purely medical point of view we have no doubt whatever that it is entitled to equal commendation—and in a word, it is a work that should command the esteem of every medical jurist. Even the illustrious John Hunter acquitted himself, on the trial of Donnellan for the murder of Sir Theodosius Boughton, in a manner so incapable as to justify Dr. Taylor's observation that Medical Jurisprudence did not then exist; and if the medical witness of our own time would aspire to make a better figure, he would indeed do well to prepare himself for examination in the way pointed out, with much practical astuteness, by Dr. Tidy. And though the jurist may perhaps find fault with the arrangement of the work, it would be impossible to disapprove of its method in other respects, while for fulness of detail its treatment is unsurpassed.

### CORRESPONDENCE.

*Letters and communications intended for publication, and addressed to THE EDITOR, 58, Upper Sackville-street, Dublin, must be authenticated by the name of the writer, not necessarily for publication, but as a guarantee of good faith.*

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

### THE SESSIONAL EXAMINATIONS.

TO THE EDITOR OF THE IRISH LAW TIMES.

SIR,—Permit me, through the medium of your valuable columns, to revive the subject of placing in order of merit the candidates at the Sessional Examination for Solicitors' Apprentices, which we heard so much about last September.

I do not know if the public are aware that at these examinations, owing to the want of accommodation, the examination is held at four different times for four different sets of candidates, and of course four different sets of papers are given.

As regards classification in order of merit, I do not for a moment object to it, provided one is classed with the persons you have competed along with, and who have got the same paper; but to be classed with persons who have not got the same paper as you—*i. e.*, have been in a different division—I say is very unfair.

I do not for one moment wish to convey that Professor Hickson would endeavour to make one paper harder than another. On the contrary, I know him to be a gentleman of the greatest fairness, and one for whom I entertain the highest respect; but nevertheless, as it is necessary to divide the candidates into classes, I would submit that, if classed at all, it should only be having regard to the different classes separately.

NORMA.

### APPOINTMENTS AND PROMOTIONS.

Mr. Richard D. Crotty, B.A., Barrister at-Law, has been appointed a temporary Stipendiary Magistrate for the county of Clare.

Mr. Albert Meldon, Barrister-at-Law, has been appointed a temporary Stipendiary Magistrate for the county of Waterford.

Mr. Andrew Newton Brady, Barrister-at-Law, has been appointed a temporary Stipendiary Magistrate for the county of Galway.

Mr. Richard Bourke, Barrister-at-Law, has been appointed a temporary Stipendiary Magistrate for the county of Clare.

### COURT PAPERS.

#### LAND JUDGES.

Sittings for next Week so far as same are appointed.

Before the Rt. Hon. JUDGE FLANAGAN.

#### MONDAY.

IN CHAMBER.—A. Noble, confirm sale.—C. Lewis, allocate.—R. B. Booth, do.—B. Hagerty, do.—A. G. Bagot, do.—J. W. Pollock, do.—W. Deane, to discharge annuity.

IN COURT.—A. Bredin, to examine witness and confirm report.

Before EXAMINER (Mr. Kennedy).

G. Graham, rental.

Before the Rt. Hon. JUDGE ORMSBY.

#### MONDAY.

IN CHAMBER.—T. M'Glynn, leave to bid.—Trustees Beatty, delay.—Trustees Reilly, payment.—C. Languale, ditto.

IN COURT.—R. Burke, final schedule.—D. V. Mullins, extend receiver.—G. H. Warburton, judgment.—E. L. Hartstonge, final schedule.—J. Bury, do.—J. S. Best, from 3rd.—M. Smythe, do.—Assignees Bolton, payment.

### COURT OF BANKRUPTCY.

#### ADJUDICATIONS IN BANKRUPTCY.

*The dates of Adjudications are first given, the Sittings follow in Italics.*

Ferris, Arthur, of Lisburn, in the county of Antrim, farmer and shopkeeper. July 14; *Friday, August 11, and Tuesday, August 29. H. and W. Seeds and B. Thompson, solrs.*

### BIRTHS, MARRIAGES, AND DEATHS.

#### MARRIAGES.

GARTLAN and HAMILL—August 3, at the Church of St. Mary, Haddington-road, Dublin, by the Most Rev. Dr. Woolock, Bishop of Ardagh, Alexander Gartlan, third son of George Gartlan, Esq., J.P., Cabra House, Newry, to Emily, second daughter of Arthur Hamill, Esq., Q.C., Pembroke-road.

O'MEARA and WATERS—August 2, at the Church of the Holy Cross, Killea, Dunmore East, County Waterford, by the Very Rev. Nicholas Walsh, S.J., Michael Cartan O'Meara, only son of Michael O'Meara, Esq., solicitor, of Wellington road, Dublin and Kouladuff, County Tipperary, to Bess, second daughter of George Waters, Esq., Q.C., County Court Judge, Mountjoy-square, Dublin.

SUFFERN and HAMILTON—August 1, at St. Mark's Church, Dundela, County Down, by the Lord Bishop of Down, assisted by the Rev. Thomas W. Clarendon, M.A., William Suffern, LL.B., Esq., barrister-at-law, only son of John Suffern, Esq., of Windsor, Belfast, to Lillian Frances, eldest daughter of the Rev. Thomas R. Hamilton, rector of Dundela.

### FUNERAL REQUISITES OF EVERY DESCRIPTION.

49, WALLER, 50,  
DENZILLE-STREET.

3-7

DUBLIN STOCK AND SHARE LIST.

DESCRIPTION OF STOCK	JULY		AUGUST			
	Sat. 29	Mon. 31	Tues. 1	Wed. 2	Thurs. 3	Fri. 4
<b>*Paid Government.</b>						
3 p c Consols ..	99½	99½	99½	—	99½	—
3 p c Reduced ..	—	—	—	—	—	—
New 3 p c Stock ..	98½	99½	98½	98½	98½	—
<b>INDIA STOCK.</b>						
4 p c Oct. 1888 } Trade at ..	102½	—	102½	102½	—	—
3½ p c Jan. 1881 } Bk. of Irel. ..	100½	—	—	—	—	—
<b>Banks.</b>						
100 Bank of Ireland ..	—	—	—	314½	—	314½
25 <i>Hibernian Banking Co.</i> ..	—	—	34½	—	—	—
20 <i>London and County (Ltd.)</i> ..	—	—	77½	—	—	—
15 <i>London Joint Stock</i> ..	—	—	—	52½	—	52½
20 <i>London and Westminster, Ltd</i> ..	68½	—	—	—	68	—
10 <i>Do. New</i> ..	—	—	60½	—	60½	—
3½ <i>Munster Bank (Limited)</i> ..	7	—	—	—	7	—
— <i>Nat. Prov. of England, lim.</i> ..	—	—	—	—	—	—
10 <i>National Bank (Limited)</i> ..	23½	—	—	23½	—	23½
10 <i>National of Liverpool (Ltd.)</i> ..	—	—	—	—	14½	—
25 <i>Provincial Bank</i> ..	—	—	—	—	27½	—
10 <i>Royal Bank</i> ..	29½	—	—	—	29½	—
25 <i>Standard of B. S. A., Ltd</i> ..	—	—	—	—	58½	—
<b>Steam.</b>						
50 <i>British &amp; Irish</i> ..	—	—	—	—	—	—
100 <i>City of Dublin</i> ..	—	—	100½	—	—	100½
50 <i>Dublin and Glasgow</i> ..	—	—	—	—	—	—
10 <i>Dundalk (Limited)</i> ..	—	—	—	—	—	—
50 <i>Pennanular and Oriental</i> ..	—	—	—	—	—	—
<b>Mines.</b>						
7 <i>Mining Co. of Ireland (Ltd)</i> ..	—	—	—	—	2½	—
<b>Miscellaneous.</b>						
10 <i>Alliance &amp; Dub. Cons. Assurance</i> ..	—	15½	—	—	—	—
8 <i>Do. do. New</i> ..	—	—	—	—	—	—
4 <i>Arnott &amp; Co., Limited</i> ..	—	—	—	—	—	—
4 <i>Cannock &amp; Co. Lim'td., Ltd</i> ..	—	—	—	—	—	—
20 <i>C. Dub. Brewery Co. (lim.)</i> ..	—	—	—	—	—	—
10 <i>Dub. (S'th) City Market Co.</i> ..	—	—	—	—	—	—
4 <i>National Discount, Inc., Ltd</i> ..	—	—	—	1½	1½	—
<b>Tramways.</b>						
10 <i>Belfast Trams</i> ..	—	—	7½	7½	—	—
10 <i>Dublin United Tramways</i> ..	—	10½	10½	10½	—	—
10 <i>Edinburgh Street Trams</i> ..	—	—	—	—	—	—
10 <i>L'pl Un'td Tram &amp; Bus Ltd</i> ..	—	—	—	12½	—	—
10 <i>N'th Metr. Tramway, Lond.</i> ..	—	—	—	—	—	—
<b>Railways.</b>						
50 <i>Belfast and County Down</i> ..	—	—	—	—	—	—
20 <i>Cork, Blackrock &amp; Passage</i> ..	—	—	—	—	—	—
100 <i>Dublin, Wicklow, &amp; W'ford</i> ..	—	—	—	—	—	—
100 <i>Great Northern (Ireland)</i> ..	—	—	—	—	—	—
100 <i>Gt. Southern and Western</i> ..	—	113½	113½	—	—	—
100 <i>Midland Gt. Western</i> ..	—	84½	84	—	—	—
100 <i>Waterford &amp; Cent. Ireland</i> ..	—	—	—	—	—	—
50 <i>Waterford and Limerick</i> ..	—	—	—	—	—	—
<b>Railway Preference</b>						
100 <i>D., W., &amp; W., 5 p c (1860)</i> ..	—	—	—	—	—	—
100 <i>Do. do. (1865)</i> ..	—	—	117	—	—	—
100 <i>Gt. N'th'n (Ireland) 4 p c</i> ..	—	—	—	—	—	—
100 <i>Do. 4 p c</i> ..	—	—	—	—	—	—
100 <i>Gt. South'n &amp; West'n 4 p c</i> ..	—	—	—	—	108	—
100 <i>Mid. Great Western 4 p c</i> ..	—	—	—	—	—	—
<b>Debenture Stocks.</b>						
— <i>Dublin &amp; Wicklow 4 p c</i> ..	—	106	—	—	—	—
— <i>Gt. Northern (Ireland) 4 p c</i> ..	—	—	—	109½	—	—
— <i>Do. 4 p c</i> ..	—	—	—	—	—	—
— <i>Gt. North'n &amp; West'n 4 p c</i> ..	—	—	—	—	—	—
— <i>Gt. South'n &amp; West'n 4 p c</i> ..	—	—	—	—	—	—
— <i>Kilkenny Junction, A, 5 p c</i> ..	—	—	—	—	—	—
— <i>Midland Gt. West'n 4 p c</i> ..	—	—	—	—	—	105½
— <i>Do. 4 p c</i> ..	—	109	109½	—	—	—
— <i>Do. 4 p c</i> ..	—	—	—	—	—	—
— <i>Waterford &amp; Central 5 p c</i> ..	—	—	—	109	109	—
— <i>Waterford &amp; Limerick 4 p c</i> ..	—	—	—	—	—	—
— <i>Do. 4 p c</i> ..	—	—	—	—	—	—
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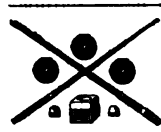
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# THE IRISH LAW TIMES AND SOLICITORS' JOURNAL.

VOL. XVI.

SATURDAY, AUGUST 12, 1882.

No. 811

## RIGHT TO COSTS OUT OF PARTICULAR ESTATE OR FUND IN LITIGATION.—I.

"WHILE I agree to the decree of the court in this case, I do not agree to the opinion, so far as it is an argument in favour of a principle on which is founded the grossest judicial abuse of the present day, namely, the absorption of a property or a fund which comes into the control of the court, by making allowances for attorneys' fees and other expenses, pending the litigation, payable out of the common fund, when it may be finally decided that the party who employed the attorney, or incurred the costs, never had any interest in the property or fund in litigation. This system of paying out of a man's property some one else engaged in the effort to wrest that property from him, can never receive my approval; and as I have had no opportunity to examine the authorities cited in the opinion. I can do no more than make my protest against the doctrine." So said Miller, J., in the case of *Trustees of the Internal Improvement Fund of Florida v. Greenough*, reported in the *Central Law Journal* of June 16th, 1882. But, apart from the question of making such allowances (in itself, certainly, deserving of examination), he appears to have agreed with the well considered judgment there delivered, in reference to the payment of costs to trustees, &c., out of property forming the subject-matter of *bona fide* litigation; and this latter practice it is on which we propose, at present, to offer some observations. It has recently come under more particular notice in relation to one or two cases in this country, as well as in the American case just cited; and it will be remembered that the Judicature Act (section 53, Ir.; O. L.V., r. 1, Eng.) expressly preserves to "a trustee, mortgagee, or other person" "any right to costs out of a particular estate or fund to which he would be entitled according to the rules hitherto acted on in Courts of Equity."

In *Gillooley v. Plunkett*, argued on the 16th ult., and decided by Chatterton, V.C., on the 31st ult., one of the questions determined was as to the jurisdiction of the Probate Division (and see as to County Courts, in testamentary suits, *Bell v. Hughes*, 14 Ir. L. T. Rep. 77) to order payment of costs out of assets. It had, indeed, been held, in *O'Kelly v. Brown* (9 Ir. L. T. Dig. 12), that this court has no jurisdiction to order costs to be paid out of real estate; and it is the usual practice of the court, without having regard to the amount or the ownership of the property, if the case has been a proper one for litigation, and has been properly conducted, to order the general costs to be paid out of the personal estate. But section 69 of the Probate Act (20 & 21 Vic., c. 79) seems only to have contemplated an award of costs against unsuccessful litigants personally; and the contrary practice had never before come into question directly in reference to jurisdiction. The Vice-Chancellor held that it had been too long exercised and recognised to be now questioned. But, in the next place, a question arose as to the power of the Chancery Division, engaged in the administration of assets, to regulate and control the costs so awarded; and in order to understand the full scope of the decision on this point, the facts must first be recalled. Mr. Plunkett, as executor and residuary legatee in the will of Dr. Patrick Moran, of Ardkenna, county Roscom-

mon, propounded the will alone, dated May, 1873, seeking probate thereof. Honora Moran and Mary Jane O'Malley opposed the will, and propounded a later testamentary paper as the will, and failing in that they propounded a codicil to the will set up by Mr. Plunkett, of February, 1876. By this codicil, which was opposed by Mr. Plunkett, the testator gave some additional legacies, and revoked the appointment of that gentleman as residuary legatee, naming Mrs. Moran in his stead. The case was first tried on the 19th June, 1878, when a verdict was had against the codicil and in favour of the will. Mrs. Moran applied for and (after going to the Court of Appeal) obtained a new trial, which was had in June, 1879, when both will and codicil were established, and by a judgment of the Probate Division of the 14th June, 1879, the two testamentary documents were declared to constitute the last will of Patrick Moran, whose estate was now being administered in the Vice-Chancellor's Court. By that judgment it was ordered that the plaintiff in that suit (Mr. Plunkett) should be paid his costs to the 20th June, 1878, except so much of them as had been already paid to him by the defendants out of the assets of the testator; that the defendants (Honora Moran and Mary Jane O'Malley) should be allowed their costs to the same date out of the assets, and their subsequent costs, by the plaintiff; and that the defendant, Patrick Moran, the executor, should be paid his costs out of the assets. The costs were taxed—Mr. Plunkett's at £347 7s. 5d., one half of which, £173 13s. 8d., Honora Moran and Mary Jane O'Malley were liable to pay. Of that they paid him £80 0s. 4d. in cash, and set off against the residue—as they were entitled to do by the order of the Court of Appeal—their taxed costs of the appeal motion, ascertained at £93 13s. 4d. Mr. Plunkett claimed in the administration suit to be allowed £267 7s., being his taxed costs, less by £80 0s. 4d. paid in cash; but the Vice-Chancellor held that the probate order extended also to what had been allowed or set off in respect of the appeal costs, and that all he was now entitled to claim was £173 13s. 8d. The Court of Chancery, said the Vice-Chancellor, exercised a control over the payment of costs so directed to be paid, in the administration of assets, in so far as the priority in which they were payable was concerned: *Major v. Major*, 2 Drew. 281; *Re Mayhew*, 5 Ch. Div. 596. Those cases only decided, no doubt, that such costs must be postponed to the costs of an administration suit, but they were important to show that the Chancery Division to which alone the administration of assets was assigned, has power to regulate the manner in which effect should be given on administration to such orders as those of the Probate Division. Even creditors must be postponed in administration to the payment of the costs, and if the assets proved deficient they might be even ordered to pay the costs incurred in the suit by a personal representative. The costs of obtaining probate in the ordinary way were allowed and paid immediately after funeral expenses, but the costs of an adverse litigation were open to different considerations. An expensive litigation might ensue on the setting up or contesting of testamentary papers other than that found to be the will, in which proceedings creditors had no right to intervene, and it appeared inequitable that they should be deprived of their just demands by a grant of costs

to the parties then before the Court, swallowing up all the assets. As between litigants in that court such an award of costs must be held to be conclusive; but he (the Vice-Chancellor) could not see that it would be just as against the persons whose rights were paramount, nor in principle how it could bind persons not privy to the suit, and not privy to the parties thereto. Allowing that there was power in the Judge of the Probate Division to make these orders, he was of opinion that the Chancery Division had the right to decide the order in which costs so awarded were to be paid on the administration of assets, even although the result might be that, in consequence of the existence of charges equitably prior to such costs, the fund might prove insufficient for the payment of them in full or at all. If the personal estate were sufficient to pay both costs and legacies, there would be no question to decide; but it appeared that the personal estate would be insufficient for the payment of both; and, therefore, the legatees contended that their legacies should be paid out of the personal estate before these costs, leaving them to be satisfied out of the residue. In determining what rank these costs must take, he should look at their character. Where there was a fair ground for the litigation, and it was plain that without a decision upon the subject matter of the dispute the fund could not be administered, it was plain that the costs should be borne by the fund before it was distributed between legatees, next of kin, or *cestui que trust* as the case might be. In this case the decree of the Probate Division showed that the learned judge must have considered that there were fair grounds for the litigation, and with his decision he (the Vice-Chancellor) had no authority to interfere. The judge there had the entire case before him, and his opinion was formed upon the merits, and not upon consents of parties. If it had been upon consent, he (the Vice-Chancellor) would throw the costs given by the consent upon the funds coming to the parties to such consent. In the absence of any other circumstances calling for the exercise of the jurisdiction which he had claimed for that court in administering assets, he must hold, having regard to the principle he had stated, that the costs awarded by the Judge of the Probate Division must be paid out of the personal estate before the legacies. The costs of Patrick Moran, the executor, stood upon a still higher ground, and his costs in the Probate suit must take priority of those of the other parties.

#### "LAW JOURNAL REPORTS" FOR AUGUST.

The monthly number of the *Law Journal Reports* for August contains pages 585 to 664 of the Chancery Division, pages 435 to 490 of the Queen's Bench Division, pages 97 to 120 of the Magistrates' Cases, and cap. 15 to 25 of the Statutes of the Realm. In all, thirty-seven cases are reported, of which fifteen are from the Chancery Division, sixteen from the Queen's Bench Division, and six Magistrates' Cases.

Of the Chancery cases, we have first the case of *The Attorney-General v. The Union of Dorking*, in which the Court of Appeal declined to order a sanitary authority to take proceedings against persons improperly draining into its sewers at the instance of a third person thereby injured. In *Martinson v. Cloues* it was held that an agent of a mortgagee who has acted in the matter, and instructed an auctioneer to sell, is incapacitated from buying the property on his own account. In *Smith v. Chadwick* the law of fraudulent representations was applied to a prospectus; and it was held that naming as a director a person who had not agreed to act, and stating that the purchase-money of the undertaking was payable by instalments without mentioning interest, did not amount to an actionable misrepresentation. *Teevan v. Smith* elucidates section 15 of the Con-

veyancing Act, 1881, which allows a mortgagor entitled to redeem to require the mortgagee to assign the debt and convey the property to his nominee. It decides that the section only applies to cases in which the mortgagor was entitled to call for a reconveyance before the Act, and, therefore, not to the case in which the mortgagee has notice of a further encumbrance. In *Chappell v. Boosey* it was held that the author of a musical piece does not lose his right to perform it by publishing it first. In *Stannard v. St. Giles, Camberwell*, the Court of Appeal declined to grant an injunction against a vestry taking proceedings before a police magistrate in respect of interference with a drain which the plaintiffs claimed as against the vestry. In *Clarke v. Palmer* it was held that a first mortgagee, not having the deeds, is postponed to all mortgagees advancing money in the belief that the first mortgagee had them. *In re Braby & Co.'s Application* is a trade-mark case, in which the registration of a trade-mark was considered not prevented by the fact that a similar mark had been registered with regard to goods of the same class, if there was no risk of confusion. In *Warner v. Jacob Mr. Justice Kay* declined to interfere with a mortgagee selling under his power *bond fide*, although the sale appeared disadvantageous. In *Harston v. Tenison* a claim for money ordered by the Court, in 1858, to be paid in respect of a breach of trust, was made the ground of an administration judgment, the deceased having been out of England till 1870, and died in 1880. In *Waite v. Bingley* a decree for sale was made in a partition action, subject to a mortgage in fee, notwithstanding that a tenant in common had procured an assignment of the mortgage and obtained possession. In the case of *In re the Alexandra Palace Company* directors were made to recoup dividends paid out of money borrowed for the purpose, while the company's premises were being rebuilt after a fire. In *Crofton v. Crofton Mr. Justice Fry* declined to issue a commission to a French Court, on the ground that the case was one in which the witnesses ought to be examined and cross-examined by the parties. In *Holroyd v. Garnett*, Vice-Chancellor Bacon refused to issue an attachment against a trustee who had erroneously misapplied the fund without fraud.

Of the Queen's Bench cases, the first case is *The Prison Commissioners v. The Clerk of the Peace for Middlesex*, in which the plaintiffs were held entitled to recover land conveyed to the defendant in trust for the justices of the county, "for the purposes of the Prison Act, 1865, and upon or for no other trust, intent, or purpose whatsoever," the defendant being held by the Court of Appeal concluded by the recital, and the land passing to the plaintiffs under the Prison Act, 1877. In *Jenkins v. Jones* the sale of a right of entry to which there was a good title was held, since rights of entry may now be granted, not to be forbidden by the Statute of Henry VIII. against the sale of "pretended" titles. In *Chard v. Jervis* the Court of Appeal declined to commit for non-payment of a debt a man who made an affidavit that the appearance of means in his way of living was due to his wife's money, and that he had none of his own. In the case of *Regina v. The Mayor of Maidenhead* a *mandamus* issued to a corporation to raise a rate to pay the expenses of the Court at an election petition, although it was alleged that the barrister intended to visit the respondents with these expenses. In *Stone v. Hyde* a notice under the Employers' Liability Act which did not state the cause of injury was held cured by the fact that the omission did not prejudice the defendant. In *Pulling v. The Great Eastern Railway Company* an action of tort for injuries against a railway company was held not to survive to executors. In *Hunt v. Austin* substituted service of a summons by a solicitor to take out of Court money on which he had a charge, was allowed. In *The Local Board of Bexley v. The West Kent Main Sewerage Board* a reference provided by a private Act of Parliament between a local board and a parish, was held not a reference by consent, so that the local government were not competent to state a special case for the opinion of the High Court. In *Cheriton-upon-*



*Medlock v. Chorlton Union* it was laid down that the rating of premises used for public purposes is to be calculated as if their use was unrestricted. In *Saunders v. Crawford* it was held, as the result of the Factories Act and the Education Act, that children between thirteen and fourteen cannot be compulsorily sent to school unless they are not under proper control. In *Vichary v. The Great Northern Railway Company* a master's order that a plaintiff should pay the costs of his being examined *visâ voce* on interrogatories was upheld. *Jack v. Kipping* decides that a claim for damages in respect of misrepresentation of the value of shares may be set off against the claim for the price of the shares brought by a trustee in bankruptcy. In *Graves v. Terry* the plaintiff did not deliver his reply in time, but delivered it before the defendant gave notice of motion for judgment, so that of course the motion was refused. In *Heaven v. Pender* a workman of a painter who had contracted to paint a ship brought an action against the contractor who put a staging round the ship for the purpose of painting it, and it was held that he could not recover for injuries caused by the staging giving way. In *Cony v. Burr* an insurance against barratry, free from capture and seizure, was held not to cover the seizure of the ship by a foreign Government by reason of barratrous smuggling. In *Titterton v. Cooper* the Court of Appeal held a trustee in bankruptcy, who had not disclaimed a lease, liable for rent due after his appointment. In *The Sheffield Waterworks Company v. Carter* it was held that a waterworks company, under the Waterworks Act, 1868, is bound to supply water although the consumer declines to provide a meter. In *Regina v. Dyott* it was held that rates cannot be duly published in a parish not having a church; but the effect of the decision was avoided by an Act passed a few weeks ago and printed among the statutes at the end of the number, allowing the rates to be published in a conspicuous place. In *Smith v. The Assessment Committee for Lambeth* it was held that bookstalls affixed to railway stations, and used by newsgatees under the control of the company, are not rateable. In *Parsons v. The Birmingham Dairy Company* the formalities required by the Adulteration Act in buying for analysis are held to apply equally to private persons and public officers buying. In *Regina v. Vane* it was held that a union not having a school board, but contributing to a neighbouring board, can enforce a proportion from one of its parishes. In *Beatty v. Gillbanks* religious processions in the streets were held not unlawful, so that those who took part in them could not be bound over to keep the peace.—*Law Journal*.

#### FELO-DE-SE.

In the course of this Session something has been done to abolish an interesting fiction without much notice being taken of the fact. Parliament has found time to pass a short Act which will virtually put an end to a curious and venerable piece of absurdity. Coroners' juries have hitherto been constrained, in defiance of their oaths and in the teeth of facts, to find fictitious verdicts in cases of suicides. There might be no reason to suppose that the person whose death was the subject of investigation was really out of his mind at the time when he shot or drowned himself. The contrary might be perfectly clear, and the same jury would have unhesitatingly found him competent to make a will and generally responsible for his actions; but, in order to elude a barbarous law, repugnant to most men's feelings, it was deemed right to resort to a pious fraud. The memory of a man guilty of suicide fared badly at the hands of our ancestors. All his goods were forfeited to the Crown. His widow and children were rendered penniless, and the rights of his relatives were ignored. His body was denied decent burial. If all were done in order, the body ought to be ignominiously buried, with a stake driven through it, in a public cross road. From time to time we have cut out the grosser parts of this savage law. More than fifty years ago burial in a public highway was done away with. But the memory of

the old view of suicide was kept up in the legal requirement that the body should be interred within twenty-four hours from the finding of the inquisition, and that this should be done between 9 and 12 o'clock at night. We travel slowly in criminal legislation, and not until more than forty years afterwards did we abolish the practice of robbing widows and orphans for the purpose of punishing husbands and fathers. Deodands are also things of the past. Coroners' juries are not in these days required to assess the value of the wagon which crushed or the horse which kicked a man. Now we have taken another step in the right direction. The Act just passed does away with all the ignominious accessories to the burial of the remains of one who has committed suicide. The coroner need now only give directions as to the mode of interment, and that may be done in any of the ways prescribed by the Burial Amendment Act of 1880—that is to say, the burial may take place with or without religious service. The direction of the rubric that the Office for the Burial of the Dead is "not to be used for any who have laid violent hands upon themselves" remains in force. Otherwise, the motive for the compassionate verdicts of "temporary insanity" which coroners' juries have been accustomed to give is gone. They will not be obliged, in order to spare the feelings of the friends of a dead man, to record their opinion that he was a fool. Amiable perjury will not be among the duties of a jurymen called upon to take part in investigating the death of some poor wretch by his own hand.

The old law, the last shreds of which we have just thrown aside, was undeniably brutal and harsh. It was a rough and coarse way of regarding suicide. It surrounded a hideous subject with artificial horrors. It shocked people who were not very easily shocked; it proved too much even for the not over sensitive generations which permitted our goals to be true Infernos and the places in which the insane were lodged to be, if possible, something worse. It was an outrage to the living, and only wounded those who required consolation. Nor had it in all probability much effect in preventing suicide. A man who shuts himself up in a room and lights a charcoal fire, or loads a revolver, or purchases poison, with intent to destroy himself, is not likely to be deterred by the thought that his body may be refused Christian burial. Consuming, all-pervading grief, melancholy wrapping a man round as in a cloud, "perpetual fume and darkness," as Burton has it, the sense of depression and complete extinction both of hope and the power to hope, and all the other mental phases which precede suicide, do not permit the unhappy victim to think much of the proceedings *super visum corporis* in the future in the back parlour of a public-house. Perhaps all that could be said in excuse of the brutal, blundering system, the last stick and stone of which have been removed, is that it was just as effectual for its purpose as any other. For ages moralists and clever men have been constructing aphorisms about the iniquity and meanness of self-destruction, and they sound very cogent in the ears of those who are quite satisfied with life as it is. Have they, however, ever arrested a case of meditated self-destruction? The man who is demoralised by a long train of misfortunes is not likely to pull himself together by taking a dose of the best apothegms. He is self-absorbed, and is dead to the motives which would influence him in his better moments. Every "mad doctor" will assure us that those who are afflicted with suicidal melancholia appear to understand perfectly well the reasons which are urged against their infatuation; but arguments glance off them without producing any real impression. Their self-absorption grows and grows, regardless of external circumstances, until they one day seek relief in suicide. If the unhappy man will not hear the simple, clear calls of nature and affection, he will be sure to be deaf to the stranger, more distant voices of preachers and moralists. He must be rescued, if at all, by elementary remedies; and, if he be open to reason, there never was much danger that he would do himself harm.

It was once the fashion among writers who thought

themselves unusually wise to pen or hint at half apologies for suicide. It was a "note" of culture in the last century to laud the readiness with which a Roman of the times, described by Tacitus, tranquilly quitted life when it seemed to him that the occasion had come for making a graceful or dignified exit; and we have among us some who include in their admiration for cheerful Pagan ways, mild approval of self-destruction if practised judiciously and with picturesque accessories. Our forefathers who constructed the law which is being destroyed, had no such view of their duties. They really thought the man who killed himself wicked. They called him a murderer, and they meant exactly what they said. It has been often pointed out that the practice, now become all but universal, of returning a verdict of insanity at coroners' inquests is of modern origin. A well known legal writer, not so very ancient, protests against "the strange notion, which has unaccountably prevailed of late, that every one who kills himself must be *non compos* of course." In these days coroners' juries cannot be got to act upon any other than this "strange notion;" and it would be monstrous to think of reviving one jot or tittle of the jurisprudence which treated suicide either as a foul crime or as an unerring sign of insanity. If we are to make a choice of blunders, there is something to be said for keeping to the old theory. It is more manly than, and at least as true, as the notion that suicide is often a piece of heroism. Madame de Staël wrote a book full of instances of people who killed themselves for the most high-sounding reasons. In point of fact, such persons are extremely rare. Suicide is, in the world as it is, generally the vice of weak, shallow natures. Strong-minded men and women with nimble wits and sound hearts do not make away with themselves. Even if influenced by no high motives, they are much too busy and full of interests to think of self-destruction. No matter how poignant grief may be, it rarely drives its victims to suicide. It is vanity, the union of limited faculties with ill-regulated desires, or the wreck of rash speculations, which generally impels men to lay violent hands upon themselves. The young lovers who, as described in our columns on Monday, threw themselves into a stream at Uxbridge in the hope of drowning themselves, and were fished out by a school-master who happened to pass, would not have been murderers, had they managed to make away with themselves, in the sense in which one who kills another is a murderer. People will insist upon drawing a very marked distinction between the two offences. But it would be unfortunate if the less heinous of the two were invested with any false sentiment, or if in abandoning antiquated jurisprudence we were to impair the feeling of contempt for this form of crime. Happily, the two things do not hang together. The new law—of which, to judge from a statement by the borough coroner for Cambridge, some coroners themselves appear to be unaware—removes the necessity or apology for a merciful fiction. Juries will henceforth be free to refrain from pronouncing a man insane who, so far as they know, had all his faculties in perfect order. But we need not fear that this will in any way materially lessen the abhorrence of suicide, which has its roots in a stratum much deeper than the Common Law.—*Times*.

### THE LAND COMMISSION.

#### LEASEHOLDERS AND LABOURERS.

The following recommendations have been made to the Government by the Land Commission as to an Amendment of those clauses of the Land Act affecting Leaseholders and Labourers:—

#### "AS TO LEASEHOLDERS.

"The following may be said to be the causes of the comparative inefficiency of the clause of the 21st section, enabling the court, under certain circumstances, to declare void certain leases accepted since the passing of the Act of 1870.

"I. The restriction of the power of giving relief to tenants from year to year, to the exclusion of those who may have been compelled to accept a lease on the determination of their former tenancy.

"II. The necessity that the terms of the lease should be not only unreasonable or unfair in themselves, but unreasonable or unfair, having regard to the provisions of the Act of 1870.

"III. The fact that in a very large number of cases, possibly in the majority of the cases which have been heard, what the landlord set himself to procure by threat of eviction or undue influence was not the acceptance of a lease, but the payment of an increased rent, and the term complained of by the tenant as unreasonable or unfair to him was the payment of such increased rent. In very many cases it was a matter of indifference to the landlord whether the tenant took a lease or not, so that the increase of rent was obtained, and the tenant on the other hand either was indifferent on the subject of a lease—sometimes objecting solely on the score of the expense of taking it out—or else, when he saw that he was compelled to pay an increase of rent, desired to have a lease as a protection against further increase.

"IV. Another ground on which some applications have failed is, that the lease comprised additional land beyond that held under the former tenancy, so that, as to portion of the land in the lease, the leaseholder had not been previously a tenant; and, as the clause gave no power to set aside a lease in part, the application to set it aside failed altogether.

"If the clause were amended so as to admit to its benefits tenants whose leases or other tenancies were expiring, or had determined, and were further amended by not making the unreasonableness or unfairness of the terms depend upon their having relation to the Act of 1870, many leaseholders might avail themselves of the clause who are now excluded. But unless the amendment went further and embraced the cases mentioned above as No. III. it is to be feared that the result would be an amount of disappointment and discontent almost as great as has arisen from the results of the present clause.

"The object aimed at by the clause was, it is apprehended, as follows:—

"The 21st section provides for the inviolability of contracts of tenancy embodied in existing leases. But as it might happen that some of those leases might be both unfair in themselves and unfairly obtained, the power was given of setting them aside, if procured since the Act of 1870, and thus admitting such leaseholders to the benefit of the Act.

"It is submitted that the principle of the clause extends to the case of the enforcement by unfair means of an increase of rent which was at the time unreasonable and unfair, and which was made unalterable for a fixed period by being reserved by a lease, and that relief might justly be given in such a case, although the rent which forms a term of the lease, and not the lease itself, was what the landlord sought to procure by threat of eviction or undue influence.

"JOHN O'HAGAN."

#### "AS TO LABOURERS' COTTAGES.

"Great difficulty exists in enforcing the orders of the Land Commission in respect of labourers' cottages.

"No penalty is provided by the Act, and the only mode by which the order can be enforced is by attachment for disobedience.

"This is a process most unsuitable for the purpose.

"If the provisions of the statute are to be acted on and effectually pressed, a penalty must be imposed for non-compliance with the order.

"It is suggested that it should be enacted that in case of non-compliance with the order of the Commission or Sub-Commission within the time and according to the direction limiting the same, the labourer or the landlord may, or the clerk of the union, when an order shall have been made by the Land Commission in that behalf, shall proceed by summons at petty sessions

against the party in default, and upon the production of a certified copy of the order, and proof of non-compliance, the party bound by the order shall be subjected to a penalty not exceeding twice the amount of the sum allowed by the order to be charged for rent, and not less than the said amount, which penalty shall be payable weekly until the order shall have been certified by the justices to have been complied with. The penalty shall be recovered in like manner as penalties under the Petty Sessions Act, and shall be paid in to the credit of the union in relief of the poor rates.'

"It can hardly be expected that the labourer will proceed to enforce the order. The farmer is not bound to keep the labourer, and any hostile action on the labourer's part against his employer would lead to his dismissal. It is not to be expected that the landlord will move in the matter, as he has no inducement to force his tenant to comply. The result must be that the burden of enforcing the order must rest upon the Land Commission or some local authority. Boards of Guardians composed of tenant farmers will not be inclined to enforce the provisions of the Act, and consequently the Land Commission alone can be relied on for the purpose.

"To enable the Commission to do so, it should have power to appoint and employ an inspector, whose duty it would be to visit the holdings and report to the Commission, and on his report the Commission should have power to direct a prosecution by either the clerk of the union, or by the petty session clerk, or the sub-inspector (Royal Irish Constabulary) of the district, as may be deemed most desirable.

"The entire question of labourers requires to be dealt with by separate and distinct legislation, but some such enactment as here suggested is required to give effect to the provision of the Land Law (Ireland) Act, 1881, in relation to labourers' cottages.

"E. F. LITTON.

"29th May, 1882."

#### THE LABOURERS' COTTAGES' BILL.

Mr. Stuart's Bill on this subject, which was read a second time in the House of Lords on the 10th inst., provides as follows:—

"1. This Act may be cited for all purposes as the Labourers' Cottages and Allotments (Ireland) Act, 1882.

"2. In this Act the expression 'the principal Act' means the Land Law (Ireland) Act, 1881, and the several words and expressions to which meanings are assigned by that Act shall have the same respective meanings in this Act unless there be something in the context repugnant thereto.

"3. Where under section eight of the principal Act, the landlord and tenant of any holding have agreed and declared, or shall agree and declare, by writing under their hands, what is the fair rent of the holding, and such agreement and declaration, has been or shall be filed in court, the court may at any time within *six months* from the passing of this Act, or within *twelve months* from the date of the filing of such declaration and agreement, whichever shall last happen, order the tenant of such holding for the accommodation of the labourers employed thereon to improve any existing cottages, or build any new cottages, or assign to any such cottage an allotment not exceeding half an acre, and may by such order fix the terms as to rent and otherwise on which such accommodation is to be provided, and any such order may be made on application to the landlord, or of the tenant of the holding, or of any labourer employed thereon, or of any inspector appointed under this Act.

"4. When an order is made under this Act, or has been made or is made under section nineteen of the principal Act, for providing accommodation for the labourers employed on any holding, and if such order has not been complied with within *six months* from the date of such order; or *six months* from the passing of this Act, whichever shall last happen, the person failing to comply with such order shall be liable thereon-

forth to a penalty of *one pound for every week* during which such order is not complied with, and such penalty shall be recoverable in a summary manner before two or more justices in petty sessions in manner provided by the Petty Sessions (Ireland) Act, 1851, upon the complaint of any inspector appointed under this Act, or of any labourer employed on the holding, and the justices shall award such penalty to the guardians of the poor of the union within which the holding is situate to be applied in aid of the poor rate of such union

"5. Any person who has incurred any penalty under the provisions of this Act may apply to the court for relief from the same, and the court may relieve him from the whole or part of such penalty on such terms as to compliance with the order and as to costs or otherwise as the court thinks fit, and such relief may be granted, notwithstanding that an order has been made at petty sessions for the payment of the penalty.

"6. The Lord Lieutenant may, from time to time, with the consent of the Treasury as to number, appoint, and by order in Council remove, inspectors of labourers' dwellings, who shall hold office for such time as shall be determined by the Lord Lieutenant. *There shall be paid to each of such inspectors such salary of remuneration as the Lord Lieutenant may, with the consent of the Treasury, determine.*

"The duties of such inspectors shall be such as the Land Commission shall from time to time determine.

"Every such inspector shall be admitted into any labourers' dwelling at any time between the hours of *nine* in the forenoon and *six* in the afternoon for the purpose of inspecting the same, or otherwise carrying into effect the duties imposed upon him by the Land Commission.

"7. This Act and the principal Act shall be read together and construed as one Act."

#### THE AGRICULTURAL COMMISSION.

Although bad seasons and foreign competition, aggravated by the price of labour and losses of stock, are, according to the final report of the Royal Commission on Agriculture, the principal causes of the present depressed condition of the farming classes, by no means the least important part of the report deals with matters more within the range of practical alleviation. Some of these, being intimately connected with existing legal enactments, their operation and their proposed amendment, it will hardly be out of place to refer to in these columns.

Of our land laws, in the first place, the Commissioners say that "no different condition of land tenure or of occupation would have materially mitigated the severity of the recent depression or would prevent its recurrence." In support of this view they refer to their reports from foreign countries, where, under different systems of tenure, like depression has existed, and to the fact that in this country owners in fee farming their own land with sufficient capital have suffered no less than life tenants and lessees. The report proceeds, however, somewhat illogically, to describe Lord Cairns' Settled Land Bill as "a bold, comprehensive, and most valuable measure." The ample powers that it confers on life tenants will, it is said, obviate many of the objections which have been urged against the existing laws—objections, it is hardly necessary to point out, just before declared to have no foundation. To the suggested establishment of a peasant proprietary, the Commissioners are decidedly opposed. They think that "no special facilities should be given to stimulate the artificial growth of a system which appears to be ill-adapted to the habits of the people or to the condition of agriculture in this country." At the same time, they deem it highly expedient to facilitate and cheapen the transfer of land.

Another very important question is that of compensation for unexhausted improvements. The Agricultural Holdings Act, 1875, the Commissioners say, has, notwithstanding its permissive character, done much good. There are, however, many parts of Great Britain

in which from various causes no sufficient compensation is secured. The conclusion arrived at is, therefore, that further legislative provision should be made, and that with this object the principles of the Act, with one or two limitations, should be made compulsory "in all cases in which such compensation is not otherwise provided for." With this part of the report, however, Lord Vernon disagrees, owing to what he considers the impossibility of prescribing any universal rule for estimating the value of improvements.

Another alleged impediment to the favourable pursuit of agriculture is the not unfrequent custom of exacting special restrictive covenants as to cropping and the sale of produce. On this subject the commission have examined many witnesses. In conclusion a belief is expressed that the more stringent covenants of this nature are to be found only in the older forms of leases, and that the general improvement in cultivation would justify their removal. Their compulsory abolition is, however, not recommended.

With regard to the law of distress, the report says, the evidence has been conflicting. Some witnesses have been for retaining, some for modifying, and some for abolishing it. Of the last opinion are no less than four of the commissioners themselves. The majority, however, agree in the main with the Select Committee of the House of Commons, who have recently been investigating the same question. They think the law should be modified but not abolished. Abolition, they say, would operate to the prejudice of farmers, especially of the smaller class of holders. In Denmark, where no such law exists, the substitute is found more oppressive to the farmer, consisting as it does of payment of rent in advance, and the provision of security against losses and dilapidations. They propose, therefore, by way of modification that the power of distraint should be limited to two years, and that hired machinery and agisted stock should be exempted from the operation of the law.

A further matter with which the report deals at some length is that of local taxation. The Act (43 Eliz. c. 2) undoubtedly contemplates a contribution to the poor rate according to the ability of every inhabitant, and the courts have at various times decided that personal property is liable equally with realty under that statute. *Earby's case*, in the early part of the seventeenth century (3 Bulstr. 354), and the more modern cases of *R. v. Lumadaine* (10 Ad. & E. 157) and *R. v. Capel* (12 Ib. 332) bear out this view. These decisions, in fact, led to the passing of the Act (3 & 4 Vict. c. 89), whereby personalty was first temporarily exempted, and which has been from time to time continued down to the end of the present year by various Expiring Laws Continuance Acts. The exemption, as the report points out, is grounded, not upon justice, but on public convenience. The difficulty of localising a rate on personal property appears indeed unsurmountable, and all that the commission can suggest is that certain local taxes should be assigned to local purposes, or that local expenditure be defrayed out of the Consolidated Fund. It is admitted, however, that to this course some weighty objections may be raised, on the ground of increased centralisation and consequent extravagance.

The remaining points touched on by the report we may pass by briefly, as being of less interest in a legal than in a social aspect. All rates, it is said, should in future be borne equally by owners and occupiers, whatever changes may be made in the incidence of local taxation. Strong disapproval is expressed of any legislative interference with the question of rent between landlord and tenant. The Education Acts are found to operate prejudicially to agriculture by depriving farmers of the labour of boys and giving the latter a taste for other industries. The Contagious Diseases (Animals) Act, on the other hand, has had a most beneficial effect, and should be made even more restrictive than it now is. Steps also are recommended to prohibit the adulteration of farm produce and the sale of spurious imitations, and attention is drawn to the inequalities of railway rates and the preferential terms granted to

foreign commodities. Finally, it is proposed that the present mode of taking tithe averages should be altered, that the rentcharge be a fixed sum, and that every facility be given for its redemption.

On the whole, it is evident that in the opinion of the Commissioners the wholesale amendment of certain portions of the Statute-book is desirable in the interests of agriculture. The main causes of depression—weather and competition—no legislation can control; but the host of minor causes they have referred to are within the reach of parliamentary remedies, and cannot be taken in hand too soon, if they are ever to be removed. At the same time the Commissioners would have it always clearly remembered, that in this country no interference between the rural classes can render any one of them independent of the other; and that "the best hope for the prosperity of agriculture lies in the mutual confidence and friendly relations of the three classes directly engaged in it, and in the common conviction that their interests are inseparable."—*Law Times*.

#### THE LAW OF DISTRESS.

The report has been printed of the Select Committee of the House of Commons appointed to consider "the whole subject of the law of distress, especially as regards agricultural landlords and tenants." After an historical sketch of the law, together with a review of the evidence taken by them, and of the arguments for and against the law, the committee (of which Mr. Goschen was chairman) proceed as follows: "Most of the witnesses who expressed themselves in favour of a retention of the law at the same time advocated considerable modifications in its provisions. Those who desired the total abolition of the law were of opinion that cheaper and more speedy means of re-entry, in the event of non-payment of rent, must be given to the landlord. In the opinion of your committee, a period of commercial and agricultural depression would be very inopportune for the abolition of the law of distress, which would of necessity impair the existing system of credit given by the landlord to the tenant, and cause serious inconvenience. There are some special enactments relating to exemptions that require notice. The Lodger Act of 1871 protects goods that are not the property of the tenant; workmen's tools are exempt from seizure; looms and frames used by workmen at their homes are not liable for the rental of those homes. Goods sent to a house for the purposes of trade, as, for instance, a watch for repair, are not endangered by the law of distress. Beasts at the plough are excepted, unless there are not sufficient goods otherwise to distraint upon; and there are some other exemptions. The tithe owners can distraint for two years only. Under the bankrupt law the landlord has the privilege of preference with regard to one year's rent only. Upon a careful review of the evidence placed before them, your committee are of opinion that a law of distress should be retained. The evidence seems to them to favour modification rather than abolition of the law. Your committee recommend the following alterations in the law: That the right of distraint be restricted to one year's rent, and that this right should only be exercised within six months after the said year's rent has become due. That with regard to agisted stock, the limit of distress should be the consideration payable for the grazing to the farmer who takes in the stock, in accordance with sec. 5 of 30 & 31 Vict. c. 42. That provision be made for the protection of machinery not the property of the tenant; also that animals not the property of the tenant, temporarily upon the holding for breeding purposes, be exempt. That the limit of £20 distress regulated by the Act of 1817 (57 George 3, cap. 93), be raised to £50, and that the allowance in the schedule of that Act for a man in possession be raised from 2s. 6d. to not exceeding 5s. a day. That, the attention of your committee having been called to the heavy and unnecessary costs incident to the processes of distress and the sale of effects, the costs and charges relative to

distress for rent in cases above the limit regulated by the Act should be subject to taxation by the registrar of the County Court, or other proper officer. That the time a bailiff may remain in possession under a distress, may, at the request of the tenant and on his giving security for the costs, be increased from five to fifteen days, and that in such case no sale shall take place sooner, except at the request or with the consent of the tenant; also, that at the desire of the landlord, or of the tenant, the goods of the tenant may be removed for sale to public auction rooms or some other fit place. That appraisment previous to sale may be omitted, and that bailiffs should be approved by the County Court judge of the district in which they act, and be subject to removal by him for extortion or misconduct. Your committee are of opinion that, so far as possible, the above recommendations should be embodied in a Bill and laid before Parliament."

BILLS OF SALE.

There is not, and probably never will be, complete agreement as to the best tests of the material prosperity of the country. The state of the revenue, the amount of deposits in savings banks, the statistics of pauperism, our exports, our imports, might each be pronounced, with some show of reason, the safest criterion of real increase in wealth. On all hands, however, it will be owned that the annual returns of bills of sale throughout the country afford valuable indications of the state of business and prosperity. If this be so, the figures for the last seven years, published by the Board of Trade, are well worthy of attention. They show a truly amazing growth of bills of sale. In 1875 they were only 11,844; in 1881, they were 51,687. Between 1878 and 1879 they leaped from 19,596 to 49,623. In 1878 a new Act came into operation. It imposed fresh restrictions on this mode of borrowing. It extended the definition of bills of sale. It made them void, if unregistered, in certain cases, and it required, in the interest of the borrower, new formalities to be observed. On the other hand, it altered the law in one way likely to encourage the creation of such documents. Those which were registered in accordance with the Act protected goods from seizure by the trustee in bankruptcy, even if they were in "the possession, order, and disposition," and, to outward appearance, apparently the property of the debtor. Probably the state of trade had more to do with the multiplication of such bills than the form of the law. At any rate, the number rose from 19,596 in 1878 to 49,623 registered in 1879. It reached 55,518 in 1880, but in 1881 it fell to 51,687. The most serious side of the matter is that the increase has been chiefly in bills of sale for small amounts. A few years ago no one thought of borrowing five or six pounds by giving a bill of sale on his furniture. Even if he wished to do so, there were not the means of gratifying his desire with ease. The whole number of registered bills of sale in 1875 for sums under £10 was 86; but in 1880 it was no less than 8,872, and last year the number to secure advances under £10 was 7,227. Making allowance for the fact that it was not until the Bills of Sale Act of 1878 came into effect that it was of so much consequence to resort to registration or to state the true consideration, it is remarkable that 86 and 761 bills of sale were given in 1875 for sums under £10 and sums between £10 and £20, and that in 1880 the corresponding numbers were 8,872 and 18,978. A change has, it is plain, come over the ways and manners of the poor. A well-to-do person has always tided over his difficulties by going to his banker and obtaining an advance. The poor man has, hitherto, as a rule, gone in his troubles to the pawnbroker, raising a loan by leaving in pledge a fender, a looking-glass, or, in dire straits, the family linen. Bills of sale were the privilege of impecunious traders. They were parts of the machinery of hazardous and dubious forms of business. But this no longer holds good. "Credit has been popularized," to use an expression once common. The workman does as his betters did.

When he cannot make ends meet, he calls at some "friendly," "equitable," "co-operative," "amicable," or "harmonious" office, which gives him an advance in exchange for a bill upon his goods and chattels. The borrower puts every stick which he possesses at the mercy of the lender, who designates himself by a more euphonious name than that of usurer or pawnbroker, but who carries on much the same business.

These facts have not escaped notice. They receive prominence in consequence of the circular which the Lord Chancellor sent to the County Court Judges with a view to elicit their opinion as to the working of the Act of 1878. At the beginning of this Session Mr. Monk introduced into the House of Commons a Bill with the view of amending the law which had permitted the rapid development of this form of credit. One of his proposals was that no bill of sale should have the virtue of transferring after-acquired property; subject to certain exceptions, it should affect only goods and chattels specified in a schedule. Mr. Monk also proposed to make provisions for local registration of bills of sale. By his measure a blow was to be struck at borrowing small amounts. Bills of sale for sums under £50 were to be declared void. Registration within seven days was required, on pain of the bill being void; and for twelve months it was in any case liable to be defeated by a trustee in bankruptcy, so far as goods in "the order and disposition" of the grantor were concerned. This measure, as modified by a Select Committee, passed the Commons. When it came to the House of Lords, it met with qualified approval, and it was referred to a Select Committee, of which Lord Coleridge was the chairman. The Committee took some evidence and suggested a few modifications. By a small majority they agreed to the 12th section, which prohibits bills of sale for sums under £50. They suggested, also, that the requirement of the present law that every bill of sale should be attested by a solicitor should be repealed. They rejected Mr. Monk's proposal as to this, and they proposed as a substitute that every bill of sale should be attested by one or more credible witnesses who were not parties to it. Obviously the measure as it came from the Commons was an attempt to restrict materially the use of one of the readiest modes of borrowing; and whether this is or is not an advantage to the community is open to question. We are not so sure as Mr. Monk appears to be that it is right and expedient to throw all sorts of legislative obstacles in the way of a particular mode of borrowing, and that, too, one which appears to answer a widespread want. It is a fact against such restrictions that they are rarely very successful in their objects; and mischief is apt to be done in the very attempt. Something, too, may be urged against the purpose and principle of such legislation. Take a leading and distinctive clause in Mr. Monk's Bill—that which would cut down a man's power of hypothecating to one creditor goods which he may afterwards get. Very charitable, no doubt, are the motives of those who would try to prevent a trader from plunging into hopeless embarrassments by preventing him from borrowing money on the security of his after-acquired property, and limiting his credit to obtaining advances on articles and property which he has actually in stock. A shopkeeper who really wants money will find ways of getting it, by hook or by crook, in spite of this provision; and why, in all fairness, it may be asked, should not a man be free to borrow upon his stock as it comes in, provided he pays for it? Much the same criticism may be made with respect to other restrictions which are proposed. Why should an artisan who is behind with his rent not be free to go to a loan office, which chiefly lends on bills of sale, as well as to a pawnbroker's to procure a small advance? Some of the provisions which have been made from time to time for the protection of the grantors of such bills come near being puerile. The present law requires a bill of sale to be explained to the person making it by a solicitor, and Mr. Monk's measure proposes that a bill should be executed in the presence of a person authorized to take oaths, whose duty it would be to give

explanations to the grantor. We are a little at a loss to understand whom this well-meant machinery can in practice benefit. Of course it is open to question whether bills of sale should exist at all. They are admitted to be contrary to the spirit of many systems of jurisprudence. A Scotch lawyer, for example, does not understand the propriety of a security possession of which is not given to the lender. It strikes him as a fruitful source of fraud. And, no doubt, bills of sale are, as a rule, modes in which a man who is deep in debt, and who is not honest enough to wind up his affairs when he ought, gives away what in fairness belongs to the whole body of his creditors. They are generally artifices for conferring upon later special creditors unmerited preference over those who have earlier claims. No one, however, is prepared at present to propose the abolition of a form of security so well known and so much used. What may be done is to look as vigilantly as possible after the interests of general creditors, and not to allow bills of sale to become, as they often are, ready means of perpetrating the grossest frauds. This is the pinch of the matter; and in mistaken zeal for the interest of a not unknown, but comparatively rare, victim—the needy borrower who cannot read and who does not know whether he is being charged 5 or 50 per cent.—the Legislature has not been sufficiently mindful of the most important point. The grantor of the bill of sale is rarely, in practice, duped. He is too often in the mood to dupe others; we might leave him to protect himself, with the certainty that no great harm would befall him. The persons most liable to be deceived are the general body of creditors who find that the man to whom they have given credit for goods has secretly made away with his property. It is they who most require protection, and who do not find it in the law as it now stands. If the Bill is passed in the shape in which it has emerged from the Lords' Select Committee, it will rectify some minor defects. It may save a few persons from falling into the hands of usurers, and it may lead to safer trading in a few instances. It would be no slight service to do away with the innovation introduced in 1878, which has made bills of sale in recent time so popular a form of security. But we fear that the new measure would not remove all those scandals which have made bills of sale odious to scrupulous men of business.—*Times*.

#### THE SETTLED LAND BILL.

Lord Cairns deserved the congratulations of the Lord Chancellor on the success of the important measure which now only awaits the Royal assent. The Settled Land Bill, which came down from the House of Lords before Easter, and had been amended by a select committee of the House of Commons, is the most considerable measure of reform effected in the law of real property these fifty years. In some respects, it might be called the most considerable since the Restoration, for the series of amending statutes which began about the time of the Reform Bill, and were closed a dozen years later, were concerned, important and useful as they were, chiefly with matters of form and machinery. Their general purpose was to provide straightforward methods of exercising powers already recognised, and giving legal effect to common dealings with land, instead of cumbrous and costly devices enveloped in fiction and mystery, and fruitful of sinecure fees. They left unaltered the substance of landowners' rights and powers. The present Bill, which in its original form was introduced by Lord Cairns two years ago, has a much larger aim. It is designed to make the persons known as limited owners—the life-tenants of settled estates and others whose position is only technically distinguishable from theirs—as nearly as possible the masters of those estates for all useful purposes. Limited ownership, so far as compatible with its being preserved at all, is no longer to stand in the way of the land being dealt with to the best advantage. Tenants for life are to have simple and effectual powers of selling and leasing, and may apply the proceeds of sale to clear off incumbrances

on the rest of the estate. Such money may also, with the sanction of the trustees of the settlement and the Court or the Land Commissioners, be spent on the execution of permanent improvements; the Land Commission being a proposed new body in which the existing Inclosure, Copyhold, and Tithe Commissions are to be merged. The capital money, again, proceeding from the sale may be invested otherwise than in land—in Government securities, for instance, or in debenture bonds of railways. No power is given to mortgage for improvements. This can be done under an Act of 1864, with a good deal of formality and delay, by the help of the Inclosure Commissioners, and all that is proposed now is to extend the list of authorised improvements for this purpose. It would be useless to say anything here of the technical aids and safeguards by which the working of the measure is assured, and special circumstances, such as the infancy of the limited owner, provided for. These parts of the Bill, however, appear to have been well considered in the first instance, and to have gone through a careful criticism. We do not think any glaring omissions will be found; some clauses, indeed, rather savour of abundant caution. When the Bill first came down from the Lords some Liberals threatened to oppose it altogether on the ground that it was reform of the wrong kind. They objected so much to the whole system of limited ownership that they cared for no amendment short of reforming it altogether. Lord Cairns's proposals were in their eyes a waste of skill and labour on the tinkering of a thoroughly bad and worn-out vessel. Fortunately this line of opposition has not been persisted in. To do so would have been unreasonable in itself and bad policy; the former, because, granting that the Bill is but a palliative, it may with general consent be speedily passed, and so give immediate and much-wanted relief, whereas any more thorough measure is attainable only after a severe contest, for which the time and opportunity are not yet visible; the latter, because the case for a searching reform of our real property laws is in no way weakened by such particular amendments as this. Indeed, the case is rather strengthened by the allowed necessity for them. The costliness and complexity of our land laws are such as, on the first appearance of the thing, to put the whole system on its defence. When that system turns out, by the admission of its own natural advocates, to need constant patching and refitting—and every operation of this kind, however useful in itself and at the moment, adds to a complication already excessive—it is an argument that the days of decrepitude are come. Fifty years ago the Real Property Commissioners, enlightened men according to their light, asserted that the English scheme of family settlements combined sufficient freedom of management with due regard for the interest of successors in exactly the happy mean. A generation later Lord St. Leonards used much the same language; but he lived to be an active or consenting party to legislation which sensibly relaxed the strictness of the provisions thought elastic enough even by the Liberals of his youth. And we may peradventure live to see a successor of Lord Cairns—or what if it should be Lord Cairns himself?—conveniently remember the historical fact that strict settlements have no particular antiquity to boast of, and claim their abolition as a necessary consequence of true Conservative principles.—*Pall Mall Gazette*.

#### EVIDENCE BY PRISONERS.

The diversity of opinion which exists amongst all persons competent to form an independent judgment, on the desirability of permitting an accused person to give evidence on his trial for a criminal offence, renders it very interesting to observe what the result is when under the present system of criminal jurisprudence an accused person indirectly becomes enabled to give evidence on his own behalf. We have always entertained the gravest doubt whether the proposed change would be an advantage in practice, although theoretically it rests upon a substantial basis. We have frequently pointed

out that the popular notion about the prisoner's mouth being shut is entirely erroneous; that it is competent for him to make a statement at the time of his arrest, which the police officer is bound to take down in writing and produce at the trial; that he can make a further statement or repeat the same statement when charged at the police station; that at the close of the hearing before the magistrates, in reply to the statutory caution, he can tell his own story in his own way; and lastly, by the universal consent of all the judges, he may, even if defended by counsel, tell his own tale to the jury. It is true that the statement in reply to the statutory caution is only evidence against him as an admission, and if not put in by the prosecution cannot be used by the prisoner, but practically the statement is always put in; indeed, the judge usually intimates his opinion that this should be done, and such an intimation no counsel of any experience would be foolish enough to disregard.

The Draft Criminal Code, Part XLIII, s. 523, deals with this subject in the following way: "Every one accused of any indictable offence shall be a competent witness for himself or herself upon his or her trial for such offence, and the wife or husband, as the case may be, of every such accused person shall be a competent witness for him or her upon such trial: provided that no such person shall be liable to be called as a witness by the prosecutor, but every such witness called and giving evidence on behalf of the accused shall be liable to be cross-examined like any other witness on any matter, though not arising out of his examination in chief: provided that, so far as the cross-examination relates to the credit of the accused, the court may limit such cross-examination to such extent as it thinks proper, although the proposed cross-examination might be permissible in the case of any other witness."

This latter provision seems to us most ridiculous, because, whenever the question as to credit has been asked, the mischief is done; e.g., suppose the code to become law so far as this section is concerned, and the prisoner to be called as a witness on his own behalf, he having been previously convicted of burglary and sentenced to penal servitude, it would be competent for the counsel for the prosecution—indeed he seems to be invited by the section—to ask, "Have you not been convicted of burglary?" The court might disallow the question, but the prisoner's chance of acquittal would be substantially reduced, if not altogether taken away, and yet he might be perfectly innocent of the crime for which he was being tried.

In their report (p. 37) the commissioners thus allude to this section: "The Bill contained a clause enabling the accused to make an unsworn statement on his own behalf, and subjecting him to cross-examination of a restricted character. For this we have substituted sect. 523, which renders the accused, and the husband or wife of the accused, competent witnesses for the defence." As regards the policy of a change in the law so important, we are divided in opinion. The considerations in favour of and against the change have been frequently discussed and are well known. On the whole we are of opinion that, if the accused is to be admitted to give evidence on his own behalf, he should do so on the same conditions as other witnesses, subject to some special protection in regard to cross-examination."

A recent trial at the Millstone Assizes, on the 21st ult., is a good illustration of the probable result of the proposed change in the law. The case was one of rape, and was described by Sir Henry Hawkins as the most extraordinary he had ever tried, or indeed even heard of during his long experience. One Dr. McNab, a medical man at Dartford, had gone away for a holiday, leaving one of the prisoners, Dr. Kennedy, in charge of his practice. On the 1st July, Kennedy invited a friend named Hartnett, an officer in Her Majesty's Customs, to spend the day with him, the only other occupants of the house being two female servants, a cook and a housemaid, aged respectively twenty-two and sixteen-and-a-half years. About ten

o'clock, Kennedy and Hartnett left the house, the latter intending to catch a train to Gravesend, but he missed the train, and the two returned to Dr. McNab's at about eleven o'clock. Both the girls were up, some drinking took place in the dining-room, and then commenced a scene of unbridled profligacy which lasted until four o'clock in the morning, Kennedy and Hartnett being subsequently, on waking in the morning, charged with rape. The magistrates refused to commit for this offence after a long hearing, and only sent the men for trial for an indecent assault, but bills were preferred for the graver charge, and duly found by the grand jury. There were several indictments, and the prosecution elected to proceed on one charging both prisoners together: Hartnett with committing a rape on Barbara Moore, the cook, and Kennedy with aiding and abetting. The defence was, of course, consent, and the evidence for the prosecution presented many features of improbability, particularly as there were no marks of violence on the girls, although they swore they had been subjected to very great brutality. At the close of the case for the prosecution the learned counsel for the prisoners submitted that there was no evidence of aiding and abetting by Kennedy in the case of the particular rape before the jury, and, after argument, the objection was allowed, and a verdict of "Not guilty" taken as against Kennedy. Kennedy was then called as a witness for Hartnett, and, as there were other indictments against him, including one for a rape on Barbara Moore, he thus practically became a witness for himself. Hartnett was convicted.

We believe, whenever there is a conflict of testimony, a jury would accept in nine cases out of ten the story of the witnesses for the prosecution, who apparently have no object in stating that which is untrue, and would reject that of the prisoner, who is so deeply interested in the result, and that they certainly would never attach greater weight to a statement on oath than to a statement otherwise made. We think the proper solution of the problem would be, to retain the provision in the original Bill drawn by Mr. Justice Stephen allowing the prisoner to make a statement, whether defended by counsel or not; but we would not permit cross-examination of the prisoner under any circumstances, as we consider such a practice would inevitably lead to the conviction of many innocent persons.—*Law Times*.

#### THE LIMITS TO LITERARY AND ARTISTIC CRITICISM.

(Continued from page 382, ante.)

One of the latest cases, and at the same time a very notorious one, on our topic, is *Reade v. Sweetser*,<sup>1</sup> decided in the New York Supreme Court in 1869. The plaintiff was Charles Reade, the English novelist. He asked \$25,000 damages for an alleged libel published in the *Round Table*, a New York weekly paper, in the shape of a criticism of his novel, "Griffith Gaunt," then just issued, which charged that it was "one of the worst stories that had been printed since Sterne, Fielding, and Smollet defiled the literature of the already foul eighteenth century;" that it "is not only tainted with this one foul spot—it is replete with impurity; it reeks with allusions that the most prurient scandal-monger would hesitate to make." The language of Clarke, J., in charging the jury, contains an excellent statement of the limits of literary and artistic criticism, as applied to the criticism in question. "In criticising the productions of an author," said he, "the law allows considerable latitude. The interests of literature and science require that the productions of authors shall be subject to fair criticism; that even some animadversion may be permitted, unless it appears that the critic, under the pretext of reviewing his book, takes an opportunity of attacking the character of the author and of holding him up as an object of ridicule, hatred, or contempt. In other words, the critic may say what

(1) 6 Abb. Pr. (N.S.) 2.

he pleases of the literary merits or demerits of the published production of an author; but with respect to his personal rights, relating to his reputation, the critic has no more privilege than any other person not assuming the business of criticism. For instance, he may say that the matter is crude, forced, and unnatural; that it betrays poverty of thought, and abounds with common-places and platitudes, being altogether 'flat, stale, and unprofitable,' and that its style is affected, obscure, and involved. He may say, as Burke said of the style of Gibbon, that it is execrable; but he cannot say that the author himself is execrable, or that he is personally affected, or absurd, or wayward. The critic has the same liberty, under the same restrictions, in relation to all people who come before the public for praise or censure. He may say of the orator who uses excessive gesticulation and vociferation, mistaking extravagant action and verbosity for eloquence, that he has all the contortions without any of the inspiration of the Sibyl. He can say of the player that he mounds his speech, as many players do, or that he 'tears the passion to tatters, to very rags, to split the ears of the groundlings;' but he cannot abuse him as a 'robustious, periwig-pated fellow,' and recommend that he should be 'whipt for o'erdoing Termagant.' The critic can call a painting a daub and an abortion, but he cannot call the painter himself a low, discreditable pretender and an abortion. The most comprehensive freedom in animadverting upon the productions and actions of public men is essential to the very existence of civil and political liberty, and to the progress of civilization, and I heartily agree with Lord Ellenborough in *Tabart v. Tipper*. \* \* \* But, although a critic may not have directly assailed the character of an author, or ridiculed his personal appearance, his manners, his voice, or exposed any eccentricities or defects of the man, may he not, nevertheless, defame him and wound him in the most vital spot by imputing to him unworthy motives and evil designs against the well-being of society, intimating that he infers these motives and designs from the sentiments expressed and the characters delineated in the work which he has undertaken to review? My own opinion is that many of the works of fiction which are published in this country are very pernicious in their effects upon public morality. Not that I think fiction in itself is demoralising—far from it: the most instructive lessons in faith and morals have been conveyed through its instrumentality. The founder of Christianity himself did not disdain frequently to employ it; indeed, it was his favourite method of moral and spiritual instruction. But in its very fascination consists its danger; and when we see the press teeming with productions of this kind, describing scenes and portraying characters calculated to corrupt the morals, and even weaken the mental stamina of the multitude of novel-readers who seem to be absorbed in this kind of reading, it will be prudent to allow considerable latitude of criticism in relation to these productions. \* \* \* I make these observations to show that in dealing with this class of literature the critic should not be prevented from inferring the motives and designs of the author from the inevitable effect of his writings. Of course if he imputes motives and designs which he was not warranted in imputing by any opinion or sentiment expressed, or any character delineated in the work, or from its general tone, he is liable and must take the consequences, and the author is entitled to redress. To charge an author with such motives and designs is a most serious imputation; and if it is unwarranted, the critic has committed a grievous wrong, which money is scarcely capable of repairing. Undoubtedly, the criticisms complained of make these imputations against the plaintiff. That can scarcely be denied. \* \* \* The jury have a right to determine, for it is plain that the articles are *prima facie* libellous, whether 'Griffith Gaunt' is obnoxious to such imputations; and if so, you have the right to infer the culpability of the plaintiff and the truth of the justification." The

(2) *Ante*, p. 379.

jury gave Charles Reade a verdict and *six cents* damages.

The editor of a newspaper stands in the same position as any other writer, in this regard. In *Heriot v. Stuart*,<sup>3</sup> the plaintiff was editor and proprietor of the *True Briton*; the defendant, the printer of a paper called the *Oracle*. In the columns of the last paper, sometime in 1795, this paragraph appeared:—

"*Times v. True Briton*."—In a morning paper of yesterday was given the following character of the *True Briton*: that 'it was the most vulgar, ignorant, and scurrilous journal ever published in Great Britain.' To the above assertion we assent; and to this account we add that the first proprietors abandoned it, and that it is the lowest now in circulation, and we submit the fact to the consideration of advertisers."

Erskine, who appeared for the plaintiff, admitted that the words copied from the *Times*, charging the paper with scurrility and ignorance, were not actionable, but argued that the concluding sentence was, as it affected the sale of the paper and the profits to be made from advertising. Lord Kenyon, C.J., who presided at the trial, assented to both propositions. *Heriot v. Stuart* was cited in a similar case, twenty years later, when Lord Ellenborough informed the jury that it was competent for one public writer to criticise another, exerting his talents in all the latitude of free communication belonging to a public writer; that the opinions and principles of a controversial writer were open to criticism and ridicule, in the same way as those of any other author, but that the privilege did not extend to calumnious remarks on the private character of the individual, for in this respect the editor of a newspaper enjoyed the rights of protection in common with every other subject.<sup>4</sup>

*Ryan v. Wood*<sup>5</sup> was a case where the critic was himself the complainant. Mr. Ryan was the musical critic of the *Morning Herald* and *Standard* newspapers, and the sub-editor of the *Musical World*. Occasionally he got up concerts on his own account, and for his own benefit, at which celebrated singers sang gratuitously. This aroused the suspicion of a paper called the *Orchestra*, in whose columns Mr. Ryan was spoken of as a "highwayman of the press;" the object of the article being to charge that the critic used his position to force singers to perform at his concerts without pay, they being afraid to refuse lest they should be subsequently attacked in his criticisms of musical performances. Mr. Ryan sued the proprietor of the *Orchestra* for this libel. On the trial, he testified that the artists who sang for him gratuitously did so because of personal friendship, and not for the reasons imputed by the defendant's paper. Mr. Sims Reeves, Madame Sainton-Dolby, Mr. Jules Benedict, Madame Lancia, and others of eminence in the profession, who had appeared at his concerts without pay, corroborated him, though some of them admitted that musical performances depended a great deal upon newspaper criticisms, and that they knew Mr. Ryan to be a critic. The defendant counsel called no witnesses, but insisted that the charge was true, although, on account of the reluctance of the parties to testify against the critic, he could not prove it. Cockburn, C.J., who presided, told the jury that the libel was of a most serious character. "To impute," he said, "to a public writer, who writes public criticisms upon the performances of others, that he is induced to give or to withhold praise, or to pronounce censure, from interested motives, is to make a charge of the greatest turpitude, for it is a charge of the basest and most dishonourable conduct. Those who undertake to enlighten public opinion and public taste in matters of literature or art, undertake a most important, a sacred trust. It is not only that the public look to them upon matters in which the public must be necessarily less informed or enlightened, for assistance in the formation of their judgment and their taste, but it is also this: that those who are struggling

(3) Esp. 1796.

(4) *Stuart v. Lovell*, 2 Stark. 93 (1817).

(5) Frost. & Fin. 738.



in the race of public competition, for public favour, as the means of their livelihood or success in life, have a right to expect that their performances shall be scanned by fair and impartial critics. There are few of those who constitute the public who are competent to form an opinion upon these subjects." The learned judge then went on to speak of the habit of the people to look to the press for the proper estimate of a new work of literature or art, and to be influenced thereby, and pointed out the importance of the criticisms being conducted with a sense of honour, impartiality, and justice. The remarks on Mr. Ryan went, he said, too far. If the article had stopped with a protest against the practice of a critic receiving gratuitous service from an artist, no complaint could have been heard in a court of law. "The writer has gone much farther. He has not satisfied himself with pointing out the bad consequences of the system which the plaintiff has adopted, but he has imputed to him that he does, in fact, mete out his criticism, favourable or unfavourable, according as these services are rendered to him or not; and that by these means, through the influence of his criticisms upon those artists who dread them if they do not submit to his demands, he is enabled to levy blackmail upon them, and thus to be a kind of highwayman upon the press. Such being the scope of the libel, it assumes a very serious character." Under these instructions the jury, after a brief consultation, gave the plaintiff £250 damages.

In *Diddia v. Swan*,<sup>6</sup> in the King's Bench in 1793, the plaintiff was the proprietor of a place of public entertainment called the Sans Souci, where songs were sung which were supposed to have been written by him; the defendant was the editor of a newspaper. The libel for which the action was brought inculpated that the songs were written by another person; that on the first night of the performance there had been a very slim audience, composed mostly of "deadheads," from whom alone the applause came; that the music was of a very inferior kind. The plaintiff alleged that the songs, both as to words and music, were of his composition; that there was a very full audience; and that the applause was genuine, coming from persons in no way connected with him. Lord Kenyon stated the law thus: That the editor of a public newspaper may fairly and candidly comment on any place or species of public entertainment, but it must be done fairly and without malice or view to injure or prejudice the proprietor in the eyes of the public. That if so done, however severe the censure, the justice of it screens the editor from legal animadversion; but if it can be proved that the comment is unjust, is malevolent, or exceeding the bounds of fair opinion, that such is a libel, and therefore actionable. The verdict in this case is not reported. Lord Kenyon's language is open to the objection made by the reporter in *Paris v. Levy*,<sup>7</sup> that it is difficult to see what other object an editor can have in writing strictures upon a public entertainment, if it be not to "prejudice the proprietor in the eyes of the public" by inducing them to abstain from patronizing his exhibition.

An architect was the complainant in the King's Bench in 1827.<sup>8</sup> The alleged libel pretended to give an account of the principles of a new order of architecture, styled the Bæotian, which it is said had been invented by the plaintiff, and whom it called the Bæotian professor; it set out a number of absurd principles as the rules of the new order, from buildings in which the new order had been employed, and which it illustrated by examples—all of them being works of the plaintiff. Lord Tenterden, C.J., in summing up, used language similar to that which he employed, a year later, in *Macleod v. Wakely*. The publication, he told the jury, professed to be a criticism on the architectural works of the plaintiff. Such works, like literary productions, any man had a right to give his opinion on; and though his taste might be at fault, and his opinion might be unjust to the artist's merit, he was not punishable. An opinion

may be expressed through the medium of ridicule. Here the censure was strong, but if they thought it was fair and reasonable, the defendant was entitled to a verdict, even though it was not correct. But if they considered it unfair and intemperate, and written with the intention and for the purpose of injuring the plaintiff in his profession, by imputing to him that he acted on absurd principles of art, then he ought to recover. The jury found for the defendant.

In the King's Bench in 1828,<sup>9</sup> Lord Tenterden, C.J., in giving to the jury a case in which a medical man, the editor of a periodical work called the *London Medical and Physical Journal*, had sued for a libel on him in the *Lancet*, said:—

"It has been stated on the part of the defendant that the matter contained in this publication relates to the plaintiff only as an author; but still there is no doubt that a man who is an author has a right to have his character protected, just the same as if he acted in any other capacity. However, notwithstanding that, whatever is fair and can be reasonably said of the works of authors or of themselves as connected with their works is not actionable unless it appear that, under the pretext of criticising the works, the defendant takes an opportunity of attacking the character of the author, and then it will be a libel. That there is in this publication a great deal of ridicule must be admitted by everyone, and I think that there appears also to be some rancour; still, if you think that what is said here was fairly called for by what the plaintiff had done as the editor of another publication, the defendant is entitled to a verdict, but if you should think the remarks were not fairly called for, you will find for the plaintiff."

The nature of the alleged libel does not appear in the report, but the jury gave the plaintiff £5 damages.

(To be continued.)

## NOTES OF ENGLISH CASES.

[From the *Law Journal*.]

### SUPREME COURT OF JUDICATURE.

COURT OF APPEAL.

(Before JESSEL, M.R., BRET and COTTEN, L.JJ.)

In re ROPER. *Ex parte* BOLLAND.

July 27.—*Bill of Sale—Statement of consideration—Explanation and attestation by solicitor—Affidavit on registration—Bills of Sale Act, 1878 (41 & 42 Vict. c. 31), ss. 8, 10, subs. 1, 2.*

A bill of sale was expressed to be made in consideration of £2,000, "paid by the grantee to the grantor immediately before the execution of the deed." No part of the £2,000 was in fact paid, it being the balance of purchase-money owing in respect of a brewery which had been sold by the grantee to the grantor.

The execution of the bill of sale by the grantor was attested by a solicitor, and the attestation clause stated that before the execution the effect of the deed was explained by the solicitor to the grantor. The affidavit filed on registration was made by the attesting solicitor, and stated that the deponent was present and saw the grantor execute the deed, but did not state that the effect of the deed was explained to him by the solicitor before he executed it.

The trustee in liquidation of the grantor having applied to the Court to declare the bill of sale void as against him, on the grounds (1) that the consideration was not truly stated, and (2) that the affidavit ought to have stated that the effect of the deed was explained by the solicitor to the grantor before he executed it, the County Court judge held that the deed was void on the second ground. The CHIEF JUDGE, on appeal, reversed this decision, and held that both objections failed. The trustee appealed.

*Horton Smith, Q.C., and Crump* for the appellant.

*Winslow, Q.C., and S. Taylor*, for the respondent, were not called upon.

(6) 1 Esp. 28. (7) 9 C. B. (n. s.) 353.  
(8) *Soane v. Knight, Moo. & M.* 74.

(9) *Macleod v. Wakely*, 3 Car. & P. 310.

Their LORDSHIPS considered that both points were covered by the decisions in *Ex parte Challinor*, 51 Law J. Rep. Chanc. 476 (n); L.R. 16 Chanc. Div.; and *Ex parte The National Mercantile Bank*, 49 Law J. Rep. Bankr. 62; L.R. 15 Chanc. Div. 42. They, therefore, dismissed the appeal.

TEXT-BOOK ADDENDA.

[From the *Law Journal*.]

*Goddard on Easements*, 270.

*Angus v. Dalton*, 50 Law J. Rep. Q. B. 689, extends to support from adjoining buildings as well as from adjacent lands; therefore, in the case of a building, the right to support may be acquired by twenty years' uninterrupted possession (*Lemaitre v. Davis*, 51 Law J. Rep. Chanc. 173).

*Seton (4th Edition)*, 787.

An increased maintenance for infants entitled to a certain given maintenance under a will was allowed out of income directed to be accumulated, the trustees being ordered to hold their interests as security to recoup any persons affected by the order (*In re Colgan*, 51 Law J. Rep. Chanc. 180).

*Theobald on Wills (2nd Edition)*, 470.

Gift of real and personal estate to trustees upon trust to convert and invest and stand possessed of investments in trust for all the testator's children equally at twenty-one or marriage, the share of any female to be for her separate use without power of anticipation. Held that the gift was of an income-producing fund, and that no part of the corpus of their share could be paid to married daughters (*In Re Benton, Smith v. Smith* (51 Law J. Rep. Chanc. 183).

COURT PAPERS.

COURT OF BANKRUPTCY.

ADJUDICATIONS IN BANKRUPTCY.

The dates of Adjudications are first given, the Sittings follow in Italics.

- Baldwin, Thomas, of Michael street, in the county of the city of Waterford, ironmonger and general hardware merchant. July 21; *Friday, August 25, and Tuesday, September 12. Henry Greene Kelly, solr.*
- Canning, Randall John, and Henry Robert Canning, both of Belfast, in the county of Antrim, merchant tailors, trading in copartnership under the style and firm of Canning Brothers. July 25; *Friday, August 25, and Tuesday, September 12. Armstrong & Johnston, solrs.*
- Doherty, Patrick, of 68 William-street, Londonderry, in the county of Londonderry, builder. July 21; *Friday, August 25, and Tuesday, September 12. Jehu Mathews, solr.*
- Duffy, Peter, of Ballybay, in the county of Monaghan, shopkeeper. July 19; *Friday, August 25, and Tuesday, September 12. W. D. Whelan and George C. Lett, solrs.*
- Maguire, Patrick, of 92 and 149 Great Britain-street, in the city of Dublin, provision dealer. July 28; *Tuesday, August 29, and Friday, September 15. Hamilton & Craig, solrs.*
- M'Namara, Benjamin, of No. 211 Great Britain-street, in the city of Dublin, provision dealer. August 4; *Tuesday, August 29, and Friday, September 15. Casey & Clay, solrs.*
- M'Eneny, Bridget, of Kingscourt, in the county of Cavan, widow, grocer, hardware and general dealer. August 1; *Friday, August 25, and Tuesday, September 12. Jehu Mathews, solr.*
- Whelan, Michael, otherwise Michael Phelan, of Clapook, in the Queen's County, farmer. July 25; *Friday, August 25, and Tuesday, September 12. Michael Larkin & Co., solrs.*

On the 9th inst., Lawson, J., sentenced Fitzpatrick to five years' penal servitude for the recent attack on Mr. Recorder Falkiner.

DUBLIN STOCK AND SHARE LIST.

DESCRIPTION OF STOCK	AUGUST					
	Sat. 5	Mon. 7	Tues. 8	Wed. 9	Thur. 10	Fri. 11
<b>Paid Government.</b>						
3 p c Consols .. .. .	—	—	99½	—	—	99½
3 p c Reduced .. .. .	—	—	—	—	—	—
New 3 p c Stock .. .. .	—	—	98½	98½	99½	98½-9
<b>INDIA STOCK.</b>						
4 p c Oct. 1838 } Traffic at .. .. .	—	—	—	—	102	—
3½ p c Jan. 1837 } Bk. of Irel. .. .. .	—	—	102½	—	100½	—
<b>Banks.</b>						
100 Bank of Ireland .. .. .	—	—	—	314½	314½	315
25 <i>Hibernian Banking Co.</i> .. .. .	—	—	—	—	—	—
20 <i>London and County (Ld'd.)</i> .. .. .	—	—	—	—	—	—
15 <i>London Joint Stock</i> .. .. .	—	—	—	—	—	—
20 <i>London and Westminster, W'd</i> .. .. .	—	—	—	68	—	—
10 <i>Do. New</i> .. .. .	—	—	—	—	—	—
34 <i>Minster Bank (Limited)</i> .. .. .	—	—	—	—	—	—
— <i>Nat. Prov. of England, lim.</i> .. .. .	—	—	—	—	—	—
10 <i>National Bank (Limited)</i> .. .. .	—	—	23½	23½	23½	23½
10 <i>National of Liverpool (Ld'd.)</i> .. .. .	—	—	—	14½	—	—
25 <i>Provincial Bank</i> .. .. .	—	—	—	—	—	—
10 <i>Royal Bank</i> .. .. .	—	—	29½	29½	—	—
25 <i>Standard of B. &amp; A., W'd</i> .. .. .	—	—	—	—	—	—
<b>Steam.</b>						
50 <i>British &amp; Irish</i> .. .. .	—	—	—	—	—	—
100 <i>City of Dublin</i> .. .. .	—	—	—	100½	—	—
50 <i>Dublin and Glasgow</i> .. .. .	—	—	—	—	—	—
10 <i>Dundalk (Limited)</i> .. .. .	—	—	—	—	—	—
50 <i>Peninsular and Oriental</i> .. .. .	—	—	—	—	—	—
<b>Mines.</b>						
7 <i>Mining Co. of Ireland (W'd)</i> .. .. .	—	—	—	—	—	—
<b>Miscellaneous.</b>						
10 <i>Alliance &amp; Dub. Cons. Gas</i> .. .. .	—	—	—	—	—	—
8 <i>Do. do. New</i> .. .. .	—	—	—	—	—	—
4 <i>Arnott &amp; Co., Limited</i> .. .. .	CLOSED	HOLIDAY	—	—	—	—
4 <i>Cannock &amp; Co. Lim'd, W'd</i> .. .. .	—	—	—	—	—	—
20 <i>C. Dub. Brewery Co. (lim.)</i> .. .. .	—	—	—	—	—	—
10 <i>Dub. (S'th) City Market Co.</i> .. .. .	—	—	—	—	—	—
4 <i>National Discount, Ire., W'd</i> .. .. .	CLOSED	HOLIDAY	—	—	—	—
<b>Tramways.</b>						
10 <i>Belfast Trams</i> .. .. .	—	—	—	—	—	—
10 <i>Dublin United Tramways</i> .. .. .	—	—	—	10	10	—
10 <i>Edinburgh Street Trams</i> .. .. .	—	—	—	—	—	—
10 <i>L'pl Un'd Tram &amp; Bus L'd</i> .. .. .	—	—	—	—	—	—
10 <i>N'th Metr. Tramway, Lond.</i> .. .. .	—	—	—	18½	—	—
<b>Railways.</b>						
100 <i>Great Northern (Ireland)</i> .. .. .	—	—	—	—	—	—
100 <i>Gt. Southern and Western</i> .. .. .	—	—	—	—	—	114½
100 <i>Midland Gt. Western</i> .. .. .	—	—	83½	84	—	—
100 <i>Waterford &amp; Cent. Ireland</i> .. .. .	—	—	—	—	—	—
50 <i>Waterford and Limerick</i> .. .. .	—	—	—	—	—	—
<b>Railway Preference.</b>						
100 <i>D., W., &amp; W., 5 p c (1860)</i> .. .. .	—	—	—	—	—	—
100 <i>Do. do. (1848)</i> .. .. .	—	—	—	—	—	—
100 <i>Gt. N'th'n (Irind) g'd 4 p c</i> .. .. .	—	—	—	—	—	—
100 <i>Do., 4½ p c</i> .. .. .	—	—	—	—	—	—
100 <i>Gt. South'n &amp; West'n 4 p c</i> .. .. .	—	—	107½	107½	—	—
100 <i>Mid. Great Western, 4 p c</i> .. .. .	—	—	—	103½	—	—
100 <i>Watfd. &amp; Limerick, 4 p c</i> .. .. .	—	—	—	—	—	—
100 <i>Do., 4½ p c</i> .. .. .	—	—	—	—	—	102½
<b>Debenture Stocks.</b>						
— <i>Dublin &amp; Wicklow 4 p c</i> .. .. .	—	—	—	—	—	109
— <i>Gt. Northern (Ireland) 4 p c</i> .. .. .	—	—	—	109½	109½	—
— <i>Do., 4½ p c</i> .. .. .	—	—	—	—	—	—
— <i>Gt. North'n &amp; West'n 4½ p c</i> .. .. .	—	—	—	—	—	—
— <i>Gt. South'n &amp; West'n, 4 p c</i> .. .. .	—	—	—	—	—	—
— <i>Kilkenny Junction, A, 5 p c</i> .. .. .	—	—	—	—	—	—
— <i>Midland Gt. West'n, 4 p c</i> .. .. .	—	—	105½	—	—	—
— <i>Do., 4½ p c</i> .. .. .	—	—	—	—	—	—
— <i>Do., 4½ p c</i> .. .. .	—	—	—	—	—	—
— <i>Waterford &amp; Central 5 p c</i> .. .. .	—	—	—	—	—	—
— <i>Waterfd &amp; Limerick 4 p c</i> .. .. .	—	—	—	—	—	—
— <i>Do., 4½ p c</i> .. .. .	—	—	—	—	—	—
<b>Miscellaneous Debent.</b>						
<i>Ballast Office Deb., £92 6s 2d, 4 p c</i> .. .. .	—	—	—	92½	92½	—
<i>Dub. &amp; Kingstown 4 p c</i> .. .. .	—	—	—	—	—	—

\* Shares not fully paid up are given in Italics. † x d

Bank Rate—Of Discount—8½ per cent., 23rd March, 1882.  
Of Deposit—1 per cent., 23rd March, 1882.

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Account Days—August 16th and 30th, 1882.

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**BIRTHS, MARRIAGES, AND DEATHS.**

**BIRTHS.**

**BENNER**—August 5, at Northumberland-road, the wife of Samuel Benner, Esq., solicitor, of a daughter.  
**BYRNE**—August 8, at Lower Leeson-street, the wife of John Onseley Byrne, Esq., solicitor, of a daughter.  
**MACCARTHY CONNER**—August 2, at Mountview-terrace, Sunday's Well, Cork, the wife of F. Mac Carthy Conner, Esq., of a daughter.  
**WALKER**—August 6, at Rutland-square, the wife of Samuel Walker, Esq., Q.C., of a son.

**MARRIAGES.**

**BEESTON and READ**—August 4, at St. Peter's Church, by the Rev. E. W. Buckley, D.D., Joseph Lleyceley Beeston, L.K.Q.C.P., and L.R.C.S.I., eldest son of the late John L. Beeston, Esq., of Newcastle, New South Wales, to Anna Maria (Annie), youngest daughter of William Read, Esq., Grosvenor-road, Rathmines, solicitor.  
**GUERIN and RYAN**—July 31, at the Redemptorist Church, Limerick, Edmund F. Guerin, Esq., solicitor, to Mary Teresa, second daughter of William Ryan, Esq., The Grange, County Limerick.  
**PETTIT and MURRAY**—August 8, at the Oratory, Brompton, London, S.W., by the Rev. F. Antrobus, Joseph Pettit, Resident Medical Superintendent District Lunatic Asylum, Sligo, to Josephine Marie, eldest daughter of Edward Murray, Esq., Letterkenny, solicitor.

**DEATHS.**

**CHAMBERLAIN**—August 5, at her residence, St. Stephen's-green, Dublin, at an advanced age, Dorothea, last surviving daughter of the late Hon. Tankerville Chamberlain, one of the Justices of the Court of King's Bench in Ireland.  
**KANE**—August 7, at Dungiwen, Aylesbury-road, Clare Mary, only daughter of Robert E. Kane, Esq., aged 5 years.

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 DUBLIN.

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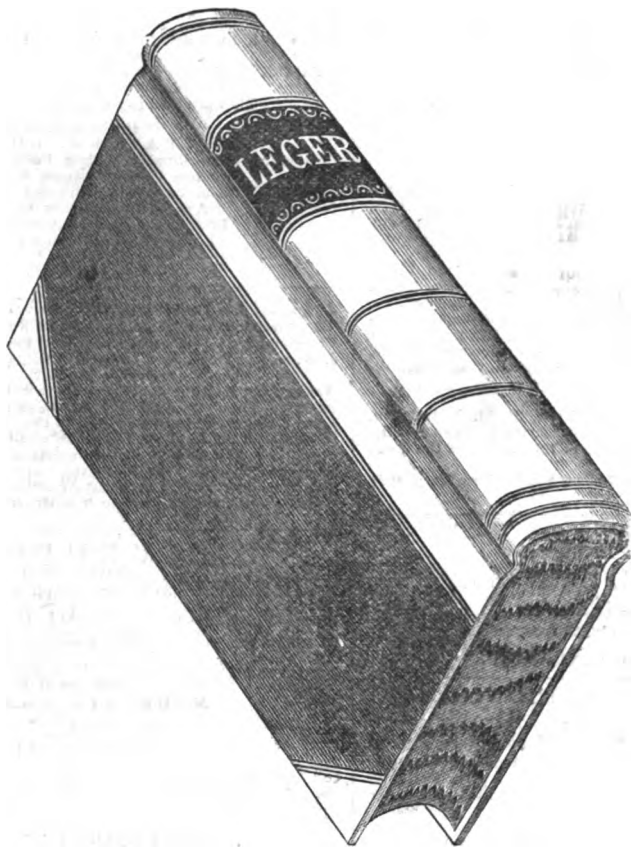
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**PUBLIC NOTICES:**

**IRISH LAND COMMISSION.**

GENERAL RULE—LAND LAW (IRELAND) ACT, 1881.

Tuesday, the 8th day of August, 1882.

It is this day ordered by the Irish Land Commission that the Notice of Application to the Court by either Landlord or Tenant to fix a specified value of the tenancy, pursuant to Form No 30, shall be served not only on the opposite party but on the Secretary of the Land Commission or the Clerk of the Peace, as the case may be.

[Seal of the Irish Land Commission.]

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**IRISH LAND COMMISSION.**

**NOTICE.**

The Land Commissioners intend to commence hearing Appeals about the 20th October.

The practice of the Court as to costs of appeals followed during the first judicial year, on account of the novelty of the procedure, will cease, and in cases heard after the commencement of the new sittings costs will be awarded and dealt with as to the Court may seem just.

(By Order),

DENIS GODLEY.

24 Upper Merrion-street, Dublin,  
8th August, 1882.

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**SUMMER TOURS IN SCOTLAND.**

GLASGOW AND THE HIGHLANDS.

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Royal Mail Steamer COLUMBA or IONA, from GLASGOW DAILY, at 7 a.m., from GREENOCK at 9 a.m., conveying in connexion with his West Highland Steamers passengers for Oban, Fort William, Inverness, Lochawe, Skye, Gairloch, Staffa, Iona, Glencoe, Stornoway, &c. Official Guide, 8d.; Illustrated, 6d. and 1s. Time Bill with Map and Fares free, at CARSON BROS., 7 Grafton-street, Dublin; or by post from the owner, DAVID MACBRATNE, 119 Hope-street, Glasgow. 79

Printed and Published by the Proprietor, JOHN FALCONER, every Saturday, at 53, Upper Sackville-street, in the Parish of St. Thoma and City of Dublin.—Saturday, August 12, 1882.

**PUBLIC NOTICES:**

ESTABLISHED 1851.

**BIRKBECK BANK.**

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Current Accounts opened according to the usual practice of other Bankers, and interest allowed on the minimum monthly balances when not drawn below £25. No commission charged for keeping Accounts, excepting under exceptional circumstances.

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The Bank undertakes for its Customers, free of charge, the custody of Deeds, Writings, and other Securities and Valuables; the collection of Bills of Exchange, Dividends, and Coupons; and the purchase and sale of Stocks, Shares, and Annuities.

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# THE IRISH LAW TIMES AND SOLICITORS' JOURNAL.

VOL. XVI.

SATURDAY, AUGUST 19, 1882.

No. 812

## RIGHT TO COSTS OUT OF PARTICULAR ESTATE OR FUND IN LITIGATION.—II

As a general rule, trustees and executors, as between them and their *cestuis que trust*, are entitled to their costs from the estate, and usually as between solicitor and client, and all charges and expenses properly incurred are also allowed them: *Morg. & D.* 290. "It is a general principle," observed Bradley, J., in *Greenough's* case (already cited), "that a trust estate must bear the expenses of its administration. It is also established by sufficient authority, that where one of any parties having a common interest in a trust fund, at his own expense takes proper proceedings to save it from destruction and restore it to the purposes of the trust, he is entitled to reimbursement, either out of the fund itself, or by proportional contribution from those who accept the benefit of his efforts." And in that case (14 Central L. J. 469), where a large number of bonds issued by a corporation were secured by a trust fund, which was being wasted and misapplied by the trustees, or which they refused or neglected to apply to the payment of the bonds, and a bondholder, in good faith, filed a bill to secure the due application of the fund, and succeeded in bringing it under the control of the court for the common benefit of the bondholders, it was held that the litigant bondholder was entitled to have his costs and necessary expenses of the litigation (as between solicitor and client) paid out of the fund before its distribution—to make them a charge upon the fund being the most equitable way of securing contribution. So, in proceedings for restoring property to the uses of a charity, which had been unjustly divested therefrom, *Lord Cowper, C.*, allowed costs to the relators out of the improved rents which they received for the charity, "for that they had been serviceable to the charity, by easing them of the £620 debt which was claimed against them:" *Att.-Gen. v. The Brewers' Co.*, 16 Wms. 376; and so, see *Att.-Gen. v. Kerr*, 4 Beav. 297; *Att.-Gen. v. Old South Society*, 13 Allen 474 (Amer.); *Seton, Decrees*, 566. The same rule is applied to creditor's suits, where a fund has been realized by the plaintiff's diligence: *Stanton v. Hatfield*, 1 Keen, 358; *Thompson v. Cooper*, 2 Coll. 87; *Goldsmith v. Russell*, 5 D. M. & G. 556; *Tootal v. Spicer*, 4 Sim. 510; *Larkin v. Paxton*, 2 Myl. & K. 320; *Barber v. Wardle*, *ib.* 818; *Sutton v. Doggett*, 3 Beav. 9; *Wedgwood v. Adams*, 8 *ib.* 103, 104, n.; *Adames v. Hallett*, L. R. 6 Eq. 473. But, while a plaintiff who institutes a suit for the benefit of others gets a charge on the fund for his costs, he does not necessarily get the costs in priority to a defendant—the rule not being correctly stated in *Daniell, Ch.*, 4th ed., 1306: see *In re Middleton* (51 L. J. Ch. 273), decided by the Court of Appeal in February last. The rule that a party who recovers a fund for the common benefit of creditors, is entitled to have his costs and expenses paid out of the fund, also prevails in bankruptcy cases: *Worrall v. Harford*, 8 Ves. 4; *Re Williams*, 2 Bank. Reg. 28 (Amer.). But, in *Ex parte Russell*, reported in last month's issue of the *Law Journal* (51 Ch. 521), where the Court of Appeal, reversing the decision of *Bacon, C.J.*, and affirming that of the County Court judge, set aside a voluntary settlement as void as against the settlor's trustee in liquidation, it was held that the

trustees of the settlement should bear all the costs of both appeals. "It is a hard case on the trustees," observed *Jessel, M.R.*, "but, on the other hand, they are asking for costs out of other people's property. They ought to have been satisfied with the decision of the County Court judge. It is a hard case, but the result will be this, that a man will be very slow to accept the trusts of a voluntary settlement." But, see *Rashley v. Masters*, 1 Ves. jun. 205; *In re Dickson*, 2 New Zealand Jur. N. S. 207. In *M'Cormick v. Patten* (Ir. R. 5 Eq. 291), it was held that, although a will contained a specific bequest in trust, *inter alia*, to pay the testator's "just debts and funeral and testamentary expenses," yet the costs of a suit, rendered necessary by an ambiguity in the will, should be borne by the assets generally. So, in *Re Noble's Trusts* (*ib.* 140), costs were given out of a fund lodged under the Trustee Relief Act to unsuccessful claimants, where the question regarding its distribution arose on an ambiguity in a will. But see, in reference to an improper lodgment of money under the Act, *In re Fortune's Trusts* (Ir. R. 4 Eq. 351); *Re Knight's Trusts*, 27 Beav. 45; *Lewin, Trusts*, 859; *Eiffe, Jud. Act*, 121; and as to where a petition was not presented by the petitioners *bonâ fide* as executors, but as devisees under the will in question, see *In re Willis's Estate*, 8 Ir. L. T. Rep. 121. Again, in *Courtney v. Rumley* (Ir. R. 6 Eq. 99), it was held that a trustee is entitled to be reimbursed out of the trust property all the charges and expenses incurred in the execution of the trust, and in this the court will always deal liberally with a trustee acting *bonâ fide*; that, where the costs or expenses claimed have been incurred through the misconduct or negligence of the trustee, he will not be allowed them; but, that the fact of his having been unsuccessful in litigation, either as plaintiff or defendant, will not, in the absence of misconduct, disentitle him to be reimbursed his costs. And though, as we have seen, the right of trustees, mortgagees, &c., to costs out of the estate has been preserved under the Jud. Act, that right was always and is still liable to be defeated by reason of misconduct: *Re Hoskin's Trusts*, 6 Ch. Div. 261; *Thighington v. Grant*, 1 Ph. C. C. 600; *Rose v. Sharrod*, 11 W. R. 356; *Re Chennell*, 8 Ch. Div. 492; *Eiffe, Jud. Act*, 121. But, as *Cotton, L.J.*, remarked in *Turner v. Hancock*, reported in the *Law Times* of the 29th ult. (46 L. T. N. S. 750), as between a trustee and his *cestuis que trust*, the court can only deprive him of his costs if he has done something contrary to the contract he undertook to perform by becoming a trustee.

In *Re Keely's Trusts*, on the 26th ult., upon the hearing of a petition for the appointment of new trustees of a deed of settlement, executed in 1879, it appeared that by the deed in question Mr. James Keely (one of the petitioners) put in settlement a sum of £600 invested in Bank of Ireland Stock, which he assigned to trustees in trust for himself for life, and after his death for Mrs. Keely and her daughters (the other petitioners). The trustees named in the deed were the Rev. Francis J. Maguire, of Arran-quay Catholic Church, and Mr. Bartholomew Keely, and the money was accordingly transferred to their names in the books in the Bank of Ireland. Shortly after the execution of the settlement Mr. Bartholomew Keely, one of the trustees, died; and it appeared that the

Rev. Mr. Maguire had never assented to act as trustee, that he had not signed the deed, and declined to act in the matter at all, as he stated that to mix himself up in a transaction of the kind was contrary to the rules of the order of which he was a member. New trustees were then nominated, but the Rev. Mr. Maguire declined to sign the deed transferring the fund to their names, as to do so would be equally contrary to the rules of his order. An action was brought to compel him to sign the transfer of the fund, and the matter having been debated before the Vice-Chancellor, his lordship made an order directing the Rev. Mr. Maguire to transfer the fund, and condemning him in the costs of the suit. The Rev. Mr. Maguire, however, was advised that the Vice-Chancellor was wrong, and he brought an appeal, and, after a full argument, the Appellate Court disapproved of the Vice-Chancellor's decision, holding that Mr. Maguire not having signed the deed, and never having acted in the trusts, was not a trustee at all and could not be compelled to sign the transfer, and they accordingly reversed the decree of the Vice-Chancellor with costs. Sir E. Sullivan, M.R., said: "A most lamentable mistake was made in this case. Here was a small fund, worth not quite £600, and enormous costs have been incurred in a most groundless and untenable proceeding, whereby it was sought to make a man a trustee who never had signed the deed and never acted as trustee good, bad, or indifferent. No man could be compelled to act as a trustee unless he had done some act or consented to act in the trusts. It is one of the most shocking cases I ever heard of—enormous costs incurred in a small case of this kind. The Rev. Mr. Maguire was perfectly right in refusing to transfer the money, and it was a monstrous thing to seek to compel him to act under the circumstances. It would be against all reason and equity that the costs of this unnecessary litigation should fall on the trust estate. I shall take good care that the costs shall not be paid out of the trust fund. I shall make it part of my order that no part of the costs of the suit, either in the Vice-Chancellor's Court or in the Court of Appeal, shall be paid out of the trust money, and I shall direct a copy of my order to be served on the new trustees." An order was made accordingly, appointing the new trustees, as applied for, appending to it a declaration that the costs of the litigation should not be payable out of the fund.

#### LOCAL AND STIPENDIARY MAGISTRATES.

At the Limerick petty sessions, on the 11th inst., before the mayor, Mr. J. B. Irwin, R.M.; Dr. O'Shaughnessy, Mr. Ambrose Hall, and Mr. Stephen Hastings, Sub-Inspector Wilton applied to have the case of John O'Dea against John M'Mahon and James Carroll for intimidation referred for trial before two resident magistrates under the Prevention of Crimes Act.

Mr. HALL, J.P., contended that the case should have been brought under the "Conspiracy and Protection of Property Act," as it was an ordinary trade dispute. Prosecutions of that character had been heard before the magistrates of that court, and he saw no reason for the exceptional application made by Sub-Inspector Wilton. He did not know what the opinion of the other magistrates was, but he was prepared to hold to his own, and, if necessary, ask that the point should be decided by a superior court. He was quite willing to accept the responsibility of refusing the application on these grounds for the present. The only object that he saw for making the application was perhaps to justify the curfew clause of the Crimes Act which was being put into operation in the city of Limerick. The case could, of course, be heard before two resident magis-

trates, but it could also be tried before the ordinary magistrates. He for one would not allow his position as a magistrate on that bench to be abrogated by temporary resident magistrates.

Sub-Inspector PHILLIPS denied that any imputation had been cast upon the legal capacity of the local magistrates to try the case. It was purely a matter of form, the case having been in the first instance dealt with by Mr. Hamilton, R.M., under the Crimes Act, and it was owing to a mistake that it appeared in the petty sessions book. A special court was appointed for 11 o'clock on the following day to try the case.

Mr. HALL said he did not care what the opinion of Mr. Hamilton or any other temporary resident magistrate was. He had read the Act carefully, and presumed to be as well acquainted with its various clauses as Mr. Hamilton. He would say that the appointment of temporary resident magistrates had materially interfered with the intelligent action of the recognised permanent resident magistrates of the country.

Sub-Inspector CARLTON said he would not discuss that question with Mr. Hall as he thought it totally irrelevant to the issue.

Mr. HALL.—I know that, but when you refer to the opinion of a resident magistrate as an authority in this case, I am forced to say that I do not hold my opinion inferior to his. Why, the other day, a man who happened to be a tea planter, and who was on vacation, was appointed a resident magistrate.

Dr. O'SHAUGHNESSY.—I know the gentleman Mr. Hall refers to, and I must say he is quite wrong. The Lord Lieutenant never made a better choice, and I am happy to say that the Lord Lieutenant has made, in the newly appointed resident magistrates in Ireland, admirable selections.

MAYOR.—As chairman of this court I must object to this discussion.

Mr. HALL.—Then, Dr. O'Shaughnessy, you are in the secret, too.

MAYOR.—I really must ask that this discussion shall not proceed.

Mr. HALL.—I think it is better it should drop, because I can enlighten Dr. O'Shaughnessy.

Mr. IRWIN, R.M.—I must say this case is not one for this court. It is one entirely for the two resident magistrates.

The MAYOR declined to express any individual opinion, but stated that the majority of the bench decided to hear the case.

The prosecution was proceeded with, and the evidence went to show that the prosecutor, while at work as a baker, was threatened by the defendants, who are also bakers, with bodily harm if he did not quit his employment, as he was violating the regulations of the society. He refused at first to obey the mandate, but subsequently left the employment as he was afraid of being injured. The accused were returned for trial at the quarter sessions.

#### LEGAL AND LAY SUB-COMMISSIONERS.

At the Portadown Sub-Commission on the 11th inst., before Messrs. Romney Foley, Q.C.; Davidson and Meek, an extraordinary incident occurred in the case of Count de Salis, landlord; Wm. John Tally, tenant. It was contended by counsel for the landlord that the tenant was a leaseholder, and therefore outside the Act. The tenant in 1856 purchased 77 acres of land, held under lease, which has not yet expired, and a few years afterwards he purchased 10 acres of land, held under a yearly tenancy, from the same landlord. Since then the one rent receipt had been given to the tenant for the amount of the rent of the two holdings, without distinguishing the leasehold. Counsel for the tenant submitted that the landlord by this action had surrendered the lease, and Mr. Foley decided in favour of the tenant's contention. Mr. Davidson said that it was monstrous that a leaseholder should thus be included in the Act, and he refused to adjudicate or inspect the farm, and left the court.

Mr. MANK said that, expressing his own opinion, he probably agreed with Mr. Davidson, but he would be probably guided in legal matters by Mr. Foley. The case could not be proceeded with as there was not a full number of commissioners present, and the registrar was sent to represent the position to Mr. Davidson, who again took his seat, but announced his determination not to interfere in the case.

Mr. ATKINSON, solicitor for Count de Salis, held that under the circumstances the Commissioners could not adjudicate, and refused to produce evidence.

An appeal on behalf of the landlord will be lodged.

THE LICENSING ACTS.

A very important question in connexion with appeals under the Licensing Act arose in a recent case before Mr. Phillips, the stipendiary magistrate at West Ham. By the Licensing Act, 1872 (85 & 86 Vict., c. 94), sect. 52, it is provided that, "if any person feels aggrieved by any order or conviction made by a court of summary jurisdiction, the person so aggrieved may appeal therefrom, subject to the conditions and regulations following:—(1) The appeal shall be made to the next court of quarter sessions for the county or place in which the cause of appeal has arisen, holden not less than fifteen days after the decision of the court from which the appeal is made. (2) The appellant shall within seven days after the cause of appeal has arisen give notice to the other party, and to the court of summary jurisdiction, of his intention to appeal, and of the ground thereof. (3) The appellant immediately after such notice shall enter into a recognisance before a justice of the peace, with two sufficient sureties, conditioned personally to try such appeal, and to abide the judgment of the court thereon, and to pay such costs as may be awarded by the court, or shall give such other security, by deposit of money or otherwise, as the justice may allow." Now it has been found in practice impossible to comply with the provisions of the Act, so far as it relates to taking the recognisances immediately after giving notice of appeal. To do so would frequently, indeed invariably, stop the regular business of the court, and be productive of great inconvenience. The usual practice in the metropolitan police courts is for the appellant to attend with his sureties when giving notice of appeal, and the recognisances are taken either at the adjournment of the court or on a day arranged for the convenience of all parties. In the case which came before Mr. Phillips, which was an appeal from a conviction of one Abrey, for selling beer on the premises, he only having an "off" licence, notice of appeal was duly given within the seven days named in the statute, but the appellant did not attend with his sureties to enter into a recognisance; but two or three days afterwards his solicitor wrote a letter to the magistrate stating Mr. Abrey had given notice of appeal, and that he was prepared to attend at any time which the magistrate might fix, and enter into a recognisance with his sureties to try the appeal. To this letter no reply whatever was sent. The appellant waited a week and then attended before Mr. Phillips, who refused to take the recognisance, stating the appellant was too late.

Now, upon this case two important questions arise: (a) What is the meaning of the expression "immediately after such notice," in sect. 52, sub-sect. 3? (b) Has the magistrate any discretion as to whether he shall take the recognisance of the appellant and his sureties, or is it a purely ministerial act save so far as fixing the amount of the recognisance is concerned? In other words, is it for the magistrate to construe the meaning to be attached to the word "immediately," or is it a question of fact to be determined by the Court of Quarter Sessions? As to the first point, it is quite clear from the decision of the Queen's Bench in *Reg. v. Justices of Berkshire* (L. Rep. 4 Q. B. Div. 469; 48 L. J. 187, M. C.; 48 J. P. 607) that the word "immediately" must not be construed strictly. This case came before the court by way of *mandamus*. It appeared upon

affidavits that on the 4th March, 1879, the appellant was convicted by a justice under the above statute for unlawfully suffering gaming to be carried on on his licensed premises. The requisite notices of appeal were served on Monday, the 10th March, but the recognisance was not entered into until Friday, the 14th March. At the hearing of the appeal on the 8th April, objection was taken that the recognisance was not entered into within the prescribed time, and, no explanation of the delay being afforded, the sessions declined to hear the appeal. Chief Justice Cockburn said:—"I think this rule must be discharged. The question is, whether the sessions were right in holding that the regulations in 85 & 86 Vict., c. 94, s. 52, sub-sect. 3, as to entering into a recognisance 'immediately' after notice of appeal had been complied with. The notice was given in due time, but the appellant did not enter in the recognisance until four days afterwards. Did this satisfy the words of the statute? The question is substantially one of fact. It is impossible to lay down any hard and fast rule as to what is the meaning of the word 'immediately' in all cases. The words 'forthwith' and 'immediately' have the same meaning. They are stronger than the expression 'within a reasonable time,' and imply prompt, vigorous action, without any delay; and whether there has been such action is a question of fact, having regard to the circumstances of the particular case. Who is to decide that question? Undoubtedly the sessions, and unless we can clearly see that they have gone wrong and put some construction on the word 'immediately' which it will not bear, their decision must prevail. The appellant seeks to bring before the court materials which did not come before the sessions. I think we have no different power to receive evidence on the point before the court than in the case of an ordinary appeal from sessions; and this being the case, we ought not, in the exercise of our discretion, to review upon fresh facts the decision of the justices."

The case is more fully reported in the *Justice of the Peace*. The Lord Chief Justice does not say four days' delay was sufficient to deprive the appellant of his remedy, but says, "I cannot say affirmatively it was acting promptly and expeditiously;" and Mr. Justice Mellor adds, "This question was one for the justices to decide."

This brings us to the second point—viz., whether the taking of the recognisance is a purely ministerial act on the part of the justice, save in so far as fixing the amount is concerned. It must not be thought that the matter is settled by the dictum of Mr. Justice Mellor, "This question was one for the justices (that is in quarter sessions) to decide," because the learned judge was clearly only speaking in reference to the matter before the court, and all that his words imply is, that as between the Queen's Bench Division and the Court of Quarter Sessions, the question was one of fact which it was for the latter to determine. Our own opinion is, that the taking of the recognisances by the justice is not a purely ministerial act, but that when application is made at a time subsequent to that at which notice of appeal is given, the justice can exercise a judicial discretion; we think, however, he is bound to hear and determine the matter if proper application is made to him upon affidavit, and if he declines to do so, we entertain very little doubt that a *mandamus* would be granted.

At the same time the question is by no means free from doubt, and as it is one of very great importance, we trust that before long it will be authoritatively determined by the Queen's Bench Division.—*Law Times*.

A PROULAR system of mortgaging farms is used in Switzerland. A farmer may borrow of a dozen men successively, the simple record in an official book showing their order. If he fails to pay, a successor is found for him by beginning at the bottom of the list of debtors, and calling on each in his order to assume all the debts and manage the farm, or step aside and lose his claim.

## NOTICE OF INTENTION TO ANALYSE.

On more than one occasion the High Court has recently been called upon to consider the provisions contained in the Sale of Food and Drugs Act, 1875. (38 & 39 Vict., c. 63), and the Amendment Act, 1879, (42 & 43 Vict., c. 30, s. 7), relating to the notification required to be given before proceedings can be taken thereunder. The 14th section of the former statute enacts that "the person purchasing any article with the intention of submitting the same to analysis, shall, after the completion of the purchase, forthwith notify to the seller or his agent, selling the article, his intention to have the same analysed by the public analyst, and shall offer the article into three parts to be then and there separated, and each part to be marked and sealed or fastened up in such a manner as its nature will permit, and shall, if required to do so, proceed accordingly, and shall deliver one of the parts to the seller or his agent." In the recent case of *Parsons v. The Birmingham Dairy Company*, 9 Q. B. D. 172, it was contended that these provisions were only applicable to the purchase of such an article by one of the public officers named in the 13th section of the Act of 1875, and not to a purchase by a private individual. The facts in the case were briefly as follows:—The appellant, a farmer, had contracted with the respondents to supply them with a certain quantity of milk daily. One day a portion of the milk was, immediately on its arrival at the respondents' shop, taken out of the can and placed in a tumbler on a shelf in the shop. It remained there for two days, after which it was forwarded to the borough analyst. When analysed, the milk was found to contain 33 per cent of water. The certificate to that effect of the borough analyst was produced at the hearing of the summons. The magistrate in spite of no notification having been given to the vendor or his agent of any intention to have the milk analysed convicted the appellant, but at the same time stated a case for the opinion of the High Court. After argument the Queen's Bench Division quashed the conviction on the ground that the provisions of the statute as to the notification apply equally to a purchase by a private person as to a purchase by the public officer. Field, J., in the course of his judgment thus deals with the question: "The Legislature has imposed heavy liabilities upon the seller of adulterated articles, but has at the same time taken precautions that he shall be protected against the contingency of the articles said to be adulterated being tampered with after they have left his possession. I think the intention of the Act is to strike at the moment of time at which the seller parts with the article. This was clearly the intention of the Act of 1875, though the Amendment Act of 1879 still further affects the liability of the seller by enacting with respect to milk that a sample may be procured by an officer, inspector, or constable during the course of delivery to the purchaser or consignee in pursuance of the contract of sale." Accordingly it may now be laid down as settled law that it is a condition precedent to the right, whether of a public officer or private person, to take proceedings for the recovery of a penalty under the Sale of Food and Drugs Act, 1875 and 1879, that he should have given to the vendor the prescribed notification. To this general rule there is, however, one exception; for the notification has been held not to be necessary where milk in course of delivery is seized by the public officer by virtue of the powers conferred on him by the Amendment Act of 1879 (*Rouch v. Hall*, 6 Q. B. D. 17).

Another recent case bearing on the subject, may be briefly referred to, viz., *Barnes v. Chipp*, 8 Ex. D. 176. There, a police constable, acting under the orders of the inspector of weights and measures, bought gin from the barmaid of an inn with the intention of submitting it to analysis. He then proceeded to inform her that he was a police constable, and that he had purchased the gin for the purpose of analysis. But he omitted to add that the analysis was to be made "by the public analyst."

Subsequently the inspector of weights and measures directed the gin so purchased to be analysed by the public analyst, who gave his certificate that the gin was diluted. The inn-keeper was accordingly prosecuted and convicted by the justices under the Sale of Food and Drugs Act, 1875. On the case subsequently coming before the Exchequer Division, by way of a case stated, their lordships (Kelly, C.B., and Pollock, B.) quashed the conviction on the ground that the 14th section of the statute requires the purchaser to forthwith notify to the seller or his agent who actually sells the article, his intention to have the same analysed by the public analyst. The court held, as in the case of *Parsons v. The Birmingham Dairy Company*, that the notification is a condition precedent to a prosecution under the statute; and that in the case under review the omission on the part of the police constable to add that the analysis was to be made by the public analyst was fatal to the conviction being maintained.

From the authorities cited above, the general rule may be deduced that it is a condition precedent to proceedings under the Sale of Food and Drugs Act, 1875 and 1879, that the notification not only of the intention to analyse the article sold but also of the intention to submit the case to the public analyst must be forthwith after the purchase given to the vendor.—*Justice of the Peace.*

## THE ADULTERATION ACT.

Mr. Hannay, at the Worship-street Police Court, has stringently applied the stringent decision in *Barnes v. Chipp*, 47 Law J. Rep. M. C. 85, under the Adulteration Act. That decision was to the effect that a due observance of the forms prescribed in buying for analysis is a condition precedent to a conviction for adulteration, and that to tell the seller that the purchase is "for analysis," and not to add "by the public analyst," is not a due observance of those forms. Mr. Hannay was bound by the decision on the first point; but the second point is, in our opinion, a question of fact. The words "public analyst" are not an "Abracadabra" which must be repeated. "Parish analyst" would do as well; and if the seller knew the name of the public analyst, would not it be enough for the buyer to mention his name? Moreover, it would be very material to know whether the seller knew that the buyer was the sanitary inspector, and was not buying or analysing for private purposes. To apply these considerations, if "the analyst" does not mean the public analyst, what does it mean? What other analyst *par excellence* is there? Mr. Hannay is not satisfied with *Barnes v. Chipp*. Others were in the same frame of mind at the time of its decision. The Act of Parliament does not expressly make the analysis a condition precedent to a prosecution; still less does it make all the forms preliminary to the analysis conditions precedent. The certificate of the analyst is *prima facie* evidence of the ingredients of the thing analysed; and it is far from improbable that the Legislature intended the magistrate to decide in favour of the defendant if there was any doubt as to the fairness of the analysis, and not to make all the forms prescribed conditions precedent to the conviction. It is another question, and one not raised, whether they are conditions precedent to the admissibility of the certificate in evidence. In certain circumstances the thing analysed may be sent by registered letter to the analyst. Would the conviction be bad if it came by ordinary post, without the mystic blue lines across it?—*Law Journal.*

## THE LAW OF DISTRESS.

The report of the Select Committee of the House of Commons on the Law of Distress is a document of considerable interest, notwithstanding that the committee have not seen fit to approve the heroic remedy suggested by Mr. James Howard, and to recommend the entire abolition of the right of distress. The report is a paper of some length, based on Mr. Salt's draft. It sets out the antiquity of the law of distress, and how it grew out



of a feudal custom gradually defined and regulated by statute, until it has at last come to rest upon a mass of case law and a great number of Acts of Parliament. The points to which the evidence was addressed are stated, the arguments telling for and against the existence of a law of distress are set out, and the committee then proceed to recommend that the right of distraint should be restricted to one year's rent, the right only to be exercised within six months after the rent has become due; that the limit of distress as to agisted stock should be the consideration payable to the farmer who takes it in; that provision should be made for the protection of machinery not the property of the tenant, and for the exemption of breeding animals not belonging to him; that the limit of £20 distress under 57 Geo. 3, c. 93, should be raised to £50; and other suggestions are made with the object of diminishing the expenses of this process, described as "the heavy and unnecessary costs incident to the processes of distress and the sale of effects." There is also an expression of opinion in the body of the report that, if the law of distress is to be maintained, the question of the consolidation of the numerous and complicated statutes relating to it ought not to be forgotten. It is obvious at once that this is not a report with which anyone will quarrel on account of the violent and unprecedented character of its recommendations; it is rather to be feared that its recommendations, if carried into effect, would altogether fail to satisfy the class for whose benefit they are designed, and it is worthy of note that in his opposition to the moderate character of the report Mr. Howard generally had the support of the tenant-farmer members of the committee. At the same time there is no doubt that the amendments in the law which are proposed would be of substantial benefit. As the case stands between landlord on the one side and tenant on the other, the right of distress has its advantages as well as its disadvantages, and if it were so limited as to give the landlord the position of a first mortgagee under a mortgage implied by law, there would be nothing unfair in it. One point, however, which always strikes those who are considering the matter is the way in which the right of distress affects third parties, and in this respect the proposal of the committee appears to be very reasonable, amounting, in effect, to this, that the landlord should be able to recover from the owner of property on the land not belonging to the tenant so much as, and no more than, they are liable to pay to the tenant in respect thereof. The matter would thus be reduced to an attachment by a creditor of a debt owing to his debtor by a third party.—*Law Times*.

#### THE LAW OF STRIKES.

The best that can be said of trades unions in their most favourable aspect, and when not executing the ostensible objects of their creation, is that they are barely justifiable; but as they exist practically, they are hurtful and pernicious, not only to the public at large, but to the best interests of their own members. No right is dearer to the public interest or more important to be understood and enforced just now, than the right of government to keep within proper restraints this insidious enemy to personal rights. It is the outgrowth of seeds of discontent and rebellion transplanted here from foreign soil, and is not native to America.

Is there no law that forbids dissatisfied workmen from organising and co-operating in schemes and threats to prevent others from working who are not dissatisfied? If not, then such a law cannot be enacted too soon. Of course if actual violence is used, then it becomes a crime under existing laws; but are not combinations, schemes and plans accompanied by threats when they have the effect to deter others from work, also unlawful? Several of the States have statutes broad enough to cover almost every conceivable case of the kind, but others unfortunately have not, and those that have, do not enforce them. In the State of New York the language of the statute is "if two or more persons con-

spire to commit any act injurious to trade or commerce" they are punishable for a misdemeanour. An act may be punishable when committed by such an organisation that would not be if done by any individual; and if the plan embraces the burning of a building or any violence to a person, it will be punishable, even though no overt act is committed. Many of the States have similar statutes, and in some the common law is made to cover substantially the same ground. A case has been recently decided in New Jersey in which the court takes the broad ground that "combinations of workmen to prevent others from working who wish to do so are criminal." Conceding the right of workmen to combine for the purpose of peaceably advancing a rate of wages, there can be no question but what the law should forbid associations from compelling employees or workmen not in the association to conform to their prescribed rates.

An almost universal element in strikes, and one which precludes every other hypothesis than that they are planned in a spirit of vindictiveness and malice, is that the time selected for them is the one when it will do their employers the most possible harm. As, for instance, the workmen in an iron furnace agree to strike just at a time when the molten metal is ready for casting, or the compositors on a newspaper at an hour too late to supply their places in time for the next issue, or railroad employees leaving their trains of freight and passengers in the most inconvenient places, and selecting the most crowded seasons for their strikes. Now can the law overlook the malice and the intentional mischief of such a strike? Is it not a crime against the public to have commerce, provisions, mails and travel out of without a moment's warning by these organisations? It has been even held that a simple refusal to work was an offence, but this doctrine has been discarded, and it is now universally conceded to be the right of a dissatisfied person to quit, and even where workmen club together and unite upon a rate of wages, if carried out in good faith and without attempt at coercion, either amongst themselves or of others not in the organization, it has been held by some courts that they commit no crime, unless as before stated their strike is so timed as to be evidently their purpose to do either the public or some individual a malicious injury. This has been pretty generally held to be the law, but just recently (May 17, 1882, before Sir R. Harrington, Bart., in the Bromsgrove County Court, in England, in the case of *Stokes v. Sanders*), the judge laid down a much stronger doctrine. This was an action upon a promissory note given for money loaned to strikers to live on while engaged in a strike, and one of the defences set up was that the money was loaned for an unlawful purpose. The judge, in rendering the opinion, among other things said, "The lenders entered into the contract with the express and avowed purpose of supporting a strike, and if that purpose be an illegal one, there can be no doubt, I think, that the lenders cannot recover. Was then that purpose an illegal one? Notwithstanding the view expressed by the present President of the Probate Division of the High Court of Justice, and the late Mr. Justice Hayes in the case of *Farber v. Close*, L. R. 4 Q. B., 602, as to the extent to which strikes are illegal, I cannot in this inferior court take the responsibility of holding otherwise than that a combination of workmen to refuse to work, entered into for the purpose of compelling their masters to raise the rate of wages, is, at common law, an illegal combination, as being in restraint of trade. See L. R., 2 Q. B., 153. And even if I thought that the question was open, my own opinion is very strong, that such a combination, which has necessarily the effect of interfering with the freedom of contract between individuals, is in restraint of trade."—*American Law Magazine*.

SINCE the days of the Hon. Stuart Wortley, observes the *Law Times*, it cannot be said that any Recorder has been found to possess any great fund of legal knowledge, and the present Recorder certainly does not form any exception to the rule.

## CETEWAYO.

The visit of Cetewayo to England has given rise to some curious expressions of opinion as to the effect of his landing in England upon the right to detain him in the Cape Colony after his return. We confess that we cannot see what possible effect it should have upon his status. That the landing of a prisoner of war upon neutral territory sets him free is an accepted principle of international law (Hall on Neutrals, p. 73); but this principle cannot apply, unless it can be made out that Cetewayo was a prisoner of war captured by the Cape Government in a war in which England was neutral. He was and is a prisoner of war to England, captured by the Imperial troops, and the right to detain him cannot in any way be affected by his having been committed to, or taken out of the custody of, a colonial government. The question whether, being a prisoner of war, he could, according to the present rules of international law, properly be detained at all after the war was over, is a far more arguable one. His detention would probably be justified upon the grounds which were put forward in defence of Napoleon (Parl. Debates, 33, 1012, 1059.): (1) Necessity; (2) that the right to the release of prisoners of war belongs to the nation of which the prisoner is subject. The French nation, in the case of Napoleon, would not claim such release; in the present case there is clearly no Zulu government capable of claiming it. It is too often forgotten in cases of this kind that all the doctrines of modern international law pre-suppose an established government on each side capable of carrying out mutual obligations; they cannot without some modification be applied to relations with savage or semi-savage tribes.—*Law Times*.

## LEGAL EXPENSE.

A correspondent writes as follows to the *Law Journal*:—"No reform of legal expense will be thorough unless it strikes at certain matters with which, with all respect to the judges, I don't think them quite strong enough to deal. One of the first reforms must be a change in the costs allowed to counsel. Let every party employ as many counsel as he likes, but don't let him inflict the cost of more than one on his opponent. Let him go to counsel for advice as often as he likes, but don't let the costs of petty consultations fall on his unsuccessful opponent. Let the solicitor act as junior counsel; this will save great expense. In taxing costs, let the masters pay regard to common sense; at present we see £1,500 costs piled up and allowed in a small action, lasting from beginning to end only three months; on the other, we may see the greatest ability displayed by a solicitor in conducting and shortening proceedings, and, as a penalty, he is practically fined by the taxing-master.

"We need abler men as masters of the Courts—men who know the value of time—who will not be always adjourning or wasting months over details that are not worth the delay."

## PARTICULARS AND CONDITIONS OF SALE.

(Continued from page 378, ante.)

We have now completed our draft of conditions, and append a form of memorandum. We are much obliged to some of our readers for suggestions, and we shall delay publishing our settled form for some little time; so our subscribers will be able to peruse the draft conditions as a whole, and will have full opportunity of making further suggestions or remarks.

*The Memorandum of Agreement.*

This will be printed on the same sheet as the conditions, and must be so worded as to satisfy the Statute of Frauds. Both parties should be specified, either by their own names or by some unmistakably clear reference. It is not sufficient to call the vendor "the

vendor": (*Thomas v. Brown*, 35 L. T. Rep. N. S. 237; L. Rep. 1 Q. B. Div. 720; *Williams v. Jordan*, L. Rep. 6 Ch. Div. 517; *Rositer v. Miller*, 39 L. T. Rep. N. S. 173; L. Rep. 3 App. Cas. 1124; *Donnison v. People's Cafe*, 45 L. T. Rep. N. S. 187; *Calling v. King*, 36 L. T. Rep. N. S. 526; L. Rep. 5 Ch. Div. 660.) Of course, when there is any correspondence there may be enough evidence to explain who the vendor is, and thus to satisfy the statute (see above cases, and Dart, 217); but it is far best and safest to give the name: (see Conc. David. 106; Wolst. & T. 113.) The forms in David. i. 615, 622, were drawn before *Thomas v. Brown* was decided; but in most respects they form excellent models.

Also, the property must be properly described and identified. A general description is sufficient (Dart. 219; *Naylor v. Goodall*, 37 L. T. Rep. N. S. 422), and the description may be pieced together from different documents if they can be sufficiently connected: (*Shardlow v. Cotterell*, 45 L. T. Rep. N. S. 572; L. Rep. 20 Ch. Div. 90.)

It is not enough for the auctioneer to enter names of vendor and purchaser, and description of the property, and price in his book, if he omits all reference to the conditions of sale: (Dart, 221; *Rishton v. Whatmore*, L. Rep. 8 Ch. Div. 467.) If the memorandum is printed as we suggest, there is no danger of these accidents rendering a sale invalid. This is one, and by no means the least, of the advantages of a printed form.

The memorandum can either take the form of an agreement between the parties; or of an acknowledgment by the purchaser, with an agreement to complete, and a ratification by the auctioneer as agent for the vendor. We prefer the latter mode, which is adopted by Mr. Davidson. See also Barton, ed. 1821, p. 108.

*"Form of Memorandum.*

"I of hereby acknowledge that on the sale by auction this day of 18 of the property mentioned in the foregoing particular, I was the highest bidder for and declared the purchaser of lot thereof, subject to the foregoing conditions of sale, at the price of £ , and that I have paid the sum of £ by way of deposit and in part payment of the purchase money to the vendor's solicitor, and I hereby agree to pay the remainder of the said purchase money (and the valuation, if any is provided for by the above conditions), and to complete the said purchase according to the aforesaid conditions.

"As witness my hand this day of 18  
"As agent for Mr. , the vendor, I ratify and confirm this sale and acknowledge the receipt of the said deposit of £

Purchase money £  
Deposit.....£

Remaining unpaid £

"NOTE.—The vendor must be named. If the sale is of the property in one lot, the words 'of lot' and the blank space after those words should be struck out, and the obliteration should be initialed by the purchaser and the vendor's agent."

*As to the Stamp.*

If the agreement is under seal it must be stamped as a deed. If not under seal, and if the subject-matter does not appear to be value £5, no duty is payable. If its value is £5 or upwards a 6d. stamp is payable: (83 & 84 Vict., c. 97, sched. tit. "Agreement.")

If on a sale by auction the same person buys several lots a distinct contract arises for each lot, so that no stamp is required for any lot under £5; but there must, in general, be as many stamps as lots of the value of £5 or over: (Dart. 237.) There are exemptions from stamps on certain sales of land (Ib. 237), and on all sales of "goods, wares, or merchandises."

"The duty of 6d. upon an agreement may be denoted by an adhesive stamp, which is to be cancelled by the person by whom the agreement is first executed." (83 & 84 Vict., c. 97, s. 36.)

*Postscriptum.*

It may be convenient to mention here some additional recent and important cases on Vendor and Purchaser. In *Phelps v. White* (7 L. Rep. Irish 160, C. A.), there was a condition that error should not annul the sale, but that compensation should be made. The purchaser might have discovered the error before conveyance, but it escaped his notice until after the purchase was completed, and he had taken possession. It was held that he was entitled to compensation, though the error was made through inadvertence of the vendor, and not through intentional deceit. The condition did not expressly exclude the purchaser from compensation after conveyance, but the case is a warning against placing too much reliance on such a condition, however framed. In this case *Manson v. Thacker* (L. Rep. 7 Ch. Div. 620) and *Allen v. Richardson* (41 L. T. Rep. N. S. 614; L. Rep. 13 Ch. Div. 524) were considered, and *Bos v. Helskam* (15 L. T. Rep. N. S. 841; L. Rep. 2 Ex. 72), and *Re Turner and Skelton* (41 L. T. Rep. N. S. 666; L. Rep. 13 Ch. Div. 180) approved of: (see Dart, 5th ed. 1225.) A note of the above case is given in Mr. Emden's *Supplementary Digest of Cases in 1881*, p. 141.

In *Jenkins v. Jones* (*Law Times*, 3rd June, 1882, p. 80; L. Rep. 9 Q. B. Div. 128) it was held that, although 32 Hen. VIII., c. 9, s. 2, it cannot be said to have been repealed by 8 & 9 Vict., c. 106, s. 6, nevertheless, since the passing of the latter statute a grant of lands to which the grantor has a title existing in fact, but of which he has never been in possession, and on which he is entitled only to a right of entry, will be valid, even although at the time of the grant a litigation is pending as to the title of the lands. See Dart, 289-241, where numerous decisions cutting down the effect of the statute of Henry VIII. are cited. In *Jenkins v. Jones* the Court held that the statute applied (1) to a title for which there was no foundation; (2) a title which, though not fictitious, was not capable of being conveyed. By 8 & 9 Vict., c. 106, s. 6, contingencies, &c., can be conveyed.

In *Bettys v. Maynard* (46 L. T. Rep. N. S. 766) a sale under a power in a mortgage was set aside as being improper and at a gross undervalue, and also because there was a common mistake in a serious point. The view mentioned in *Jones v. Clifford* (85 L. T. Rep. N. S. 937; 3 Ch. Div. p. 792) that, even in the case of a complete purchase, the court would give relief against a common mistake as it would against fraud, received approval in this case. But generally speaking it takes a very strong case to induce the court to interfere with a mortgagee's power of sale. He is only a trustee in a limited sense: (*Warren v. Jacob*, 46 L. T. Rep. N. S. 697.)

WOMEN AS LAWYERS.

The late Act of the Massachusetts Legislature, conferring upon women the right to practise law, is but another link in the chain of events showing the tendency of the times to depart from the traditions of our fathers, and set up house-keeping for ourselves. And now that we come to think of it, why should the law ever have prohibited women from practising law? We must answer the conundrum in the language of Lord Dundreary, "it is one of the things no fellow can find out." The Legislature, bear in mind, does not undertake to endow her with the wisdom, or knowledge or any of the masculine traits supposed to be requisite to the successful practitioner; but only removes the legal prohibition. The law is not even compulsory. It is only that she may, not that she shall, and for this she should be thankful. There never should have been any legal restrictions against her in regard to any avocation. If by nature her endowments fit her in a less degree for this calling than do those of the man, she will be less likely to embark in it, and less likely to succeed if she does, but even this furnishes no reason for her exclusion by law. Nature has been decidedly parsimonious of her endowments of man in certain avocations where woman is peculiarly fitted; amongst

which we may name that of wet nurse; and yet no law has ever prohibited him from making the attempt; and it is this kind of partiality in legislation that has given just grounds to woman to complain. There are masculine women, and there are effeminate men. Let the former practise law and the latter wash dishes, and who shall complain?

That man is superior intellectually to woman has been assumed by the former, but never admitted by the latter (especially not by that portion of them who wish to practise law), and in point of fact it is an open question whether there ever was any good grounds for the assumption. Some claim to find authority for it in the original transgression, on the ground that Eve was first inveigled into eating the forbidden apple; but this authority proves too much. In point of time she did eat it first, but time forms no factor in the determination of the question of strength of mind, but the surrounding circumstances of each case alone are to be considered: and this done, all must agree that Adam fell, upon a much slighter provocation than did Eve, and he also violated one of the very first principles of the law of evidence; he accepted and acted upon hearsay testimony, whilst she had authority for what she did in the direct command of the devil himself: and to say that his provocation was greater than her's, is to concede that she is more subtle than the devil. Then why would she not make a successful lawyer?

But even admitting man's superiority intellectually (which we don't), is that a good reason why woman should be excluded from any of the avocations whereby she could earn an honest living? Certainly not, but rather on the contrary all encouragements and helps should be held out to the weaker ones.

And do not let us, men, flatter ourselves that such an act is one of nobleness and magnanimity; it is only an act of justice and right.

The question has moral, social, and domestic bearings. These we are not discussing, but only the legal one—and we say the law is right. We confess to a sensation, something akin to that of an icicle creeping down our back when we think of our own wife and daughters being pitted against some bloated pettifogger of the police court, amidst a rabble of thieves, tramps, and dead-beats of every description, but we console ourselves with the reflection that they are enjoying their rights.—*American Law Magazine.*

ECCENTRIC WILLS.

The law coincides with common sense in its application to such bequests as that of the testatrix in *Brown v. Burdett*, noted in this week's Notes of Cases. This lady devised her house, orchard, and garden to trustees in trust to brick up all the doors and windows (except the kitchen and a room for a caretaker), with all the furniture and other things, especially the clock, as she left them. The house was to remain in this condition for twenty years, after which it was to go to devisees beneficially. If the trustees failed to comply, the property was to fall to others. It was impossible that a will of this kind should not to some extent endow the lawyers. It was disputed in the Probate Court without success; but, when it came before the Chancery Division in an administration action, the bequest was pronounced a mere negation, and an intestacy was considered as created in respect of the twenty years. Pope's sarcasm that "thousands die and endow a college or a cat" was cited in extenuation of the bequest, but Vice-Chancellor Bacon was unable to see even a cat to be benefited. The beneficiaries, if any, were the spiders; or, perhaps, a fit legatee would have been the "dog in the manger." The lady had probably read of rooms locked up and kept for years just as they were left by the dead through the morbid fancy of a survivor. A place at the table duly laid at meals is another form of the same luxury of woe. The lady wanted her heirs to feel her power after her death, and wait with longing eyes on the blocked-up windows all the twenty years. The law has, in theory,

declined to gratify such a form of posthumous selfishness; but, in practice, the idea appears to have been carried out. The testatrix died in 1872, so that for ten years she has had her way, thanks to the law's delay, if not to the law.—*Law Journal*.

### THE LIMITS TO LITERARY AND ARTISTIC CRITICISM.

(Continued from page 397, ante.)

In *Green v. Chapman*,<sup>1</sup> decided in the English Common Pleas in 1837, the plaintiff was a horticulturist, and had exhibited a number of flowers at a public competition, where he was adjudged a prize. Subsequently, in the *Horticultural Journal*, *Florists' Register* and *Royal Lady's Magazine*, there was published the following letter: "Sir: You will recollect a mean, shabby fellow named Green, making a great noise about a fifteen-shilling prize, and using gross language because he did not receive it directly. The name of Green is to be rendered famous, I believe, in all sorts of dirty work. The tricks by which he and a few like him use to secure prizes seem to have been broken in upon by some judges more honest than usual, and Riley, Dunn, and he being little kings of growers among the Bakers' Arms' squad, have formed a new society in which no one who can show against them will be allowed to compete. This is the way in which floriculture is to be supported in the East. Societies ought to obtain the list of members of this new club of amateurs, and carefully exclude from their ranks the knaves who promote, and the fools who join such a despicable gang. If Green be the same man who wrote an impudent letter to the Metropolitan Society, he is too worthless to notice; if he be not the same man, all we have to say is, that it is a pity two such beggarly souls could not be crammed into the same carcass. Dunn and Riley ought to have known better." The plaintiff brought suit against the newspaper, and the case went to the full court on a demurrer to pleas. Here it was argued that the action could not be maintained, as the words set out fell within the description of privileged criticism. The argument was short, only the defendant's counsel being called on. Barstow: "One who in any manner exhibits himself publicly cannot maintain an action for any fair criticism which his exhibition provokes. Throughout the whole of the alleged libel in the present case, no attack is made upon the plaintiff's private character." Tindal, C.J.: "How does the occasion justify such language as this: 'The name of Green is to be rendered famous, I believe, in all sorts of dirty work?'" Barstow: "That was intended to have reference solely to the public exhibition of flowers by the plaintiff." Tindal, C.J.: "Or this, 'If Green be the same man who wrote an impudent letter to the Metropolitan Society, he is too worthless to notice; if he be not the same man, all we have to say is, that it is a pity two such beggarly souls could not be crammed into the same carcass.'" Barstow: "The whole originated in and has reference to the plaintiff in the capacity of an exhibitor of flowers for prizes. The passages complained of contain nothing more than mere terms of reproach as applicable to the plaintiff as an exhibitor of flowers; at the most they merely ascribe to him the absence of certain good qualities, not the possession of bad ones. A party who makes any kind of exhibition thereby invites criticism, and if it be not always couched in the language of compliment, he cannot complain." *Per curiam*: "The publication is clearly libellous, and is not within the protection of the rule as to matters written with a view to fair criticism." And the plaintiff had judgment.

In *Eastwood v. Holmes*,<sup>2</sup> the alleged libel was contained in the course of a report of the proceedings of the British Archaeological Association at one of its ordinary meetings. The offensive words were these: "The remainder of the evening was occupied in the discussion of an account drawn up by Mr. C., on the recent forgeries

in lead. There are figures reported to have been obtained from the Thames, and called 'pilgrims' signs.' They are being offered, not only in London, but throughout the country, and antiquaries should be on their guard in the purchase of them. Mr. C. had inspected eight hundred of them, but the aggregate is said to be not less than two thousand. The whole are proved to be of recent fabrication. They appear to have been made in chalk moulds. They have been steeped in a strong acid and smeared over with Thames mud. It is to be lamented that there are no legal means of punishing a gross attempt at deception and extortion." The plaintiff was a dealer in antiquities who had purchased, in the way of his business, a number of "pilgrims' signs." At the close of his case, Willis, J., ruled that the action could not be maintained,—first, because the publication was protected by the privilege of fair discussion on matters of public interest, it not being malicious; and, second, because it reflected only on a class of persons dealing in particular goods, and not on the plaintiff. "If a man wrote that all lawyers were thieves," said the learned judge, "no particular lawyer could sue him, unless there is something to point to the particular individual, which there is not here. There is nothing to show that the article was inserted with any special reference to the plaintiff." *Gott v. Pulstifer*,<sup>3</sup> decided in Massachusetts in 1877, was another case of this kind. The plaintiff was the owner of the "Cardiff Giant," which may be remembered by some as being a colossal stone figure resembling the statue of a man, and which was exhibited to the public as the petrified body of a being of a past age. Exhibiting it to the curious at so much a head had long been a source of profit to the owner, and he was about to dispose of it to one Palmer, who had agreed to pay him the sum of 30,000 dollars for it, when an article in the *Boston Sunday Herald*, charging that the "giant" was a fraud and humbug, caused Palmer to draw out of the contract. The plaintiff brought an action for libel and the damages resulting to him therefrom, and on the trial asked the judge to instruct the jury that, "if the defendants published said article heedlessly and carelessly, without due regard to the rights of the owner of the Cardiff Giant, they are liable to the plaintiff for all damages thereby caused him." The judge declined to so instruct; and charged the jury that if they believed that the publication was honestly made by the defendant, believing it to be true, that would be a good defence to the action, unless express malice or malice in fact was proved. No definition of malice was given. The jury found for the defendant; but on appeal to the Supreme Court, it was held that the judge should have instructed the jury more fully as to malice, and a new trial was granted. But Gray, C.J., who delivered the opinion of the court, laid it down that "the editor of a newspaper has the right if not the duty of publishing, for the information of the public, fair and reasonable comments, however severe in terms, upon anything which is made by its owner a subject of public exhibition, as upon any other matter of public interest, and such a publication falls within the class of privileged communications for which no action can be maintained without proof of actual malice."

Where an article is charged to be libellous, all of it is to be looked at, and the proper inquiry is, whether as a whole it is fair or malicious; and not whether any particular imputation is untrue. Thus, in *Strawes v. Francis*,<sup>4</sup> where Mr. Hepworth Dixon in the *Athenaeum* had, in the course of a review of a novel called "The Old Ledger," criticised "its display of bad Latin, bad French, bad German, and bad English," and, in an action for libel, the author called witnesses to show that there was no bad French or bad German in the book, and contended that in respect of the charge of bad French and bad German he was entitled to a verdict. Cockburn, C.J., said: "No. The question is as to the article as a whole. It is not because (even sup-

(1) 5 Scott, 340.

(2) 1 Foot. & Fin. 347.

(3) 122 Mass. 235.

(4) 4 Foot. & Fin. 1107 (1866).

posing it to be so) the critic was mistaken in saying the plaintiff's German was bad, that therefore you are to have a verdict. The verdict must be upon the article as a whole, and whether as a whole it is to be deemed malicious and libellous."

If the criticism is honestly made, it is not libellous because the terms of censure are strong. This is laid down in *Thompson v. Shackell*,<sup>5</sup> where the plaintiff had painted a portrait of King George IV., and the defendant, in the *John Bull* newspaper, characterised it as a "daub." The artist was unable to obtain satisfaction in the courts.

It is important to distinguish between matters of fact and matters of opinion. The critic of a book, as we have seen, may print an unfavourable opinion of a book, and this opinion may be both unjust and untrue. Nevertheless he is not responsible for that opinion. But as to matters of fact, it is otherwise. If he state a fact contrary to the truth, he is responsible, not for his criticisms, but for the false basis he has assumed. This rule is well illustrated in *Fry v. Bennett*.<sup>6</sup> The plaintiff, the manager of an Italian opera company, sued the proprietor of the *New York Herald* for a series of libellous publications, in relation to him, in his management of the performances of the company, and in his treatment of his artists and employees. The defence was that the publications were privileged in that they were not beyond the bounds of legitimate criticism. Oakley, C.J., in instructing the jury, pointed out the distinction which the law drew between the two charges. Said he: "These alleged libels may be divided into these two classes: those which relate to the management, by Mr. Fry, of the opera generally, and those which charge him with harsh and unjustifiable conduct in relation to various individuals whom he had employed, especially the female portion of them. Two defences are interposed. The first is that, all these publications are of that class which the laws privilege,—that is, publications which Mr. Bennett had a right to make,—and that he is not responsible, although they may have been founded in entire error; that they relate to the management of the opera, a public amusement introduced by Mr. Fry, in which the public had an interest, and that, therefore, any man, the editor of a newspaper or otherwise, might speak of it by way of just criticism, and that the public have an interest that there should be a free and unrestricted criticism exercised in cases of this kind. Various instances were referred to by the counsel on both sides as illustrating this rule of law. For instance, the works of an author. The public have an interest in the publication of books and all literary productions; and in order that the public interest should be guarded, and that no false impression should be made upon the public mind, the public have an interest that these publications should be open to free remark. It is well settled with respect to a book which a man may choose to write and publish: honest criticism may be made upon it with respect to its dangerous qualities, its destitution of merit, or anything else which the party chooses. These things the public have an interest in, in order that publications inculcating incorrect principles may be exposed, and that no evil should result from them. The counsel for the defence contends that this privilege extends, not only to the work itself, but to the personal character of the author. That was contended upon the former occasion. My own impression for the present is, that the position assumed by the counsel for the plaintiff in this matter is a sound and true one, and that this privilege is to be confined to the discussion of subjects only in which the public have an interest. Thus, a book may be examined and criticised, but anything bearing upon the personal character of the author, anything that touches him personally, does not fall within the rule. I cannot see myself how it will be necessary or useful that the person of an author should be held up in a ridiculous light, or his personal character attacked, or his motives

impugned. It is not difficult to draw the line of distinction, and it seems to me that it is a line dictated by good sense and fair dealing. In one word, in any statements of matters of fact in relation to this principle, as well as every other, the party is responsible for the truth of what he states, but is not responsible for his opinion and judgment. That arises from the fact that not only is it important to the public that this opinion should be free, but it is impossible to test it by any rule. The critic may have an honest opinion of a book which is unfavourable and may not be accurate, but he is not responsible for that opinion. Not so with respect to matters of fact. If the critic of a book states a fact contrary to the truth, he is responsible, not for the criticisms which he makes, but for the false basis which he has assumed. In respect to the case before us, all the parts of these libels which reflect on Mr. Fry's want of judgment and skill, either in the selection of operas or the choice of incompetent performers, everything of that kind is open to criticism, and Mr. Bennett is not responsible if these opinions be not correct; but all those parts of the libel which charge Mr. Fry with unjust, tyrannical, and oppressive conduct in reference to his dealings with his artists, do not come within the rule." So, to impute to an author that he had written a certain book, and to attack him for it, when in fact he was not the author of the book, would obviously not be privileged.<sup>7</sup>

Sometimes the author, stung by the attacks of the critics, instead of seeking his remedy in the courts, takes the law into his own hands. This method is always illegal, often unsatisfactory, and generally expensive. It was pursued in England in at least one reported case.<sup>8</sup> The Hon. Grantley Berkeley had published an historical novel called "*Berkeley Castle*," on which, in a subsequent number of *Frazer's Magazine*, there appeared what purported to be a *critique*, but which, in the opinion of the author, was a gross libel on himself and his family. The Hon. Grantley Berkeley read it, and three days after repaired to Frazer's place of business; finding him there, he assaulted him with a whip, two of his friends who accompanied him keeping the bystanders away. Frazer sued him for the assault, and he then brought an action against Frazer for the libel. Lord Abinger, in summing up the first case to the jury, said: "The plaintiff's counsel has put this matter as a sort of debtor and creditor account—that Mr. Frazer libelled Mr. Berkeley, and Mr. Berkeley beat him; and that, on Mr. Frazer bringing his action for the assault, Mr. Berkeley brought his action for the libel. But if you allow for the libel in diminution of damages, Mr. Berkeley will still be entitled to recover damages for it in the cross-action; and as he has chosen his remedy for the libel for his action for damages, I think that he cannot fairly be allowed to take much advantage of it in mitigation of damages in the present action. I really think that this assault was carried to a very inconsiderate length, and if an author is to go and give a beating to a publisher who has offended him, two or three blows with a horse-whip ought to be quite enough to satisfy his irritated feelings." Mr. Frazer recovered £100 damages, which is probably a good deal more than Mr. Berkeley obtained in his action, as it is not reported in the books.

These, then, are the limits and extent of privileged literary criticism: 1. It is protected, however severe, provided it is directed against the work. In other words, the book or artistic production cannot be plaintiff. 2. But the private character of the author is not public property; and the critic must not make his assault on the work a pretext for a personal attack. 3. Neither is the author himself, nor his private character, open to ridicule. According to the language of Lord Ellenborough in *Carr v. Hood*, any amount of ridicule of the author of a performance, artistic or literary, is privileged as criticism, provided there be no attack on the private or personal character of the artist

(5) Moo. & M. 157 (1828).

(6) 3 Bosw. 309 (1858); 28 N. Y. 320 (1863).

(7) See *Tabart v. Tipper*, 1 Camp. N. P. 350.

(8) *Frazer v. Berkeley*, 7 Car. & P. 631 (1836).

or author. "One writer, in exposing the follies and errors of another, may make use of ridicule, however poignant. Ridicule is often the fittest weapon that can be employed for such a purpose. If the reputation or pecuniary interest of the person ridiculed suffer, it is *damnum absque injuria*." But later cases do not go this length, as we have seen in the opinions of Chief Justice Tenterden in *Soane v. Knight*, of Chief Justice Cockburn in *Strauss v. Francis*, and of Cowan and Clarke, JJ., in the only American cases of consequence on this topic. In 1828, also, Chief Justice Best followed the doctrine of Lord Ellenborough in *Carr v. Hood*, except that he thought that no personal ridicule of the author was justifiable.<sup>9</sup> 4. In matters of opinion, the critic, though mistaken, is not legally responsible, for he is not bound to be infallible. 5. In matters of fact it is different; he is liable for making a false charge, as in other cases of libel where privilege cannot be pleaded.—JOHN D. LAWSON.

#### THE EXTENT OF THE DUTY IN TORTS.

The case of *Heaven v. Pender*, reported in the August number of the *Law Journal Reports*, belongs to a branch of law of much interest but considerable difficulty. The action was brought by a painter whose master had contracted with a shipowner to paint a ship lying in dock against another person who had contracted with the shipowner to put a staging round the ship, in order that the painter might get at his work. The staging gave way, and the painter was injured, whereupon he brought an action, not against the shipowner, but against the man who had undertaken to put up the staging. The cause of the downfall was that one of the ropes was charred through. The action differs from most of the other cases on the same subject, in that the plaintiff had, it would seem, mistaken the right defendant; whereas, in the other cases, the question was whether the action would lie at all. In the "gun" case, *Langridge v. Levy*, 7 Law J. Rep. Exch. 887, the son of a man who bought the gun from the defendant would have had no right of action whatever, if he had none against the defendant. In the "coach" case, *Winterbottom v. Wright*, 11 Law J. Rep. Exch. 415, the coachman, who was injured by the breakdown, had no right of action against the Postmaster-General, and his only hope was in his action against the coachbuilder. In the "hair-wash" case, *George v. Skivington*, 89 Law J. Rep. Exch. 8, the wife would not have been compensated at all if she had not recovered in the action against the chemist who sold the wash to her husband. Not that this fact at all affects the argument. It, of course, does not follow that a plaintiff has a right of action against a defendant because he has a right of action against no one else. But it rather detracts from the serious nature of the action as in reality only involving half the law of the case, and preparing the plaintiff's way to a better remedy.

Most of the cases have also arisen upon the sale of articles, as in each of the three cases referred to, and to this class of case the argument *ab inconvenienti* is very forcibly applicable. If the maker or seller of an article is liable for negligence in its construction to any other person than the buyer, where is his liability to stop? Is he to be liable for any damage the article may cause to every subsequent purchaser through whose hands it may pass, or to whom it may be lent, or who may come near it? It was upon considerations of this kind that *Winterbottom v. Wright* was decided against the coachman. Otherwise, it was said, every passenger and every passer-by might have a right of action against the coachbuilder. It was, therefore, necessary to draw the line at the person with whom the defendant had contracted. And yet, in *Langridge v. Levy*, the line was drawn much wider when the plaintiff's son, the injured person, was allowed to bring the action. This case is, in fact, the leading case on the subject, or there may be persons who would call it the misleading case.

(9) *Thompson v. Shackell*, Moo. & M. 187.

Just as *Fletcher v. Rylands* is always cited in support of the proposition that an injury may be actionable without negligence, so *Langridge v. Levy* is cited in support of the proposition that an action will lie on a contract by one who is not a party to it. The main duty of the Courts in reference to *Langridge v. Levy* is to distinguish it. Whether it was rightly decided is now an unprofitable question, but it contains in itself the elements for misleading. As is well known, the plaintiff was the son of the purchaser of a gun from the defendant. The terms of the purchase must be taken from the findings of the jury on the questions left to them by Baron Alderson, who tried the case. The report states that "the learned judge left it to the jury to say—first, whether the defendant had warranted the gun to be made by Nock, and to be a safe and secure one; secondly, whether it was in fact unsafe or of inferior materials or workmanship, and exploded in consequence of being so; and, thirdly, whether the defendant warranted it to be a safe gun, knowing that it was not so? The jury found a general verdict for the plaintiff, damages £400." Baron Parke, in delivering the judgment of the Exchequer, carefully rejects the findings of the jury in regard to the contract. "It is clear," he says, "that this action cannot be supported upon the warranty as a contract, for there is no privity in that respect between the plaintiff and the defendant." He then proceeds to state the law as to misrepresentations independently of contract, showing that a false statement made with the intention of being acted upon gave ground for an action. As a corollary to this principle he lays down that a false statement made to one person, intended to be conveyed to another, and intended to be acted upon by that other, gives a cause of action to that other if he is injured by relying upon it. The application of this principle greatly narrows the material facts of the case in question. Levy knowing that the gun was unsafe, and meaning Langridge to act on the statement that it was safe, told Langridge's father that it was safe; meaning the statement to be communicated to Langridge, which statement was communicated to Langridge. Langridge's father was, in fact, the conduit pipe through which Langridge was deceived. It did not matter that a warranty was also given to Langridge's father by way of contract with him, or that the fraudulent statement made was also intended to be acted upon by him. These facts, under different circumstances, might have given a cause of action to Langridge's father either in contract or tort; but that consideration did not prejudice the question of the right of action vested in Langridge. Baron Parke considered that all the elements of an action of deceit brought by Langridge against Levy were present, and so decided in Langridge's favour. This is clearly the drift of Baron Parke's judgment. It is true that the facts assumed by Baron Parke were not left to the jury, or found by them; but it does not appear, from the report, that any of the material facts, except whether the gun was of bad workmanship and that a warranty had been given, were disputed on the defendant's behalf.

The distinction generally taken between *Langridge v. Levy* and other cases is, that in that case there was fraud. In *Heaven v. Pender* Mr. Justice Field says:—"There is no fraud in this case—that is clear—as there was in *Langridge v. Levy*." But, in *Langridge v. Levy*, there was much more than fraud. As we have seen, the case does not decide that, where a fraud is committed, any one who is injured by the fraud may bring an action. Baron Parke distinctly says:—"We do not decide whether this action would have been maintainable if the plaintiff had not known of, and acted upon, the false representation; nor whether the defendant would have been responsible to a person not within the defendant's contemplation at the time of the sale." It was this misstatement of the effect of *Langridge v. Levy* which seems to have misled Chief Baron Kelly and Baron Cleasby in *George v. Skivington*. In that case the Court of Exchequer held that, upon a purchase by a husband of hair-wash for his wife, the wife could sue for the breach of duty in not supplying a thing reason-

ably fit for the purpose. Both the Chief Baron and Baron Cleasby treat the case as governed by *Langridge v. Levy*. Baron Cleasby says:—"You have only to substitute negligence for fraud." If the whole point of *Langridge v. Levy* had turned on fraud, Baron Cleasby's observation might be accepted. Fraud is a tort, and negligence is a tort, and there is no reason *per se* why they should not be governed by the same rules. Baron Pigott puts his decision partly on the ground that the wife was a person who could not contract for herself; but the action was framed in tort, and not in contract. Upon an action differently framed it is possible that the husband might have recovered in his contract for any expenses or inconvenience to which he may have been put by the illness of his wife. As *George v. Skivington* stands, it is disapproved by the judges in *Heaven v. Pender*. Mr. Justice Field says:—"I quite agree that there is no distinction between *George v. Skivington* and this case," but *Winterbottom v. Wright* was not cited in *George v. Skivington*, and the learned judge prefers that case. Mr. Justice Cave's judgment is to the same effect; but he adds that one of the judgments in *George v. Skivington* "proceeds on the assumption that there is a kind of negligence analogous to fraud, something of which all the world can complain." Upon the true reading of *Langridge v. Levy*, as we have seen, fraud is not a cause of action of which all the world can complain. In *Winterbottom v. Wright* the judges were very careful to reduce *Levy v. Langridge* to reasonable dimensions; but the statement of the decision made by Lord Abinger is another example of the facility with which the case is misunderstood. Lord Abinger says: "We ought not to attempt to extend the principle of that decision, which, although it has been cited in support of this action, wholly fails as an authority in its favour; for there the gun was bought for the use of the son, the plaintiff in that action, who could not make the bargain himself, but was really and substantially the party contracting." This view of the case would have been wholly repudiated by Baron Parke, as we have seen. Baron Alderson, who was a party to *Langridge v. Levy*, in his judgment in *Winterbottom v. Wright* puts the right construction on the former case. All the judges agreed that the coachman had no right of action against the coach-builder, whose duty was to the Postmaster-General. Mr. Justice Field and Mr. Justice Cave take the same view of *Heaven v. Pender*. The County Court judge had found in favour of the plaintiff, but this judgment was set aside. The confusion which is frequently found in this branch of the law depends, we think, on the ease with which readers of *Langridge v. Levy* are misled in reading that case. It is a case which, after all, does not decide a principle of very general application, as the facts were special. As we read the judgment, it decides that an actionable misrepresentation may be made through a third party to some one else, although it is also made to the third party himself, and although a contract is made with the third party himself, if the statement was intended to be communicated to the injured party, and intended to be relied on by him. It does not decide that where a fraud is committed all the world may bring an action, if injured by the fraud. Still less does it decide that an action of tort may be brought against the tort-feasor by any person who is injured.—*Law Journal*.

PROPERTY HELD IN MORTMAIN.

One of the latest of Parliamentary returns shows the extent of real property throughout the kingdom that is held in mortmain, or for charitable, public, or perpetual uses, or in such a way that no succession duty is payable thereon. More than one and a half million acres are so held in England and Wales, 284,000 in Ireland, and nearly 130,000 in Scotland. Taking the aggregate area of the United Kingdom at seventy-seven and a half million acres, it would seem that one acre in every thirty-nine comes within the scope of the return, and in England and Wales about one in every twenty-three acres. These facts should help to dispel the

common, but of course erroneous, notion that from the time of Magna Charta to the Act of Geo. 2 the Legislature has been constantly engaged in placing absolute prohibitions upon corporations holding lands in mortmain. It can hardly be supposed that the recent relaxations in favour of public parks, schools, &c., have had any material effect upon the figures. The return, therefore, shows clearly that the statutory restrictions are in practice found less stringent than is generally imagined.—*Law Times*

ADMISSION OF A SOLICITOR.

Mr. Maurice Healy (brother of Mr. Healy, M.P.) has been admitted a Solicitor of the Court of Judicature. He was awarded a special certificate at the late examination.

NOTES OF ENGLISH CASES.

(From the *Law Journal*)

SUPREME COURT OF JUDICATURE.

COURT OF APPEAL.

(Before JESSEL, M.R., BRETT and COTTON, L.JJ.)

*In re ROBERTS. Ex parte PRICE.*

July 27.—*Bankruptcy—Jurisdiction—Discretion—Fraudulent deed—13 Eliz., c. 5.—Bankruptcy Act, 1869, s. 72.*

This was an appeal from a decision of Bacon, C.J., reversing an order of the County Court.

The bankrupt had, about eighteen months before the date of the bankruptcy, conveyed to his father, professedly in consideration of £100, land worth about £500. The trustee alleged that after the execution of the conveyance the bankrupt continued to deal with the property as absolute owner, and he applied to the County Court to have the deed declared void on the ground that it was executed for the purpose of defeating the creditors. The father objected to have the question tried in the County Court, and wished to have it tried in the High Court.

The County Court judge overruled the objection, and declared the deed void.

This decision was reversed by Bacon, C.J., who held that the case was one in which the Court of Bankruptcy ought not to exercise its discretionary jurisdiction under section 72 of the Bankruptcy Act, 1869, but leave the question to be tried by the ordinary tribunals.

The trustee appealed.

*Winslow, Q.C.*, and *F. Thompson*, for the appellant.

*Yate Lee*, for the respondent, was not heard.

Their LORDSHIPS held, affirming the decision of Bacon, C.J., that, considering there were allegations of gross fraud against the father and the son, and that the value of the property involved was large, the Court ought not to compel the father—who was not a bankrupt and not, therefore, directly amenable to the jurisdiction of the Court of Bankruptcy—to submit to the jurisdiction of the County Court.

HIGH COURT OF JUSTICE.

CHANCERY DIVISION.

(Before BACON, V.C.)

*Re BUSHBY.*

Aug. 2.—*Conveyancing Act (44 & 45 Vict., c. 41), s. 39—Order binding married woman's property—Consent of married woman—Evidence.*

In this case an order was made in chambers, under section 39 of the Conveyancing Act, 1881, binding the interest of a married woman in property with a restraint on anticipation subject to her consent being shown.

*H. B. Howard* asked that the order might be drawn up on a written request to the solicitors signed by the married woman, her signature being verified by affidavit.

The lady lived in Norfolk and was confined to her home. He referred to *Hodges v. Hodges*, 51 Law J. Rep. Chanc. 549.

Bacon, V.C., said the order might be drawn up on this evidence, without the separate examination or further proof of the consent of the married woman.

**BROWN v. BURDETT.**

Aug. 2.—*Will*—*Direction to brick up house and furniture for twenty years*—*Invalid trust*—*Intestacy*—*Wills Act, 1837, s. 3.*

Testatrix devised a house, garden, orchard, and out-buildings, at Gilmorton, Leicestershire, to trustees upon trust immediately after her funeral, and on the same day, to cause the doors and windows of every room, except the kitchen, back kitchen, middle attic, and hall, and of the coach house, to be well and effectually bricked up from the outside, with every article of whatever kind, that might then be therein, including her clocks, at her decease, and cause the same to be repaired and renewed as occasion should require, and so bricked up to continue for the term of twenty years after her decease; and subject to the trusts aforesaid upon trust, to place in and remove at pleasure some respectable married couple in the actual occupation of the kitchen, back kitchen, middle attic, and hall, and allow them to live there rent free, in consideration of their taking care of the said messuage and premises, and particularly the blockade to the doors and windows; and, from and after the term, the testatrix devised the property to devisees beneficially. The testatrix gave a number of minute directions to her trustees as to the blocking-up of the premises, and, if they failed to comply with her directions, gave over to other persons interests given to the trustees.

The testatrix died in 1872. This was the further consideration of an administration suit, and one question was as to the validity of the trusts for the term of twenty years, it being contended that the Wills Act, s. 3, only empowered a positive disposition of property to be made; and that the negative trust to leave the property unenjoyed was, in effect, an intestacy for the term of twenty years.

*E. K. Karlake, Q.C.; Marten, Q.C.; Hemming, Q.C.; Miller, Q.C.; Langley, Yate Lee, Brett, S. Hall, and Phillips* for the parties.

Bacon, V.C., made a declaration that the trusts of the real and personal estate in question were invalid, and that such real and personal estate passed as undisposed of for the term of twenty years from the death of the testatrix.

(Before KAY, J.)

*In re CLARK.*

July 31.—*Infant*—*Religion.*

This was an application by the mother of an infant, eight years of age, who was entitled to real estate in Lancashire, for the appointment of herself and a paternal uncle as guardians. The father was a Protestant; he had allowed his children to be baptised, and, so far as they were capable, educated in the Roman Catholic faith, which the mother held. The infant in question was the second child, a son who was under three when his father died. There were two other children—girls—who had no property. The family lived abroad. The father did not attend any Protestant place of worship, but sometimes went with his wife to Mass.

*J. Pearson, Q.C., and Bagshawe* for the application.  
*Cookson, Q.C., and E. Bond, contra.*

KAY, J., held, on the evidence, that the father had, by his acts, indicated an intention that the infant should be brought up as a Roman Catholic; and that it would, under the circumstances, be more beneficial to the infant that he should be brought up in that faith; and made the order asked.

**TEXT-BOOK ADDENDA.**

[From the *Law Journal*.]

*Order XVI., Rule 13.*

*Lely and Foulkes on the Judicature Acts (3rd Edition), 157.*  
*Wilson on the Judicature Acts (2nd Edition), 180.*

The consent required to be given by a proposed new plaintiff need not be in writing. It is sufficient if the solicitor of the original plaintiff states that he consents on his behalf (*Cox v. James*, 51 Law J. Rep. Chanc. 184).

*Theobald on Wills (2nd Edition), 282.*

A gift in remainder after a life interest, to the persons who shall "then" be the testator's next-of-kin is a gift to a hypothetical class, to be ascertained as if the testator had died when the tenant for life died (*Sturge to the Great Western Railway Company*, 51 Law J. Rep. Chanc. 185).

*Joyce on the Doctrine of Injunctions, 109.*

*Kerr on Injunctions (2nd Edition), 170.*

An action by a reversioner of a cottage to restrain the continuance of a nuisance was dismissed on the ground that there was no permanent injury to the reversion (*Cooper v. Crabtree*, 51 Law J. Rep. Chanc. 189).

**CORRESPONDENCE.**

*Letters and communications intended for publication, and addressed to THE EDITOR, 43, Upper Sackville-street, Dublin, must be authenticated by the name of the writer, not necessarily for publication, but as a guarantee of good faith.*

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

**WITNESSES TO AGREEMENTS FIXING FAIR RENTS.**

TO THE EDITOR OF THE IRISH LAW TIMES.

SIR,—Having written to the Land Commission, suggesting that Commissioners to Administer Oaths should be eligible as witnesses to a tenant's signature of agreements fixing fair rents, my firm have received a reply from Mr. Godley, in which he states—"Though a Commissioner for Administering Oaths is not specified in the form as an allowable witness to the signature of a tenant, no objection will be made to receive an agreement so witnessed."

This may interest some of your readers.

Yours faithfully,

A SUBSCRIBER.

Dublin, 17th August, 1882.

**COURT PAPERS.**

**COURT OF BANKRUPTCY.**

**ADJUDICATIONS IN BANKRUPTCY.**

*The dates of Adjudications are first given, the Sittings follow in Italics.*

Dennehy, Michael, of Main-street, Mallow, in the county of Cork, shopkeeper, trading as Dennehy and Co. August 8. *Tuesday, September 5, and Friday, September 22.* Thomas Gerrard, solr.

Little, John, formerly of, Dungannon, in the county of Tyrone, and lately of Dendalk, in the county of Louth, and now of 2 Elizabeth-place, off Oriel-street, in the city of Dublin, lately carrying on the trade or business of builder and contractor in copartnership with James Little, under the style and firm of "Lytle Brothers." August 4; *Friday, September 1, and Friday, September 15.* Wellington Young and B. Thompson, solrs.

Lunham, William, of Russell-street, Tralee, in the county of Kerry, provision merchant. August 4; *Friday, September 1, and Friday, September 15.* Samuel Benner, solr.



DUBLIN STOCK AND SHARE LIST.

DESCRIPTION OF STOCK	AUGUST					
	Sat. 12	Sun. 13	Tues. 14	Wed. 15	Thur. 16	Fri. 17
<b>Government.</b>						
3 p c Consols ..	99 1/2	99 1/2	99 1/2	99 1/2	99 1/2	99 1/2
3 p c Reduced ..	99	98 1/2	98 1/2	99	98 1/2	98 1/2
New 3 p c Stock ..	103 1/2	103 1/2	103 1/2	103 1/2	103 1/2	103 1/2
<b>INDIA STOCK.</b>						
4 p c Oct. 1888 } Traffic. at ..	100 1/2	100 1/2	100 1/2	100 1/2	100 1/2	100 1/2
3 1/2 p c Jan. 1881 } Bk. of Irel. ..	100 1/2	100 1/2	100 1/2	100 1/2	100 1/2	100 1/2
<b>Banks.</b>						
100 Bank of Ireland ..	315 1/2	315 1/2	315 1/2	315 1/2	315 1/2	315 1/2
25 Hibernian Banking Co. ..	35	35	35	35	35	35
20 London and County (Ltd.) ..	75 1/2	75 1/2	75 1/2	75 1/2	75 1/2	75 1/2
15 London Joint Stock ..	67 1/2	67 1/2	67 1/2	67 1/2	67 1/2	67 1/2
20 London and Westminster, Ltd ..	7 1/2	7 1/2	7 1/2	7 1/2	7 1/2	7 1/2
10 Do. New ..	7 1/2	7 1/2	7 1/2	7 1/2	7 1/2	7 1/2
3 1/2 Munster Bank (Limited) ..	23 1/2	23 1/2	23 1/2	23 1/2	23 1/2	23 1/2
10 Nat. Prov. of England, Ltd. ..	14 1/2	14 1/2	14 1/2	14 1/2	14 1/2	14 1/2
10 National Bank (Limited) ..	27 1/2	27 1/2	27 1/2	27 1/2	27 1/2	27 1/2
10 National of Liverpool (Ltd.) ..	22	22	22	22	22	22
25 Provincial Bank ..	29 1/2	29 1/2	29 1/2	29 1/2	29 1/2	29 1/2
10 Do. New ..	29 1/2	29 1/2	29 1/2	29 1/2	29 1/2	29 1/2
10 Royal Bank ..	29 1/2	29 1/2	29 1/2	29 1/2	29 1/2	29 1/2
25 Standard of B. & A., Ltd ..	51 1/2	51 1/2	51 1/2	51 1/2	51 1/2	51 1/2
25 Union of Australia ..	69 1/2	69 1/2	69 1/2	69 1/2	69 1/2	69 1/2
<b>Steam.</b>						
50 British & Irish ..	100 1/2	100 1/2	100 1/2	100 1/2	100 1/2	100 1/2
100 City of Dublin ..	100 1/2	100 1/2	100 1/2	100 1/2	100 1/2	100 1/2
50 Dublin and Glasgow ..	100 1/2	100 1/2	100 1/2	100 1/2	100 1/2	100 1/2
10 Dundalk (Limited) ..	100 1/2	100 1/2	100 1/2	100 1/2	100 1/2	100 1/2
50 Peninsular and Oriental ..	100 1/2	100 1/2	100 1/2	100 1/2	100 1/2	100 1/2
<b>Mines.</b>						
4 1/2 Borehaven (Limited) ..	4/9	4/9	4/9	4/9	4/9	4/9
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2 1/2 Wicklow Copper ..	12/-	12/-	12/-	12/-	12/-	12/-
<b>Miscellaneous.</b>						
10 Alliance & Dub. Cons. Gas ..	16	16	16	16	16	16
8 Do. New ..	16	16	16	16	16	16
4 Gascock & Co. Ltd. Ltd ..	5	5	5	5	5	5
20 C. Dub. Brewery Co. (Lim.) ..	5	5	5	5	5	5
10 Dub. (Sth) City Market Co. ..	12/-	12/-	12/-	12/-	12/-	12/-
10 M'Kenzie & Sons (Ltd.) ..	1 1/2	1 1/2	1 1/2	1 1/2	1 1/2	1 1/2
4 National Discount, Fra. Ltd ..	2	2	2	2	2	2
<b>Tramways.</b>						
10 Belfast Tram ..	8	8	8	8	8	8
10 Dublin United Tramways ..	8	8	8	8	8	8
<b>Railways.</b>						
50 Cork and Brandon ..	80-2	80-2	80-2	80-2	80-2	80-2
100 Great Northern (Ireland) ..	119 1/2	119 1/2	119 1/2	119 1/2	119 1/2	119 1/2
100 Gt. Southern and Western ..	114 1/2	114 1/2	114 1/2	114 1/2	114 1/2	114 1/2
100 Midland Gt. Western ..	83 1/2	84	85	85	85 1/2	85 1/2
100 Waterford & Cent. Ireland ..	30 1/2	30 1/2	30 1/2	30 1/2	30 1/2	30 1/2
100 Waterford and Limerick ..	30 1/2	30 1/2	30 1/2	30 1/2	30 1/2	30 1/2
<b>Railway Preference.</b>						
100 D. W., & W., 5 p c (1880) ..	109 1/2	109 1/2	109 1/2	109 1/2	109 1/2	109 1/2
100 Do. do. (1885) ..	109 1/2	109 1/2	109 1/2	109 1/2	109 1/2	109 1/2
100 Gt. Nth'n (Ireland) 4 p c ..	109 1/2	109 1/2	109 1/2	109 1/2	109 1/2	109 1/2
100 Do. 4 1/2 p c ..	109 1/2	109 1/2	109 1/2	109 1/2	109 1/2	109 1/2
100 Gt. South'n & West'n 4 p c ..	109 1/2	109 1/2	109 1/2	109 1/2	109 1/2	109 1/2
100 Mid. Great Western, 4 p c ..	98 1/2	98 1/2	98 1/2	98 1/2	98 1/2	98 1/2
100 Waterf. & Limerick, 4 p c ..	98 1/2	98 1/2	98 1/2	98 1/2	98 1/2	98 1/2
100 Do. 4 1/2 p c ..	109 1/2	109 1/2	109 1/2	109 1/2	109 1/2	109 1/2
<b>Debenture Stocks.</b>						
100 Belfast & Nth'n Cos. 4 p c ..	105 1/2	105 1/2	105 1/2	105 1/2	105 1/2	105 1/2
100 Dublin & Wicklow 4 p c ..	105 1/2	105 1/2	105 1/2	105 1/2	105 1/2	105 1/2
100 Gt. Northern (Ireland) 4 p c ..	109 1/2	109 1/2	109 1/2	109 1/2	109 1/2	109 1/2
100 Do. 4 1/2 p c ..	109 1/2	109 1/2	109 1/2	109 1/2	109 1/2	109 1/2
100 Gt. North'n & West'n 4 1/2 p c ..	109 1/2	109 1/2	109 1/2	109 1/2	109 1/2	109 1/2
100 Gt. South'n & West'n, 4 p c ..	109 1/2	109 1/2	109 1/2	109 1/2	109 1/2	109 1/2
100 Kilkenny Junction, A, 5 p c ..	80	80	80	80	80	80
100 Midland Gt. West'n, 4 p c ..	109 1/2	109 1/2	109 1/2	109 1/2	109 1/2	109 1/2
100 Waterf'd & Limerick 4 p c ..	111 1/2	111 1/2	111 1/2	111 1/2	111 1/2	111 1/2
100 Do., 4 1/2 p c ..	111 1/2	111 1/2	111 1/2	111 1/2	111 1/2	111 1/2
<b>Miscellaneous Debent.</b>						
100 Ballast Office Deb. £2 6s 2d, 4 p c ..	102 1/2	102 1/2	102 1/2	102 1/2	102 1/2	102 1/2
100 Dub. & Kingstown 4 p c ..	102 1/2	102 1/2	102 1/2	102 1/2	102 1/2	102 1/2

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ROSS and DEANE—August 17, at the Parish Church of St. Michan, Dublin, by the Rev. E. J. Stokes, B.D., assisted by the Rev. R. S. O'Loughlin, B.A., Incumbent of Sixmiletown, John Ross, Esq., LL.B., barrister-at-law, eldest son of the Rev. Robert Ross, Ardfoyle, Londonderry, to Catherine Mary Jeffcock, only surviving child of Lieut.-Colonel Deane and Mary Stobart Mann, Dunmoyle, County Tyrone.

DEATHS.

JORDAN—August 13, at her residence, Castlebar, Margaret Josephine, relict of the late Myles Jordan, Esq., Crown Solicitor.

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# THE IRISH LAW TIMES AND SOLICITORS' JOURNAL.

VOL. XVI.

SATURDAY, AUGUST 26, 1882.

No. 813

## RIGHT TO COSTS OUT OF PARTICULAR ESTATE OR FUND IN LITIGATION.—III

WHILE it is hoped that our contribution on this subject will be found practically useful, especially by reason of its many citations of cases not elsewhere collected, nor to be found without some degree of troublesome research such as we have devoted to the matter, incomplete indeed would be a treatment excluding discussion of the important and moot topic of the right of appeal in cases of the kind under notice, particularly as it has been the subject of adjudication both in England, Canada, and America, in three decisions reported so recently as July 29th, August 1st, and July 12th, respectively.

Where the subject-matter of a suit has been settled before litigation, the case will not be entertained merely in order to determine who is entitled to costs: *Griffin v. Brady*, 39 L. J. Ch. 136; and see the Canadian cases of *Re Holden*, 39 U. C. R. 88; *Samson v. Haggart*, 25 Gr. 543. And it is on the same principle that, with certain exceptions, appeals for costs alone will not be allowed, for the court will not investigate the merits for the mere purpose of deciding on the incidence of the costs: *Owen v. Griffith*, 1 Ves. Sen. 249; *Palmer v. Walesy*, L. R. 3 Ch. 736; and see the Scottish cases of *M'Alay v. Adam*, 1 S. & M'L. 665; *Clyne's Trustees v. Dunnet*, M'L. & Rob. 48; *Inglis v. Mansfield*, 3 Cl. & Fin. 371; and the American cases of *Dodge v. Stanhope*, 20 Amer. L. Reg. 828; *Canter v. Amer., &c., Ins. Co.*, 3 Pet. 307; *Elastic Fabrics Co. v. Smith*, 100 U. S. 112; *Lubker v. The "N. H. Quimby"*, 8 Rep. (Amer.) 806; *Wood v. Weimer*, 25 Alb. L. J. 298; and see *Daniel*, Ch. Pr., 5th ed., 1332; *Eiffe*, Jud. Act, 115; *Wilson*, Jud. Act, 3rd ed., 60; *Seton*, Decrees, 4th ed., 1603. "Ordinarily," observed *Bradley, J.*, delivering the judgment of the Supreme Court of the United States, in the recent case of *Trustees, &c., v. Greenough*, according to the *Reporter* (Boston, U. S.) of July 12th, 1882 (S. C. 14 Cent. L. J. 469, 25 Alb. L. J. 492) "a decree will not be reviewed by this court on a question of costs merely, in a suit of equity, although the court has entire control of the matter of costs, as well as the merits, when it has possession of the cause on appeal from the final decree. But it was held by Lord Cottenham, in the case of *Angell v. Davis*, 4 Myl. & Cr. 360, that when the case is not one of personal costs, in which the court has ordered one party to pay them, but a case in which the court has directed them to be paid out of a particular fund, an appeal lies on the part of those interested in the fund. Lord Cottenham, indeed, suggested other cases in which an appeal might lie from a decree for costs, as where the costs are part of the specific relief prayed; and where the whole of the facts distinctly appear upon the face of the proceedings themselves, so that it is not necessary, in determining the question, to enter into any investigation of the merits. But these suggestions have not met with subsequent approval; and in the case of *Taylor v. Dowlen*, 4 Ch. App. 697, the court declared that they were not disposed to extend the case of *Angell v. Davis*, and dismissed an appeal brought by parties ordered to pay costs, which they claimed should be payable out of a fund. But these discussions in the English courts arose under a system in which appeals from interlocutory orders are allowed. We can only entertain an appeal from a final decree;

and supposing the objection to the appeal on the ground of its being from a decree for costs only is untenable, as we think it is, then arises another question, whether the orders appealed from amount to a final decree." On this question, suffice it to say that it was held that a decree made by a circuit court, directing payment of costs and expenses, out of a trust fund in court, to the complainant, the fund, in the mean time, remaining in the court in course of administration, was *pro tanto* a final decree from which an appeal lay. The other question it is, on which the English cases were glanced at, with which we have here to do.

Now in *Owen v. Griffith*, *ubi supra*, an appeal for costs, on behalf of an incumbrancer who had been deprived of them and ordered to pay the plaintiff's costs, was entertained by Lord Hardwicke, it being said that the incumbrancer had a lien on the estate for costs, as well as for his demand, and therefore the deprivation of costs affected the merits of the case—or, in effect, that where a person deprived of costs has a "right" to them, he can appeal. Then, we have the case of *Angell v. Davis*, already mentioned; and again, there is *Cotterell v. Stratton* (L. R. 8 Ch. App. 295; see 2 Fish. Mtge., 3rd ed., 1002-4), where, in a suit to redeem, a mortgagee, not guilty of vexatious or oppressive conduct, was refused his costs of suit, Lord Selborne saying: "The right of a mortgagee, in a suit for redemption or foreclosure, to his general costs of suit, unless he has forfeited them by some improper defence or other misconduct, is well established, and does not rest upon any exercise of that discretion of the court which, in litigious causes, is generally not subject to review. The contract between mortgagor and mortgagee, as it is understood in this court, makes the mortgage as a security, not only for principal and interest, and such ordinary charges and expenses as are usually provided for by the instrument creating the security, but also for the costs properly incident to a suit for foreclosure or redemption. In like manner, the contract between the author of a trust and his trustees entitles the trustees to all their proper costs incident to the execution of the trust, by way of indemnity out of the trust estate, as between themselves and the *cestui que trust*. These rights, resting substantially upon contract, can only be lost or curtailed by such inequitable conduct on the part of a mortgagee or trustee as may amount to a violation or culpable neglect of his duty under the contract." But while, as we have seen, *Angell v. Davis* failed to command plenary approval in *Taylor v. Dowlen*, so, the effect of *Cotterell v. Stratton* was qualified considerably by *Re Hoskins' Trusts* (6 Ch. Div. 281, following *Taylor v. Dowlen*), where *James, L.J.*, holding that an appeal for costs will not lie where a trustee has been deprived of them on account of impropriety of conduct, said: "A case where a trustee has been deprived of costs for impropriety of conduct is no exception from the general rule, that an appeal for costs alone will not lie;" adding, after stating that the rule has been adopted by the Judicature Act (see Jud. Act, s. 52, Ir.; Jud. Act, 1873, s. 49, Eng.), except where the trustee is entitled to costs out of a particular estate or fund: "The present is not a case where the appellant is *ex debito iustitiae* entitled to costs, the costs of a trustee being subject to the discretion of the court." This being

directly in conflict with the law laid down in *Cotterell v. Stratton*, we next find that in *Re Chennell* (6 Ch. Div. 492), where it was held that an order directing payment to a trustee of his "costs, charges, and expenses" of action, properly incurred, is not an order as to "costs only" which are "left to the discretion of the court," within the meaning of the Jud. Act, and therefore that an appeal from such an order would lie without the leave of the court, it seems to have been considered that the fact that costs have been ordered to be paid out of a particular fund, or by a particular person, will not render an appeal from the order the less an appeal for costs, such a direction being a mere incident of the order as to the mode of payment—a result arrived at on the construction of O. L.V., Eng. (Jud. Act, s. 53, Ir.), and opposed to the view taken before the Jud. Act, in such cases as *Angell v. Davis* (*ubi supra*). Jessel, M.R., was one of the judges who so decided in *Re Chennell*; but, we also find him a party to the subsequent decision in *Farrow v. Austin* (18 Ch. Div. 281), where, an executrix having been refused her costs in the court below on the ground that an administration suit instituted by her was unnecessary, it was held on appeal that she was entitled to costs out of the estate, and had been guilty of no misconduct so as to give the court power to deprive her of "her right to costs," that the costs were therefore not in the discretion of the court, and that an appeal lay from the order as to costs. The previous decisions on the subject, however, were not there cited; and considering how they conflict, it is the more satisfactory now to have yet another determination on the subject. This is presented in the recent case of *Turner v. Hancock*, reported in the *Law Times* of July 29th, holding that, although in an action a trustee may be deprived of his costs out of the estate, such costs are not in the discretion of the court, and an appeal lies without leave from an order as to them; *Cotterell v. Stratton* being approved, *Farrow v. Austin* followed, and *Re Hoskins' Trusts* disapproved; both Jessel, M.R., and Cotton, L.J., appearing to consider that the same rule would apply in proceedings under the Trustee Relief Act. (*Et cf. Johnstone v. Cox*, 19 Ch. Div. 17; *Etherington v. Wilson*, 1 Ch. Div. 160; *Rowcliffe v. Leigh*, 26 W. R. 726; *In re Rio Grande Do Sul Steamship Co.*, 5 Ch. Div. 282; *Ex p. Russell, ubi supra*; *Dryden v. Dryden*, 3 Australian L. T. 43; *Re New York Prot., &c., School*, 25 Alb. L. J. 34.) And still more recently we have the case of *Re Woodhall*, reported in the *Canada Law Journal* of the 1st inst., where it was decided as follows:—Costs should not be given out of the estate in administration proceedings, unless it appears that the litigation has been in its origin directed with some show of reason, and a proper foundation for the benefit of the estate, or has in its result conduced to that benefit; and, therefore, in this case, where no benefit was shown to anyone by the administration proceedings, as the same result would have been secured without suit, if the plaintiff had not acted so precipitately, and the said proceedings were taken against the will of the adult beneficiaries, it was held that the expense to which the other parties had been put should be paid by the plaintiff, and the order requiring her to pay the costs should be affirmed, according to the rules laid down in *Mackenzie v. Taylor*, 7 Beav. 467, as explained in *Hilliard v. Fulford*, 4 Ch. D. 389, and *Rosebatch v. Parry*, 27 Gr. 193; and further, following *Farrow v. Austin*, 18 Ch. D. 58, that the question of the residuary legatees' costs is an appealable matter.

Thus, after so much doubt and diversity in the English decisions, the subject seems at last to have been settled in the same way contemporaneously both in England and across the Atlantic, nor can we doubt

the salutariness of the result; while, on the other hand, a different result "would tend to destroy, or at least very materially to shake and impair the security of mortgage transactions and the safety of trustees," as Lord Selborne observed in *Cotterell v. Stratton*, and would also, as he says, "deprive the latter class [*i.e.*, 'those who repose confidence as to property in their friends or neighbours'] of the assistance of all who cannot afford, or are not inclined to bestow upon the affairs of other persons their money as well as their trouble and time." "The old practice of the Court of Chancery, which was so severe upon trustees," as Sir G. Jessel, M.R., remarked in *Turner v. Hancock*, "had a tendency not only to stop honest people from undertaking the office of a trustee, but was an injury to *cestuis que trust* by frequently compelling them to employ as trustees the very persons by whose acts they were likely to suffer loss, namely, those unscrupulous persons who are willing to undertake the office for the purpose of making profit by it"; and it is satisfactory indeed, that, as so recently exemplified and affirmed in this case, "it is not the course of the court in modern times to discourage persons from becoming trustees, by making those trustees who have done their duty honestly liable for having made mistakes through a mere error of judgment, or for having committed innocent breaches of trust."

#### MR JUSTICE O'HAGAN.

Referring to Mr. O. Lewis's criticisms in the House of Commons on the appointment of Mr. Justice O'Hagan as a land commissioner, based on the fact of the learned judge having in his younger days, written and published some verses, couched in rather strong language, and entitled "The Union," the *Law Times* says: Mr. Lewis has since written a letter to a London newspaper, in which he states that a new edition of the verses is now on sale in London and Dublin, and that in May last he "wrote Mr. Justice O'Hagan, drawing his attention to the republication, and giving him a distinct opportunity of renouncing all connexion with or approbation of the present circulation of his extraordinary views and verses, but that he declined to avail himself of it." Mr. Lewis adds, that he feels sure "that no moralist or lawyer could, under the circumstances, hesitate to hold Mr. Justice O'Hagan to be responsible for them as a present production." We cannot see what ground of complaint Mr. Lewis has. It is unfair to suppose that because, in his youth, Mr. Justice O'Hagan entertained a certain opinion regarding an historical event, or because he still holds the same opinion, he is to be deemed unfit to perform the duties of a land commissioner. It is very certain that, however well or ill he performs his duties, his conduct will not do much towards obtaining a dissolution of the union between England and Ireland.

#### LIBELS ON THE ADMINISTRATION OF JUSTICE.

The principles upon which Mr. Justice Lawson acted in regard to Mr. Gray in the case of *Regina v. Hynes* are well recognised in point of law. Almost as soon as newspapers began the practice of commenting on proceedings in court, it was laid down that while the discussion of the merits of a verdict or the decision of a judge with candour and decency was permissible, it was an indelible libel to publish an invective against judges or juries with a view to bring the administration of justice into suspicion or contempt. The best known case is that of White, who in 1808 was convicted at the Guildhall of a libel in a newspaper on Mr. Justice Le Blanc and the jury who had tried a case of murder at the Old Bailey. White was sentenced to three years' imprisonment. The principles on which a judge may act summarily for contempt of Court are not so clearly

defined; but he is justified in so doing when immediate action is necessary. The libels in the *Freeman's Journal* were calculated to inflame public feeling against the jurymen in question, and to demoralise jurymen in subsequent trials; and they proceeded from the officer of the Court specially charged by the law with the duty of supplying jurymen to the Court and protecting them in the discharge of their functions. When an indictment would be nugatory, a summary conviction for contempt of Court is the right proceeding. Mr. Gray is very far from being the first high sheriff who has been so convicted. More than one instance of sheriffs being pronounced guilty of contempt has occurred on the circuits in England within the last few years; but the offence has generally been some unintentional want of respect to the judge, condoned by an ample apology, and not in the end calling for the presence of the coroner, as the qualified executive officer of the law in cases in which the sheriff is personally concerned.—*Law Journal*.

#### THE NEW MARRIED WOMEN'S PROPERTY BILL.

Quietly, and almost unobserved by the mass of the persons whom it will affect, a Bill fraught with no small consequence to nearly half the community has been passing through Parliament. The Married Women's Property Bill was brought from the Lords as long ago as May 22. In the Commons it was blocked by the tactics of Mr. Warton. But it has been triumphant even over him, and was read a third time on Tuesday, August 15, and the amendments of the Commons were agreed to on Wednesday, August 16, by the Lords. More than once in other years the measure seemed on the point of passing, and yet was at the last moment shunted, owing to those vague but potent reasons known as "the state of public business." The Bill has not been advanced to its final stage without deliberation. It has been subjected to the scrutiny of three Select Committees; it has been amended in the Lords; and if the authors and friends of the Bill have proceeded upon wrong lines, they have done so with *malice prepense*. The policy of the measure may be good or bad, but there can be no mistake about the magnitude of the change which it will introduce. It is intended to amend and consolidate the Acts of 1870 and 1874; but it is much more than a consolidation Bill. The first section shows the sweeping character of the alterations which it may make in the economy of many English households. When the Bill becomes law a married woman will be capable of acquiring, holding, and disposing, by will or otherwise, of real or personal property as her separate estate, just as if she were single. The intervention of trustees and the rest of the apparatus of settlements will not be requisite. At common law—and with some modifications the same still holds good—a married woman could not enter into any contracts; if she went through the form of doing so, the result was null. She was more helpless in this respect than infants and lunatics, the two classes in whose company she habitually figured in English law. Everything which she acquired, no matter in what manner, went to her husband, and at death to his personal representatives. If she were injured in a railway accident and recovered damages, she might see the compensation spent by her husband as he in his wisdom or folly thought fit. A married woman might work hard and earn money as an artist or a washerwoman. Her receipt for the price of her labour was no receipt at all, and the person who trusted to it and paid her might have to do so twice over. In several respects this has already been altered, and greater changes are proposed. Under this Bill every married woman will be capable of "entering into and rendering herself liable in respect of and to the extent of her separate property on any contract, and of suing and being sued, either in contract or in tort, or otherwise, in all respects as if she were a *feme sole*, and her husband need not be joined with her as plaintiff or defendant, or be made a party to any action or other legal proceeding brought by or taken against her." Hereafter the damages which she recovers for a broken leg or

injured reputation will be her separate property. An important change will be effected by the adoption of the clause which proposes to enact that every contract into which a married woman enters will be deemed to be a contract binding her separate estate, unless the contrary be shown. A leading presumption of law will thus, apparently, be altered at a stroke. Of still more consequence is the proposal that in the case of any woman married after the measure comes into operation, she shall hold as her separate estate and be free to dispose of, without limitations as to amount, "all real and personal property which shall belong to her at the time of marriage, or shall be acquired by or devolve upon her after marriage." Thus, at a stroke, goes the prime necessity for settlements. Not content with making this measure prospective, the framers of it boldly go on to say, "Every woman married before the commencement of this Act shall be entitled to have and to hold and to dispose of in manner aforesaid, as her separate property, all real and personal property, her title, to which, whether vested or contingent, and whether in possession, reversion, or remainder, shall accrue after the commencement of this Act, including any wages, earnings, money, and property so gained or acquired by her as aforesaid." Compared with these clauses, most of the others are tame and commonplace. But it is, perhaps, worth while to note that the Bill proposes to give every married woman the same civil and criminal remedies against all persons, and, subject to certain exceptions, "including her husband," for the protection and security of her separate property as if it belonged to a *feme sole*; that, conversely, a wife is to be liable to criminal proceedings by her husband, if she deals improperly with his property; and that if she happens to carry on trade separately from her husband she may be made bankrupt.

An exaggerated conception of the area covered by the measure would be got if we lost sight of a few substantial qualifications which undo not a little of the effect of the most salient clauses of the Bill. It is not intended, for instance, to interfere with existing settlements. There is, too, no proposal to withdraw or curtail the power of making future settlements, unless so far as it is necessary to give creditors the same rights over the property of a married woman who engages in trade and is unable to pay her debts as they now possess in the case of a bankrupt trader. To avert an obvious scandal which would be produced by the adoption of one of the clauses without check or limit, the framers of the Bill say that as to any property "no criminal proceedings shall be taken by any wife against her husband by virtue of this Act while they are living together." Nevertheless this legislation marks a notable advance and heralds some curious social changes. In 1870 the Legislature had its eye directed almost solely to the hardship, which was undeniable, of permitting a husband, who might be wholly remiss in his duties as bread-winner of the family, to sweep away all the earnings made by his wife's pen, pencil, or needle. With general approbation Parliament then took measures to secure the remuneration gained by married women in separate trades, or in the exercise of literary, artistic, or scientific skill. In 1874 Parliament returned to the subject, but only to touch it lightly and perfunctorily. The new measure is more important than either of its predecessors. Unlike them, it is based upon a principle, and one radically different from the principle which has hitherto been supreme in regard to married women's property.

The presumption always has hitherto been that everything which a woman had at marriage or which she afterwards obtained passed to her husband. For centuries that principle has been applied, almost without mitigation, to the poor, and, indeed, to the greater part of the middle classes, who have no family solicitors at their elbows, and are not much concerned about the transmission of property. Until the measures which we have named, and others designed to protect the earnings of women who were deserted by their husbands, were adopted, the Common Law was, in fact, the

marriage law of the poor. For the rich there was another law. Men whose daughters were entitled to property took care, as a rule, to settle it to their separate use; and accordingly the well-to-do classes of the community know little of the rigour of the rules which we have stated. Under this Bill the wife of a costermonger will have, in effect, an Act of Parliament settlement. An important legal presumption will be altered, and we shall not have to wait long to observe the result. Those who do not marry without settlements of some sort will continue in the same course; but the millions who do not will live under a law which gives a *feme covert* much the same rights as a *feme sole*. Other consequences, perhaps more momentous, are latent in the measure, which will leave little of the Common Law intact. It probably portends indirect social effects much greater than the disposition of property, and it may in the end pulverise some ideas which have been at the basis of English life. Measures which affect the family economy are apt to be "epoch making;" and probably when the most talked of Bills of the Session are clean forgotten this obscure measure may be bearing fruit.—*Times*.

The present Married Women's Property Act has adopted a plain general rule. All property of whatever kind and to whatever amount, which is inherited by or bequeathed to or gained by a married woman, is to belong to her, just as if she were single, apart from all control of her husband. The Act is retrospective; that is, it applies to a woman married before the Act, but only as to property which comes over to her after the Act. In compensation the wife is to be responsible for her own debts incurred before marriage and afterwards; she is liable to support her own children if the husband cannot, and even to support her husband if he would otherwise go upon the rates and she has money. The law has thus, for all sorts and conditions of women, been brought into accordance with public sentiment. We have lagged behind not only other nations in Europe in doing so, but behind our own kith and kin in the United States and in many of the colonies. The reason, no doubt, was that the richer classes, the "vocal" classes, those who had the ear of Parliament, were practically satisfied with the system of settlements. All women are now brought within the pale. It is to be hoped that the knowledge among even the lowest and roughest, that a woman is no longer a poor wretch with no rights and nothing she can call her own, though it is earned by the sweat of her brow, will tend to give her increased protection. Seeing how many women among the poor are bread-winners and money-spinners, the chances of their bread being changed for gin, and the money spent by the man on himself alone may be considerably diminished. The most lawless domestic tyrant ought to be influenced by the fact that his victim is under the protection of the law.—*Pall Mall Gazette*.

## ARREARS OF RENT (IRELAND) ACT, 1882.

### RULES.

*The 22nd day of August, 1882.*

It is this day ordered that the following general rules and orders shall from this date until further order take effect and be in force in the Land Commission in relation to all proceedings held or taken under and in pursuance of the Arrears of Rent (Ireland) Act, 1882 (hereinafter termed the Act), or any part of any Act incorporated therewith.

1. The tribunal by which applications under the Act are to be heard shall be the Land Commission, or any member or members thereof, provided that the Land Commission may by special order delegate the power of hearing any application or applications under this Act to any Legal Assistant-Commissioner.

2. All the existing rules under the Land Law (Ireland) Act, 1881, shall, so far as applicable, be in force as regards proceedings under the Act.

3. In the interpretation of these rules, the term Treasury shall mean the Commissioners of Her Majesty's Treasury, and such person or persons as the Treasury may, from time to time, appoint to represent them, and so notify to the Land Commission, shall, for all the purposes of these rules, be deemed to be the Treasury; and, in every case in which the landlord is mentioned, his land agent, to whom the tenants' rent has been usually paid, may, for all the purposes of these rules, stand in the place of such landlord.

4. The notice to be served by either landlord or tenant ten days previous to making application pursuant to the Act may be in Form A, and shall be served on the landlord or his agent, or on the tenant, as the case may be, in manner provided by the rules relating to service of Originating Notices.

5. The mode of making application under this Act, and the manner in which any tenant shall set out any property or effects, or to which he may be possessed or entitled, and which would be applicable to any arrears of rent, shall be as set forth in the ensuing rules.

6. When the application is made by landlord and tenant jointly, it may be in Form B, and may be verified by the affidavit of the tenant, and also of the landlord or his agent, pursuant to Section 14 of the Act.

7. Where two or more tenants of the same landlord are comprised in such joint application, such application may be in Form C. Provided that no more than twenty tenants shall be comprised in one of such forms.

8. Upon receipt of an application pursuant to Form B or C, duly verified as aforesaid, the Land Commission may make a Conditional Order for payment to or for the benefit of the landlord, of such sum as pursuant to the statute, may be so paid.

9. Notice of the making of such Conditional Order shall be served by the Land Commission upon the Treasury, and in the absence of any notice from the Treasury requiring the case to be investigated (which notice may be in Form D), the Land Commission may at the expiration of a fortnight from the date of service, make the Conditional Order absolute.

10. When the application is made by the tenant, the same may be in Form E.

11. When the application is made by the landlord, the same may be in Form F.

12. Every application made by a tenant, and every application made by a landlord and tenant or tenants jointly, shall be accompanied by a Schedule or Schedules of the property, effects, and liabilities of the tenant or respective tenants, pursuant to Form G.

13. Every application under the Act shall be served upon the Land Commission; and every application in Form E or Form F shall also be served on the opposite party, whether landlord or tenant. Notices served on the Land Commission under the Act should be directed to "The Comptroller of Arrears, Land Commission, Dublin."

14. On receipt of any application by landlord or tenant, or by both jointly, where the same is not accompanied by such affidavits as aforesaid, the Land Commission shall refer the same to one or more of the persons appointed for that purpose, to investigate and report as to the existence or non-existence of the preliminary conditions required to be proved for orders under the Act, and as to the value of the holdings. Due notice of such inquiries shall be given to the landlord and tenant respectively, and also to the Treasury.

15. The report of the investigator may be in Form H. 16. On return of the report the Land Commission may make a Conditional Order for payment to or for the benefit of the landlord, of such sum as he shall be entitled to pursuant to the statute. Notice of such Conditional Order shall be served upon the parties respectively, and on the Treasury; and in case no notice showing cause is in the meantime given, the Court may, at the expiration of one week after the service of such notice, make an Absolute Order.

17. Notice of motion of showing cause against making the Conditional Order absolute may be in Form I, and shall in every case specify the grounds of objection,

and shall be heard by the Land Commission or any member thereof, and the Land Commission shall make such Order thereon, either disallowing the cause and making the Conditional Order absolute, or delegating the case to be heard and decided by a Legal Assistant-Commissioner, or remitting the same for further investigation and report as they shall deem just.

18. Notice of the Absolute Order for payment to or for the benefit of the landlord of the sum payable to him pursuant to the statute may be in Form J, and shall be transmitted to the landlord, and a certificate in Form K shall be transmitted to the tenant.

19. When the landlord is himself entitled to receive the sum so ordered to be paid, he shall apply to the Land Commission by a verified claim, which may be in Form L or M, as the case may be.

20. When the landlord is not himself the person entitled to receive the entire sum ordered to be paid, it shall be lawful for him to apply to the Court by a verified claim, which may be in Form N or O, as the case may be, stating the person or persons to whom such sum is payable.

21. No actual payment of the sum so ordered, or of any part thereof, shall be made for one calendar month from the date of the order directing same to be paid to or for the benefit of the landlord.

22. It shall be lawful for any incumbrancer, receiver, trustee, or other person claiming to be entitled to the whole or any part of the sum ordered to be paid to or for the benefit of the landlord, at any time before the actual payment is made, to serve notice on the Land Commission, which notice may be in Form P, claiming to be entitled to or interested in the sum theretofore ordered, or which may be thereafter ordered to be paid, and a copy of such notice shall also be served by the claimant on the landlord.

23. In all cases in which any such notice as is mentioned in the last rule is served, the Land Commission shall before making any payment give notice to the party or parties making such claim, and shall adjudicate on all such claims, and make orders for payment accordingly.

24. Public notice of the intention of the Land Commission to direct payment of moneys lodged in court by tenants pursuant to Sec. 1, Sub-Sec. 5, to the person appearing to be entitled thereto as landlord shall be from time to time given as the Land Commission may direct.

25. Persons appointed to investigate and report as to the existence or non-existence in the case of holdings of the preliminary conditions required to be proved, for the purpose of orders under the Act, shall hold their inquiry in any public court-house within the district, or in such other place as they shall deem most expedient.

26. They shall hear the evidence tendered on behalf of the landlord and tenant respectively, as well as on behalf of any person authorized by the Treasury to appear on their behalf; they may summon witnesses, and cause the production of all documents which may appear to them to be necessary or proper for the purposes of the inquiry.

27. An appeal may be made from any order of a Legal Assistant-Commissioner within one fortnight from the date of such order, and notice of such appeal may be in Form Q, and shall be served on the Land Commission and on the opposite side.

28. The parties shall, as a general rule, bear their own expenses of the hearing of applications under the Act, but the Land Commission, or any member thereof, or the Legal Assistant-Commissioner duly delegated, may in particular cases, if they deem it just, direct costs to be paid by one party to the other. For the purpose of this rule, the person or persons representing the Treasury intervening shall be deemed a party.

29. Costs of appeals shall be in all cases in the discretion of the Land Commission, or the member or members thereof hearing such appeal.

30. Where either the landlord or tenant applies for an Order cancelling the rentcharge charged on a holding for the repayment of an advance made in pursuance of

the 59th section of the Land Law (Ireland) Act, 1881, such application may be in the Form R, or Form S, as the circumstances require.

31. Every such application of the tenant shall be accompanied by an affidavit of the tenant and a schedule in Form G, and every such application by the landlord may be accompanied by a like affidavit of the tenant and a like schedule. Notice of application by either landlord or tenant under the 16th section should be given to the other of them at least ten days before such application is made.

32. Where the landlord and tenant of a holding valued at a sum not exceeding £50 a year, make joint application for an advance pursuant to section 16 of the Act, such application may be in Form T, and shall be signed by the landlord or his agent on his behalf, and by the tenant or tenants who shall concur in such application. It shall moreover be verified by the landlord or his agent, and by the tenant or tenants as provided for in such form. No more than twenty tenants shall be comprised in any one such application; but where more than twenty tenants concur, several applications shall be made, each such application containing any number not exceeding twenty.

33. If the tenant or any of the tenants concurring in an application under section 16 of the Act be a tenant or tenants evicted for nonpayment of rent, or whose holdings have been sold and purchased by the landlord, and possession taken by him since the 1st of May, 1880, the application shall, in addition to complying with the requirements mentioned in the preceding rule, contain an undertaking on the part of the landlord to reinstate such tenant or tenants upon the terms in said section set forth.

JOHN O'HAGAN.  
E. F. LITTON.  
JOHN E. VERNON.  
MONCK.

[Seal of the Irish Land Commission]

EQUITABLE MORTGAGE BY DEPOSIT OF TITLE DEEDS—THE AMERICAN AND ENGLISH RULE.

(From the Central Law Journal.)

An interesting and instructive article on this subject, carefully prepared, as far as the English law is involved, appeared in the *Central Law Journal* of June 2, reprinted from the *IRISH LAW TIMES*. It presents a full, clear, and accurate view of the English law, but it does not discuss nor explain the decisions of the American courts on this important topic of the law, as it now exists in the jurisprudence of this country.

It is true that some of our most distinguished writers and jurists followed the decisions of the English Courts. Mr. Justice Story held: "Mortgages may not only be created by the express deeds and contracts of the parties, but they may also be implied in equity from the nature of the transactions between the parties, and then they are termed equitable mortgages. Thus, for instance, it is now settled in England (and some American States), that if the debtor deposits his title deeds to an estate with a creditor, as security for an antecedent debt, or upon a fresh loan of money, it is a valid agreement for a mortgage between the parties, and is not within the operation of the Statute of Frauds. This doctrine has sometimes been thought difficult to be maintained, either upon the ground of principle or public policy. And although it is firmly established, it has of late years been received with no small hesitation and disapprobation, and a disposition has been strongly evinced not to enlarge its operation."<sup>1</sup>

Chancellor Kent, with much learning and more explicitness, held the same views, and, after reviewing the decisions of the English Courts, says: "But the decision in *Russell v. Russell* has withstood all subsequent assaults upon it, and the principle is now deemed established in the English law, that a mere deposit of title

(1) 2 Story Eq. Jur., sec. 1020.  
(2) 4 Kent, 151.

deeds, upon an advance of money, without a word passing, gives an equitable lien."<sup>3</sup> In the year 1820, the Supreme Court of the United States held the same views. Mr. Justice Story, delivering the opinion of the Court, said: "It is argued that bills being *prima facie* evidence of an equivalent advance made by Prior, the possession by the latter of the articles of agreement, and the delivery to him of the accounts signed by Mandeville and Jameson, afford a legal presumption that the articles and account were delivered to him as security for a debt, which lien has always been deemed equivalent to an equitable mortgage. It may be admitted that, according to the course of the authorities in England, and as applicable to the state of land titles there, a deposit of title deeds does, in the cases alluded to, create a lien, which will be recognised as an equitable mortgage, and will entitle the party to call for an assignment of the property included in the title deeds."<sup>4</sup> The weight of the authority of Chancellor Kent and Mr. Justice Story, on all questions of jurisprudence, is equal to any jurists in England or America, and without disputing its force and accuracy, at the time they wrote, and when the opinion of the Supreme Court of the United States, in *Mandeville v. Welch*, was delivered, it is nevertheless true that the doctrine, as then held in England and the United States, has in the latter undergone a decided change, though still held in some of the States, as it is understood and prevails in England.

In the United States the doctrine of the authorities adverse to the English view of the law on this subject is equally as weighty and logically more impressive. "The doctrine of equitable mortgages arising upon the deposit of title deeds does not prevail generally in this country. It has, however, been adopted and distinctly acted upon in the case of *Rockwell v. Hobby*,<sup>5</sup> in New York. The assistant vice-chancellor there says: 'In the absence of all other proof of the evidence of an advance of money and finding of title deeds of the borrower in the possession of the lender is held to establish an equitable mortgage.' In South Carolina the doctrine also appears to be admitted as prevailing, though apparently in Kentucky and clearly in Mississippi it is rejected."<sup>6</sup> In Vermont the question has been lately treated judicially as an open one.<sup>7</sup> Some of the courts of this country have, however, held that an engagement in writing to give a mortgage, or a mortgage defectively executed, or any imperfect attempt to create a mortgage, or to appropriate specific property to the discharge of a particular debt, will create a mortgage in equity, or a specific lien, which will have the precedence of subsequent creditors.<sup>8</sup> Washburn says: "It was doubtful, until within a recent period, whether this species of lien, or equitable mortgage, was, or would be, recognised by any of the courts of this country as valid."<sup>9</sup> This distinguished author treats the subject with great fairness and ability, and his views are clear and impressive, notwithstanding the difficulties that attend a decision on it in the face of able authority on each side. He cites the case of *Williams v. Stratton*,<sup>9</sup> and remarks: "But the deposit of title deeds will not be held to create a mortgage in Pennsylvania, still if it is accompanied by a written declaration, and an agreement to convey the land if the debt intended to be secured be not paid, and this is recorded in the proper registry of deeds, it will be treated as a mortgage. Indeed it is not easy to see why such a doctrine should prevail in a country where the system of registration is universal,

and where it must be carried out, if at all, in direct violation of the Statute of Frauds."<sup>10</sup>

The above wise and accurate view of Washburn deserves great consideration, on account of the conflict among distinguished jurists on this subject, and especially as it accords with the learned opinion of the Supreme Court of the United States, delivered as late as 1856, and may be considered as overruling the case of *Mandeville v. Welch*, decided in 1820. Mr. Justice Campbell, delivering the opinion of the court in the latest case before it, said: "Nor can the real property conveyed in the deed be retained as security for advances or debts subsequently made on the strength of a parol engagement. Such a contract would be avoided by the Statute of Frauds."<sup>11</sup>

We think the following remark of Lord Eldon, in *Ex parte Hooper*,<sup>12</sup> true, wise, and applicable wherever the Statute of Frauds exists: "The doctrine of equitable mortgage by deposit of title deed has been too long established to be now disputed; but it may be said that it ought never to have been established. I am still more dissatisfied with the principle upon which I have acted of extending the original doctrine so far as to make the deposit a security for subsequent advances: At all events, the doctrine is not to be enlarged." The only criticism we would offer on the above remark of Lord Eldon's is, that he yielded to authority in preference to principle, truth, and reason, when he saw that the authority to which he gave his adhesion as a judge was wrong, and acknowledged it.

Washburn agrees with Browne; and after opposing the soundness of this doctrine so uniformly sustained in England, says: "But it has been recognised in several of the States as being in force. The power of creating a lien by deposit and pledge of a title deed, seem to be recognised, though not applied, in Maine; and the same may be said of the Court in Mississippi, though an intimation is made that a lien in the nature of an equitable mortgage may be valid under their Statute of Frauds for the term of one year. In Georgia, New Jersey, and South Carolina, the power to create such a lien is recognised, and is expressly sustained in New York, though it is remarked by Comstock, J., 'We have no practice of creating liens in this manner;' and in Rhode Island. The same is true of Wisconsin and Illinois. The law is stated as doubtful in Vermont. This is called an equitable mortgage, but it is of little consequence in this country, owing to the difficulty of affecting another claimant with notice of such deposit."<sup>13</sup>

The American edition of Adams' Equity cites also the cases referred to by Washburn and Browne, but takes no position on the point under discussion.<sup>14</sup> Bispham on "Principles of Equity," an American work of merit and authority, published in 1878, remarks, writing on the subject we are now discussing: "The first case in England in which this doctrine seems to have been authoritatively settled, was *Russell v. Russell*, decided by Lord Thurlow in 1788, and this decision, though strongly disapproved, has nevertheless been recognised by many cases as binding authority; and the doctrine may, therefore, be considered as well established, in spite of its apparent infringement upon the Statute of Frauds. Mortgages by deposit of title deeds have been sustained in several States of the Union, although they have not been of frequent occurrence. They have been disapproved in Kentucky, and rejected in Pennsylvania and Ohio; in Vermont the question is undecided; in quite a number of cases agreements to give a mortgage have been held to create a lien.<sup>15</sup> Hare and Wallace, American annotators of Leading Cases in

(3) *Mandeville v. Welch*, 5 Wheat. 377.

(4) 3 Sand. Ch. 9 (1844).

(5) *Welch v. Usher*, 2 Hill's Ch. (S. C.) 166; *Williams v. Stratton*, 10 Sm. & Marsh. (Miss.) 418; *Gothard v. Flynn*, 25 Minn. 58; *Van Meter v. McFadden*, 8 E. Mon. 435; *Bowers v. Oyster*, 3 Pa. 239; *Shils v. Diefendach*, 3 Barr. (Pa.) 285; *Bicket v. Madonia*, 1 Rawle, 325, 327.

(6) *Bicknell v. Bicknell*, 31 Vt. 498.

(7) *Hose's case*, 1 Paige (N. Y.) 125; *Bank of Muzington v. Carpenter*, 7 Ohio, 71; *Lake v. Droud*, 10 Id. 418; *Doe d. Burgess v. Bank of Cleveland*, 3 McLean (C. C.), 140; *Reed v. Gellard*, 2 Desaus. (S. C.) 552. See Browne on the Statute of Frauds, 61, from which the above authorities are taken.

(8) 2 Washb. on Real Property, 84.

(9) 10 Sm. & M. 418.

(10) 2 Washb. on Real Prop. 84.

(11) *Williams v. Hill*, 15 How. 344.

(12) 1 Merl. Ch. 7, cited by Mr. Justice Campbell in the case above referred to.

(13) 2 Washb. on Real Property, 84-85. See, also, Walker's American Law, 356, to which Washburn refers, and the cases cited by Washburn are also cited by Browne.

(14) Adams' Eq. 314, 4th American edition. By Henry Wharton.

(15) Bispham's Principles of Equity, 414-416; 13 Leading Cases in Eq., H. & W. American edition, pp. 663-6.



Equity, after presenting a few cases in which it has been held to be in violation of the Statute of Frauds, give also other cases in which it has been held otherwise in the United States.<sup>16</sup> It has been held recently in New Jersey, that an equitable mortgage may arise from a deposit of title deeds, citing as authority from that State, *Griffin v. Griffin*,<sup>17</sup> and *Brewer v. Marshall*,<sup>18</sup> and referring also to Leading Cases in Equity, the same edition referred to *supra*.

Very serious objections to the English decisions on this subject have been expressed by the courts of England, yet, notwithstanding the force of these objections, the decisions are uniform in sustaining the law in favour of the equitable mortgage. It is different in the United States, where the law is in a confused, unsettled, and unsatisfactory state, as far as the weight of authority of our writers on the subject, and also decisions of our highest courts, go in settling this question, the Supreme Courts of the different States presenting great contrariety of views, as we have demonstrated in this article. In a logical, as well as practical, sense we think there can be but little difficulty, notwithstanding the eminent authorities against the view, in following the decisions of those States where, under the Statute of Frauds, all such deposits of legal title deeds, with only a verbal understanding, have been held illegal, and of no force or effect. The weight of authorities, with their unanswerable reasons assigned, is sufficient to sustain the views of those courts following the English decisions, fortified in this country by the position of Story and Kent, from whom it may be embarrassing to dissent.

We refer again to the decision of the Supreme Court of the United States in the case of *Williams v. Hill*,<sup>19</sup> reversing unanimously its former decision. The reasoning of Campbell, J., by whom the opinion of the court was delivered, is unanswerable. We also refer to the clear and unanswerable views of Washburn and Browne, cited *supra*, as being the most logical, accurate and just, equal to any commentators on the other side, and sustained by the more enlarged and liberal views of the learned jurists of those State courts with which they are in conformity, and agreeing most conclusively with the literal meaning of the Statute of Frauds on this subject, as it exists in probably every State in the Union.

We need not present to the Bar or Bench the Statute of Frauds, nor its history, as it arose in England under 29 Car. II, amended by 9 Geo. IV., the substance and leading features of which we believe have been adopted in nearly all, if not every State in the Union.<sup>20</sup> In examining these statutes as presented in the appendix to Browne's work on the Statute of Frauds, it is difficult to maintain an equitable mortgage on verbal agreement, in the face of statutes which, in express language, reject and forbid all verbal agreements of such character as would attempt to bind an interest in lands as could be embraced in mortgages which would create a title to said lands; the exceptions applying and designed only to apply to rents for, or within a specified time. A court of equity may decide differently from a court of law on principles of equity; or may give an equitable construction to a statute; yet it cannot create an equity in the face of a statute, and against its provisions; for in a statutory sense, as in equity, *equitas sequitur legem*. It seems to be equivalent to creating an equitable estate, or rights in opposition to the Statute of Frauds, to say that an equitable mortgage can exist, or be brought into existence by the order of a court, when it rests on no other foundation but a verbal agreement.

The deeds are evidence of one title, and only one as expressed on their face; the possession of those deeds by another cannot, nor ought it to create a new and different interest in opposition to a statute law which requires a written instrument executed according to law

to convey, or create any title in lands subject to its exceptions, in positive terms and unequivocal language.—  
Wm. ARCHER COCKE.

PRIZE ESSAYS ON FISHING LAW.

At the great International Fisheries Exhibition, 1888, prizes of £100 will be offered for essays on each of the following subjects, among others: The effect of the existing National and International laws for the regulation and protection of Deep Sea Fisheries, with suggestions for improvements in said laws.—Relations of the State with Fishermen and Fisheries, including all matters dealing with their protection and regulation, and home legislation affecting regulations for fishing-vessels, protection of spawning-beds, close time (if any) for salt-water fish.—On improved fishery harbour accommodation for Great Britain and Ireland, indicating the localities most in need of such harbours, the general principles on which they should be constructed, and the policy the State should adopt in aiding and encouraging harbour accommodation for fishing purposes, including the effect of the Passing Tolls Act, 1861, the causes which led to its failure, grants to supplement local efforts, loans at low rate of interest, period to which they should be extended. Prizes of £25 will be offered for essays on each of the following subjects: On the legislation at present applicable to the Salmon Fisheries in Scotland (including the Rivers Tweed and Solway), and the best means of improving it.—On the legislation at present applicable to the Salmon Fisheries in England and Wales, and the best means of improving it.—On the legislation at present applicable to the Salmon Fisheries in Ireland, and the best means of improving it. Every essay must be written in the English language, or must be accompanied by an English translation, and must be sent in so as to arrive at the offices of the Exhibition on or before May 1, 1888.—Further information may be obtained of the secretary, J. W. Mollett, 24 Haymarket, S.W., London.

LAW AND LITERATURE.

The appointment of Mr. Thomas Hughes to a County Court judgeship may, perhaps, do something to weaken the prejudice that literature is incompatible with law. It was proof against the practical test of a man of letters becoming Lord Chancellor, which produced the sarcasm that Lord Brougham would know a little of everything if he knew a little law. When Samuel Warren brought out his "Ten Thousand a Year" his friends professed to be anxious to know who wrote the law in it. Yet Brougham was a good, although not a great, lawyer; and Warren, at least, made an efficient master in lunacy. Probably Sir Walter Scott, who never rose in the law beyond a subordinate post in the Court of Session, suffered through his fame as a writer. The County Court bench has hitherto been free from the suspicion of letters, but the author of "Tom Brown" may find a precedent in the case of the author of "Tom Jones." Fielding was an admirable police magistrate, and his novels gained from his experience in Court, while his law was probably not the worse for his having an imagination.—*Law Journal*.

It is doubtful whether a more delicate form of bribery will ever be devised than that which is alleged to have been resorted to in the trial of a will case in Baltimore. A new trial is sought on the ground that a beautiful daughter of the contestant was in the court room throughout the trial, carrying on a quiet flirtation with a susceptible young man in the jury box, whereby she so influenced him that he confessed his inability to acquiesce in a verdict against her father. It is further alleged that after the close of the trial the victorious father invited the young juryman to his home, where a *de jure* acquaintance was substituted for the *de facto* affair that the young people had gotten up in the court room.—*Central Law Journal*.

(16) *Gale v. Morris*, 29 N. J. (Eq.) 323. The same case fully noticed in 7 Cent. L. J. 314, decided in 1877.

(17) 3 C. E. Green, 104.

(18) 4 C. E. Green, 537.

(19) 19 How. 248.

(20) *Vide* Browne's Statute of Frauds, Appendix with a list of the States having this statute, and the statutes.

## LODGERS.

In a previous number of the *Justice of the Peace* we discussed at some length the precise meaning of the term "lodger" in the eye of the law. The conclusion there arrived at was that the principle as laid down by the Master of the Rolls in the case of *Bradley v. Baylis*, 45 J. P. 847, 848, might be accepted as finally settled law. It will be remembered that the learned Master of the Rolls there laid it down that where the owner of the house does not let the whole of the house, but resides in a part and retains the control over and right to use the passages and staircases to outer doors, giving the inmates the right of access, there the owner is the occupier of the house, and any inmate, whether he has or has not the exclusive use of the room, is a lodger.

An important case bearing on the subject has recently been decided in the Queen's Bench Division. The case alluded to is that of *Ness v. Stephenson*, 9 Q. B. D. 245. The following were the facts:—The appellant had levied a distress on the respondent's goods for rent due from the appellant's immediate tenant T. in respect of certain premises. The respondent occupied part of the premises, but no rent was due from her. A notice had been duly served on each of the appellants setting forth that the tenant had no right of property or beneficial interest in the goods so distrained, which were the respondent's property. The respondent occupied the whole of the premises at a yearly rent, except the ground floor, which was used and occupied by the tenant as a shop. There was no front door to the premises except the shop door. There was, however, a door from the house into the yard behind it, and from the yard into a back street. A door inside the building led from the shop into the part in the respondent's occupation. Neither the immediate tenant nor any servant of his lived on the ground floor, which was used as an auction room. No auction had been held there during the 15 or 18 months immediately preceding the distress, but dancing parties had occasionally been held there in the evening. With the exception of the articles in the shop, the furniture on the premises belonged to the respondent. The respondent had access to her part of the house by the back street at all times. At her request, subsequently to the commencement of the tenancy, T. allowed her to have a key of the shop and to use the shop door as a front entrance to her premises. The respondent used to clean the shop and act as caretaker. On the hearing of a summons taken out by the respondent against the appellant, it was contended that the respondent was not a lodger within the Lodgers' Goods Protection Act, 1871, but the justices held that she was a lodger, and ordered the appellants to return to her the goods they had distrained. This view of the law was confirmed subsequently by the Queen's Bench Division of the High Court. Field, J., thus deals with the legal inferences to be deduced from the circumstances of the case. "It is reasonably clear," says the learned judge, "that the mere right of exclusive occupation, although of a very considerable part of a dwelling-house, is not inconsistent with the existence of the relation of landlord and lodger, nor does the fact that the landlord does not either by himself or agent sleep or reside in the house prevent the existence of that relation, so also the nature or extent of the landlord's enjoyment of the portion of the house retained by him, or the separate and uncontrolled power of ingress and egress granted to the respondent by the use of a door other than the front or shop door, will not prevent the existence of the relation. Neither is it material that the landlord does not render any service to his tenant. All these are matters which may be taken into consideration for the purpose of answering the question to be decided, but they are all consistent with the retaining of such control and dominion over the house by the landlord as is usually retained by masters of houses let in lodgings, as distinguishable from landlords absolutely letting the tenements, and that retention of

control and dominion indicates the existence of the relation of landlord and lodger between himself and his tenants." These remarks will, on examination, be found to be in conformity with those of the Master of the Rolls in *Bradley v. Baylis*.—*Justice of the Peace*.

## THE CONVEYANCE OF RIGHTS OF ENTRY.

The case of *Jenkins v. Jones*, reported in the August number of the *Law Journal Reports*, decides a question of considerable interest in an obscure branch of the law. The case, as the names of the parties suggest, came from Wales, and, as coming thence, almost of course involved the title to land. A share in an estate called Hendra, in Cardigan, was in question. Jenkins, the plaintiff, was heir-at-law, and Jones, the defendant, was devisee of David Lloyd, the person ultimately entitled to the property under a settlement. At the determination, however, of the limitations, one David Evans, the person in possession of the estate, showed no disposition to give it up to either. Thereupon Mr. Jenkins brought an action of ejectment; and the only resource of Evans was to show that, at all events, Mr. Jenkins had no title because Lloyd had made a will, and devised the property to Jones. Mr. Jenkins appreciated the force of this objection, but contrived to overcome it by obtaining, for a ten pound note, a conveyance of Jones's title. The conveyance included a covenant for title and quiet enjoyment. Armed with Jones's title, Jenkins recovered judgment of possession; but was himself in turn ejected by Jones's trustees in bankruptcy, upon an adjudication which took place long before the conveyance to Jenkins. Thereupon Jenkins brought an action against Jones upon his covenant for title, claiming £500 damages, admitted to be the value of the estate. To this sum the Court of Appeal held that he was legally entitled.

It is not impossible that there may be lawyers who will, at first sight, be unable to see the difficulties of the case. The defendant had covenanted with the plaintiff that he had a good title to an estate. It turned out that there was an infirmity in his title; so that the plaintiff lost the estate, which was worth £500. The difficulty, however, arose from a statute of Henry VIII. (32 Hen. VIII, c. 9)—passed, probably, at a time when the confusion of titles produced by the Barons' Wars was reaping a crop of litigation. This statute, which is denominated "the Bill of Bracery and Buying of Titles," and is directed also against maintenance, enacts, by section 2, that "no person or persons, of what estate, degree, or condition soever he or they be, shall from henceforth bargain, buy or sell, or by any ways or means obtain, get, or have any pretended rights or titles, or take, promise, grant, or covenant to have any right or title of any person or persons in or to any manors, lands, tenements, or hereditaments (except such person or persons which shall so bargain, sell, give, grant, covenant, or promise the same, their ancestors, or they by whom he or they claim the same, have been in possession of the same or of the reversion or remainder thereof, or taken the rents or profits thereof, by the space of one whole year next before the said bargain, covenant, grant, or promise made), upon pain to forfeit the whole value of the lands." This enactment appears to have puzzled even such learned judges as the Master of the Rolls and Lords Justices Brett and Cotton. It would seem, on the face of it, to forbid the conveyance of any title except by a person who has been in possession of the property for a year. This would be an intelligible interpretation of the statute, although it gives no effect to the word "pretended." That word, it should be observed, is applied to the sale of a title, but not to the covenant for a title. Lord Justice Cotton justly observes that "there can be no reason why it should be penal to take a covenant for sale of rights and titles generally; but, in case of actual sale, penal to sell only when the right and title is pretended." But is any meaning to be attached to the word "pretended" at all, and does not its omission in the second branch of the section show that it was merely intended as a word of contempt, like "so-

called"? If the word has that meaning, its omission in the clause as to covenants is intelligible enough. The sale of so-called titles and also of covenants for title are forbidden. We do not know that this construction of the statute helps further to a decision of the case than the construction put upon it by the Court of Appeal, which is that the word "pretenced" is an emphatic word, and must be considered as applying both to the case of sale and of covenant. Either construction brings us face to face with the effect, if any, of 8 & 9 Vict., c. 106, s. 6, which enacts that "after the first day of October, one thousand eight hundred and forty-five, a contingent, an executory and a future interest, and a possibility coupled with an interest, in any tenements or hereditaments of any tenure, whether the object of the gift or limitation of such interest or possibility be or be not ascertained; also a right of entry, whether immediate or future, and whether vested or contingent, into or upon any tenements or hereditaments in England of any tenure, may be disposed of by deed." Does the enactment, allowing a right of entry to be disposed of by deed, conflict with the enactment that pretenced titles shall not be granted except by one in possession? The section quoted from the well-known statute is not, it must be borne in mind, the section which substitutes a grant for the lease and release previously in use among conveyancers. That section is s. 2, which runs: "After the 1st day of October, 1845, all corporeal tenements and hereditaments shall, as regards the conveyance of the immediate freehold thereof, be deemed to lie in grant as well as in livery." The distinction is material because it shows that section 6 is not a mere conveyancing section. The lease and release formerly in use was, as is well known, a contrivance by which the vendee was put in possession without resort to a feoffment. Section 6, on the other hand, so far as it relates to right of entry, deals with the possession, not of the vendee, but of the vendor. In virtue of section 2 a vendee out of possession, and without any contrivance having the effect of possession, may have title conveyed to him; and, by virtue of section 6, a vendor who is out of possession may dispose of his right of entry. Under the Act of Henry VIII. a vendor out of possession could not dispose of his right of entry. Therefore the two statutes are inconsistent to this extent at all events, and the later statute must prevail. Moreover, the Court of Appeal, adopting the view of Chief Justice Tindal in *Doe dem. Williams v. Evans*, 14 Law J. Rep. C. P. 287, declare that the common law forbade the conveyance of a right of entry; and that the statute was only intended to supplement the common law. The only question which remains is whether the Act of Henry VIII. has entirely disappeared in its collision with the Act of the Queen, or whether any portion of its provisions still remains.

The decision of this question depends on the meaning, if any, to be attached to the word "pretenced." If this word, to use an expression applied to definitions of negligence, may be considered merely vituperative, the whole of the older provision falls to the ground in its conflict with the new provision. In this view the old statute enacts that there must be possession for a year before a title can be conveyed; the new statute enacts that a right of entry may be conveyed—that is to say, that there need be no possession at all to support a valid conveyance. The Court of Appeal shrink from entirely disregarding a word like "pretenced" in a statute of long standing which has never been expressly repealed, and which has had a construction put upon it by several authorities. In "*Coke on Littleton*" (369) we are told: "For the better understanding of which statute you must observe that title or right may be pretenced in two manners of ways: first, when it is merely in pretence or supposition, and nothing in verity; secondly, when it is a good right or title in verity, and made pretenced by the act of the party; and both those are within the said statute." As Lord Justice Cotton observes, "what is said by Coke as to the second kind of pretenced title is not very clear;" but he goes on to cite the judgment of Chief Justice Tyndal in *Doe dem.*

*Williams v. Evans*, in which it is laid down that the statute is only in aid of the common law which was, "that he who was out of possession might not bargain, grant, or let his right or title." It is clear that the statute of Victoria repeals this rule of the common law; and, therefore, if the statute of Henry VIII. only affirms the common law, that statute is also repealed. Lord Justice Cotton, however, is unable to reject the word "pretenced" in the statute, or the meaning which Coke, however obscurely, attaches to it. So far as titles are "pretenced" the statute is still in force. But what is a "pretenced title?" In one sense Jones's title was pretenced, because he had no title. The title which he once had belonged to his trustee in bankruptcy at the time of the conveyance. But Lord Justice Cotton says: "In the present case there is no ground for saying that the title which the defendant purported to convey was fictitious; it was a title existing in fact;" by which we take the learned judge to mean that the title once existed in fact in the defendant. What is intended, we suppose, is that a title which has, and never had, any foundation whatever is a pretended title, and cannot be sold. It would be difficult to give an example of this kind of pretended title which is free from fraud in the person who sets it up. If an impostor or a forger were to pretend to convey a title on the strength of his crime, we suppose that the purchaser might recover his money on common law principles without resort to a statute. It therefore seems as if the area to which the statute still applies is very limited. A mere shred of the section is left. The important result of the decision is that a right of entry may be conveyed by a vendor out of possession, which will hold good if the title be sound, and that a covenant for title by a man having a fair claim to real estate may be made the subject of an action for damages if it turns out that there was a flaw in the title.—*Law Journal*.

#### LANDLORD'S ACTION FOR NUISANCE TO PREMISES.

While justices of the peace have a great deal to do with the removal of nuisances, and require to be well acquainted with the legal rights of owners, there are some aspects of these offences which are also more effectually dealt with by the High Court, and also by the county courts. The action brought by one owner or occupier against his neighbour, whether in the form of a claim for damages or for injunction, requires often to be borne in mind, especially where there is no summary procedure applicable. Some of these cases have recently occurred and are always of interest. Few people who live in towns can avoid being occasionally annoyed with some unneighbourly conduct, and it is always useful to consider what can be done and what cannot be done for and against the respective parties.

One of the rules applicable to the remedy for nuisance to premises is as to the right of the landlord as well as of the tenant to take some proceeding. The contract between landlord and tenant gives only a limited interest to the tenant, and after him comes the landlord, who has the reversionary interest, and both of these concurring parties may be damaged, and both may sue the offender. Sometimes only the tenant can sue because the injury done is so temporary that the landlord is not affected. And yet there are many doubtful cases where it is difficult to draw the line and say whether the landlord can or cannot sue in respect of his reversionary interest. In the well-known case of *Baxter v. Taylor*, 4 B. & Ad. 72, a stranger entered upon the field of a tenant with horses and carts, and put a quantity of stones there, alleging that he had a right to do so. When an action was brought by the landlord, the defence was, that there was no injury done to the landlord, and therefore he could not sue. The court held this to be a good defence. Tannton, J., said that acts of that sort could not operate as evidence of right against the plaintiff so long as the land was demised to tenants, because during that time he had no present remedy by which he could obtain redress for such an act. He could

not maintain an action of trespass in his name, because he was not in possession of the land: nor in an action on the case for injury to the reversion, because in point of fact there was no such permanent injury as would be necessarily prejudicial to it. As therefore he had no remedy by law for the wrongful acts done by the defendant, the act done by him or any other stranger would be no evidence of right as against the plaintiff, so long as the land was in possession of the lessee.

Where the injury is such as cannot be treated as of so trifling and evanescent a nature as in the last case, the remedy is still open to doubt in many cases owing to the defendant setting up some easement or other right to do the thing that is complained of. In such cases the plaintiff, whether he is landlord or tenant, or both together, often apply to the court for an injunction in order to stop the alleged grievance. Some of the grounds are often difficult to deal with, and they cause the court much difficulty. To go no further back than a few years, there was a case of *Mott v. Shoobred*, L. R. 20 Eq. 22, where the plaintiff was the landlord of two houses in a London street which had been let to tenants. The defendants were the owners of a large establishment as drapers, hosiers, upholsterers, and had recently built large warehouses immediately opposite the plaintiff's houses. The plaintiff complained that the defendants had a great number of carts and vans of great size, and these were kept constantly standing in the street, and practically converted the street into a stable yard, and so caused a grievous nuisance to the neighbours. The judge, Sir G. Jessel, said that if the tenants of the houses were complaining there could be no answer to the case, but he was of opinion that the injury was not of such a permanent nature as to entitle a reversioner to sue. The case was very different from one where injury was done to the lights, for if these were obstructed this was an injury to the reversionary right. So there was no remedy given to the landlord in that case.

While the landlord is often prevented from suing for such causes, the tenant is often more liberally treated, as appeared in the case of *Jones v. Chappel*, L. R. 20 Eq. 589. The plaintiff was the lessee of two houses in a London street let out to weekly tenants, and at the back of the premises there was a piece of vacant ground on which had been erected steam engines and stone saw mills, and the noise, steam, and smoke arising therefrom were a nuisance, and caused great damage to the plaintiff and his undertenants, and several of the tenants had left their houses owing to the nuisance. There was also obstruction to light caused by a travelling crane which passed close to the plaintiff's window. Here again Sir G. Jessel, M.R., held, as before, that the landlord could not sue in this case. The injury was a temporary nuisance, because the saws might be stopped and the steam engine might cease working at any moment. It was only an injury to the occupier, and the landlord could not bring an action because before his estate came into possession the nuisance may have ceased, or the person committing it may choose to make it cease at the moment the estate comes into possession. Another ground of action on the part of the landlord might be, that the existence of a nuisance of a temporary character would render it more difficult for him to let to a future tenant or to sell. But that ought not to be a good ground of action because the theoretical diminution of the value of the property could not be taken into account, inasmuch as the purchaser or the new occupier would have a right to stop the nuisance so that he ought not to give less on that account than he otherwise would. Here the houses were occupied only by weekly tenants, but there would be no difficulty in granting an injunction if an occupier, even though a weekly tenant, and his landlord were to join in a suit to restrain the nuisance. There was no decision against a weekly tenant having an injunction to stop a nuisance which is injurious to his health and comfort, and prevents his residing in the rooms or house he may occupy. The next case was one of *Sturgis v. Bridgman*, 11 Ch. D. 352, where the plaintiff was a London physician who

had purchased the lease of a house as his professional residence. Behind this house was a garden, and the plaintiff erected a consulting room at the end of the garden. The defendant was a confectioner in large business in an adjoining street whose garden and premises abutted on the party wall of the plaintiff's consulting room. There was in fact only a wall between the consulting room and the defendant's kitchen, and in this kitchen the defendant had large marble mortars set in brickwork and built up against the party wall. Two large wooden pestles were fixed in an upright position by horizontal bearers were fixed in the wall and were used for breaking up and pounding loaf sugar, and other hard substances, and for pounding meat. The plaintiff brought an action for an injunction to stop the noise and vibration caused by the working of these machines, as they seriously annoyed the plaintiff and materially interfered with the practice of his profession. He said that the noise prevented him from examining his patients by auscultation for diseases of the chest. He also found it impossible to engage with effect in any occupation which required thought and attention. The defendant said that he and his father before him had used such pestles and mortars, at least one of them, for more than sixty years, and the other had been used for twenty-six years. He therefore claimed a prescriptive right to continue to use the pestles and mortars, and relied on the Prescriptive Act, and further added that the plaintiff had brought the nuisance on himself by making his consulting room close to the defendant's wall, for up to that time there was only a garden there, and there was no nuisance.

This case was one of some difficulty, but the Master of the Rolls said it was a clear case for the plaintiff. The learned judge said that it was clear that until a recent period, namely, when the consulting room was built, there was no actionable nuisance to anybody. The nuisance began when the room was built, and before that date the plaintiff could not have brought any action at all. And if he could not have brought any action then the defendant could not have acquired any easement which would avail against the plaintiff. In order that the Prescription Act should apply there must be a mode of stopping the nuisance or suing in respect of it, and here the plaintiff could have done neither. Therefore neither on the theory of lost grant nor on the statute could the defendant claim to do what he had done. And the plaintiff therefore was entitled to have the mortars stopped and removed into another position.

This case was taken to the Court of Appeal, and was affirmed by that court, the judgment being delivered by Theisiger, L.J. The Court of Appeal laid down the law as follows: Consent or acquiescence of the owner of the servient tenement lies at the root of prescription, and of the fiction of a lost grant. A man cannot, therefore, as a general rule be said to consent to or to acquiesce in the acquisition by his neighbour of an easement through an enjoyment of which he has no knowledge, actual or constructive, or which he contests and endeavours to interrupt, or which he temporarily licenses. It was a mere extension of the same notion, or rather it was a principle into which by strict analysis it might be resolved, to hold that an enjoyment which a man cannot prevent raises no presumption of consent or acquiescence.

Though this case of *Sturgis v. Bridgman*, was decided, with considerable confidence by the two courts, yet the recent case of *Dalton v. Angus*, 6 App. C. 740, in the House of Lords, has probably made the decision doubtful. The doctrine that no easement can be acquired by one against another unless that other could have brought an action or interrupted the acquirement, has been shaken, and perhaps now no great reliance can be placed on the decision of *Sturgis v. Bridgman*. At least the later case will require to be considered when the same doctrine is again set up.

The very recent case of *Cooper v. Crabtree*, 19 Ch. Div. 198, has again brought out the objection that a mere reversioner cannot bring his action for a nuisance unless he can show a permanent injury to such reversion. In

that case the plaintiff was the owner in fee of a cottage which was let to tenants. The defendant was the owner of the adjoining land, and there was a small strip of land between them which each of them claimed. The defendant had on this narrow strip erected poles and a hoarding with the intention of obstructing the light in the upper window of the cottage, and so as to prevent the defendant acquiring any easement of light. This hoarding and the poles during the day and night made a constant rattling and creaking noise which was intolerable to the inmates of the cottage. The defendant had tried by means of wires and supports fixed on his own land to prevent or reduce this creaking noise, but had not succeeded. And at last the plaintiff, as the landlord, brought the present action in which he sued for the trespass of fixing the poles on the plaintiff's soil, and also for the noise thereby made. The defence was that the strip of land was not the plaintiff's soil, and the plaintiff being a mere reversioner was not damnified.

The judge, Fry, J., said that the action must fail because of the objection that the plaintiff was not the occupier of the cottage. This prevented his having any remedy.

These actions show that a landlord requires to be very careful in considering the nature of the nuisance in respect of which he seeks a remedy.—*Justice of the Peace.*

**THE LAND COMMISSION.**

The task of administering the Arrears Act has led to certain temporary changes in the official staff of the Land Commission. Mr. W. L. Micks, hitherto Assistant Secretary, a very able and courteous officer, is promoted to the responsible post of Comptroller of the Arrears Department. Mr. Glenny, Keeper of the Records, succeeds Mr. Micks as Assistant Secretary. Mr. Shaw takes charge of the Records, and Mr. Chamney becomes Examiner of Payments. Other office changes of a minor character also take place.—*Freeman's Journal.*

**TEXT-BOOK ADDENDA.**

[From the *Law Journal*.]

*Morgan's Chancery Acts*, 605.

*Daniell's Chancery Practice* (5th Edition), 37.

A petitioner in a winding up was ordered to give security for costs on the ground of his having subsequently filed a liquidation petition (*In re Curta Para Gold Mining Company*, 51 Law J. Rep. Chanc. 191).

*Levin on Trusts* (7th Edition), 785.

Where a married woman, tenant for life with a restraint upon anticipation, who had power to direct trustees to do repairs and charge the estate, employed a builder to do repairs, the trustees were ordered to raise the amount of his charges, and pay the builder (*Skinner v. Todd*, 51 Law J. Rep. Chanc. 198).

*Fisher on Mortgage* (3rd Edition), 640.

A solicitor's lien on a policy of assurance is not lost by want of notice to the assurance company against assignees who give notice (*West of England Bank v. Batchelor*, 51 Law J. Rep. Chanc. 199).

*Robson on Bankruptcy* (4th Edition), 603.

When once the trustee has executed a disclaimer of a lease, the lessor cannot appeal from the order giving leave to disclaim; he should apply, when the order is made, for a stay of proceedings pending an appeal (*Ex parte Sadler, in re Hawes*, 51 Law J. Rep. Chanc. 201)—C.A.

*Buckley on the Companies Acts* (3rd Edition), 163.

A contributory of a company, on being made bankrupt, becomes a stranger to the company, and no order can be made in the winding up on his application. His name is not removed from the list, but his interest passes to the trustee (*In re Cape Breton Company*, 51 Law J. Rep. Chanc. 202).

**BOOKS RECEIVED.**

*Analytical Tables of the Law of Real Property, drawn up chiefly from Stephen's Blackstone, with Notes.* By CHAS. JAMES TARRING, of the Inner Temple, Barrister-at-law, &c. London: Stevens and Haynes, Law Publishers, Bell-yard, Temple-bar. 1882.

*The Final Examination Guide to the Law of Probate and Divorce: containing a Digest of Final Examination Questions, with the Answers.* By ED. HENSLOW BEDFORD, Solicitor, &c. Second Edition. London: Butterworths, 7 Fleet-street, Law Publishers to the Queen's Most Excellent Majesty. Dublin: Hodges, Figgis & Co., Grafton-street. 1882.

**LAW STUDENTS' JOURNAL.**

**THE INCORPORATED LAW SOCIETY OF IRELAND.**

*Result of PROFESSOR HICKSON'S Examination in Law, held on the 30th of June and 1st of July, 1882.*

The following Apprentices have passed an Examination to the satisfaction of the Professor of Law in the subjects of the Lectures delivered in 1881 and 1882, pursuant to the 25th of the Rules of the Incorporated Law Society of October, 1866.

The names in each Division are arranged in Alphabetical order.

The gentlemen whose names appear in the First Division have answered very well. Those whose names appear in the Second Division have answered well. Those named in the Third Division are entitled to pass.

*First Division.*

Patrick Boyle  
Hutchinson Davidson  
John E. Dowman  
James Augustine Doyle  
William Frewin  
William Graham  
Henry J. Johns  
Frederick G. Kerin  
Albert J. Lee  
Francis J. Lewis  
Thomas J. Marron

Thomas J. M'Caughey  
Thomas G. Menary  
William Murphy  
Thomas Elliott Nelson  
George H. Quarry  
John P. Stott  
Frederick Waring  
Henry C. Weir  
J. F. Williams  
John F. Wray  
William H. Wright

*Second Division.*

Herbert V. Abraham  
Michael J. Bannin  
Henry R. Barry  
John F. Barry  
William F. Bennett  
Arthur G. Boyd  
William A. Breakey  
William F. Browne  
F. L. Brownrigg  
William M. Byrne  
William F. Crowley  
Patrick Davin  
Thomas Douglas  
David Doxey  
Daniel Dunford  
E. S. Finnigan  
Robert J. Fitzgerald  
Thomas Flynn  
W. B. Galway  
Martin J. Glynn  
Graham A. Goold  
James P. Hall  
Thomas Harbison  
Joseph A. Hardy  
Stephen Hastings  
William S. Hayes  
William Hearn  
George J. Hoey  
Thomas Huggard  
D. P. Humphreys  
Robert Hunter

William Jardine  
Henry J. Jordan  
Michael Kelleher  
Quintin Kennedy  
Thomas W. Kilpatrick  
Patrick Lavery  
John G. Lindsay  
Alexander A. Lockhart  
Philip C. P. MacDermot  
Francis Mayne  
William M'Arthur  
John M'Cormick  
J. B. M'Cutcheon  
John P. Murphy  
Charles E. O'Donnell  
J. Powell  
James J. Quin  
John K. Reid  
John Ringwood  
Henry Rooke  
James Ryan  
Joseph P. Ryan  
Michael Ryan  
John G. Scott  
Robert Seymour  
Francis Shields  
M. B. J. Smyth  
James L. Sullivan  
Ernest J. Thornton  
John J. Tweedy  
Thomas M'C. Windle

Third Division.

Patrik Bergin  
 William H. Burke  
 James F. Caraher  
 Thomas Y. Chambers  
 Robert H. Cunningham  
 H. J. Daly  
 William Deverell  
 John S. Farrell  
 William T. Flood  
 John J. Foley  
 F. W. Forrest  
 F. W. Forsythe  
 William J. Garty  
 C. Greene  
 John L. Hall  
 William H. Halpin  
 Edward C. Jameson

Myles J. Jordan  
 Henry R. Joynt  
 Charles Kirkpatrick  
 Edward N. Lindsay  
 J. T. Maxwell  
 John H. Menton  
 Allen H. Morgan  
 R. H. Morris  
 Marcus Purcell  
 John Augustine Quinn  
 Henry N. Raphael  
 Joseph A. Shortt  
 Frederick J. F. Smith  
 J. E. Strahan  
 Laurence C. Strange  
 William Tennant  
 William Wrafter

Eight other Apprentices, not having answered satisfactorily, cannot be allowed to pass the Examination; and the papers of twelve other gentlemen remain for consideration.

WILLIAM HICKSON, Professor.

25th August, 1882.

COURT PAPERS.

COURT OF BANKRUPTCY.

ADJUDICATIONS IN BANKRUPTCY.

The dates of Adjudications are first given, the Sittings follow in Italics.

Armstrong, William S., of Ballybofey and Stranorlar, in the county of Donegal, draper. August 11; *Tuesday, September 12, and Friday, September 29. Horae Wilson, solr.*

Killingley, William Hackett, of Belview, Bray, in the county of Wicklow, gentleman. August 10; *Tuesday, September 12, and Friday, September 29. Henry Charles Neilson, solr.*

Sloan, George, of Coal Island, in the county of Tyrone, fireclay goods manufacturer. August 11; *Tuesday, September 5, and Friday, September 22. H. C. Neilson, solr.*

THE NEW INDIAN JUDGE.—Mr. Jones Quain Pigot, Barrister-at-Law, who has been appointed to a Puisne Judgeship in the High Court of Calcutta, in the room of Mr. Justice White, resigned, was born about the year 1832, and was educated at Trinity College, Dublin, where he took his Bachelor's degree in 1855. He practised for some years as a special pleader below the Bar, and was called to the Bar by the Honourable Society of the Inner Temple in Michaelmas Term, 1864, when he joined the Home (now the South-Eastern) Circuit.

PROPOSED VISIT OF LORD COLERIDGE TO AMERICA.—Lord Coleridge has accepted an invitation from the New York Bar to visit that city. His Lordship proposes to fulfil his engagement next year.

PROBATES.—The stamp duty on probates of wills and letters of administration was in net in the last financial year £3,615,884 1s. 8d.

The prospectus is issued of the London Tramways Omnibus Company, Limited, of which 5,000 Shares of £10 each are offered to the public for subscription. It is proposed a first-class Service of Omnibuses between Finsbury Pavement and the Elephant and Castle, thus connecting the London Tramways with the North Metropolitan system, to the evident mutual advantage of both the Tramway Companies and the Omnibus Company; and, when we consider the enormous number of passengers who daily traverse the proposed route, the new enterprise appears to possess every chance of achieving a great success. We notice that the Company intends to use Omnibuses of a very much better type than those in ordinary use in the metropolis, and it is stated that other routes are under consideration in various parts of London. This enterprise has met with the warm approval of the Directors of the London Tramways Company, whose Chairman referred to it in most appreciative terms at the last General Meeting of that Company.

DUBLIN STOCK AND SHARE LIST.

DESCRIPTION OF STOCK	AUGUST					
	Sat. 19	Mon. 21	Tues. 22	Wed. 23	Thur. 24	Fr. 25
<b>*Paid Government.</b>						
— 3 p c Consols ..	—	99½	—	—	99½	—
— New 3 p c Stock ..	—	99	99	—	—	98½
<b>INDIA STOCK.</b>						
4 p c Oct. 1882 } Traffic at ..	—	—	103½	—	—	103½
3½ p c Jan. 1881 } Bk. of Irel. ..	—	—	—	—	—	—
<b>BANKS.</b>						
100 Bank of Ireland ..	—	316	—	316½	—	—
25 Hibernian Banking Co ..	—	—	36	—	—	—
20 London and County (Lit'd.) ..	—	—	—	—	—	—
15 London Joint Stock ..	—	46	—	—	45	—
20 London and Westminster, Ltd ..	—	—	—	—	—	—
10 Do. New ..	—	—	—	—	—	—
3½ Munster Bank (Limited) ..	—	—	—	7½	—	—
— Nat. Prov. of England, Lim. ..	—	—	—	—	—	—
10 National Bank (Limited) ..	—	23½	—	—	—	—
10 National of Liverpool (Lit'd.) ..	—	—	—	—	—	—
25 Provincial Bank ..	—	—	—	—	—	—
10 Do. New ..	—	—	—	—	—	—
10 Royal Bank ..	—	29½	29	—	—	—
25 Standard of B. S. A., Ltd ..	—	—	—	—	—	—
25 Union of Australia ..	—	—	64½	—	—	64½
15½ Union of London ..	—	—	46½	—	—	—
<b>Steam.</b>						
50 British & Irish ..	—	—	—	—	—	—
100 City of Dublin ..	—	—	—	—	101	—
<b>Miscellaneous.</b>						
10 Alliance & Dub. Cons.' Gas ..	—	16	—	16	—	—
8 Do. Do. New ..	—	—	—	—	—	—
4 Cannock & Co. Lim'k, Ltd ..	—	—	—	—	—	—
20 C. Dub. Brewery Co. (Lim.) ..	—	—	—	—	—	—
10 Dub. (S'th) City Market Co. ..	—	—	—	—	—	—
10 M'Kenzie & Sons (Lit'd.) ..	—	—	—	—	—	—
4 National Discount, Fra., Ltd ..	—	2	—	—	—	—
<b>Tramways.</b>						
10 Belfast Trams ..	—	—	—	—	—	—
10 Dublin United Tramways ..	—	—	—	10½	10½	—
10 N'th Metr. Tramway, Lond. ..	—	—	—	17½	—	—
<b>Railways.</b>						
50 Cork and Bandon ..	—	—	—	—	—	—
100 Great Northern (Ireland) ..	—	—	—	—	—	—
100 Gt. Southern and Western ..	—	116½	116½	116½	—	—
100 Midland Gt. Western ..	—	85½	—	—	—	—
100 Waterford & Cent. Ireland ..	—	—	—	—	—	—
50 Waterford and Limerick ..	—	—	—	—	—	28½
<b>Railway Preference.</b>						
100 Belfast & N'h'n Cos. 4 p c ..	—	100	—	—	—	—
100 D., W., & W., 6 per cent ..	—	—	148	—	—	—
100 Gt. South'n & West'n 4 p c ..	—	—	107½	—	—	107½
100 Mid. Great Western, 4 p c ..	—	—	—	—	—	—
100 Do., 4½ p c ..	—	—	—	—	—	—
100 Watfd. & Limerick, 4 p c ..	—	—	—	—	—	—
100 Do., 4½ p c ..	—	—	—	—	—	—
<b>Debenture Stocks.</b>						
— Belfast & N'h'n Cos. 4 p c ..	—	—	—	—	—	—
— Dublin & Wicklow 4 p c ..	—	—	—	—	—	—
— Gt. Northern (Ireland) 4 p c ..	—	110	—	—	—	—
— Do., 4½ p c ..	—	—	—	—	—	114
— Gt. North'n & West'n 4½ p c ..	—	—	—	—	—	—
— Do., 5 p c ..	—	127	—	—	—	—
— Gt. South'n & West'n 4 p c ..	—	—	110	110½	—	—
— Kilkenny Junction, A, 5 p c ..	—	—	—	—	—	—
— Midland Gt. West'n, 4 p c ..	—	105½	—	105½	—	—
— Do., 4½ p c ..	—	109	—	109½	—	109½
— Do., 4½ p c ..	—	113	—	—	—	—
— Waterfd. & Limerick 4 p c ..	—	—	—	—	—	—
— Do., 4½ p c ..	—	—	111½	—	—	—
<b>Miscellaneous Debent.</b>						
Ballast Office Deb., £92 6s 2d, 4 p c ..	—	—	—	92½	—	—
City Deb. of £92 6s 2d, 4 p c ..	—	—	—	—	—	92½
Dub. & Glas. S. P. Co. (1887) 5 p c ..	—	—	—	—	—	100
Do. (1889), 6 p c ..	—	—	—	—	—	100½
Dub. & Kingsdown 4 p c ..	—	—	—	—	—	—
Dublin Water Works, 5 p c ..	—	—	—	—	—	106½

\* Shares not fully paid up are given in Italics. † x d

Bank Rate—(1) Discount—4 per cent., 17th August, 1882  
 Of Deposit—1 per cent., 24th March, 1882.

Name Days—August 29th, and September 12th, 1882.  
 Account Days—August 30th, and September 13th, 1882.

Business commences at 1 30 p.m.

The Stock Exchange and Brokers' Offices will be closed on Saturdays during the month of July and August.

Holloway's Ointment and Pills will be found the best friend to persons afflicted with ulcerations, bad legs, sores, abscesses, fistulas, and other painful and complicated complaints. Printed and very plain directions for the application of the Ointment are wrapped round each pot. Holloway's alterative Pills should be taken throughout the progress of the cure, to maintain the blood in a state of perfect purity, and to prevent the health of the whole body being jeopardised by the local ailments; bad legs, old age's great grievances, are thus readily cured, without confining the patient to bed, or withdrawing from him or her the nutritious diet and generous support so imperatively demanded, when weakening diseases attack advanced years or constitutions evincing premature decrepitude.

**BIRTHS, MARRIAGES, AND DEATHS.**

**BIRTHS.**

**BOYD**—August 22, at Nelson-street, Dublin, the wife of Adolphus J. Boyd, Esq., barrister-at-law, of a daughter.

**MARRIAGES.**

**BELL and BEASLEY**—August 16, at St. Andrew's Church, Watford, Robert Alexander, youngest son of the late Thomas Bell, Esq., A.M., barrister-at-law, of Sandymount, Dublin, to Florence Isabel Alice, youngest daughter of the late Thomas J. Beasley, Esq., A.M., solicitor, of Summerhill, Dublin.

**MACDEVITT and POWER**—August 15, at the College Chapel, All Hallows, by the Most Rev. Doctor Logue, Lord Bishop of Elyhoe, assisted by the Very Rev. Doctor MacDevitt, brother of the bridegroom, and the Very Rev. Doctor O'Brien, Vice-President of the College, Edward O'Donnell MacDevitt, Esq., barrister-at-law, formerly H.M. Solicitor-General for Queensland, of Gardiner's-place, Dublin, to Katy, eldest daughter of Thomas Power, Clincarrig, Killorplin, County Kerry.

**SCULLY and ZIMMERMANN**—August 23, at St. Mary's, Booterstown, by the Very Rev. Monsignor J. Canon Farrell, P.P., assisted by Very Rev. A. F. Canon Scully, P.P., John Scully, Esq., D.L., barrister-at-law, second son of the late James Scully, J.P., of Shanballymore, County Tipperary, and Mountjoy-square, Dublin, to Agnes, only child of the late Alois Zimmermann, Esq., of Lucerne, Switzerland.

**DEATHS.**

**FETHERSTON H.**—August 18, at Innisfallen, Howth, Co. Dublin, Mary Adelaide, second daughter of Stephen Radcliffe Fetherston H., Esq., solicitor, aged 13 years.

**KERNS**—August 14, at his residence, Kenilworth-square, Rathgar, Joseph E. Kerns, Esq., solicitor.

**TANDY**—August 17, at Cliffe-terrace, Tramore, County Waterford, Charles Henry Tandy, Esq., Q.C., of Lower Leeson-street, Dublin, aged 62 years.

**FUNERAL REQUISITES OF EVERY DESCRIPTION.**

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DENZILLE-STREET.**

3:7

**PUBLIC NOTICES:**

**FORMS UNDER THE JUDICATURE ACT.**

Writ of Summons	.. .. .	1d.
Writ of Summons on Bill of Exchange	.. .. .	1d.
Writ of Summons—Rent	.. .. .	1d.
Writ of Service out of Jurisdiction	.. .. .	1d.
Memorandum of Appearance	.. .. .	1d.
Notice of Appearance	.. .. .	1d.
Notice to Limit Defence as required by Order XI.	9	1d.
Notice of Trial	.. .. .	1d.
Statement of Claim	.. .. .	1d.
Statement of Defence	.. .. .	1d.
Affidavit as to Document	.. .. .	1d.
Affidavit of Debt	.. .. .	1d.
Affidavit of Service of Writ of Summons	.. .. .	1d.
Affidavit Service, Rent or Overholding	.. .. .	1d.
Form C—Affidavits of Transmission of Writ of Summons and of Order to Substitute	.. .. .	2d.
Form C—Ejectment—Affidavit in conformity with General Order of 27th December, 1881	.. .. .	2d.
Order	.. .. .	1d.
JUDICATURE PAPER—Per Quire, 1s. 6d.; per Ream, 15s.		
BRIEFING PAPER—Per Quire, 9d.; per Ream, 12s. 6d.		

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61



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26

**PUBLIC NOTICES:**

**LAND LAW (IRELAND) ACT, 1882.**

In conformity with Rule 104, a Schedule of Agreements *ving Fair Rents* that were lodged in the Civil Bill Courts up to and including the 30th June, 1882, has been inserted in the *Dublin Gazette* of the 18th August, 1882. A copy of this Schedule will be sent to any person who applies for the same to the Secretary, Irish Land Commission, 24 Upper Merrion-street, Dublin.

(By Order),

WM. L. MICKS.

24 Upper Merrion-street, Dublin,  
25th August, 1882.

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**NOTICE.**

ARRIERS OF RENT (IRELAND) ACT, 1882.

**THE IRISH LAND COMMISSION**

have issued their *Edicts and Forms*, which can be obtained from Messrs. THOM & Co., Abbey-street, Dublin, for 6d.

Forms of application (B, C, E, F, R, S, and T, printed on the kind of paper prescribed by the Irish Land Commission) can be obtained from Messrs. THOM.

(By Order),

WM. L. MICKS.

Irish Land Commission,  
25th August, 1882.

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**D. W. CARROLL,**

44, LOWER SACKVILLE-STREET, DUBLIN,  
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**STOCK OF NOTE PAPERS AND ENVELOPES,**  
Direct in every instance from the Makers

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72

**LITERARY and GENERAL SALE ROOMS,**

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J. W. SULLIVAN, Auctioneer and Valuator (Assistant for 25 years to the late Mr. J. F. Jones),

Respectfully invites the attention of Solicitors, Executors, Trustees, Assignees, or others interested in the disposal of Libraries, Artistic Effects, Household Furniture, &c., to the unequalled facilities that he possesses for realising the full value of all property entrusted to his care. Law Libraries receive the special attention that produced such satisfactory results in the sales of the Libraries of Baron Greene, Baron Pigott, Judge Radcliffe, Sergeant Armstrong, and many others.

Valuations made for Probate or other purposes on moderate terms.

91

**STOKES BROTHERS,**

**PUBLIC ACCOUNTANTS AND AUDITORS,**  
LONDON and LANCASHIRE INSURANCE CHAMBERS,  
22, WESTMORELAND-STREET,  
DUBLIN.

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## LEGAL POSTINGS:

In the HIGH COURT OF JUSTICE in IRELAND,  
CHANCERY DIVISION.—LAND JUDGES.

In the Matter of the Estate of

JAMES FENTON, and ROBERT FENTON, and  
THOMAS WALTON GILLIBRAND, or some or one of them,  
Owners;Especially—THE NORTHERN BANKING COMPANY,  
Petitioners.

TO BE SOLD,

On TUESDAY, the 7th day of NOVEMBER, 1882,

At the hour of Twelve o'clock,

Before the Right Honourable Judge Ormsby,

At his Court, Land Judges' Court, Inns-quay, in the City of Dublin,  
The aforementioned Property, in Eight Lots, viz:—

LOT. No. 1.—Part of the Lands of Carricknab, containing 146a 3r 37p statute measure, or thereabouts, and Part of the Lands of Corbally, containing 21a 3r 30p statute measure, or thereabouts, both held in Fee-farm, situate in the Barony of Lecale and County of Down. Net annual rental, £29 0s. 7d. Tenement valuation, £188 6s.

LOT 2.—Part of the said Lands of Carricknab, containing 118a 0r 28p statute measure, or thereabouts, and part of the said Lands of Corbally, containing 84a 5r 30p statute measure, or thereabouts, both held in Fee-farm. Net annual rental, £105 5s. 10d. Tenement valuation, £180 5s.

LOT 3.—Part of the said Lands of Carricknab, containing 2a 0r 3p statute measure, or thereabouts, held in Fee-farm. Tenants' rents, 6d. Tenement valuation, £30.

LOT 4.—The Lands of Ringhaddy, and its sub-denomination of Castleland, with benefit of Rocks and Scars for wreck and seaweed belonging to same, Island Mere, Island Dunsay, Dunsay Rock, Green or Hay Island, and Island Darragh, containing in the whole 379a 1r 2p statute measure, or thereabouts, situate in the Barony of Dufferin and County of Down, held in Fee-farm. Net annual rental, £295 4s. 3d. Tenement valuation, £351.

LOT 5.—Part of the Lands of Ballow, containing 141a 1r 28p statute measure, or thereabouts, and the right enjoyed therewith or in respect thereof, to hold four Yearly Fairs, and a Weekly Market, and a Court of Pie Poudre during said Fairs and Mark ts, situate in the Barony of Dufferin and County of Down, held in Fee-simple. Net annual rent, £154 12s. 9d. Tenement valuation, £225.

LOT 6.—Part of the said Lands of Ballow, containing 23p statute measure, or thereabouts, held in Fee-simple. Net annual rent, 6d. Tenement valuation, £2 10s.

LOT 7.—Part of the said Lands of Ballow, containing 37p statute measure, or thereabouts, held in Fee-simple. Net annual rental, 1s. Tenement valuation, £5.

LOT 8.—The Manor, Town, and Lands of Ardmillan, together with the Rectorial Tithes of said Manor, and also all Courts Leet, Courts Baron, and Customs, and Fairs, and Markets, and comprising the Lands of Ballydrine, otherwise Ballindreen, otherwise Ballydrain, Ballyliddell, otherwise Ballyleghorn, Castle Esple, Tullynakill, together with Watson's Island, Lisbane, otherwise Ballylisbane, Island Roagh, Cross Island, Island Mahle, Bird and Gull Islands, Ringneal, otherwise Ballyranavale, including Rolly Island, Long Island, and Wood Island, Ballymartin, alias Ardmillan—all situate in the Barony of Castlereagh and County of Down, held under a Lease from the late Commissioners of Church Temporalities in Ireland, customarily renewable, as appears from the Orders abstracted in the Rental. Net annual rental, £782 14s. 10d. Tenement valuation, £2,506 15s.

Dated this 5th day of August, 1882.

JOHN MARTLEY, for Examiner.

N.B.—Proposals for the purchase by Private Contract will be received by the Solicitors having carriage of the Order for Sale on or before Saturday, the 28th day of October, 1882, and, if approved of, will be submitted to the Court for confirmation.

## DESCRIPTIVE PARTICULARS.

Lots 1, 2, and 3 are situate within about three miles of the Town of Downpatrick, which is the County Town, and is in railway communication with Belfast and Newcastle, the latter a fashionable watering place, about seven miles distant. Tullymurry Station, on the Newcastle Line, is distant about one mile from Corbally.

LOT 4—Ringhaddy—is situate on the Shore of Strangford Lough, about four miles north of the important Town of Killyleagh, and the remainder of the Lot consists of adjacent Islands in that Lough. There is an abundant supply of Sea Weed on the Shore.

Lots 5, 6, and 7—Ballow—are situate adjacent to the Village of Killinchy, and within about five miles of the Town of Saintfield, a Station on the Belfast and County Down Railway.

LOT 8—The Manor of Ardmillan—is situate on the Shore of Strangford Lough, within about two miles south of the Town of Comber, Station on the Belfast and County Down Railway.

For Rentals and further particulars, apply at the Registrar's Office, Land Judges, Inns-quay, Dublin; or to

OWEN MARCH, Esq., Solicitor, Rochdale;

R. F. BERRY, Esq., Solicitor, Market-place, Huddersfield; or to

HUGH WALLACE &amp; CO., Solicitors having carriage of the Order for Sale, 45 Victoria-street, Belfast; English-street, Downpatrick; and 30 North Great George's-street, Dublin.



# THE IRISH LAW TIMES AND SOLICITORS' JOURNAL.

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SATURDAY, SEPTEMBER 2, 1882.

No. 814

## PRIVILEGE OF WITNESSES AS TO CRIMINATING QUESTIONS.—I.

"HUMAN Life," observes Sir W. Erla, "is a progress between two sets of physical and moral agencies perpetually striving against each other, the one on the side of falsehood, malice, and destruction; the other on the side of truth, kindness, and health: and the law, if wisely made and properly administered, maintains truth and kindness and health, and so among other things helps persons of honest industry to obey each his own will." Law of Trades' Unions, Introd. Of this spirit of kindness characterising our jurisprudence one of the most striking exemplifications, wisely or not pervading every part of our system of judicial inquiry (Hare on Disc., 2nd ed., 100), is presented by the "general rule, established with great justice and tenderness by the law of England," as Lord Hardwicke pronounced in *Harrison v. Southcote* (2 Ves. Sen. 389), conferring the privilege on a witness, agreeably to the humane principle *nemo tenetur seipsum prodere*, to refuse, whether he be a party to the litigation or not, to answer either in a court of law or equity any question, put either *vivâ voce* or by way of written interrogatory, the answer to which would have a tendency to expose the witness, or the husband or wife of the witness, to a criminal charge, penalty, or forfeiture of any kind, reasonably likely to be sued for or preferred. This rule was very anciently engrafted in the common law, while equity carried its operation still further: Wigram on Disc., 81; Mitford on Pleading, 194; and it is recorded that even Chief Justice Jeffries was pleased to recognise it, when it told against the prisoner. It has been declared by the Law of Evidence Amendment Act, 1851 (14 & 15 Vic., c. 99, s. 3); while it has been engrafted upon the Constitutions of all the American States. But, obviously enough, it might be carried too far; wisely made, if not "properly administered" it might become dangerous to the last degree. "If you allowed a witness, merely on his own statement of his belief that an answer to a question would tend to criminate him, to refuse to answer, it would enable a friendly witness who wished to assist one of the parties to escape examination altogether, and to refuse to give his evidence. That must be an evil so great as far to overbear, as a question of public policy, the danger, if it is to be treated as a danger, of occasionally assisting to convict a man out of his own mouth." So said Sir G. Jessel, M.R., in the recent case of *Ex parte Reynolds*, before the Court of Appeal, which has attracted our notice by the report in last Saturday's issue of the *Justice of the Peace* (s.c., 28 Ch. Div. 294, 46 L. T. N. S. 506); and that decision in particular, taken in connexion with the recent case of *Temple v. The Commonwealth*, before the Supreme Court of Appeals of Virginia (5 Virg. L. J. 366), induces us to comment on this subject.

At one time, indeed, it was *vexata questio* whether a witness was bound to answer when the answer might subject him even to merely civil liabilities: 6 Cobbett's P. D. 167; but, it is now settled by the Legislature that he cannot refuse to answer in such case: 46 Geo. 3, c. 37; but, see *Venables v. Schweitzer*, L. R. 16 Eq. 76, 42 L. J. Ch. 386. In cases not covered by the statute, however, the general rule is to the effect already formulated: *R. v. Barber*, Str. 444; *Cates v. Hardacre*,

3 Taunt. 424; *Sir J. Friend's Case*, 4 St. Tr. 649, 16 Ves. jun. 242; *Titte v. Grevet*, 2 Lord Raym. 1088; *R. v. Oates*, 4 St. Tr. 9, 10; *R. v. Lord George Gordon*, 2 Doug. 593; *Hardy's Case*, 24 How. St. Tr. 755; *Parkhurst v. Lowten*, 2 Swans. 216; *R. v. Boyes*, 1 B. & S. 330; *R. v. Garbett*, 1 Den. 236; *R. v. All Saints, Worcester*, 6 M. & S. 200; *Parkhurst v. Lowten*, 2 Swans. 214; *Pye v. Butterfield*, 34 L. J. Q. B. 17; 1 Stark., Ev., 3rd ed., 191; 2 Tay., Ev., Part III., c. 3; Steph., Ev., Part III., Art. 120; 2 Hawk. c. 46; Mitford's Ch. Pl. 157; and as to compelling prisoners to furnish personal evidence of their own identity, see 14 Ir. L. T. & S. J. 466; and as to objecting on this ground to answer interrogatories, see Eiffe, Jud. Act, 382-4-5; Wilson, Jud. Act, 3rd ed., 294; Hart and Eiloart, Disc. 9. The privilege can be claimed only after the witness is sworn, and the objectionable question is put: *Boyle v. Wiseman*, 10 Ex. 647; but the witness may claim protection under this rule at any stage of the examination, and, when granted, he cannot be forced to proceed further in answer to such questions: 2 T. R. 268; *R. v. Garbett*, 2 C. & K. 474; and the privilege being his, and not that of the party (*R. v. Kinglake*, 11 Cox, 499; *Ingalls v. State*, 10 Central L. J. 317), the counsel in the case is not permitted to make the objection: *Thomas v. Newton*, M. & M. 48, n.; but, it seems the judge ought to caution the witness: 6 M. & S. 194; see 14 Ir. L. T. & S. J. 317. If having been cautioned that he is not compelled to answer the question, he answers at all, he is bound to disclose the whole of the transaction: *Dixon v. Vale*, 1 Carr. C. 278; *East v. Chapman*, 2 C. & P. 570, Mod. & M. C. 47; *Austin v. Poiner*, 1 Sim. 348; *State v. Freshour*, 1 Ky. L. J. 224; and if he voluntarily answers questions tending to criminate him on his examination in chief, he is bound to answer on cross-examination, however penal the consequence may be: 1 Stark. Ev., 3rd ed., 198; *State v. Harrington*, 5 Central L. J. 154; *Town v. Gaylord*, 28 Conn. 309; *State v. Freshour*, *ubi supra*.

As the latter question is one on which there has been some conflict of opinion, it may be well to refer more particularly to *Peuple v. Freshour*, as being the most recent decision (1880) on the subject, holding that, where an accomplice called as a witness by the State voluntarily testifies in chief on a particular subject, he may be cross-examined on that subject, even though he claims to be privileged from answering, on the ground that his answers may criminate him in other matters. The prisoner had testified that he was present at and a party to the alleged larceny, and was then asked by defendant's counsel, "state the general plan which you and the defendant entered into for stealing these cattle?" This he was excused from answering; and this was held error. M'Kinstry, J., said: "The witness should not have been permitted to separate the actual taking of the property from the plan of the parties to the taking. His recital of the alleged plan or agreement might have tended to show that the connexion of defendant with the actual taking was innocent—as that he supposed the cattle to be the property of the witness, and was employed by him—or might have led to such expansion of the narrative by witness as would leave him open to contradiction, or to impeachment by reason of the improba-

bilities of his story. Defendant was entitled to a full history of all that tended to explain the nature and degree of his complicity with the acts of the witness. The scheme of the parties and the acts following were part of one transaction; and when a witness voluntarily testifies in chief on a particular subject, he may be cross-examined on that subject, even though his answers may criminate or disgrace him: *Town v. Gaylord*, 28 Conn. 309. If the witness had been compelled to give his version of the agreement, it would have aided the jury in determining how far his testimony was credible. He had already testified that there were other parties to the criminal agreement, but it was neither his moral duty nor legal privilege to protect them at the expense of the defendant on trial. If when he had given his version of the plan he had stated there were no other parties to it than defendant and himself, he would have shown that this or his former statement was untrue; if he named other parties, they might have been called to disprove the accusation, and thus discredit the whole of his testimony. It is enough, however, to say that he had already admitted that the conspiracy contemplated and provided for the commission of the particular overt act charged in the indictment. If a witness discloses a part of a transaction with which he was criminally concerned, without claiming his privilege, he must disclose the whole: 10 Fost. 540."

#### THE DEATH OF MR. GEORGE PERRY.

DEEPLY lamented indeed is the untimely death of Mr. George Perry, which took place on the 29th ult., caused by injuries sustained in falling from an outside car. He was the eldest son of an old and highly respected solicitor, the late Mr. Jeremiah Perry, and, having been called to the bar in 1865, he had rapidly attained a very distinguished position, and enjoyed an extensive practice, especially in the Court of Bankruptcy. His genial, amiable, and courteous disposition had rendered him universally popular, and painful indeed has been the shock to the public and the profession occasioned by his sudden loss. He was but 38 years of age, and brilliant were the professional prospects that seemed to await him in the near future.

"Death! thou dread loosener of the dearest tie,  
Was there no aged or no sick one nigh;  
No languid wretch who longed, but longed in vain,  
For thy cold hand to cool his fiery pain?"

#### THE CONVEYANCING ACT, 1882.

The Conveyancing Act, 1882, which received the royal assent on the 10th of this month, is a curious illustration of the difficulties under which law reform labours in this country. It is almost entirely composed word for word of sections struck out of the Conveyancing and Law of Property Act, 1881—sections only struck out because there was some doubt whether some one would not object to them. It is a lucky combination of circumstances which does not always occur in such cases which has brought about their passing this year as a separate enactment. But it is unlucky that, as usual, each reform of the law adds to the complication and complexity of it; and, instead of having one Act, we have two, which we have to construe together to the best of our ability. In this case it is of less importance because the original Act is such a patchwork in itself. But the patchwork process is certainly not calculated to produce scientific legislation or to lighten the labours of the practitioner. However, such as it is, we must accept the Act with gratitude as a stepping-stone to better things. It really does confer some substantial advantages. The provision as to searches (section 2) will considerably lessen the trouble of the necessary, though generally formal, inquiries as to judgments, Crown debts, *lites pendentes*, and other

"common form" searches. The solicitor will now merely have to furnish the central office of the Supreme Court with particulars of the name and property in respect of which he wishes the searches to be made, and the trouble and responsibility of making the actual search will be thrown on the officer of the Court whose duty it is to make the searches. It is a pity that deeds enrolled under the Fines and Recoveries Acts and other Acts of Parliament have not been included in the section; but vested interests and settled practice have been too strong.

Section 3, which deals with the doctrine of notice, is an amplification and improvement of the corresponding provision put forward last year. It practically abolishes the absurd extension of the doctrine of notice which saddled the purchaser with the knowledge of any deed or matter affecting the property purchased which did, or might have, come to the knowledge of his solicitor in some transaction with regard to the property years before, and for some totally different purpose, or even for some other client. The notice to affect the purchaser now must be actual notice to him personally, or a limited constructive notice in cases where he has wilfully or negligently abstained from inquiry; while constructive notice, through his counsel or solicitor or agent, is restricted to cases in which one of them has actual notice in the transaction actually in question, or has wilfully or negligently abstained from inquiries which might lead to such notice. This section is very properly made retrospective, save in cases where an action is actually pending. It is of considerable legal importance, but of little practical value except as preventing the possibility of the recurrence of exceptional cases of exceptional hardship. Section 4 is probably of more practical importance. It provides that, on the assignment of leaseholds, when the lease has been made under a power, and a preliminary contract has been made, no inquiry should be made as to the contract. The section will obviate inquiry whether the contract was in accordance with the power. The title will commence with the lease itself, and there will be no power to go behind it. In dealing with leases taken up by builders on completion, in accordance with an agreement, considerable trouble and expense will be saved in many cases by this provision. The section (7) dealing with the acknowledgment of deeds by married women is a falling off in point of thoroughness from the same section as presented last year. In place of abolishing what, after all had been said on the subject, is, in any case an expensive formality, the present Act curtails the trouble and expense by allowing acknowledgments to be made before one commissioner for taking oaths instead of two. The section appears to be very carelessly drawn. Sub-section 3 provides that a deed acknowledged before or after the commencement of the Act shall not be impeached or impeachable by reason only that "the person by whom the acknowledgment is taken was interested or concerned, either as a party or as solicitor or clerk to the solicitor of one of the parties." Sub-section 5 says "The foregoing provisions of this section, including the repeal therein, apply only to the execution of deeds by married women after the commencement of this Act." There would appear to be a flat contradiction between the two sub-sections. The first says that deeds acknowledged before the Act shall not be impeached; the second says that the Act is not to apply to deeds executed before the Act. It is true sub-section 5 speaks of the execution of deeds, and sub-section 3 of the acknowledgment of deeds; but the substantive sub-section (i.) itself deals only with execution so far as acknowledgment is part of it. Therefore, this explanation will hardly suffice. The fact is, sub-section 5 has been left in from the original draft of the bill, and sub-section 3 inserted before instead of after it, and in forgetfulness of it.

Section 8 deals with powers of attorney, and amplifies and extends sections 46 and 47 of last year's Act. It provides that a power of attorney given for valuable consideration shall be irrevocable, when so expressed in the instrument; and that any act done under it

shall not be affected by the death, bankruptcy, &c., of the donor of the power; and a purchaser shall not be affected by notice of such death, &c. Section 9 contains similar provisions as to voluntary powers of attorney, which are expressed to be irrevocable for any fixed period not exceeding a year. The importance of this latter section in these days, when members of nearly every family are resident in the colonies, or India, or abroad, is very great. At present it is still necessary for a person taking a conveyance under power of attorney to ascertain that the principal was alive at the date of executing the conveyance. The Act of last year supplied a partial remedy by enabling the donor of the power to give a good discharge for the purchase money, and to give the purchaser an equitable title in case of the donor's death. But no purchaser could safely rely upon that, and the expense of obtaining evidence that at the date of execution of the conveyance the donor was alive, had to be incurred. Henceforth this difficulty can be obviated by granting the power for a term certain less than a year. Section 10 puts an end to executory limitations over on default or failure of issue of a tenant in fee simple, or for life, as soon as any one of the issue in question attains twenty-one. It puts, as regards barring entails and remainders over, executory limitations on the same footing as legal remainders. Sections 11 and 12 insert amendments in the Act of last year as to the provisions for converting long terms into freeholds (section 65), and the right of a mortgagor to make the mortgagor transfer instead of reconveying to himself (section 15). These provisions seem rather to be directed to satisfying the criticisms of one of our contemporaries by guarding against technically possible misconstructions of the Act, than for the purpose of effecting any substantial amendment in it, or meeting any objection which is likely to approve itself to a sound judicial mind. However, as riders they do no harm, and may possibly save some client the expense of an action instituted by the perverted ingenuity of his opponent's professional advisers. The whole Act is, indeed, open to the same kind of objection, that it rather remedies petty perversions of law and practice, than effects any substantial reform in conveyancing. Still even that is something to be thankful for.—*Law Journal*.

#### THE SETTLED LAND ACT.

Of the public Acts which were passed during last session one of the most important is, no doubt, the Settled Land Act. The measure is not, indeed, at all revolutionary, and we do not suppose that, however reasonable it may appear to most landowners, it will satisfy advanced land reformers. In point of fact, it incurred their displeasure in the House of Commons as being too timid. It does not abridge the power of tying up land for a considerable period of time. Men will dispose of their property very much as they did before it was passed. If the ideal state of things be, as we are often told, one in which acres will be transmitted as readily from hand to hand as sovereigns or banknotes, it is not very appreciably advanced by this measure. The Settled Land Act, the credit of which is due to Lord Cairns, proceeds upon the lines upon which Parliament has hitherto proceeded in dealing with the drawbacks and abuses incident to settlements. It does not try to make it impracticable or difficult to create limited ownership in land—a policy so much recommended in modern times. It does not combat the deep-seated general conviction as to their utility or necessity in a society such as ours. It is content to multiply the powers of limited owners; to diminish the restrictions upon their dealings with their property; to enable them to make the most of their estates without doing violence to the rights of remainder-men or other third parties. The Act is to a large extent merely a repetition of legislation from time to time undertaken with a view to improve the position of the tenant for life. Many even of the clauses in which the Legislature has apparently introduced innovations are

more important in semblance than in reality; well-drawn settlements prepared by modern conveyancers containing as a rule, not a few of the powers of which Parliament appears to make tenants for life a present. The main object of the Act is to enable them to sell, to lease, or otherwise dispose of their settled estates, either in part or as a whole, provided due provision be made to secure the purchase money on sale, and otherwise to protect the interests of remainder-men and others who are entitled under a settlement. The measure has, indeed, one or two features of boldness, and conspicuous among them is the fact that it is applicable to existing arrangements which come within the wide definition of settlements. But, on the whole, the object of the measure is not so much to innovate as to enable one to do more easily what is already done.

At present, if a sale take place under the machinery of the Settled Estates Act, 1877, there is a petition in Chancery, which, we need not say, implies expense and delay. Liberal though the provisions of that measure are in regard to authorising leases of the whole or part of settled estates, sales of settled estates or timber growing on them, and the laying out of streets and roads, they are trammelled by the necessity of resorting to the Court, and the fact that to so large an extent trustees must take steps to initiate and carry through the sale. Every one knows that trustees are slow to move, disinclined to accept responsibility, and adverse to use all their powers, and hence the reform was not so productive of good as was desired. Under this Act much of the old machinery is dispensed with. A power of sale becomes an incident of the estate of a limited owner just as if he were the owner in fee. This is, in truth, the keynote of the measure. The limited owner need not acquire—he will have a power of sale; and all the elaborate modes by which he has hitherto obtained permission to deal with acres nominally his—modes ironically termed “summary” by Acts of Parliament—will be swept away. Of course, checks are imposed upon this extensive power; and the point upon which most curiosity will be felt by the public is as to their probable efficacy. One condition is that the best price must be obtained for land which is sold. In exercising his powers under the Act, a tenant for life must have regard to the interest of all parties who are entitled under a settlement; and the law will cast upon him the duties and liabilities of a trustee for them. He must not sell, exchange, mortgage, or lease without giving notice to the trustees of the settlement; and if they are of opinion that the step is ill-advised and will be detrimental to the interests of those whom they are bound to protect, they may submit the matter in dispute to the Court, which will give directions as to it. An important check lies in the fact that money arising from a sale of land will not be paid to the tenant for life; it will be received by the trustees, who will either pay it into Court or invest it, at the option of the tenant for life. If it be invested in any of the securities mentioned in the Act, the income will, of course, be applied in the same manner as the rent of the land would have been expended; in other words, the estate, after conversion into money or securities, will be still treated as if it were land. The proceeds of a sale of part of an estate will often be used for the purpose of reclaiming or improving the rest; and a second leading object of the measure is to give large powers as to improvements without the express sanction of the will or deed from which the limited owner derives his title. A tenant for life may apply money acquired by sale in executing any one or more of a long list of works, which include all the improvements mentioned in the Improvement of Land Act of 1864. On the other hand, a tenant may think it more profitable to pay off incumbrances, buy up the land-tax or get rid of other charges, than to lay drains, or make roads, or erect cottages; and the Act provides for cases in which such preference is felt. Of course, extensive powers for granting building and mining leases which are to be found in every well-drawn settlement are given, care being taken that when capital is dealt with

the remainder-man shall not suffer or be defrauded. One important proviso, which we would fain hope would be occasionally useful, gives the owner of settled estates power to lay out his own money in improvements and to charge the amount for the benefit of his personal estate at his death. Many of the provisions are of a technical character and intelligible only to lawyers. But any one can understand the drift of such sections as those by which the Legislature has sought to nullify prohibitions or limitations to which owners of property may resort in the hope of evading or defeating the operation of the Act. The intention is, on the one hand, to take away or abridge no power of improvement which a tenant for life may now have; and, on the other hand, to permit no withdrawal or curtailment of the powers which the Legislature has thought should be an incident of ownership.

The measure is no stranger. In substantially the same form as it now is, it has been before Parliament for three sessions. It has been considered by select committees, and it is passed with the distinct approval of an ex-Lord Chancellor and the present Lord Chancellor. The Act does not come into effect until the end of the year, and by that time its provisions will be better understood, and it will be ascertained whether it does much more in fact than shortening settlements by dispensing with the insertion of powers which will exist apart from any express words. Hitherto the measure has met with much favour in all quarters. Its natural critics have been silent. The condition of English agriculture is such that any remedy, however unlikely it is that it will cure deep-seated disease, is caught at. One of the hopes of sanguine people is that somehow alterations in the form of settlements will forthwith enable farms to produce much more than they have hitherto done. The amount of truth in this theory will be determined by the experience of the next few years, and probably none will be more delighted to see it verified by results than those who have been disposed to attach more importance to a series of bad seasons and the influx of cheap foreign produce than to the state of the law of real property. In the meantime it is a drawback to the new Act that it leaves partially in force several measures dealing with the same subject-matter. This is no insignificant disadvantage. During the last few years Act after Act, of great magnitude, dealing with every nook and corner of real property law, has been passed. Some of these measures have been quickly repealed, leaving few traces behind them. Others have been in part removed from the Statute Book. Another class, though not repealed, is virtually obsolete; and others, again, are difficult to reconcile with measures still in force. Lawyers have scarcely had time to master one big Conveyancing Act when this session brings a goodly supplement in the shape of another Conveyancing Act. One is within the truth in saying that the whole law of real property has been during the last ten years cast into the crucible; and we cannot add that it has come forth completely purified and reduced to the simplest shape. In regard to measures affecting real property, or, in fact, any other highly intricate subject, Parliament might do well to pass a self-denying ordinance against enacting fragmentary statutes, not complete in themselves, but requiring reference to others. Such legislation breeds needless difficulties, and there is really no excuse for it.—*Times*.

#### MR. GRAY'S IMPRISONMENT.

There has been some misapprehension on certain points in regard to the sentence of Mr. Gray. Lay members of the commission, such as the Lord Mayor of Dublin, have no authority to interfere. Chief Justice Bovill, on one occasion at the Old Bailey, declined to allow an alderman even to put a question to a witness. There is no appeal from Mr. Justice Lawson's decision, as the Irish, like the English Judicature Act, does not allow criminal cases to be carried to the Court of Appeal. There is, however, a power in the Lord

Lieutenant to remit the sentence in exercising the mercy of the Crown. This is illustrated by the action of Sir Richard Cross, in 1875, in reference to a sentence of a year's imprisonment passed by Mr. Justice Denman on Oraddock for intimidating a fellow prisoner who had pleaded "Guilty." The Crown cannot release a prisoner committed for contempt of Court in aid of civil rights, which was Mr. Green's case; but committals for contempt of Court by interfering with the course of justice are criminal convictions, to which the prerogative applies. An inquiry into the conduct of the jury at the hotel cannot affect the justice of Mr. Gray's sentence. Apart from the fact that his main offence had nothing to do with the jury's conduct, Mr. Gray's double character puts him in a dilemma in respect of it. If the charge was untrue, Mr. Gray had no justification for publishing it; if it was true, Mr. Gray was the officer of the law responsible to the Court, if any such conduct were made possible. If he is guiltless as a journalist, he is guilty as high sheriff; and *vice versa*.

The disapprobation which certain public bodies in Ireland seem desirous of bestowing on the sentence passed by Mr. Justice Lawson on Mr. Gray, suggests certain legal considerations which are not unlikely to be forgotten. Although temperate criticism of the decision of a judge is legitimate, yet there is no doubt that anything amounting to a vote of censure by a public body on the decision of a Court is a very high misdemeanour. This is illustrated by the proceedings taken in 1788 against the Corporation of Yarmouth. A member of the corporation, called Watson, had instituted a prosecution for perjury which had failed, and in an action for malicious prosecution heavy damages were given against him. Thereupon the corporation, by a majority, passed a resolution that "Mr. Watson was actuated by motives of public justice, of preserving the rights of the corporation to their Admiralty jurisdiction, and of supporting the honour and credit of the chief magistrate, and therefore, they vote him the sum of £2,300." A motion was made in the Court of King's Bench for a criminal information against twenty members of the corporation on the ground that the resolution was a high contempt of the administration of public justice. The Court unanimously ordered a criminal information, Mr. Justice Buller saying that the tendency of the resolution was "to weaken the administration of justice, and, in consequence, to sap the foundation of the Constitution." In Watson's case the proceeding called in question was a civil action; and an attempt to reverse, by public vote, a decision of a judge in a criminal case is obviously still more open to the mischiefs against which the law is directed.—*Law Journal*.

It is to be hoped that Mr. Justice Lawson's sentences will not be interfered with, except for some very good cause indeed. It is often extremely unwise for a Government to meddle with the discretion either of a judge or a general, and every holding back of the hand of this severe but just judge will be a victory to the cause of lawlessness.—*Law Times*.

#### THE CASE OF FRANCIS HYNES.

The following is a copy of a memorial presented to his Excellency the Lord Lieutenant, on Saturday last, by the solicitor of Francis Hynes:—

"To his Excellency Earl Spencer, K.G., Lieutenant General and General Governor of Ireland.

"The humble memorial of John Frost, No. 6 Upper Ormond-quay, in the city of Dublin, solicitor, respectfully sheweth unto your Excellency—

"1. Your memorialist acted as solicitor for Francis Hynes on his trial for the murder of one John Douloughy, which trial took place at Green-street Court-house, in this city, before the Right Hon. Mr. Justice Lawson and a jury, on the 12th and 13th days of the present month of August. The said trial resulted in a verdict of guilty, whereupon the learned judge sentenced

the said Francis Hynes to be executed on the 11th September prox.

"2. Your memorialist humbly submits to your Excellency that the said sentence should not be carried into effect for the following reasons and on the following grounds:—

"3. The trial commenced on the 11th inst., and on the evening of that day the Court adjourned without finishing the cause. The jury was given into the charge of special bailiffs to whom was administered an oath in the words following, that is to say—'You shall not allow any person to have communication with the jury, save through the sheriff, with the permission of the Court, nor shall you allow the jury to separate or go at large until after the sitting of the Court, pursuant to adjournment to be made for that purpose.'

"4. The jury then retired to the Imperial Hotel in this city, accompanied by the special bailiffs. Your Excellency has been forwarded eleven affidavits sworn by eleven different persons, all residents or servants in the hotel, all having the amplest opportunity of observing the events of that night, and all having no interest whatever in the trial. Your memorialist submits to your Excellency's consideration the statements as to the occurrences in the hotel in these affidavits contained.

"5. Your memorialist further humbly submits to your Excellency that there is one most important point about which there is in effect no controversy whatever.

"6. It appears from the testimony of several of the persons who made affidavits that no attempt even was made to keep the jurors together in the hotel, and separate from and without communication with the rest of the world. That the said jurors were permitted to go where they pleased in the hotel, and converse with whomsoever they thought proper. That six of the jury entered the public billiard-room of the hotel, and remained there for over three hours, thus separating themselves from their fellows, who remained in another room of the hotel. That members of the outside public passed freely in and out of the billiard-room when the jurors were there. That one of the jurors was in close conversation with Major Wynne, a member of the outside public. That the said juror actually handicapped a game of billiards in which members of the outside public were playing. That the jurors in the billiard-room mixed freely with the outside public in the room.

"7. Your memorialist humbly submits that these facts are substantially placed beyond all controversy by the letter voluntarily addressed to the public Press by Major Hamilton, one of the jurors, a copy of which is herewith sent to your Excellency. In that letter Major Hamilton does not deny any allegation as to the jurors mixing with the outside public in the billiard-room. He, in fact, admits the substantial accuracy of this part of the case.

"8. In view of the foregoing facts your memorialist is advised that his client's remedy lies in this appeal to your Excellency, as the authority with whom rests the discretion of carrying out or not carrying out the sentence. Such was, your memorialist is advised, the decision in the case of *The Queen v. Michael Murphy*, Law Reports, 2nd Privy Council Appeals, pages 35 and 535. In that case a prisoner, having been tried and convicted of a capital felony by a Court of Oyer and Terminer in New South Wales, and sentence of death passed, an application was made to the Supreme Court of New South Wales for a rule of *venire de novo* on an affidavit which stated that one of the jury had informed the department that, pending the trial and before verdict, the jury having adjourned to an hotel had access to newspapers which contained a report of the trial as it proceeded, with comments thereon. The Supreme Court of New South Wales made a rule of *venire de novo*, Sir Alfred Stephen, the Chief Justice of New South Wales, in his judgment, declaring that the bailiffs swore to take charge of the jury, thereby became in fact officers of the Crown. The order of the New South Wales Court was subsequently reversed on technical grounds by the Judicial Committee of the Privy Council; but in delivering the judgment of the Privy Council

Sir William Erle said—'If irregularity occurs in the conduct of a trial not constituting a ground for treating the verdict as a nullity, the remedy to prevent a failure of justice is by application to the authority with whom rests the discretion either of executing the law or commuting the sentence. As there was, in the opinion of the Court below, irregularity in the respondent sufficient to vacate the judgment, their lordships have no doubt that, upon proper application on behalf of the respondent, which they recommend to be made, such weight will be given to these remarks as they may appear to deserve.' Your memorialist had not been able to obtain any official record of the fact, but he is informed, and verily believes, that in the above case of *The Queen v. Murphy* the sentence on the convict was at once commuted. There will, doubtless, be within your Excellency's reach ample means of informing yourself correctly on this point.

"9. It is humbly submitted to your Excellency that the separation of the jury in the present case, and their free commerce and communication with the outside public, was a miscarriage of justice and a violation of law. Your memorialist is advised that until near the commencement of the present century the law was that in no case of felony could the Court adjourn over the night. The object of that rule was, according to Lord Chief Justice Eyre, 'that it may be quite sure that justice will be done both to the Crown and to the prisoner; that there should be no opportunity of having intercourse with the jury; and that there may be no improper influence upon the minds of those who are in any manner to take a part in the decision of the cause' (Colbitt's 'State Trials,' vol. 25, page 180). The first case of a trial for felony in which the Court adjourned over the night was, your memorialist is advised, that of *The Queen v. Hardy* (24 'State Trials,' 414), and in that case, in order to prevent any possibility of the jury communicating with the outside public, beds were supplied for them in the court-house, and they spent the night there. The present practice of sending jurors to an inn arose, your memorialist is advised, for the first time in the case of *The Queen v. Tooke* ('State Trials,' vol. 25, page 13, *et seq.*). In that case the Lord Chief Baron Maconald justified the departure from the ancient form in the following words:—"But if you can preserve the spirit and are forced by physical necessity to make the form bend, it does not seem to me that the sacred principle of law is materially trenching upon if the jury continue inaccessible. . . . If the rule of law cannot be preserved consistent with physical necessity, it seems to me the Court is justified in deviating from the particular mode that has obtained, taking care that the jury do continue inaccessible.'

"10. The principle thus laid down by Chief Baron Maconald has, your memorialist submits, ever since been acted upon. When cases of felony run into a second day the jury has been sent to an inn for the night; but elaborate precautions have always been taken by those sworn by the court to take charge of the jury to secure that the jury shall be as inaccessible to the general public while in the inn as when shut up in the jury-box. 'The sacred principle of law, the inaccessibility of the jurors,' is jealously guarded by the oath administered to the bailiffs. It is submitted that in the present case the inaccessibility of the jury was not preserved, as the jury were allowed to go whither they pleased through the hotel—as half their number spent over three hours in the public billiard-room, mixing and conversing with the members of the general public who entered the room, and separated from their fellows. It is respectfully submitted to your Excellency that in this case the confinement of the jury in the hotel was ineffectual; that for all purposes of separation from the outside public they may as well have dispersed to their homes as remained in the hotel; that, in short, what Chief Baron Maconald called 'the sacred principle of law—the inaccessibility of the jury,' was not observed.

"11. Your Excellency's attention is respectfully drawn to the fact that there are many instances in which the prerogative of the Executive has been used

to prevent the execution of the sentence where irregularities have been proved to have occurred in the jury-room. Your Excellency's attention is respectfully directed to the very recent case of *Gerald Mainwaring*, who, at the summer assizes of Derby in the year 1879, was found guilty of wilful murder by a jury and sentenced to death. It afterwards transpired that six of the jury were for a verdict of manslaughter and six for a verdict of murder, and that a casting vote of the foreman of the jury had decided the matter. In that case, when Sir Richard Cross, the then Home Secretary, was questioned in the House of Commons as to whether, owing to the irregularities of the jury, the capital sentence would be carried out, Sir Richard Cross said, in reply, 'He should have thought it absolutely unnecessary to put such a question.' (Hansard, vol. 149, page 676.) Mainwaring's sentence was forthwith commuted.

"12. There have also been cases in which the judges, when they discovered that such irregularities occurred, declined to accept the verdict. For example, a case of the *Queen v. Gilligan* will be found reported in the Dublin papers of the 26th July, 1867. In that case a woman was tried for child murder at the Tullamore assizes, the presiding judge being the late Lord Chief Baron Pigott. It was discovered during the course of the case that at luncheon time eight of the jurors had left the box, and had gone into a refreshment room which was open to the public, but which was within the precincts of the court-house. The Lord Chief Baron commented strongly on the conduct of the jury, fined each of them, and discharged them from giving a verdict. The woman was subsequently tried on a second indictment, and found guilty of concealing the birth of her child.

"13. In the case of inferior Courts, the Queen's Bench has not hesitated to quash verdicts when the jury was guilty of irregularities or misconduct. Your Excellency's attention is respectfully directed to the case of the Ballyragget inquest, in which judgment was given by the Court of Queen's Bench in Ireland on the 6th day of March, 1882. In that case a verdict of wilful murder was returned by a coroner's jury, sitting at Ballyragget, in the county of Kilkenny, against two sub-inspectors of police, named Bouchier and O'Brien. The Attorney-General moved the Court of Queen's Bench to quash the inquisition on the ground that 'it had not been taken and held as by law required; that the jurors impanelled on the inquest had, during the proceedings, communed with persons who were not their fellow jurors, and with whom it was not lawful for them to communicate; that certain of the jurors absented themselves during the examination of some of the witnesses and did not hear the said witnesses examined; also, that after the evidence had concluded, and after the jury had been charged by the coroner, while they were deliberating on their verdict the coroner and his son—the latter not being a juror—remained shut up with the jury during their deliberation.' The communications of the jury with persons not jurors was, your memorialist is advised, one of the main reasons relied on by the Crown for quashing the inquisition. After full argument, the Court of Queen's Bench made an order quashing the inquisition, and the accused parties were thus freed from the verdict. A coroner's jury is in the nature of a grand jury: it decides nothing, but merely presents a case for inquiry. If the irregularity or misconduct of a coroner's jury is a matter so serious that their verdict is quashed and the persons accused by it allowed to go free, it is humbly submitted that the case is surely far stronger in the case of the irregularity or the misconduct of a jury, finally deciding on the life or death of a human being.

"Upon these grounds and for these reasons your memorialist humbly prays that the capital sentence on the said Francis Hynes should not, under the circumstances aforesaid, be carried into effect. And your memorialist will, as in duty bound, ever pray.

"JOHN FROST."

#### A LEGAL MENU.

One who partook of the Annual Dinner, 1882, of the Canterbury, N. Z., Law Society, held at "Coker's (Upon Lyttleton) Hotel," favours us with the following copy of the Menu:—

Respondent Oysters.

Soups.—A la Reine; "Tort" la.

Fish.—Frost fish, sauce d'Avocat; Filets au Turbot ("Feme Soles" and "Habeas Porpoises," not to be had).

Interlocutory Entries (for trial).—Cutlets à la Nolle Prosequi; Boudins de volaille (very Nisi-Tax-us); Suprême (Court) de veau; Filets de B(ri)sef (N.B. Foe'd well); Vol-au Veuve change avec costes; Pigeons plumés à la mode des Clients.

Relèves.—Turkey in Trover and Boeuf "attached"; Scarlett's Tongue; Wool-saque de Mouton, Q.C. Jelly; Hotch-pot Clauses.

Game.—Faisan rôti en damages spéciales (Hare-at-law and therefore unable to attend).

Entremets.—Diplomatic Padding; New Leases; Charlotte Russe; Macedon of Grapes; Appeals à la Parisienne; Neapolitan Cake; Champagne Biscuits; Scintille Juris; "Petty Bag" atelle; Ramequin of Cheese; Anchovies (Devil's own); as a "Digest."

Dessert Postea.

Wines.—Champagne (Veuve Clicquot) in several "LEADING CASES" to be served "without impeachment of waste;" White Burgundy (Meursault); Steinberg Cabinet et HOOK genus homme; Old Pale Sherry; Law re—"PORTS" and Château Margaux (vintage '70); Madeira; Liqueurs (Marchano and Noyau).

AS-SUM-SIT nearer the Chairman than others they will please request him to circulate the bottle freely and prevent "stoppage in transitu."

#### THE WORK OF THE SESSION.

Two hundred and eight public Bills have been introduced into the House of Commons during the present session, in addition to 40 "Provisional Order Bills," all of which latter passed. Of the rest 84 have become law, 86 were withdrawn by the members introducing them, and 70 became "dropped orders." Five Bills are placed on the notice-book of the House of Commons to take their chance of being dealt with after the House meets to consider Mr. Gladstone's Procedure resolutions in October. Omitting the Provisional Order Bills, 70 of the public Bills of the present session were Government measures, and of these 54 were placed on the Statute-book. Several of the Bills were more or less duplicates of others: thus there were two Ancient Monuments Bills, one of which became law; two Bankruptcy Bills; two Agricultural Tenants' Compensation Bills, both of which were dropped; two Bills dealing with Church Patronage, both of them withdrawn or dropped; two dealing with Copyright, the one in works of art, the other, which became law, in musical compositions; two Corn Returns Bills; three Fisheries (Ireland) Bills; three Infectious Diseases Notification Bills, two of them applying only to Ireland; three Bills for amending the Irish Land Act of 1881; three relating to corrupt practices at Parliamentary elections; two Poor Removal (Ireland) Bills; two relating to the licensing of passenger vessels in Scotland, one of which became law; two relating to patents for inventions; three Sunday Liquor Bills—one general, one for Ireland, and one for Cornwall; three relating to the Supreme Courts of Judicature, one of which, applying exclusively to Ireland, was passed; and two Tithe Rent Charge Bills. Three hundred and eight private Bills were introduced into Parliament this session, 102 of them originating in the House of Lords and 206 in the House of Commons. Four "Girvan and Portpatrick Railway" Bills were consolidated into one, while a "Metropolis Management, Building, and Floods Prevention Acts Amendment Bill" and a "Metropolitan Board of Works Bill" were consolidated into a "Metropolitan Board of Works (Various Powers) Bill" thus practically reducing the total to 303. Altogether 229 of these Bills passed into law:—Out of 136 railway Bills 92 became law; out of 21 water Bills 18 became law; out

of 14 gas Bills 13 became law; out of 22 tramway Bills 21 became law; out of 24 dock and harbour Bills 22 became law; out of 49 local improvement, drainage, bridge, &c., Bills 43 became law. Eight electric lighting Bills were introduced, but all were withdrawn; only one canal Bill was introduced, and it was withdrawn. Among miscellaneous Bills not included in the above enumeration may be mentioned the two Channel Tunnel Bills, which were withdrawn; the Liverpool Hydraulic Power Company's Bill, which never got beyond the House of Lords, into which it was introduced; the Limehouse Subway Bill and the Greenwich and Mill-wall Subway Bill, both of which became law; the Metropolitan Markets (Fish, &c.) Bill, the London Riverside Fishmarket Bill, and the South London Market Bill, all three of which also became law. Among other Bills which became law may be mentioned four private estates Bills, including those dealing with the estates of the Maharajah Duleep Singh and of the Earl of Aylesford; the Agricultural Company of Mauritius Bill, the City of Glasgow Bank (Liquidation) Bill, the City of London Courts Bill, Lecky and Smyth's Patent Bill, the Oyfarttha Works Bill, the Belfast Presbyterian College Bill, the King's College Bill, the Walton Vicarage Bill, and the Railway Management and Working Company's Bill. One bank Bill and two insurance companies' Bills also passed. Among "private" Bills of public interest which did not pass was the Paddington-park Bill. As showing the progress of legislation, it may be mentioned that 26 Bills originating in the Lords never reached the Commons. In the Lower Chamber only two suffered the indignity of being actually rejected, while 10 others were reported as "preamble not proved," and one was stopped for non-compliance with standing orders. Two private Bills received the Royal assent as early as April 28, the next batch being delayed till May 19.

#### IN RE THE SUEZ CANAL.

It is reported that the judicial council of the Suez Canal Company are of opinion that an action would lie under French law against the English Government, as shareholders in the company, for indemnities for all loss of business or damage done to the canal by the English expedition. In the first place, the evidence would probably be that the English expedition had caused the business to be much greater than if those travelling on the canal had been left to the mercy of the Egyptian rebels. The expedition is not likely to cause damage to the canal itself, but to preserve it from injury. It is extremely improbable that the English Government would submit to the jurisdiction of the French Courts, and it is just as unlikely that the English general will be deterred by the terrible threat of French legal proceedings from using the canal in any way which he may think expedient for furthering the objects of the expedition.—*Law Times*.

#### LAKE LEMAN IN A LAW COURT.

Almost from time immemorial the bed of the Rhone at Geneva has been more or less obstructed by weirs, breakwaters, and other buildings, and almost from time immemorial the shores of the lake, especially about the Ouchy and between Ouchy and Vevey, have been subject to periodical inundations, greatly to the loss of lacustrine proprietors. These inundations always occur in the height of summer, when the lake is swollen by the melting of Alpine snows. When a very warm summer follows on a very hard winter the water rises so high that the roads skirting the upper lake are often rendered impassable, and fields and vineyards submerged at the most promising time of the year. The Vaudois contend that these annual floodings, whereby the canton sustains so much damage, are caused by obstructions in the bed of the river at Geneva. The Genevans, on the other hand, say that these obstructions are so slight that they cannot appreciably affect the overflow from the lake, and that the true source of the mischief is to be found in the Upper Rhone, which, owing to the recent

corrections (straightenings) of its channels and the channels of its tributaries, pours its waters into the lake much more rapidly than of yore. It is further urged that the filling up of the lake in the neighbourhood of Villeneuve and Bonveret by *débris* brought down by the Rhone tends to raise its level, and, therefore, to cause flooding. In answer to these arguments the Vaudois point out that, so far back as the 17th century, the Government of Berne made formal complaint to the Government of Geneva in respect of the check on the overflow of the Rhone occasioned by artificial obstructions at Geneva; and in 1721 a conference was held on the subject between Landvogt von Steiger, on behalf of Berne, and representatives of the neighbouring Republic, when the latter formally recognised their responsibility, and promised to remove the principal obstruction—a promise, however, which it is alleged they failed to fulfil. Since that time the complaint has been frequently repeated, and about four years ago Vaud sued Geneva for heavy damages before the Federal tribunal. Geneva disputed the competence of the tribunal in the matter, but the tribunal having affirmed its competence, and its decision on all points of constitutional law being final, the Canton has been obliged to join issue in the case on its merits. Meanwhile, without, however, admitting any responsibility, the municipality of Geneva have removed the obstruction most complained about—a weir placed across the river below Ronssan's Island, in connexion with a hydraulic machine for pumping water to a reservoir in the Bois de la Batie for service in the town. But this, of course, does not settle the question of compensation for past damages—if the weir has been the cause of any—and so the suit goes on. So many technical points being involved, the Federal Government have appointed two foreign experts, M. de Maere, a Belgian engineer, and Herr Bazin, a German engineer, to consider the matter in dispute and prepare a report thereon. The Federal tribunal have appointed two independent experts to assist in the inquiry, and these gentlemen are accompanied in their excursions in the valley of the Upper Rhone, and their inspection of the glaciers which feed Lake Lemman, by other experts specially representing the Cantons of Geneva and Vaud. Now the Rhone and the Aletsch glaciers, as well as the river and the lake, are to be brought into court, an ingenious scientific gentleman having lately started the theory that ice, not water, is the cause of all the trouble. He attempts to prove this by pointing out that, while the glaciers which drain into the Rhone possess a superficies of 1,000 square kilometres, the superficies of Lake Lemman is only 575 square kilometres. Hence the movements of the Rhone and Aletsch glaciers must have a far more powerful influence on the summer height of the lake than any conceivable number of obstructions in the bed of the river at Geneva. For 30 or 40 years past, moreover, the glaciers all over Switzerland have been receding, and, as there is no proof that less snow has fallen than usual, it follows that the summer wasting of the glaciers—the whole of which finds its way into the lake—has been above the average of the previous 30 or 40 years—a period during which the glaciers were either advancing or stationary. This theory, though far from being generally accepted, has attracted considerable attention; and it is evident that, among other things, the Federal tribunal will have to deliver judgment on the effect of the waxing and waning of glaciers in the swelling and shrinking of Swiss lakes. A few days ago the experts concerned in the investigation held a meeting in the Alabama room of the Geneva Hôtel de Ville, when the various matters in dispute were passed under review. From a scientific and technical point of view the discussion is said to have been highly interesting and instructive. There is no reason to suppose, however, that the deliberations of the conference will tend to simplify the case, or hasten its conclusion. The suit has now lasted nearly five years; it may, as likely as not, go on for five years longer; and whatever light it is destined to throw on glacial and lacustrine phenomena, it can hardly fail to involve a heavy expenditure of public money.

## EVIDENCE OF REPUTATION IN LIBEL.

The net result of the case of *Scott v. Sampson*, reported in the July number of the *Law Journal Reports*, may be stated to be that general evidence of bad reputation may be given against the plaintiff in an action of libel upon an allegation raising that issue in the defendant's pleadings; but instances tending to depreciate the plaintiff's reputation cannot be given. The subject requires first to be stripped of ambiguities in the use of words. The word "character" had best be discarded from it, as it may mean disposition (its original sense) or reputation (the secondary sense which has been given to it). Mr. Justice Cave uses the word "disposition" in place of "character" in its original meaning. It is not a very good word, but is, perhaps, the best available, as free from ambiguity. The ambiguity in the word "character" corresponds, to some extent, to an ambiguity in the law. The law allows an action for damages to character. Does it mean reputation, whether deserved or not? or, does it mean only a deserved reputation? In other words, can a man recover damages on the strength of a character which the world gives him, but which he is far from deserving in fact? A tradesman, for example, may have the highest reputation for honesty, and yet he may habitually sand his sugar. Suppose some one accuses him of dusting his pepper; can the accuser, in order to reduce the damages, prove that the plaintiff sanded his sugar by the evidence of an errand-boy, who was his sole accomplice and who has not hitherto breathed the fact? It was practically part of the contention of the defendant in *Scott v. Sampson* that the supposed accuser could bring such evidence. The present case decides, among other things, that he cannot. It is the reputation in fact, not the reputation in merit, which the law protects. A reputation no doubt may be valuable although it is not deserved; but it is not easy to reconcile the view taken with the theory upon which a defendant is allowed to justify a libel. It is usually said that truth is a good answer to an action of libel, because the truth cannot injure the plaintiff's character. If so, the "character" protected by the law is the real, not the public, character. Either, then, the reason usually given for allowing justification is not the true reason, or the character protected by law is the real character. Strict logic cannot help out of the difficulty. The law of libel is framed largely on expediency. Few actions of libel could be tried within reasonable limits if the plaintiff's whole history were in issue. On the other hand, where a distinct accusation is made and the accusation is distinctly challenged, the law undertakes to try the question. To that extent it recognises the merits of a character; but, for the rest, is content with reputation.

The libel in the case of *Scott v. Sampson* may be briefly stated. The defendant, who was the publisher of a newspaper, wrote of the plaintiff, who was the editor of a dramatic periodical, that the plaintiff had attempted to extort money from the executor of a dead actress by threatening to publish statements defamatory of her. The plaintiff was called as a witness by the defendant, and it was proposed to ask him whether he had written a dramatic notice to spite an actor, whether he had apologised for libels, whether he had not taken proceedings for libel against another newspaper and discontinued them, and whether he had not on that occasion made statements inconsistent with his present statements? A witness was tendered to prove what the plaintiff had said, at the Police Court, in the proceedings referred to; and, finally, a witness was tendered to prove that he had heard, before the publication of the libel in question, rumours of the same charge against the plaintiff. The evidence tendered and rejected by the Chief Justice at the trial resolved itself into instances showing a bad disposition on the plaintiff's part, and into rumours of his possessing such a disposition. The authorities on the subject are more numerous than valuable. Almost all the cases cited were *Nisi Prius* cases, which would not be technically binding on a Court in *Banc* unless they were uniform.

This was far from the case. As to the admissibility of rumours, Lord Ellenborough appears to have admitted them in one case, and Mr. Justice Cresswell, with the approval of Mr. Justice Wightman, in another. On the other hand, Lord Tenterden and Mr. Justice Coltman rejected them in two other cases, and Sir James Mansfield once admitted them against his own judgment. This was at *Nisi Prius*. As to the Courts in *Banc*, the Court of Exchequer rejected the evidence in *Jones v. Stevens*, 11 *Prius* 285; and the Irish Court of Exchequer, in *Bell v. Parke*, 11 *Ir. O. L. R.* 413, did the same, with the dissent of Chief Baron Pigot. Mr. Justice Cave was, therefore, justified in saying that the weight of authority was against this class of evidence. As to the admissibility of specific instances, the authority seems to have been all against it. Mr. Justice Cave, in a most careful judgment, comes to the conclusion that the evidence tendered was not admissible, although evidence of the general reputation of the plaintiff would have been admissible. Mr. Justice Mathew, in a briefer judgment, agrees with Mr. Justice Cave on both points.

The admissibility of general evidence of bad reputation was not raised in the case, but it can hardly be doubted that such evidence is admissible. Suppose, for example, the defendant was sued for saying that the plaintiff had stolen B.'s watch. The defendant, according to the present ruling, could not prove that the plaintiff had stolen C.'s, D.'s, and E.'s watches, neither could he give evidence that there were rumours that B.'s watch had also fallen a victim to him. But he might call a detective from Scotland Yard to say that the plaintiff was a notorious pickpocket; otherwise the whole case would be tried as if the plaintiff were a blameless gentleman against whom an unfounded charge had been brought, when, as a matter of fact, the defendant had only made a mistake in the name of one of the plaintiff's victims. The question of pleading, also incidentally raised in the case, was not so clear. Mr. Justice Cave gives as an additional ground for rejecting the evidence tendered, the fact that it was not pleaded. He does not say that, in his opinion, general worthlessness of character ought to be pleaded, but he appears to imply as much. Mr. Justice Mathew, while admitting that, according to the best authorities, it was not necessary to plead such a general allegation of bad reputation under the old system, says that it is necessary to do so under the new. We are unable to follow this reasoning. Under the old system nothing was pleaded which did not go to the root of the action. As a general rule a plea to damages was inadmissible; but where special damage formed part of the cause of action, as in some slanders, the special damage might be traversed. The new system requires by Order XIX., Rule 4, that the pleadings shall contain the "material facts on which the party relies." Must not this mean material to the cause of action, as under the old system? If not, to what are the facts to be material? Any other test would lead to great uncertainties. Suppose, for instance, the defendant knew that the plaintiff's chief witness was a person not to be believed on his oath. Is he to plead that fact, or not be allowed to call the half-dozen witnesses he has to show that the plaintiff's witness cannot be believed? The opinion expressed on this head seems to adopt too broad a test of materiality. The decision on the main point is based on expediency, and the capacity of law Courts to investigate cases, rather than on a consistent theory of the law of libel; but it seems to be sound all the same.—*Law Journal*.

**CRIMINAL LUNATICS.**—In the year ending the 29th of September the number charged and detained as criminal lunatics in England and Wales was 827—656 males and 216 females.

**THE GAME LAWS.**—Last year there were 11,117 offences against the game laws and 10,107 in the previous year.

**COST OF CORONERS' INQUESTS.**—In 1881 the cost of inquests, including salaries, &c., was £88,229 11s. 8d., being an average of 23 4s. 2d. each.



IN THE MATTER OF AN UMBRELLA.

At the Nenagh Petty Sessions on Saturday last—before Messrs. Henry H. Pee (in the chair), Randal Howe, Charles E. Tuthill, and J. F. Lynch, R.M.—an ex-draper's assistant named John Anthony Maher, formerly of Rosorea, late of Nenagh, and latest of Rathdowney, was brought up in custody, and charged by Sub-constable Jeremiah Regan with having stolen a silk umbrella from the house of Dr. Morton, Summer Hill, Nenagh, on Saturday, the 12th ult.

Mr. William Reeves, S.I., R.I.C., conducted the prosecution. The prisoner conducted his own defence with all the assurance of an experienced practitioner, yet with an assumption of injured innocence as if he were a martyr to circumstances.

The principal evidence for the prosecution was that of Nanny Ralph, a servant in the employment of Dr. Morton, who deposed that on the day in question the prisoner called at her master's house, and asked if Dr. Morton was in. She replied that he was not, and asked if Mrs. Morton would do. She then went to inform her mistress of the presence of the man in the hall who wanted to see the doctor. On her (witness's) return to the hall she missed from the stand a silk umbrella, the property of a young lady then on a visit to Mrs. Morton. The umbrella now produced was the one taken from the hall.

CHAIRMAN—Is that the man (prisoner) whom you saw in the hall?

WITNESS—It is, sir.

PRISONER (assuming a tragic air)—

Lady, look me straight in the face,  
I am but the wreck of a Royal race;  
Of fortune and friends they have bereft,  
I'm John Anthony Maher—that's all that's now left.

Evidence was then given by a Mrs. Margaret Minogue to the effect that on the evening in question the prisoner came to her husband's house and asked her to buy the umbrella for two shillings, but she said she did not want to buy it. He then said that he was very hungry, that he wanted his dinner, and then she might have "the article" for a shilling. She gave him the shilling "through compassion, your worships," though she had not known him before, neither did she ask him his name.

The CHAIRMAN expressed his surprise, that a person of such apparent respectability as Mrs. Minogue should have purchased a valuable umbrella from such a man as the prisoner, for a shilling; to which the witness replied that she had no "forecast" in the matter.

PRISONER (who was "all impatience" to make a speech)—Well, gentlemen of the court, what do you charge me with? I went into a house to see a doctor. I was hungry, I was thirsty—nay, gentlemen, I was delirious; in fact 'twas our old familiar friend, John Jameson, that did it all—through me—I was but the "instrument." If I took the umbrella—and we will assume, for argument sake, that I *did*—I was quite unconscious of having done so; that, gentlemen, is "the head and front of my offending." Now, what's the odds? I had £100 a-year as assistant in a draper's shop in Rathdowney; let me go back to my business there again, and you shall never see me more.

CHAIRMAN—There is no doubt but that you stole this umbrella, and the magistrates—

PRISONER—Pardon me, your worship, for one moment, while I address the Court. There was often ten times as much taken from me, and I never said a word about it. I lost a chain and locket that stood me 19s. 4d.—first cost, gentlemen, I assure you—and I have never seen or heard of them since. I wish I were dead. And who knows if life be not what we poor mortals call death, and death the thing that we call life? There's a problem for you, gentlemen—which of you shall solve it?

CHAIRMAN—Why did you leave Rathdowney?

PRISONER—"Thereby hangs a tale"—

One evening in May, as the setting sun shone,  
The shop it was there, and John Anthony gone.

CHAIRMAN—I have here your photograph—

PRISONER (with well-feigned surprise)—What! mine, your worship? Did you say my photo, my second self?

CHAIRMAN—Yes; and it is an accurate likeness. Look at it (and his worship confronted the prisoner with his photo, at foot of which was the date—"17-1-75"—and the prisoner's name in full).

PRISONER (looking at the picture with all the air of an art critic)—Well, your worship, I cannot compliment the artist, for it is not a speaking likeness. However, now, your worship, look on that picture, then on this (striking his breast), for you "ne'er may look upon the like again."

CHAIRMAN—I have also here a record of many previous convictions against you, and by which I find that you were four times convicted of larceny, seven times for vagrancy—

PRISONER—Oh! Mother of Moses!

CHAIRMAN—Once as a public nuisance—

PRISONER—(with a smirk)—You don't say so.

CHAIRMAN—And twenty-one times for drunkenness—

PRISONER—Shall I ever get drunk again?

CHAIRMAN—In fact, we have such a good character of you here on this record, that we shall give you the benefit of it, and send you for trial on this charge to the next quarter sessions.

PRISONER—Now I should like to know who was the recording angel that went to the trouble of jotting down all my peccadilloes. What about all the good things I have ever done?

Oh! if all my meritorious deeds were stated,  
They'd more than balance all you have enumerated.

CHAIRMAN—That will do now, you may go down.

PRISONER—

"Down to the dust from which I've sprung,  
Unwept, unhonoured, and unsung."

CHAIRMAN—Constable, remove the prisoner. The case is now returned for trial to the next Quarter Sessions.

PRISONER—Holy Moses! Then, John Anthony, my boy, after all your journeying to and fro, and after all the pleasant days and nights you've spent, I fear me very much that your sun has at length set, and set for ever.

The prisoner was then removed in custody.

REGISTRATION OF SOCIETIES MAKING GAIN.

Of late years nearly every enterprise which requires considerable capital has been undertaken by a number of persons acting as an association, whereby each contributes a share resembling the manner in which ordinary trading companies are established and carry on business. Whether any such association requires to be registered is one of the first matters to be attended to, and sometimes it has also been deemed prudent to consider whether the association offends against the Lotteries Acts, which justices have to administer, and when they do so they treat with no small severity the offenders. There are many societies which have objects more or less gainful, and more or less philanthropic, and it is necessary to be able to steer clear of all such enactments on one side and on the other; and of late there have been one or two decisions of great authority as to the border line separating one class of undertaking from another. And most people are now interested in societies and associations which come under one or other category.

The Lotteries Acts are directed chiefly against the grosser kinds of practices approaching very near to nuisances, whereby people expect to make their fortunes without the trouble of working for them. But the Companies Act, 1862, deals with another view of the subject, and is designed to regulate the relations between the shareholders and the directors of all kinds of enterprises which are in other respects perfectly lawful if not necessary in ordinary life. When companies became so common, the legislature found it necessary to construct a code whereby those who contribute their money, and those who have the expending of it, may more easily control and bring each other to account. And one of the prominent features is to secure creditors

against being too easily imposed on by those who carry on these companies, and often maintain a large business connexion. The Act 25 and 26 Vict., c. 89, s. 4, enacts that no company or partnership consisting of more than 20 persons shall be formed after the date of the Act for the purpose of carrying on any business that has for its object the acquisition of gain by the company or by the individual members thereof unless it is registered as a company. There are one or two modifications as to banking and mining companies which do not require a special notice. There are various provisions for enforcing this registration and securing to shareholders and creditors the means of knowing who are the shareholders, and what is the extent of capital under their control. It is thus of great importance to know where a company or association of 20 persons are exempt from the requirements imposed as to registration and its incidents.

Many societies have bye-laws and regulations which give at certain stages powers and advantages which are ascertained by a ballot or what are called drawings. In the case of *Wallingford v. The Mutual Society*, L. R. 5 App. Cas. 685, the appellant Wallingford was an iron-monger at Andover, and became a member of the Mutual Society which was formed for the purpose of accumulating capital by monthly subscriptions of its members who were, by drawings in rotation, entitled to receive advances which were to be repaid by certain instalments. The appellant had received four advances at different times amounting to about £11,300, and the Society was to receive from him during a period of years certain instalments, the total of which would be £12,700. He had failed to pay some of the instalments, and was sued by the Society. It is unnecessary to describe the proceedings, but one of the defences he set up was that this transaction was void on account of the Lottery Acts. The Lord Chancellor, however, said that one of those Acts plainly, on the face of it, had reference to gambling transactions only, and this was in no sense a gambling transaction. The other statute had reference to persons who kept lottery offices and sold lottery tickets. None of these Lottery Acts, however, touched the case. And Lord Hatherley observed that if this were held to be a lottery then nearly every one of the building societies and similar societies might be found to fall within the same enactments. This transaction, however, had nothing in common with lotteries.

Another case raised the important point as to whether the Society was one for making gain and so requiring registration under the Companies Acts. In *Smith v. Anderson*, 15 Ch. D. 241, a number of persons had united in a deed or indenture which recited that divers persons had subscribed to purchase certain scheduled securities such as shares of telegraph companies of the nominal value of £420,000, and that 4,200 certificates were to be issued to subscribers, each in respect of £90 subscribed. The holder was to be entitled to £100 of the nominal capital, and ultimately to a share of the profits. When divested of technicalities, this association was intended to do very much the same thing as a stock and share-broker does who invests other people's money, and who changes the stocks by selling and buying. The prospectus held out that there would be a profit of about £30 on every £90 if the person investing should be lucky enough to be a drawer, or if the certificates should be bought by tender. This was to be over and above an ordinary average profit of 26 lbs. 4s. 4d. per cent.

The plaintiff was a certificate holder, and brought an action against the surviving trustees, alleging the sale and purchase of shares and stocks, and that a drawing had taken place, and that the association was formed for the acquisition of gain without being registered, and the drawings were illegal, and claiming to have the trusts administered and the property divided between the certificate holders. The Master of the Rolls first decided the question raised, and after reviewing all the details, came to the conclusion that the association were carrying on a business for the acquisition of gain. His view was very clear and strong, and he had previously decided a somewhat similar case in the same way as he

decided this. He said it appeared to him that this was as plain a company or association formed for the transaction of business for the purpose of gain as could be fairly put into words, if you change names and nothing more. If you changed three names and called the certificate holders shareholders, the trustees directors, and the association a company, it was then an ordinary Joint Stock Company. It was not only within the words of the Act, but it was the very thing which the Companies Act intended to prohibit for various reasons, and this was a mere device, and a very transparent one, to endeavour to escape from the plain meaning of the enactment. He said that the deed had no doubt been drawn with great care by eminent counsel; but they often deceived themselves into thinking that they had evaded an Act of Parliament successfully, whereas their handiwork when once it came to be examined in a court of justice satisfied no judicial authority.

The case was carried to the Court of Appeal, and that court, consisting of James, L.J., Brett, L.J., and Cotton, L.J., reversed this very confident judgment of the Master of the Rolls, and thereby overthrew other cases decided by the same authority in the same way. The valuable judgment of the Court of Appeal explained the difference between the kind of floating association and the ordinary definite body called a company. An association of this kind was rather a succession of partnerships than a partnership for any one period. The trustees were not in the position of directors. A trustee is the real owner of property subject only to his accounting to some third parties; while a director is a paid servant of a definite body and never enters into a contract for himself, but merely acts for and binds his principal, that is to say, the company. The learned judges therefore said that here there was nothing to be done which comes within the ordinary meaning of business, and nothing more than what is done by trustees under a marriage settlement who have large properties vested in them, and who have very extensive powers of disposing and exchanging investments, selling them and re-investing the money according to their discretion and judgment, with or without the consent of their *cestuis que trust*. There was here over £400,000 worth of stock of a particular kind, which was merely a good investment spread over a great number of things in order that the one might equalise the other. Some investments would pay large dividends and some would pay small dividends. But the object was a legitimate object, namely, to have an investment of their money under such circumstances, that the certificate holders might look for a high dividend with a very considerable security for the capital which they were investing. It was nothing like an attempt to evade any Act of Parliament.

Such was the opinion of all the three judges of the Court of Appeal. They held that the only business of the certificate holders was to receive and consider a report from their trustees; to appoint auditors and elect new trustees; and it was impossible to say that these certificate holders were by themselves carrying on any business any more than any persons who were *cestuis que trust* under any well drawn trust deed. There was thus no registration required of such an association of persons however numerous.

A very recent case of *Wigfield v. Potter*, J. P., p. 485, has arisen, involving a very similar point, and which has been disposed of according to the view taken in the Court of Appeal. In this last case a society of more than 20 persons called the Moorgate Freehold Society had been constituted by a deed. Their object was to purchase an estate of 28 acres and divide it according to certain rules. There were 21 subscribers and 48 shares or allotments. They had a committee of two trustees, a president, and five members, who were paid for their services such a sum as the members in their annual meeting should determine. The allotments were offered by auction to the members who had executed the deed, each allotment being offered at a certain proportion of the first cost of the estate, and

the highest bidder above that sum acquired it, and it was conveyed to him. The plaintiff was sued by the trustees for two of the monthly instalments which he had contracted to pay, and also for some fines incident thereto, and he set up the defence that this was an illegal society because it was intended for purposes of gain, and was not registered under the Companies Act, 1862. The county court judge held that it was not a company for gain, and an appeal was brought to the Queen's Bench Division. The court, on the authority of the previous case, held that this judgment was right, and so that there was no need of registration.

These cases recognise a point of law which is of great interest and importance, especially as regards building and freehold societies, and that it was of some difficulty is evident from the circumstance that the learned Master of the Rolls had several times gone wrong about it.—*Justice of the Peace.*

#### IMITATIONS OF COFFEE.

Under an Act of Parliament of 1872 the excise duty on chicory and other vegetable matter applicable to the uses of chicory or coffee grown in the United Kingdom has hitherto been 12s. 1d. per cwt. And under an Act of 1876 the Customs' duty has been 18s. 8d. per cwt. on the raw or kiln dried, and 2d. per pound on the roasted or ground. These regulations are now superseded, except so far as chicory is concerned, in the new Customs and Inland Revenue Act of this year by the grant of an excise duty of a halfpenny on every quarter of a pound on imitations of coffee and on mixtures of such articles with coffee. This duty is to be collected by means of an adhesive stamp, to be fixed to the packets containing the articles. The sale of these imitations of coffee and "coffee mixtures" is made subject to certain conditions, one of which is that the packets are to contain an exact number of quarters of a pound; and another is that a label shall be affixed to each packet, denoting the proper names of the substances of which the mixture is composed. The penalty for infringing the Act is forfeiture of the article and a fine of £30. However, it is declared that the Act is not to affect any statute relating to the adulteration of food. One section of the Act abolishes the restrictions and penalties imposed on the manufacturers of and dealers in these articles by the statutes of 1803 and 1860.

#### TEXT-BOOK ADDENDA.

[From the *Law Journal*.]

*Daniell's Chancery Practice (5th Edition)*, 1,190.  
*Macpherson on Infants*, 103.

Taking out a summons to appoint a guardian in the matter of an infant and payment of money into Court to her account are both sufficient to constitute her a ward of Court (*De Pereda v. De Mancha*, 51 Law J. Rep. Chanc. 204).

*Daniell's Chancery Practice (6th Edition)*, 752.

The award of an arbitrator in an action in the Chancery Division need not be made a rule of Court before any order can be made to enforce it (*Jones v. Wedgewood*, 51 Law J. Rep. Chanc. 206).

*Bankruptcy Rules, 143 and 144.*  
*Robson on Bankruptcy (4th Edition)*, 93.

Where an appeal from the County Court was not entered in the Bankruptcy Court until the last day allowed, and notice of the appeal was not sent off to the country registrar till the day following: held that the notice had not been sent "forthwith," and, therefore, the appeal was out of time (*In re Southam, ex parte Lamb*, 51 Law J. Rep. Chanc. 207)—C.A.

*Daniell's Chancery Practice (6th Edition)*, 9.

Where it is desired to appeal from the order of a judge in chambers on a summons not afterwards adjourned into

Court, the appellant should serve notice of motion to discharge the order, so as to enable the judge to give his reasons for his decision (*Holloway v. Cheston*, 51 Law J. Rep. Chanc. 208).

*Order LVIII., Rule 16.*

*Lely and Foulkes on the Judicature Acts (3rd Edition)*, 263.

An application to stay execution for the purpose of appealing to the House of Lords in respect of the amount of damages refused (*Webber v. London, Brighton, and South Coast Railway Company*, 51 Law J. Rep. Q. B., 154)—C.A.

#### APPOINTMENTS AND PROMOTIONS.

NOTE BENE.—Information intended for publication under the above heading should reach us not later than Friday morning in each week, as publication is otherwise delayed.

Mr. John F. Small, solicitor, has been elected to the office of Coroner for the southern districts of County Armagh, vacated by Mr. Garland, J.P., on his appointment as an Assistant Land Commissioner.

Mr. W. J. Keatley has been appointed Clerk of Petty Sessions for the Lifford district.

#### BOOKS RECEIVED.

*The Prevention of Crime (Ireland) Act, 1882, with a Review of the policy, bearing, and scope of the Act; Notes on the several Sections, chiefly those on the subject of Summary Procedure for Offences against the Act.* By HENRY HUMPHREYS. Dublin: Hodges, Figgis, and Co., Grafton-street, Publishers to the University. 1882.

*Arrears of Rent (Ireland) Act, 1882, (45 & 46 Vict., Cap. 47.) with Rules and Forms.* Dublin: John Falconer. 1882.

*The Bills of Exchange Act, 1882. With Explanatory Notes and an Index.* By M. D. CHALMERS, Esq., M.A., of the Inner Temple, Barrister-at-Law, Draftsman of the Bill, &c. London: Waterlow & Sons, Limited, London Wall, E.C. 1882.

*The Nineteenth Century.* A Monthly Review, Edited by JAMES KNOWLES. No. 67. September, 1882. London: C. Kegan Paul & Co.

*Contemporary Review.* September, 1882. London: Strahan and Co., Limited, Paternoster-row.

*Cassell's History of England from the earliest period to the present time.* With about 2,000 Illustrations. Part 84. London, Paris, and New York: Cassell, Petter, and Galpin.

#### COURT PAPERS.

##### COURT OF BANKRUPTCY.

##### ADJUDICATIONS IN BANKRUPTCY.

*The dates of Adjudications are first given, the Sittings follow in Italics.*

Crosby, John E., of Sir John Rogerson's-quay, in the city of Dublin, trading as "John E. Crosby and Son," and of Eden-quay, in the said city, trading as "Lanigan and Co." rope manufacturer. August 18; *Tuesday, September 12, and Friday, September 29.* *M. Larkin & Co., solrs.*

Dixon, William, of Clones, in the county of Monaghan, publican, grocer, and general shopkeeper. August 11; *Tuesday, September 12, and Friday, September 29.* *Henry T. Stewart, solr.*

Palmer, Maurice Studdert, of Tralee, in the county of Kerry, gentleman. August 11; *Tuesday, September 12, and Friday, September 29.* *R. Davoren, solr.*

Regan, Honora, of Ballinadriscan, in the county of Cork, widow, farmer. August 18; *Friday, September 15, and Tuesday, October 3.* *Richard Davoren, solr.*

DUBLIN STOCK AND SHARE LIST.

DESCRIPTION OF STOCK	AUGUST					Sep.
	Sat. 26	Mon. 28	Tues. 29	Wed. 30	Thur. 31	Fri. 1
<b>*Paid Government.</b>						
— 3 p c Consols ..	—	99	—	99½	—	99 ½
— New 3 p c Stock ..	—	98½	99½	99	99	98½
<b>INDIA STOCK.</b>						
4 p c Oct. 1882 } Traffic at ..	—	103½	103½	103½	103½	103½
3½ p c Jan. 1881 } Bk. of Irel. ..	—	—	—	—	—	—
<b>Banks.</b>						
100 Bank of Ireland ..	—	—	316½	—	319	—
25 <i>Hibernian Banking Co.</i> ..	—	—	36	—	35½	35½
20 <i>London and County (Ld' &amp;.)</i> ..	—	—	—	—	—	—
15 <i>London Joint Stock</i> ..	—	—	—	—	—	45
20 <i>London and W'minster, W'd</i> ..	—	68½	—	—	69½	—
10 <i>Do. New</i> ..	—	—	—	61	—	—
3½ <i>Monster Bank (Limited)</i> ..	—	—	7	—	—	—
— <i>Nat. Prov. of England, Lim.</i> ..	—	—	—	—	—	—
10 <i>National Bank (Limited)</i> ..	—	23½	—	23½	23½	23½
10 <i>National of Liverpool (Ld' &amp;.)</i> ..	—	—	14½	14½	—	—
25 <i>Provincial Bank</i> ..	—	27½	—	—	—	—
10 <i>Do. New</i> ..	—	—	—	—	—	—
10 <i>Royal Bank</i> ..	—	—	29	—	—	—
<b>Steam.</b>						
50 <i>British &amp; Irish</i> ..	—	—	—	—	—	—
100 <i>City of Dublin</i> ..	—	—	—	—	—	—
50 <i>Dublin &amp; Liverpool Steam Ship Building Co.</i> ..	—	—	—	—	—	58½
<b>Miscellaneous.</b>						
10 <i>Alliance &amp; Dub. Cons. G'ns</i> ..	—	—	—	—	—	16½
8 <i>Do. New</i> ..	—	—	—	—	—	—
7½ <i>Dub. Drapery Whouse, Ltd.</i> ..	—	—	—	—	—	6½
25 <i>Ir. C. S. Building Society</i> ..	—	—	37½	—	—	—
9-4-7 <i>Patriotic Assurance</i> ..	—	—	—	10½	—	—
<b>Tramways.</b>						
10 <i>Belfast Trams</i> ..	—	—	—	—	—	—
10 <i>Dublin United Tramways</i> ..	—	—	10½	—	10½	—
10 <i>L'pl Un'd Tram &amp; Bus L'd</i> ..	—	12½	x d	—	—	—
10 <i>N'th Metr. Tramway, Lond.</i> ..	—	—	—	—	—	—
<b>Railways.</b>						
50 <i>Belfast and Northern Cos.</i> ..	—	—	—	—	5½	—
50 <i>Cork and Bandon</i> ..	—	—	—	—	—	—
100 <i>Great Northern (Ireland)</i> ..	—	—	—	—	—	—
100 <i>Gt. Southern and Western</i> ..	—	115½	116	116½	116½	117
100 <i>Midland Gt. Western</i> ..	—	—	—	86½	87½	—
100 <i>Waterford &amp; Cent. Ireland</i> ..	—	—	—	—	—	—
50 <i>Waterford and Limerick</i> ..	—	—	—	—	—	—
<b>Railway Preference.</b>						
100 <i>Belfast &amp; Nth'n Cos. 4 p c</i> ..	—	—	—	—	—	—
100 <i>D., W., &amp; W., 6 per cent</i> ..	—	—	—	—	—	—
100 <i>Gt. South'n &amp; West'n 4 p c</i> ..	—	107½	—	—	—	—
100 <i>Mid. Great Western, 4 p c</i> ..	—	—	—	—	—	—
100 <i>Do. 4½ p c</i> ..	—	—	—	—	—	—
100 <i>Waterf. &amp; Limerick, 4 p c</i> ..	—	—	—	—	—	—
<b>Leased at Fixed Rentals.</b>						
100 <i>Londonderry &amp; Enniskillen</i> ..	—	—	125	—	—	—
100 <i>Do., Pref. 5 p c</i> ..	—	—	125	—	—	—
<b>Debenture Stocks.</b>						
— <i>Belfast &amp; Nth'n Cos. 4 p c</i> ..	—	105½	—	105½	—	—
— <i>Dublin &amp; Wicklow 4 p c</i> ..	—	—	—	105½	—	—
— <i>Gt. Northern (Ireland) 4 p c</i> ..	—	—	—	—	—	—
— <i>Do., 4½ p c</i> ..	—	—	—	—	—	—
— <i>Gt. North'n &amp; West'n 4½ p c</i> ..	—	—	—	—	—	—
— <i>Do. 5 p c</i> ..	—	—	—	—	—	—
— <i>Gt. South'n &amp; West'n. 4 p c</i> ..	—	110½	110½	—	—	—
— <i>Kilkenny Junction, A. 5 p c</i> ..	—	—	—	—	—	—
— <i>Midland Gt. West'n. 4 p c</i> ..	—	—	105½	—	—	105½
— <i>Do., 4½ p c</i> ..	—	109½	—	—	—	—
— <i>L'derry &amp; Enniskillen 5 p c</i> ..	—	—	125	—	—	—
— <i>Waterford &amp; Central 5 p c</i> ..	—	—	107	—	—	—
<b>Miscellaneous Debent.</b>						
— <i>Ballast Office Deb., 2½ 6s 3d, 4 p c</i> ..	—	—	—	—	—	—
— <i>City Deb. of 2½ 6s 3d, 4 p c</i> ..	—	—	—	—	—	—
— <i>Dub. &amp; Glas. S. F. Co. (1887) 5 p c</i> ..	—	—	—	—	—	—
— <i>Do. (1888), 6 p c</i> ..	—	—	—	—	—	100½
— <i>Dub. &amp; Kingstown 4 p c</i> ..	—	—	—	102½	103	—
— <i>Dublin Water Works, 5 p c</i> ..	—	106½	—	—	—	—

\* Shares not fully paid up are given in *Italics*. † x d  
**Bank Rate**—Of Discount—4 per cent.. 17th August, 1882  
 Of Deposit—1 per cent.. 23rd March, 1882  
**Name Days**—September 12th and 26th, 1882.  
**Account Days**—September 13th and 27th, 1882.  
**Business commences** at 1.30 p.m.  
 The Stock Exchange and Brokers' Offices will be closed on Saturdays during the months of July and August.

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BIRTHS, MARRIAGES, AND DEATHS.

**BIRTHS.**  
**ATKINSON**—August 22, at Maryborough, the wife of Mr. J. H. Atkinson, Clerk of Petty Sessions, of a son.  
**DAVOEN**—At Mountjoy-square, South, the wife of Richd. Davoren, Esq., solicitor, of a son.  
**MEREDITH**—August 21, at Waverley-terrace, Meath-road, Bray, the wife of Richard E. Meredith, Esq., barrister-at-law, of a son.  
**READ**—August 29, at Rathgar, the wife of John Read, Esq., solicitor, of a daughter.  
**RUSSELL**—August 22, at Downpatrick, the wife of William Russell, Esq., solicitor, of a son.  
**MARRIAGES.**  
**MANDERS and LANE**—August 26, in the Parish Church of Maglilgan, by the Rev. John M'Adams, Rector, Frederick Richard Henry, eldest son of Frederick Manders, Esq., of Donnybrook, County Dublin, to Mary Margaret Moody, youngest daughter of the late Hugh Lane, Esq., Master of the Queen's Bench.  
**ROSS and MANN**—August 17, at the Parish Church of St. Michan, Dublin, John Ross, Esq., LL.B., barrister-at-law, eldest son of the Rev. Robert Ross, Londonderry, to Catherine Mary Jeffcock, only surviving child of Lieut.-Colonel Dean Mann, Dunmoyla, Tyrone.  
**DEATHS.**  
**MARTLEY**—August 25, at Rathgar, John Martley, Esq., barrister-at-law, aged 38 years.  
**PERRY**—August 29, George Perry, Esq., barrister-at-law, of Rutland-square, West, Dublin, aged 38 years.

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  - B.—Joint Application by the Landlord and Tenant .. .. . 1d.
  - C.—Joint Application by Landlord and Tenants .. .. . 4d.
  - D.—Notice by Treasury requiring Investigation of the Case .. .. . 1d.
  - E.—Application by Tenant for an Order for Payment of Arrears to or for benefit of his Landlord .. .. . 1d.
  - F.—Application by Landlord for an Order for payment of Arrears due by Tenant to or for benefit of such Landlord .. .. . 1d.
  - G.—Statement of Property and Effects of the above-named Tenant applicable to the satisfaction of the Arrears of Rent .. .. . 1d.
  - H.—Report of Investigator .. .. . 1d.
  - I.—Notice showing Cause against Conditional Order .. .. . 1d.
  - J.—Notice to Landlord of Absolute Order for payment to him or for his benefit of sum in respect of Arrears .. .. . 1d.
  - K.—Notice to Tenant that Arrears of Rent of Holding are Released and Extinguished .. .. . 1d.
  - L.—Claim by Landlord for payment of Amount ordered to be paid to or for his benefit, where the Landlord is absolutely entitled .. .. . 1d.
  - M.—Claim by Landlord for payment of Amount ordered to be paid to or for his benefit, where several Holdings are comprised in claim, and where the Landlord is absolutely entitled .. .. . 1d.
  - N.—Claim by Landlord for payment of Amount ordered to be paid to or for his benefit, where Landlord himself is not in receipt of Rent of Holding .. .. . 1d.
  - O.—Claim by Landlord for payment of Amount ordered to be paid to or for his benefit, where Landlord himself is not in receipt of the Rent, and where several Holdings are comprised in the claim .. .. . 1d.
  - P.—Notice by Incumbrancer, Trustee, or Receiver, claiming to be entitled to Arrears of Rent .. .. . 1d.
  - Q.—Notice of Appeal from Order of Legal Assistant Commissioner .. .. . d.
  - R.—Application by Landlord for cancelling of Rent-charge under 59th Section of Land Law (Ireland) Act, 1881 .. .. . 1d.
  - S.—Application by Tenant for cancelling Rent-charge, created under 59th Section of Land Law (Ireland) Act, 1881 .. .. . 1d.
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## LEGAL POSTINGS:

In the HIGH COURT OF JUSTICE in IRELAND.

CHANCERY DIVISION.—LAND JUDGES.

## SALE

Of very desirable and well-secured Profit Rents out of Premises  
AT SYDNEY-PARADE, MERRION, COUNTY DUBLIN,  
On **TUESDAY, the 14th day of NOVEMBER, 1882.**

In the Matter of the Estate of

**F R A N C I S R E A L A M B E R T**  
and the Rev. WILLIAM HENRY BROWNE, ALEXANDER  
SMITH ORR, and LOUISA FERRIN, Executors and  
Executrix of the Will of the Rev. MARK FERRIN, who was  
the surviving Executor of the Will of FRANCIS REA, deceased,

Owners;

GILES JOHN EYRE LAMBERT,

Petitioner.

And in the Matter of the Estate of

GILES JOHN EYRE LAMBERT,

Owner and Petitioner.

## TO BE SOLD,

In 4 Lots, as under,

## BY PUBLIC AUCTION,

Before the Right Honourable Judge ORMSBY,  
At his Court, Land Judges' Court, Inns-quay, Dublin,  
On **TUESDAY, the 14th day of NOVEMBER, 1882,**  
At Twelve o'clock noon,

Lot No. 1.—Part of the Lands of Old Merrion, containing 3a 2r 4p statute measure, held under Lease dated the 27th day of October, 1843, for the term of 61 years from the 29th day of September, 1843, now known as "RICHELIEU," situate in the Parish of Saint Mary's, Donnybrook, Barony of Dublin, and County of Dublin, and producing a net annual rental of £16 11s 8d.

Lot No. 2.—Part of the Lands of Old Merrion, containing 3a 1r 3p statute measure, held under Lease dated the 2nd day of January, 1835, for 73 years from the 29th day of September, 1834, and now known as "NORTH MUNSTER VILLA," producing a net annual rental of £80.

Lot No. 3.—Parts of the Lands of Old Merrion, containing respectively 1a 5r 18p and 0a 1r 5p statute measure, held under Leases dated respectively 9th day of October, 1832, for 74 years from 29th day of September, 1832, and 2nd day of December, 1834, for 73 years from the 26th day of March, 1834, and now known as "ADELAIDE," producing a net annual rental of £74 10s.

Lot No. 4.—Part of the Lands of Old Merrion, containing 0a 1r 19p statute measure, held under Lease dated the 22nd day of June, 1832, for 3 lives, since deceased, or 73 years from 29th day of September, 1832, and now known as "ROSEVILLE COTTAGE," producing a net annual rental of £34 7s.

Dated this 30th day of August, 1882.

JAMES M'DONNELL, Examiner.

## DESCRIPTIVE PARTICULARS AS TO ALL THE LOTS.

The interest for Sale consists of well-secured Profit Rents arising out of Premises at Sydney-parade, Merrion, in the County of Dublin, close to the Sydney-parade Station of the Dublin and Kingstown Railway Company, together with the valuable reversions (extending for upwards of 13 months to close on 17 years as under stated) expectant on the determination of the Leases by which the occupying Tenants hold.

The property has an extensive frontage to the Strand-road, Merrion. It is part of the Pembroke Estate, and the intermediate Landlord's Lease will, it is believed, expire about the year 1906. The interests under the Leases for Sale herein continue respectively till 29th September, 1904 (Lots 1 and 4); 25th of March, 1906 (part of Lot 3); 29th September, 1907 (Lot 2, and residue of Lot 3).

It is understood that the representatives of O'Reilly, the intermediate Landlord, are in the habit of granting Leases for the outstanding residue of their term at a rent fixed by their valuers, such Leases being only given to the occupying Tenants who may have vested in them the entire of the Leases' term or interest immediately under O'Reilly, which in the present case is the interest for Sale.

The Earl of Pembroke, upon the occupying Tenant acquiring the full reversion, has, it is understood, been in the habit of granting a reversionary Lease to such occupying Tenant upon the terms of an expenditure upon the premises (either immediate or within a limited time, as may be agreed on) and subject to a small rent, which is fixed in the Estate Office, during the continuance of the O'Reilly Lease, and a full rent also fixed in the Estate Office and reserved in the reversionary Lease which becomes payable upon the expiration of the O'Reilly term.

The occupying Tenants upon this property have thus very valuable interests in their holdings, and purchasers at this Sale may (while perfectly secured in the immediate well and punctually paid rental) reasonably look forward to re-selling the property with their reversions thereon to the occupying Tenants at considerable advantage, and, in the event of the purchasers retaining the property, the reversions expectant on the occupying Tenants' Leases would enable the purchasers to become occupiers themselves of the premises, and to treat with the representatives of O'Reilly and with the Earl of Pembroke for the new or reversionary Leases.

The value of property in this neighbourhood near the Railway Station and Tram Line is daily increasing, and has been much improved by the Sewerage Works recently executed.

Lot No. 1.—This Lot comprises the Dwellinghouse and Premises known as "RICHELIEU," situate at Sydney Parade-avenue, in the

County of Dublin, with Land attached thereto, containing upwards of 2½ acres statute measure, producing a net annual rental £16 11s 8d. The premises are sublet on Lease which will expire on the 14th day of August, 1903. There is a reversion vested in the owners expectant on the determination of the Tenant's Lease of upwards of 12 months to which a purchaser will become entitled, which would enable him to obtain possession and become the occupier of the premises so as to enable him to treat with the Pembroke Estate and the intermediate Landlord for a new Lease as above pointed out. The present rental is well secured. The Government valuation is £73.

Lot No. 2.—This Lot comprises the Dwellinghouse and Premises known as "NORTH MUNSTER VILLA," otherwise "SIDNEY LODGE," situate at Sydney Parade-avenue, with Land attached thereto, containing nearly 2½ acres statute measure, producing a net annual rental of £80. These premises are sublet on Lease which will expire on the 1st day of October, 1903. There is a reversion vested in the owners expectant on the determination of the Tenant's Lease of about 4 years, to which a purchaser will become entitled, and which would enable him to treat for a new Lease as above mentioned. The present rental is well secured. The Government valuation is £55.

Lot No. 3.—This Lot comprises the Dwellinghouse and Premises known as "ADELAIDE," situate at Strand-road, Merrion, adjoining Sydney Parade-avenue, with Land attached thereto, containing nearly 2 acres statute measure, producing a net annual rental of £74 10s. These premises are sublet on Lease, which will expire on the 1st day of November, 1890. There is a reversion vested in the owners expectant on the determination of the Tenant's Lease of between 16 and 17 years, to which a purchaser will become entitled, and which would enable him to treat for a new Lease as above mentioned. The present rental is well secured. The premises are used as the Masonic Male Schools. The Government valuation is £66.

Lot No. 4.—This Lot comprises the Cottage Residence and Garden attached thereto, known as "ROSEVILLE," situate in Sydney Parade-avenue, producing a net annual rental of £34 7s. These premises are sublet on Lease, which will expire on the 26th day of March, 1899. There is a reversion vested in the owners expectant on the determination of the Tenant's Lease of about 5½ years, to which a purchaser will become entitled, and which would enable him to treat for a new Lease as above mentioned. The present rental is well secured. The Government valuation is £21.

For Rentals and further particulars apply at the Registrar's Office, Land Judges Court, Inns-quay, Dublin; to

ARTHUR LEE BARLEE, Esq., Solicitor, 30 Westland-row;

or to

SAMUEL P. REDINGTON, Solicitor having the carriage of

the Sale, 32 Rutland-square, Dublin. 1c8

In the HIGH COURT OF JUSTICE in IRELAND.

CHANCERY DIVISION.—LAND JUDGES.

COUNTY OF TYRONE.

## SALE,

On **TUESDAY, the 7th day of NOVEMBER, 1882.**

In the Matter of the Estate of

**N A T H A N I E L M A Y N E,**  
Owner;

Ex parte—ELIZABETH ANNE HURST,

Petitioner.

TO BE SOLD BY PUBLIC AUCTION,

In Two Lots,

Before the Right Honourable Judge ORMSBY,

At his Court, Inns-quay, in the City of Dublin,

On **TUESDAY, the 7th day of NOVEMBER, 1882,**

At the hour of Twelve o'clock noon,

Lot 1.—Consisting of the Lands of the Ballyboes of Terlagan and Teerhagan, otherwise Seemaghmore, now known as Terlagan only, containing 26a 0r 17p statute measure, held in fee-farm, and producing a yearly profit rent of £109 14s 11d; and

Lot 2.—Consisting of part of the Lands of Tullybleety, containing 10a 2r 7p statute measure, also held in fee-farm, and producing a yearly profit rent of £86 4s 4d—all situate in the barony of Lower Dungannon and county of Tyrone.

Dated this 19th day of August, 1882.

IGNATIUS O'KEEFFE, for Examiner.

## DESCRIPTIVE PARTICULARS.

The Lands of Terlagan, exclusive of 36a 0r 6p in the owner's possession, of which the purchaser will get immediate possession, are let to yearly tenants, whose aggregate rents amount to £125 14s, which are, with one exception, judicial rents, and are only subject to £15 18s 1d head rent and rentcharge. The Lands of Tullybleety are all let to yearly tenants, the gross rent amounting to £97 10s, and subject to £11 5s 7½d for head rent and rentcharge. The Lands of Tullybleety and Terlagan, although they lie nearly two miles apart, are about an equal distance from the town of Aughnacloy, in county of Tyrone, both of them lying within 2½ miles of that town. Aughnacloy is a capital market town, and the lands are situate in a most orderly and peaceful neighbourhood. The Lands of Tullybleety are not a mile distant from the main line of road from Caledon to Aughnacloy, and lie within about eight miles of the Caledon Station on the Great Northern Railway. The Lands of Terlagan lie close to the main line of road from Aughnacloy to Dungannon.

For rentals and further particulars apply at the Office of the Registrar of the Land Judges, Inns-quay, Dublin; to

WILLIAM CAREY and SON, Solicitors, No. 1 Wellington-quay, Dublin; and to

ALEXANDER M'CORMACK, Solicitor having carriage of Sale, 1 Wellington-quay, Dublin, and Armagh. 105

# THE IRISH LAW TIMES AND SOLICITORS' JOURNAL.

VOL. XVI.

SATURDAY, SEPTEMBER 9, 1882.

No. 815

## PRIVILEGE OF WITNESSES AS TO CRIMINATING QUESTIONS.—II.

WHILE no agreement can deprive a party of his right to refuse discovery tending to establish a criminal charge against him (*Lee v. Read*, 5 Beav. 381; *Robinson v. Küchen*, 21 *ib.* 365, 370; Hare on Disc.), the privilege may be lost by the witness waiving the right to take the objection: *Paxton v. Douglas*, 16 Ves. 242; *Corporation of Trin. House v. Burge*, 2 Sim. 411; *Williams v. Farrington*, 3 Bro. C. C. 38, 40; *Parkhurst v. Lowten*, 1 Mer. 391, 400; *Hambrook v. Smith*, 17 Sim. 209, 215; *Pye v. Butterfield*, 5 B. & S. 829, 837; or by the liability ceasing: s. c.; *Wigram on Disc.* 83; and so, where an offence is barred by statute of limitations: *Calhoun v. Thompson*, 56 Ala. 166; but, it has even been held that a witness is protected although he has received a pardon: 1 Stark. Ev., 3rd ed., 192. In the Massachusetts case of *Commonwealth v. Nichols* (114 Mass. 285), it was held that a person accused of a crime and voluntarily testifying in his own behalf under a statute allowing him so to do, waives thereby his privilege of not being compelled to criminate himself: and see 101 Mass. 200. But, the contrary has been held in other States: *Bigler v. Reyher*, 43 Ind. 112; *Barker v. Kuhn*, 38 Iowa, 395; *Bobo v. Bryson*, 31 Ark. 387; *Dutlenhofer v. The State*, 34 Ohio, 6 Rep. 726. And in *Temple v. The Commonwealth* (5 Virg. L. J. 366), it was held that the fact that a witness testified before the grand jury (see 2 Cent. L. J. 180; so, if before a coroner: *Cullen's Case*, 24 Gratt. 624; cf. *R. v. Widdop*, L. R. 2 C. C. R. 3), and on his evidence an indictment was found, will not deprive him of his privilege of declining to testify on the ground that he would criminate himself, on the trial of the party so indicted on his testimony. And if the witness answers questions improperly put, his answers may afterwards be used as evidence against him: *Stockfleth v. De Tastet*, 4 Camp. 10; *Smith v. Beadrill*, 1 *ib.* 30; *R. v. Merceron*, 2 Stark. 366; while, on the other hand, no inference as to the truth of the suggestion can be drawn from the fact that the witness declines to answer: *Rose v. Blakemore*, Ry. & M. 384; and where, under statutes enabling defendants in criminal cases to testify in their own behalf, they refuse to answer, the failure to do so cannot be taken into consideration by the jury in determining whether or not they are guilty: *Com. v. Harlow*, 110 Mass. 411; *Com. v. Nichols*, *ubi supra*; *Com. v. Scott*, 5 Cent. L. J. 415; and such refusal cannot be used against a witness upon his subsequent trial for the same offence: *State v. Bailey*, 20 Amer. L. Reg. 552. But, in India the court may presume that, if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given, would be unfavourable to him: Ind. Ev. Act, s. 114, *Illust.* (A); see also, s. 148 (4).

To the general rule, however, certain exceptions have been established. For instance, in furtherance of the object of the bankrupt laws, to procure a discovery and equal distribution of the assets among all the creditors, a qualification has prevailed in bankruptcy; and it is now well settled that, while a witness is entitled to the usual protection (*Re Firth*, *Ex p. Schofield*, 5 Ch. Div. 230, 46 L. J. Ba. 112, 36 L. T. N. S. 281), the bankrupt himself is bound to answer

all questions respecting his property, be the consequences what they may, with this exception, that he cannot be required to answer a question whether he has done some specific act clearly of a criminal nature: *Ex p. Cossens*, Buck, 540; *Ex p. Kirby*, M. & M. 225; *Ex p. Heath*, 2 D. & C. 214, Mont. & Bl. 184; *Re Feaks*, *ib.* 226; *Re Smith*, *ib.* 230; *Ex p. Pratt*, 1 G. & J. 62; but, he cannot, when examined touching his estate, trade, or dealings, refuse to give any information respecting them merely because such information may incidentally show that he has been guilty of some crime or misdemeanour: *ib.*; and his examination may be used as evidence against him on a criminal charge: *R. v. Scott*, 1 D. & B. 47, 2 Jur. N. S. 1096; *R. v. Sloggett*, 1 Dear. 656, 2 Jur. N. S. 476; *R. v. Skeen*, 1 Bell, C. C. R. 97, 5 Jur. N. S. 151; *R. v. Robinson*, L. R. 1 C. C. R. 80, 36 L. J. M. C. 78; *R. v. Widdop*, L. R. 2 C. C. R. 3, 27 L. T. N. S. 693, 42 L. J. M. C. 9 (and see 5 & 6 Vic., c. 39, 24 & 25 *ib.*, c. 96, s. 85, as to examination of agent guilty of misdemeanour); and, as a general rule, all depositions on oath legally taken are evidence against a witness on a subsequent criminal charge, especially if he had not objected to them as criminatory: *R. v. Coote*, L. R. 4 P. C. 599, 42 L. J. P. C. 445. As to husbands and wives, see 1 Hale, P. C. 301; *R. v. Cliviger*, 2 T. R. 263; *Cartwright v. Green*, 8 Ves. 405; *R. v. Bathwick*, 2 B. & Ad. 639; *R. v. Worcester*, 6 M. & S. 194. "These cases show that even under the old law, which made the parties and their husbands and wives incompetent witnesses, a wife was not incompetent to prove matters which might tend to criminate her husband. *R. v. Cliviger* assumes that she was, and was to that extent overruled. The cases, however, do not decide that if the wife claimed the privilege of not answering she would be compelled to do so, and to some extent they suggest that she would not: "Stephen, Ev., Art. 120, n. And see 2 Stark. Ev., 3rd ed., 551; and Powell on Evidence (4th ed., 110), where it is observed, "The question whether a wife is bound to answer questions criminating her husband is not in a satisfactory state." In equity, however, there is no doubt that a wife cannot be compelled to answer any question which may expose her husband to a charge of felony: *Cartwright v. Green*, *ubi supra*; but as to high treason, see *R. v. Griggs*, T. Raym. 2. And as to "communications" between husband and wife during marriage, or when it is terminated by death or divorce, disclosure is not compellable: *O'Connor v. Marjoribanks*, 4 M. & Gr. 435; *Monroe v. Twisleton*, Peake 221. And in reference to the Married Women's Property Act, 1870, s. 11, it has been said, "It is conceived that there is nothing in the statute to vary the rule by which communications between husband and wife, made during marriage, are held privileged and inadmissible in evidence, such privilege being based on general grounds of public policy: "Griffith, Mar. W. Prop. Acta, 4th ed., 53; see Taylor, Ev., 6th ed., 810; 16 & 17 Vic., c. 83, s. 3. For to admit such evidence would occasion domestic dissension and discord; it would compel a violation of that confidence which ought, from the nature of the relation, to be regarded as sacred; and it would be arming each of the parties with the means of offence, which might be used for very dangerous purposes: 1 Stark., Ev., 3rd ed., 70, 2 *ib.* 549; Co,

Litt. 6, b.; 2 Haw. c. 46; 2 Hale, 279; and so, even though upon consent: *Barker v. Dixie*, Cas. temp. Hardw. 264. But, the Married Women's Property Act, 1882 (45 & 46 Vic., c. 75), coming into operation on the 1st of January next (repealing the former Acts), introduces an important alteration; for by section 12, giving to married women a right to the same civil and criminal remedies in respect of separate property as if they were unmarried, it is provided that "in any proceeding under this section a husband or wife shall be competent to give evidence against each other, any statute or rule of law to the contrary notwithstanding;" and see s. 16 as to criminal liability of wives in reference to the property of their husbands.

"LAW JOURNAL REPORTS" FOR  
SEPTEMBER.

Of the Chancery cases *Broadbent v. Barrow* gives occasion for the decision by the Court of Appeal that a will which, after pecuniary legacies, gives all the personal estate, except money, to a person named, with the residue, real and personal, to trustees, does not give a specific legacy to that person. In *Heming v. Worsam* Mr. Justice Fry dismissed an action by husband and wife against the administrators of the will of the wife's father, to whom she had sold her share of the estate, settling the proceeds on her marriage, without prejudice to an action by the trustees. In *re Hall-Dare's Contract*, is an important decision of the Court of Appeal under the Conveyancing Acts. It decides that under section 70 of the Conveyancing Act, 1881, a good title can be made to land as to which an order under the Settled Estates Act has been made, although such order improperly omitted to name the persons in remainder in dispensing with their concurrence. In the case of *In re Palmer* the Court of Appeal held that an application by a person aggrieved for the rectification of the register of trade-marks is not restricted to five years; neither does the lapse of that time make good a trade-mark registered in fact, but incapable of registration. In *Ex parte Solomon, in re Tilley*, the Court of Appeal held that a creditor in bankruptcy was entitled to have a shorthand writer at the debtor's examination. In *Comton v. Preston* Mr. Justice Fry struck out as embarrassing a counter-claim by a mortgagee for damages and for the possession of land in respect of which the plaintiff was not suing. *Hunt v. Chambers* is a decision of the Court of Appeal of great importance, as to the right of a party to a jury. It is held that he has, on giving notice, a *prima facie* right to that form of trial, which must be displaced by considerations advanced on his opponent's behalf. When a case in the Chancery Division is to be tried by a jury it will be transferred to the Queen's Bench Division. *Morley v. Olifford* lays down that there cannot be prescription for common of pasture without stint. In *Ex parte Leslie, in re Guerrier*, it was held that a bank might prove for an overdraft against a bankrupt although forged bills had been deposited to secure the overdraft, and no prosecution had taken place. This decision is without prejudice to the question, about which there has been much difference of opinion, whether a man is bound to prosecute for a crime before he treats it as a civil injury. In *Forbes v. Jackson* a surety who tendered the debt and interest was held entitled to securities taken by the creditor, although he had advanced further sums on the strength of them. In the case of *In re Butler's Wharf Company* Vice-Chancellor Hall stated that his practice was, when a party meant to appeal against an order in chambers, to require the matter to be mentioned in chambers, with a view to his saying whether the summons ought to be adjourned into Court. The variations of practice on this head are very inconvenient. In *Mostyn v. Lancaster* a power in tenants for life, without impeachment of waste, to grant mining leases for such terms and under such conditions as to them should "seem

reasonable and proper," was held to authorise a lease for ninety-nine years, at a peppercorn rent, to secure £6,000. In *The United Telephone Company v. Harrison, Cox-Walker & Co.*, a description of an invention written in German, but accompanied by plates and understood by an Englishman who did not read German, was held a publication. In *The New London and Brazilian Bank v. Brocklebank* the Court of Appeal upheld the decision of Vice-Chancellor Bacon that a Banking Company had, under its articles, a lien on the shares of a customer indebted to it, even when held in trust. In *Tucker v. Linger* a custom for tenants to take and sell flints was held good and reasonable, and not contrary to a reservation of "mines, quarries, brick, earth, and gravel pits" to the landlord. In *Speight v. Gaunt* a trustee who had paid money to a broker on a bought-note, was held liable to make good the loss to the fund. In *Arnold v. Kayes* a share of a sum certain given to children to their separate use, and without power of anticipation if married women, was allowed to be paid over to a married woman. In the case of *In re Russell, ex parte Allen*, it was held that a trustee in bankruptcy could not disclaim land and retain chattels, both being held under the same lease.

The first of the cases in the Queen's Bench Division is *Miller v. Pilling*, which decides on the authority of the Court of Appeal, overruling Mr. Justice Field, that a referee is not bound to set out the reasons for his decision, although he may be asked by the Court to give them. In *Webber v. Lee* the Court of Appeal held that an agreement to give a fourth share of shooting, and a fourth of all the game shot, was required to be in writing under the Statute of Frauds. In *Keal v. Smith* it was held that a solicitor does not authorise the sheriff to seize certain goods, by merely saying that he had better do so, nor has he any implied authority from his client to direct the sheriff to do so. Mr. Justice Stephen dissented from the latter proposition. *In re Joel Emmanuel & Co.*, decides that the limitation of the sum recoverable for costs incurred in the "conduct" of a County Court action does not apply to work done before and after the suit. In *Jennings v. Hammond* it was held that a company, whose business was to lend money to its members only, was bound to be registered, and a person who sued as trustee for the company was held not entitled to recover. In *Hetherington v. The North-Eastern Railway Company*, the assistance, by money and otherwise, which a father, who was nearly blind and crippled, received from his son, was held good ground for an action for the son's death, under Lord Campbell's Act. In *Blackmore v. The Vestry of Mile End Old Town* a vestry was held liable for personal injuries arising from defects in the flap of a water-meter belonging to it. Two cases of interest, in regard to water-rates, follow. In *The Warrington Waterworks Company v. Longshaw* the "annual value, at which premises are assessed to the poor-rate," was held, for the purposes of calculation the water-rate, to mean the rateable value; and in *Dobbe v. The Grand Junction Waterworks Company* it was further held that, where a house is held on a long lease, subject to ground-rent, the actual rent cannot be ascertained, so that resort is had, under the Act, to the rateable value. In *Enraght v. Lord Penance* the House of Lords declined to prohibit the Dean of the Arches from inhibiting a clerk who had been admonished not to use specific practices in the service of the Church, or similar practices, and who used practices decided to be similar. In *Harding v. Proce* it was held that a disclaimer by the trustee in bankruptcy of the assignee of a lease does not destroy the liability of the lessee to the lessor, or of the assignee's surety for rent paid by the lessee to the lessor. In *Clarison v. Musgrave* it was held that an appellant from the County Court is bound strictly to the points of law taken at the trial—a view which appears somewhat narrow.

The Magistrates' Cases for the month are very largely occupied with the case of *Regina v. The Local Government Board*, which was an unsuccessful attempt to prohibit that body in an appeal with regard to apportioning expenses under the Public Health Act. In *Davies v.*



*Evans* Mr. Justice Grove and Baron Huddleston were unable to agree whether justices have a discretion in enforcing a bastardy order.—*Law Journal*.

### THE STOLEN GOODS BILL.

Among the useful measures of intended legislation which, under the pressure of the past Session, failed to find their way into the Statute-book, a prominent place must be assigned to the Stolen Goods Bill, which, although it passed in an amended form through the House of Lords, was not equally successful in the House of Commons. It will, no doubt, be reintroduced on the first opportunity; and in the meanwhile it is not undesirable to call attention to its character, and to the urgent need which exists for some enactment of the kind. It has long been a maxim in criminal jurisprudence that the receiver is worse than the thief; and it is unquestionable that many forms of theft would hardly be attempted at all were it not for the facilities of disposing of stolen property which are afforded by persons who are in fact receivers, but who conceal their nefarious calling under the mask of legitimate trade. Besides these people, most of whom are well known to the police, but who escape detection because there is no sufficient power of searching their premises, there are, it is to be feared, veritable pawnbrokers whose honesty is not sufficient to induce them to exercise proper care in the reception of pledges, or to take trouble even when it is well known to them that robberies have been committed, and that goods like those which have been deposited with them form part of the booty. When the Stolen Goods Bill was introduced, it excited much indignation among pawnbrokers generally, rendering them strenuous in their opposition to its provisions, and loud in the assertion that it was unnecessary, and that their honour and honesty as tradesmen were improperly assailed. A useful commentary upon these assertions was furnished by the letter of our correspondent "Lex," published yesterday, in which he stated that a robbery was committed in the premises of Mr. Attenborough, a representative member of the trade, and that the valuable stolen goods were pledged by a mere boy at twenty different pawnshops, without any difficulty being thrown in his way and without any intimation or other assistance being afterwards afforded to Mr. Attenborough by any one of the number, although the nature of his losses had been made known by a special notice in the *Pawnbrokers' Gazette*, and although he had offered to defray all expenses connected with the restoration of his property. If this incident may be taken to express the amount of sympathy which was felt by pawnbrokers for a plundered member of their own craft, it is a fair inference that their sympathy with the general public would be less rather than more active; and it must be conceded that the existence of their shops not only affords dangerous facilities to the dishonest, but even holds out temptations to those whose honesty is merely feeble. While the professional receiver is the natural ally of the professional thief, the pawnbroker of not too highly strained integrity is a snare to the temporary servant or charwoman, or to the servant under notice to leave. Many of the robberies which are committed week after week by persons belonging to one of these classes would probably never have been committed at all if the sale of the stolen goods had been attended by any risk or difficulty; and every enactment which tends to create such risk may serve as a deterrent from first offences, which, in their turn, so often lead on to more serious ones.

The Bill, as finally amended and passed by the Peers, commences by empowering any justice of the peace, on the affidavit of a superior officer of police, to grant a warrant to search any premises therein specified for stolen goods and to seize them if found. The person in whose possession they are, if the Court considers he had reason to suspect that they were stolen, and if he thereupon failed to make reasonable inquiry, or to give information to the police, or if he fails to give a satis-

factory account of the way in which he came by them, shall be liable to fines for the first two offences, and to fine or imprisonment, at the option of the Court, for the third. Willfully to conceal, melt, deface, or alter any stolen article is made an offence punishable in a similar manner; and all melting of second-hand precious metal is forbidden until after the lapse of seven days from the purchase of the same. The hours within which melting may be carried on by refiners are laid down, and a justice of the peace may issue a search-warrant on sworn information of the belief that this provision is being contravened. Where a police notice of any stolen article has been given to any pawnbroker or second-hand dealer he shall be required, if any such article shall come into his possession, to give notice to the police, with the best description he can furnish of the person from whom he received it; and he shall permit a duly authorised constable to inspect all articles in his possession of a description similar to that mentioned in the notice. He is to answer all reasonable inquiries made by an authorised constable with regard to any stolen property, and to permit an examination of his books with reference to his purchases of any similar articles subsequently to the commission of the theft. If an article is offered for sale which the pawnbroker or dealer suspects to be stolen, and if the person offering it fails to give a satisfactory account of the way in which he became possessed of it, the pawnbroker or dealer is authorised to detain both the article and the person offering it and to deliver them as soon as may be to a constable. Pawnbrokers and second-hand dealers are forbidden to take an article from any person who appears to be under the age of fourteen years or to be intoxicated, or to employ any servant or other person under the age of sixteen to purchase or receive goods. The hours of business are limited; and second-hand dealers are to be licensed by the police. Besides other penalties, certain offences against the Bill would entail "registration" upon these dealers; and a registered second-hand dealer would for a period of not more than three years be subject to more stringent rules than previously. Other clauses provide for the restitution or other disposal of stolen property, and for cases in which it would be urged as a defence, by persons charged under the Act, that the goods had been received by a servant or agent. The servant or agent would be held guilty, and would be punishable as a principal, only if the actual principal was able to establish his entire freedom from complicity in the offence.

The general effect of these provisions would be, therefore, that dealing in stolen property would entail upon pawnbrokers a statutory liability to do certain things in the way of facilitating the discovery of the thief. They would be bound to show their books, and their recent purchases or pledges, to a policeman duly authorised by his superiors; and would be compelled, in short, to do what most honest people would think it their duty to do without compulsion. The necessity for the Bill rests, it may be assumed, partly upon police knowledge of the extent to which the operations of pawnbrokers do actually encourage theft, and partly upon experience of their unwillingness to co-operate with the police for its detection. To some small extent the Bill, if it became law, might be a troublesome interference even with their legitimate occupation; but they have cut away the ground from beneath their feet by their past conduct, which, even in the above cited case of the robbery from Mr. Attenborough, has abundantly justified the assertions of those by whom the Bill was introduced and supported. Even if this were not the case, the passing of such a law would afford them no just cause of complaint. Their trade is a necessity to the poor, and cannot possibly be prohibited. A trade which cannot be prohibited, but which is frequently abused to the detriment of the public, must necessarily be brought under regulation, so that the abuses attendant upon the inevitable may be reduced to a *minimum*. Every pawnbroker or second-hand dealer may, if he pleases, comfort himself by the reflection that, if all other members of his calling were as blameless and as careful

as himself, no legislation would be required. While he does this he must certainly admit that some of his fraternity are careless, and that some are dishonest; and he must admit, also, that carelessness and dishonesty in such a business are great causes of dishonesty in others. Legislation which rendered dishonesty more difficult and less profitable would naturally tend to drive the black sheep out of the trade; and when they have all disappeared, Parliament may, perhaps, be ready to consider whether provisions which are now called for might not safely be relaxed.—*Times*.

#### COVENANTS FOR PRODUCTION OF DEEDS IN CONNEXION WITH RECENT LEGISLATION.

These covenants are very often an essential part of the conveyance of purchased lands. Title deeds are, in England, the very sinews of the legal estate, and next to possession of the deeds the right to have them safely kept, and to obtain them when necessary, is most to be desired. Recent legislation has in several ways touched this important little branch of conveyancing. By sect. 2 (5) of the Vendor and Purchaser Act, 1874, the usual custom that the vendor retained the deeds, if he kept any part of the property to which they related, received statutory sanction. By sub-sect. (3) of the same section "an equitable right" to the production of deeds must now satisfy a purchaser, if the vendor is "unable" to furnish the purchaser with a legal covenant. It is not quite clear what "an equitable right to production" means: (Dart, 143.) It seems that a purchaser has a right to a covenant for production from his vendor, retaining the deeds, and if the covenant is given by person seized of the legal estate, he has a legal right to the production running with the purchased lands; but it is questionable whether it runs with lands reserved by the seller so as to bind an alienee: (Sug. V. & P. 453; Dart, 556, 775.) If the covenant does not run with the land, it gives the purchaser in equity a right to enforce production against persons claiming and holding through the seller: (Sug. V. & P. 453.) Mr. Dart seems to think that this depends on the persons having notice (pp. 143, 775), but we doubt this limited view: (see 1 Dav. Conv. 146.) In any case the covenantor and his real and personal representatives will be liable even after alienation: (*Miller v. Small*, 1 Macq. H. L. 346.) The Act then makes it quite clear that, where a legal covenant is unattainable, a right under a covenant, operating in equity, will suffice. So even a right, without a covenant, will be enough. This seems to suggest a return to the older and more liberal doctrine, that an equity existed entitling any party interested in a deed in consequence of a purchase from some person who retained the deed to call for its production by any other person succeeding to the custody of it; or, at all events, that the mere fact of the purchaser having neglected to take a covenant will not deprive him and his successors in title of the equitable right to production.

Fortunately, if there is considerable doubt as to the exact effect of such covenants and as to the consequences of neglecting them, there is none that the proper course is to take the covenant. The only question remaining is, whether the statutory forms given by sect. 9 of the Conveyancing Act, 1881, should be adopted.

On comparing statutory "acknowledgment of the right to production of deeds and delivery of copies" with the common form of covenants by fiduciary owners in Davidson (vol. i. 223), we see that the covenantor is as efficiently protected. He is only liable while the deeds are in his custody (sub-sect. 2), and he is not liable for loss or injury to the deeds (sub-sect. 6). On the other hand, the covenantee has the advantage that the statute expressly binds the possessor for the time being, without reference to the troublesome questions about covenants "running with the land." Hence, we can safely advise mortgagees and trustees to

give, and purchasers from them to accept the statutory "acknowledgment."

The more onerous undertaking for safe custody (sub-sect. 9) must be separately considered. It resembles the usual covenant by an absolute owner qualified, according to modern practice, by the insertion of a proviso that the covenant shall cease after the deeds have been handed over to some other person, and such other person has entered into a like covenant with the person for the time being entitled to the benefit of the former covenant, and has delivered the new covenant to such last-mentioned person: (David. i. 222; Dart, 555.)

The statutory form is more beneficial to the covenantor, because it relieves him from the obligation as soon as he parts with the deeds, without compelling him to secure a substituted covenant. It is, however, presumed that he can only safely hand them over to some person properly entitled to their custody. It is, in one way, an advantage to the covenantee, because his rights run with the deeds; but, on the other hand, it gives him no ready means of tracing them, and he may have a difficulty in finding out against whom he should bring his action. Also it would seem in some cases to bring liabilities on mortgagees and trustees who obtain possession of deeds. It would apparently even affect an equitable mortgagee who had no notice of any right to production. This, however, is really not very serious. If persons take deeds into their possession, they should be careful with them.

In *James v. Rumsey* (11 Ch. Div. 398) a mortgagor, whose principal title deed had disappeared when held by his mortgagee, was held entitled to an indemnity and certain costs, but not to compensation.

On the whole the statutory form is slightly best for the vendor; but the usual defeasible, or common form, covenant is preferable for the purchaser, for it is better to be sure where the deeds can be found and have a covenant with some ascertainable person than to have a covenant running with the deeds and not know where they are or upon whom the obligation of the covenant has devolved. But, by sub-sects. (8) and (11), the statutory acknowledgment and undertaking will satisfy any liability to give covenants for production, delivery of copies, and for safe custody. Hence, as in the absence of contract to the contrary the vendor has the choice, he should give only the proper statutory covenant. Of course, either of the statutory covenants will give "an equitable right to production" so as to satisfy sect. 2 (3) of the Vendor and Purchaser Act as quoted above.

So far we have only discussed the right to title deeds as between vendor and purchaser. In a settlement the legal tenant for life has a right to the custody, and the court will not take the deeds from him except in case of danger to the safety of the deeds or the court requires them for the purpose of carrying out trusts: (*Leather v. Leather*, 6 L. T. Rep. N. S. 646; 5 Ch. Div. 221.) On a partition the court generally gives the custody of the deeds to the person entitled to the share or estate of the largest value, and if they are equally entitled to the plaintiff, on entering into a covenant to produce and allow copies to be taken. Of course the provisions of sect. 9 will apply here also. The result is that the Conveyancing Act will greatly shorten these subordinate but important documents of title.—*Law Times*.

#### THE DECLINE AND FALL OF A GREAT HUMBUG.

The Great Humbug is, "JURY TRIAL IN CIVIL CASES." We have now had an experience of this institution since the year 1815, and we see the fate which has overtaken it, in its almost entire disuse.

Mr. Mackay, in his "Sketch of the History of Scots Law," which has been separately reprinted, and which first appeared in the pages of this Journal, has said that "the experiment of Civil Jury Trial, unpopular in its origin, and not conducted in a manner to remove prejudices

by either the judges or the advocates, has never had a really fair trial in Scotland." The author adds to this amazing statement the following remark: "It was specially unfortunate that few opportunities were given for testing its value in mercantile causes at circuits, in the chief commercial centres, where it had proved useful and popular in England." The statement that it has not had a fair trial in Scotland is very singular indeed, coming from one who so perfectly knows its history. For a period of upwards of sixty years this system was the favourite of the Courts; it was forced upon the public and the profession, in season and out of season. It saved trouble; it rendered unnecessary the consideration of complicated proofs; the judges were no longer compelled to give reasoned opinions upon matters involving disputed fact; the House of Lords was freed from the laborious drudgery of hearing dreary Scottish appeals in which there was this matter of disputed fact. The parties were silenced by the verdict of an unlettered jury; and when they were silenced the House of Lords was at its ease. The trial by jury was applied not merely to simple questions of negligence arising from the overturning of a coach, but to all questions involving fact—to questions of fraud depending on the most involved circumstances of the transactions of a life-time, to questions of pedigree, such as the *Shandwick Succession* case, involving an inquiry into family history of upwards of a hundred years, and resting altogether upon documentary evidence. The result is before us in the instructive history of its gradual extinction.

Every successive Act of Parliament dealing with jury trial has been in the way of lopping off one part of it after another, until at last none of those peculiarities, which in the eyes of its friends constituted its great charm and beauty, are to be found existing now. The verdict is no longer required to be the unanimous verdict of the jury, and both parties may address the jury upon the evidence, even though evidence has been led for both. And, still most important of all, there are no cases now which *must* be tried by a jury, the mode of trial being entirely within the discretion of the Court.

There are, however, a certain number of cases yet, which apparently in the mind of some of the judges ought to go before a jury. These are actions of damages against railway companies, actions of damages for breach of promise of marriage and seduction, and declarators of a right of public road—which, with submission to these learned persons, are the very class of actions that ought *not* to be submitted to a jury. A railway company, although it have a good defence, has never, or at all events very seldom, a fair chance, when the pursuer of the action is the widow of the man who has been killed in the collision. In actions for breach of promise the defender is in as bad a case, when a pretty girl is the principal witness, and tells the story of her betrayal with touching pathos. And as for declarators of a right of public road, the defender ought at the very outset to surrender, because he will be obliged to do so at the conclusion, with a frightful account of expenses to pay.

It is sometimes said that questions of damages are peculiarly appropriate for jury trial. This is a statement which every day's experience teaches to be utterly and absolutely incorrect. Take, for example, those miserable actions for damages for technical informalities in the execution of the diligence of the law, or for saying that some one is no better than he should be—the low litigation which degrades the law, and constitutes nearly the half of the entire mass of our jury cases—in these actions the juries seem to forget all reason, justice, and common-sense; they disregard the suggestions and comments of the judge; and people who have not one unnecessary sixpence to rub upon another, will return verdicts for extravagant sums of damages. Two hundred pounds are often given where two hundred farthings would be too much. There is indeed no measure, nor reason, nor rule in the mode in which juries deal with damages; and to tell the truth, there is a kind of secret self-gratification in being

enabled thus to lord it over the unfortunate defender—a railway company or a gentleman.

The statement of Mr. Mackay, that the system is very popular in England, is also one made without due consideration, and obtains a very direct contradiction from recent events in the South. All the cases in the County Courts may be tried with or without a jury, and nine-tenths of them are tried without a jury. The judges of the High Court of Justice in England have, moreover, reported that it should be confined, in the High Court, to a certain restricted class of cases; and even as regards them, that the judge should have a discretion to order the case to be tried before himself without a jury. The reason is the same in both countries. The instrument whereby we seek to administer justice is utterly unfit for its purpose. It is well described by George Combe: "A Scotch jury, even in Edinburgh, frequently presents the following features for observation:—It consists of twelve men, eight of whom are collected from the country, within a distance of twenty or thirty miles from the capital. These individuals hold the plough, wield the hammer or the hatchet, or carry on some other useful and respectable, but laborious occupation for six days in the week. Their muscular systems are in constant exercise, and their brains are rarely called on for any great exertion. Counsel address long speeches to them; numerous witnesses are examined, and the cause is branched out into complicated details of fact, and wire-worn deductions in argument. Without being allowed to breathe fresh air, or to take exercise, they are confined to their seats for many hours, and return a verdict by which they dispose of thousands of pounds." They are in truth very frequently a motley group; so opposite in opinions, so different in knowledge, and so distinct in professions, that they would never by any evolutions of chance have met together in this world before, and except to meet upon another jury, may never meet together for one and the same object again. The amazing paradox is to club together so party-coloured a group, and to ask a verdict from men who have not the same previous knowledge of the subject, and who cannot have the same appreciation of the evidence. To dovetail into one mass the grocer, the tailor, shoemaker, farmer, and clerk, is to call into being a tribunal in whose name indeed a verdict is given forth, but which in reality must be nothing more than the opinion of the most active or the most self-willed unit of the mass. It cannot indeed be otherwise, however much pains the judge may take to explain the evidence for them, and however industriously he may employ short sentences and words of one syllable. The jury are supposed, on the instant, to perform the most difficult of all the duties of the judicial office; on the instant they are supposed capable of separating good evidence from bad; giving due weight to what is important, and rejecting the immaterial; able to arrange, analyse, and apply the result of the labours of months of preparation. Masses of written evidence are read to them (as in the *Shandwick Succession* case), which they are not themselves allowed to read, even assuming that they had the capacity to do so. Let us, however, admit that the jurors themselves are more the objects of our pity than of our contempt or ridicule. They are compelled to assume an office for the discharge of which they are the strongest witnesses of their own incapacity; and all of them dread the summons that calls them to a wearisome labour and a lost day. Indeed it is not uncommon for a juror, who suspects the object of the registered letter which is the citation presented to him, to refuse to receive it.

But it is needless further to pour water upon a drowned rat. The institution has been nibbled away in bits, like the law of entail, and it will no doubt in a few more years have received the finishing stroke, which will entirely take it from practical life and relegate it to history.

The expedient which has been resorted to, to supply the place of jury trial, is one to which perfect justice has not yet been done. To have the whole of the

evidence taken down by a shorthand writer secures, as nearly as possible, a perfect report of what witnesses have said; and one judge at least has the advantage of having seen the way in which the witnesses comported themselves. The judges of a Court of Review are deprived of this great aid in forming an estimate of the value of evidence; but this is in some measure supplied by the report of the judge who saw the witnesses, and whose opinion as to their credibility they would be slow to dispute.

The defects of the system are, that an immense quantity of trash is recorded, and proofs are protracted to a most unreasonable extent. All that is material or immaterial is duly recorded by the stenographer; and a bulky volume represents his labours, carrying along with it, of course, a bulky fee to him. The cause of this is greatly due to the want of preparation on the part of the counsel by whom these proofs are conducted. The same questions are repeated over and over again; the trial is protracted from day to day, because the counsel have to read up their prerecognitions in presence of the Court; and until a page of pre recognition has been read no question can be put, and the time of the Court—which is the time of the public—is absolutely wasted. Cross-examination, moreover, seems to be a lost art; the counsel who has to carry it out, instead of confining himself to those points where his client was hit, thinks it necessary to go through the whole case just as if there had been no examination-in-chief. The result is a wearisome repetition of the same statements; and in almost every case the cross-examining counsel has made the proof more damning against his own client than when he began. The remedy for this is in the hands of the Court themselves, by simply striking off the expense of two days out of the four during which the proof lasted.

Mr. Mackay's "Sketch," which has suggested the foregoing remarks, is one of the best introductory discourses to lectures upon Scots Law that we have ever read. Nowhere else can there be found within a limited compass so much interesting information about the rise and progress of Scottish Jurisprudence and the legal literature which it has called forth. If we differ from him here and there, our differences are not material. For example, he does not do justice altogether to a writer who has been unjustly neglected. Bankton's Institute contains a vast amount of interesting information (especially about country matters) besides law; and when one in the pursuit of an authority fails to find it in Stair or Erskine, he will in all probability find it in the Institute of Bankton. The judges who preside in the Small Debt Courts ought to make a note of the fact that they will find authority in Bankton for the conclusion, that a father is not liable for the damage caused by his youthful son, who in his playful negligence has broken the windows of a neighbour.

In his rapid sketch of the formation of the law at various epochs Mr. Mackay has also done less than justice to the judges of the seventeenth century—from 1600 till 1700. All our Equity Law dates from that century. The following century (1700 to 1800) was occupied almost entirely with cases on the Feudal Law; and it has only been within recent years that Equity Jurisprudence has again come to the front. We have a great leeway yet to make up in this matter; but we have now almost inexhaustible sources of supply in England and America, and in the yet unexhausted fountain of the Pandects.—*Journal of Jurisprudence.*

**TREASURE TROVE.**—The Judge of the Salisbury and Yeovil County Courts has had before him a singular claim. Dr. Garland, of Yeovil, and an elderly man named Hann, of Odcombe, being summoned for the value of an old Roman coin. A young woman, named Ross, who was the plaintiff, bought one of a number of old coins that were discovered, and she lent it to Hann, who showed it to Dr. Garland. Dr. Garland, who is the deputy coroner, detained it on behalf of the Crown. His Honour decided that the coin belonged to the Crown.

### THE CONVICT FRANCIS HYNES.

The following letter was on Saturday received by Mr. Frost, the convict's solicitor:—

"DUBLIN CASTLE, 1st Sept., 1882.

"SIR,—With reference to your memorial on behalf of Francis Hynes, the prisoner under judgment in Limerick Male Prison, I am directed by the Lord Lieutenant to inform you that his Excellency, after a careful consideration of all the circumstances of the case, has felt it to be his painful duty to decide that the law must take its course.—I am, sir, your obedient servant,

"W. S. B. KATE.

"John Frost, Esq., 6 Upper Ormond-quay."

### ANCIENT EXECUTIONERS.

A very curious document has recently been discovered in the State archives of Hesse-Darmstadt. It is the official tariff of Darmstadt and Bessungen, in the latter part of the fourteenth century, to the executioners of those towns for the performance of their duties. Physical exertion seems to have had nothing to do with it, the rate being high or low, according to the degree of appallingness in the punishment. To boil a criminal in oil bought the executioner twenty-four florins, while breaking a man on the wheel gave but five florins and thirty kreutzers. Criminals were hung at ten florins per head, and burned alive for fourteen. To apply the torture of the rack brought but five florins, and branding on the back or forehead or cutting off nose and ears were the same price. The list is a commentary on the actual progress of civilisation. We are a step or two further toward humanity.—*Washington Law Reporter.*

### THE RAILWAY COMMISSION.

The most important part of the report of the Committee on Railway Rates both to lawyers and laymen is that which deals with the railway commission. Many of the questions discussed by the committee, such as the carriage by companies of foreign produce on better terms than native produce, come within the existing jurisdiction of the commission, and the rest must depend for their satisfactory solution on the efficiency of the tribunal charged with carrying out the law. The result of the committee is favourable to the continued existence of the railway commission. Unless reinforced their powers expire with the present year, and they will, of course, now be, at least, renewed. A still better course would be to adopt at once the recommendation of the committee, and make the commission permanent, which recommendation was agreed to without a division. The commissioners have been in existence for nine years, and ought no longer to be considered on their trial. It is time now that they be either abolished or made permanent. Their continued instability is a source of weakness; and, if the railway companies knew that they were firmly established, there would probably cease to be any further attempts to starve them of business or bring them into ridicule. The reforms suggested by the committee are not of so crucial a character but that they can wait. Before Parliament separates, however, permanence ought to be given to the commission as one of the matters which the report has put beyond question.

The committee recommend that the commission shall not only be permanent, but that it shall be a Court of Record. We have no objection, although we cannot see what good it will do the commission. The object of the committee may possibly have been to give more the character of a Court of law to the tribunal; but, if so, why did they reject the proposal of Mr. Bolton that "the president or chief commissioner should be a lawyer, having the rank and position of a judge of the High Court?" If the railway commission is to be, as it ought to be, a Court, the legal element in it ought at least to predominate. As at present constituted the members of the commission are to

consist of three persons, of whom "one shall be of experience in the law, and one of experience in railway business," and yet the president of the commission has been neither of these. The evident intention of the Legislature was that the lawyer should be first. There are two ways in which the commission might be satisfactorily constituted. One is that suggested by Mr. Bolton, in which case the Court would consist of a judge, aided by two men of business as assessors. The alternative is to constitute a Court of two lawyers and one man of business with equal powers. If there was a difference of opinion in such a Court the majority would in all probability be right. If one lawyer were in a minority the case would probably be one of mixed law, fact, and administration, in which the business man's opinion might well be allowed to turn the scale. If the business man found himself in a minority, the case would be one in which legal experience was most required, and which ought to be governed by the opinion of lawyers. In process of time the commission ought, we think, to take the shape, as it may under the present Act. If there were two lawyers on the commission, there would be no necessity for enacting that, in case of difference, each should give judgment for himself. Lawyers when they form opinions are fond of supporting them in words; and the present rule—sanctioned, we suppose, by the majority of the existing commission—would be rescinded if there were two lawyers on the commission. In fact, it would be rather ridiculous to pass an Act of Parliament insisting that a man shall give reasons for an opinion. The committee deal with the question of appeal with a lavish disposal of the time of the Court of Appeal which will hardly commend itself to the Lord Chancellor. They suggest that prohibition to the railway commissioners shall be abolished, but that there shall be an appeal to the English and Irish Courts of Appeal, and to the Court of Session, and no further. This appeal is to be of right, and it is to include questions of fact. In other words, there is to be a second hearing before a Court of Appeal in every case in which the railway company in question does not succeed, and in some in which they do succeed, amounting to at least three-fourth of all the cases. It is out of the question that the Court of Appeal in England, with its present numbers and its present duties, could respond to any such call on their time. If such a course were possible, it would be ill-advised. The recommendation of the committee is, to use a pleader's phrase, "bad for a departure." They first decline to make the legal element predominate in the commission, and then they put a tribunal composed exclusively of lawyers over the commission. A tribunal, the majority of which consists of men not lawyers, are to be controlled on questions of fact by a purely legal Court. If the commission is properly constituted as it is, then the Court of Appeal is the wrong tribunal to put over it. If the Court of Appeal is the right tribunal to revise the decisions of the commission, then the commission itself ought to be composed of lawyers. As a corollary to the recommendations as to appeal, the committee propose the abolition of prohibition and *certiorari* to the commissioners. If there is to be an appeal on the facts, no trouble need be taken to abolish these remedies, which are only used because there is no more extensive remedy. Why objection should be taken to them, we do not know. They form a very convenient way of testing the correctness of a decision of the commissioners in point of law, and of separating the law from the facts, and the inferences from facts, with which a Court of law ought not to be troubled.

The rest of the suggestions of the committee require little discussion. They are mainly directed to certain defects in the existing jurisdiction of the commission which are accidental—such as the making of an order which will compel two companies to co-operate for the benefit of an applicant. To this must be added the condition that both parties are made to the proceedings. The commission ought also to have power to see that

the general and special railway Acts are carried out, instead of only possessing their present limited powers. The "granting of damages" suggested does not, of course, refer to compensation for personal injuries; and there is no reason, if a person proves that he has been overcharged, why the commission should not have power to order the return of the money, instead of putting the applicant to a second proceeding by action. The same approbation may be given to the proposal that the commissioners should, by consent of the parties, act as referees in rating cases. The existing tribunals may well be relieved of a class of case with which they cannot conveniently deal. The main recommendation of the committee—namely, that which proposes an appeal to the Court of Appeal on the facts—is, we think, altogether inadmissible. The railway commission was instituted as a special tribunal possessing special qualifications, and as such the committee approve it. The object was to give such assistance to the lawyers in the commission as would commend the decision on the facts to the community of business men. Unfortunately the law was outnumbered in the original constitution of the tribunal, and there has not as yet been an opportunity of repairing that initial blunder. To give an appeal on the facts is to restore the jurisdiction of the Common Pleas in a confused way, and mainly in the interests of the railway companies. Of course, the companies will appeal when the case goes against them; so that this, the leading recommendation of the committee, will have the effect of maintaining a lay tribunal to decide in favour of railway companies, and establishing a second chance for the companies in case a tribunal of pure lawyers should decide in their favour. This is a mixture which, we think, cannot work, and, in spite of the care with which the committee have taken evidence and considered the matter, their proposed reform of the railway commission seems out of the question.—*Law Journal*.

#### CRIMINAL STATISTICS.

The *Daily News* gives the following summary of the paper on the State of Crime read by Professor Leone Levi, on the 24th Aug., at the meeting of the British Association:—The number of indictable offences reported to the police within the last ten years showed a slight increase in England and Wales from 1.97 per thousand in 1871 to 2.05 in 1880, and in Ireland from 1.51 to 1.62. The ten years included five of great prosperity and high wages, and five bad years, and indictable crimes were greater in number during the five bad years. The number of crimes reported in Ireland was uniformly smaller in proportion than in England. Evidence of the difficulties in the administration of justice in Ireland was given in the fact that in the ten years the percentage of convictions on committals was 75 in England and Wales, 76 in Scotland, and only 55 in Ireland. The aggregate of committals for trial and summary jurisdiction offences gave 26.5 per thousand for England and Wales, 32.82 for Scotland, and 36.12 for Ireland. Great differences existed in the classes of crime and offences in England, Scotland, and Ireland respectively. Honour and property were safest in Ireland. The person was safest in Great Britain. Drunkenness was worst in Ireland. Geographically, crime was least in the North-Midland and South-Western counties, and most in the North-Western. The bulk of our criminals consisted of persons having no occupation and of common labourers whose means were precarious. The numbers committed for trial in England in 1880 were 19 per cent. less than in Scotland, and 5.3 per cent. less than in Ireland. The amount of deposits in the savings banks was 80 per cent. more in England and Wales than it was in Scotland, and 7.3 per cent. more than in Ireland. Prosperity went hand in hand with virtue, misery with depression and crime.

COURTS OF JUSTICE.—The charge on the Consolidated Fund last year for Courts of Justice, was £587,124 8s. 2d.

## TREASURE TROVE IN FRANCE.

Three hundred and seven thousand francs in gold, rolled up in wrappers of the *Moniteur* newspaper of the time of the Revolution, were discovered last April by a carpenter in the wall of a house at Dijon. Dr. Chanut, the owner of the house, claimed the money; but an adverse claim was set up by the descendants of the Vicomte de Monssier, who owned the house at the time of the Revolution, and memoranda in whose handwriting were detected on the wrappers. The Dijon tribunal has just decided in their favour, with costs against the owner of the house, on the ground that their ancestor must have hidden the money between 1794 and 1816.

## COHABITATION AS EVIDENCE OF MARRIAGE.

The law has its romances, and the Courts witness many scenes much stranger than those we read of in works of fiction.

The Court of Appeals of New York have recently considered a case that involved a curious phase of life. (*Badger v. Badger*, 20 Ohio Law Journal, 592.) The plaintiff claimed dower in the lands of Jacob Badger, whom she alleged was her husband. There had been no formal marriage, nor any express agreement between the parties, but simply a very long cohabitation. The defendants denied the marital relation, and, in the course of the trial, the following curious history was developed:

"The decedent appears to have lived two lives. They ran parallel with each other for more than a third of a century, and without approach or collision. In one locality, and among his own relatives and friends, he seemed to be a bachelor, possessing considerable wealth, at the head of a respectable business, occupying rooms with his sister and with others during much of the period, and if not always at home, yet not so frequently absent as to arouse suspicion or remark. In another locality in the same city, but perhaps in an humbler neighbourhood, he appears as John Baker, living with the plaintiff as his wife, introducing her as such, called uncle by her nephew, and deemed father by her daughter, paying her bills and expenses, furnishing her with the food and shelter he shared, nursing her through severe and continued illness. Seldom absent at night, attending her mother's funeral as one of the family of mourners, the intercourse created no scandal, but reputed to be virtuous and respectable, and that of husband and wife."

Jacob Badger lived on Joralemon-street, in a state of single blessedness. John Baker lived on Macdougall-street, in a state of marital bliss. Jacob and John were the same person, and yet not the same. Those who knew Jacob knew not of John, and those who knew John had never heard of Jacob. The result was that the witnesses as to Jacob's celibacy could not testify as to John's reputation for chastity. Inasmuch, therefore, as no one cared whether Jacob had gone the way of the transgressor or not, the Court very properly held that witnesses who knew nothing about this alleged matrimonial reputation were not competent to testify that he was not married.

"That the decedent lived a single life without presence or appearance of wife or daughter, at his rooms when boarding with his sister, was a fact properly proved, and clearly admissible. But that among those who thus saw him, and before whom nothing had occurred to raise the question, he was reputed to be unmarried, was pure hearsay, explaining nothing since there was nothing to be explained. The life of John Baker, in Macdougall-street, was ambiguous in the sense that it might indicate an illicit intercourse or a matrimonial connexion. To ascertain which, the shadow it cast upon surrounding society could be examined and studied usefully for the solution of the doubt. The life of Jacob Badger, in Joralemon-street, was not ambiguous at all, and needed no help to solve its character. It is indeed said that the purpose was to show a divided repute, and so contradict the reputation of marriage,

which, to be effective, must be general. But the general repute proved, and that required to be shown, does not and cannot go beyond the range of knowledge of the cohabitation. If within that range there is division as to the character of the fact, the divided repute merely continues the ambiguity and determines nothing."

In speaking of this cohabitation, the Court said: "So far as we know, the association began when the plaintiff was young and the decedent in middle life, and continued until he fell dead an old man of seventy-six. It lasted without break or interruption. It survived the loss of youth and its attractions; it ran on through sickness, paralysis, and some degree of mental weakness; it showed no trace of the satisfied passion that tires of its victim and abandons her for new temptation; it did not change when the girl had grown into the matron and became deaf and lame; it stayed with the tenacity of love and duty, remaining patient and faithful until the end. It is argued with great force that if this relation was that only of lover and mistress, it approached strangely near to matrimonial truth and devotion, and gave to unlawful lust an endurance and virtue not common or expected.

"The reputation attending this cohabitation in the neighbourhood where it existed and was known, among those brought into its presence by relationship, business, or society, was that which ordinarily attends the dwelling together of husband and wife. It has been well described as the shadow cast by their daily lives. (1 Bishop on Mar. and Div., s. 438.) In the general repute surrounding them, the slow growth of months and years, the resultant picture of forgotten incidents, passing events, habitual and daily conduct, presumably honest because disinterested and safe to be trusted because prone to suspect, we are enabled to see the character of the cohabitation and discern its distinctive features. It is for that reason that such general repute is permitted to be proven. It sums up a multitude of trivial details. It compacts into the brief phrase of a verdict the teaching of many incidents and the conduct of years. It is the average intelligence drawing its conclusion."

The judgment of the above Court was therefore reversed, because of the admission of evidence as to Jacob's celibacy given by those who knew nothing of John.

"We have been able to find no case where such evidence as was here given, upon its admissibility being challenged by objection, has been held competent. The evidence of reputation, when admitted, is an exception to general rules. It should never be allowed to stray beyond some useful or necessary purpose. In its application to cases of pedigree it is justified by the difficulties of proof, and confined generally to the family and relatives whose knowledge is assumed, and who have spoken before a controversy arisen. In its application to the fact of marriage it is more than mere hearsay. It involves and is made up of social conduct and recognition, giving character to an admitted and unconcealed cohabitation. But in its application to a man living in appearance a single life, it adds nothing to that fact, it creates no further contradiction to an intercourse carried on elsewhere under the appearance of matrimony, and throws no additional light upon it. It amounts to bare hearsay, and the unsworn declarations of persons knowing nothing of the facts in controversy. In the present case twenty-three different witnesses were allowed to testify to the reputation of the decedent as a bachelor, not one of whom, before his death, had seen or heard of the plaintiff, or known of her connexion with him. We do not think this evidence was admissible. Its very volume and frequency indicates the dangerous effect it may have produced upon the mind of the Court, and we cannot disregard the error.—*Pacific Coast Law Journal*.

In the last financial year the fees on "bills" in the House of Lords were £30,022, and in the House of Commons £31,609.

## PROCESSIONS IN THE STREETS.

The case of *Beatty v. Gillbanks*, reported in the August number of the *Law Journal Reports*, deals with the interesting and important questions of law raised by the mode of proceeding adopted by the religious revivalists, styling themselves the "Salvation Army." As is well known, opinions have widely differed on this subject. Last October the Home Secretary was called upon to give his advice in the matter by the magistrates of Stamford. He suggested that if riotous proceedings were apprehended, an information should be sworn to that effect; notices should be issued forbidding the procession; and, in the last resort, the procession should forcibly be prevented from forming. The soundness of this advice in point of law is negatived in *Beatty v. Gillbanks*, by the judgment of Mr. Justice Field and Mr. Justice Cave. Their judgment amounts to a decision that a procession in the streets is a lawful proceeding, and that those who take part in it cannot be bound over to keep the peace, notwithstanding that the procession may reasonably be expected to raise a tumult. In form the case only decides that a person charged with creating an unlawful assembly cannot be bound over to keep the peace because he is taking part in a procession which is, without his so intending it, likely to lead to a breach of the peace; but, in effect, the judges decide the larger proposition, that by no form of proceeding can this kind of procession be prevented. This is clear from the fact that *Beatty v. Gillbanks* has, since its decision, been considered conclusive in the case of a member of a similar procession convicted of assaulting a police constable who had proceeded to lay hands upon him to stop the procession. The conviction was quashed, with costs against the justices, as in the case of *Beatty v. Gillbanks*. There is grave doubt whether there is power to give costs against the justices upon a case stated; and some surprise has been caused by the Court taking this course when the justices acted under the suggestion of the Home Secretary, and when the point involved does not appear to be so clear as the judges seem to consider it.

The decision of the Court on the question upon which they considered the whole matter to turn—viz., whether those who took part in the procession were guilty of an unlawful assembly—may be accepted more easily than its application to all the questions involved. Even on this point, however, the admission of Mr. Justice Field suggests that there is much to be said. The learned judge concedes that "every one must be taken to intend the natural consequence of his acts; and, therefore, if this disturbance of the peace was the natural consequence of the acts of the appellants, they would be liable, and the justices would have been right in binding them over." But what does "natural consequence" mean? It does not refer merely to physical necessity. If a man carrying a red umbrella walks into a field where there is a savage bull, the natural consequence is that the bull attacks him. If on the day of an election the most unpopular candidate parades the streets conspicuously wearing his colours, the natural consequence is that rotten eggs, if at hand, are thrown at him. It could not, however, be said that the candidate in question could be convicted on an indictment of creating a riot or unlawful assembly. The present decision goes further, and assumes that he could not be lawfully taken under shelter against his will, still less prevented from leaving his house. We do not think that this is so clear as the judges appear to consider it. No doubt English law has the highest respect for private judgment and individual rights, and generally forbids no act which is not unlawful in itself. But there are some cases in which this principle has been made subservient to the rights of the public. For instance, it is in itself a lawful act for a shopkeeper to make his shop window as attractive as he can, and yet a shopkeeper who attracts a crowd outside his window can be convicted of causing an obstruction (*Re v. Carville*, 6 C. & P. 637). In these cases the intention is immaterial, as decided in *Hall's case* (1 Ventris, 169), in which an exhibition of acrobats,

apparently in private ground, at Charing Cross was pronounced illegal, as it drew a disorderly crowd. Some forty years ago, a confectioner in Regent-street had a pretty daughter, and crowds collected outside the shop to see her, creating so great an obstruction that the girl's father was obliged to take her out of the shop. It would seem strange to indict a man for having a pretty daughter; but if the effect of putting her in a shop in public view is to cause a block in the street, it is quite in accordance with sound principles of public duty to make those who place her there amenable to the law. Before Northumberland House gave place to the present Avenue, two men, by way of bringing a bet to the test, stood gazing at the lion which used to stand over the front of the house. The consequence was that an immense crowd collected in Trafalgar-square, and, in all probability, an indictable offence was committed. In deference to the same principle the figures of Gog and Magog, which used to appear and strike the hours in front of a clock-maker's shop in Cheapside, have been silenced.

The class of cases, of which these are instances, are tolerably familiar. Whether or not the principle of them applies to processions in the street likely to arouse opposition requires, we think, at least grave consideration. If an act, innocent in itself, becomes illegal because its natural consequence is to obstruct the public street, is it legal to do an act having a riot as its natural consequence? If the freedom from obstruction of the streets is an object which may be attained at the expense of forbidding an innocent act, is not the maintenance of the public peace, *a fortiori*, such an object? It may be answered that the law never has been applied in this way; but the question remains whether the principle of the law does not necessarily include this application. There is a further question whether processions are in themselves a lawful use of the streets. If they are not, those who take part in them may lawfully be prevented from so doing. It is clear that the object of the defendant in *Beatty v. Gillbanks* was purely and simply to take part in a demonstration. It was not even a procession from one place to another. The "Army" with band of music, flags, and banners, started from their hall and returned again to the hall. The object was to beat up recruits. Whether this is a lawful use of the streets deserves discussion. It is true that the Army did not stand still in the street. If it had done so, doubtless an unlawful act would have been committed. If it walked in procession from one place of meeting to another, probably the streets would be lawfully used notwithstanding the flags and the band of music. But is it a lawful use of the streets to march through the principle thoroughfares of a town, and march back again to the same place? Do the objects with which the streets are dedicated to the public include this use? These are questions, amongst others, which appear involved in the present discussion; but which have hardly as yet received adequate treatment in the Courts. The decision, it is true, is in the healthy direction of individual liberty; but traditional principles of English law are apt sometimes to be pedantically applied, and to place the general rights of the public out of their true perspective.—*Law Journal*.

The search for lead, and ultimately for zinc also, was carried on in the Mendips, Somersetshire, even during the middle ages, and a curious code of laws was enacted, in the reign of the fourth Edward, for the regulation of the industry. Every man was entitled to dig a trench, and to "throw his hoes two ways after the rake;" and then none might work "within the compass of the throw." A thief of ore was treated as an Achan. He was shut in his house, with all that he had, and the building was fired; but after a time he was permitted to rush out through the flames, purged of his faults—like purified metal from the smelting.

The Legislature of Missouri has passed a bill forbidding the sale or manufacture in the State of any imitation of butter, whether represented to be genuine or not.

## TEXT-BOOK ADDENDA.

[From the *Law Journal*.]

*Railway Clauses Consolidation Act, 1845, s. 93.*  
*Godofroi and Shortt on Railways, 427.*

The provision as to mile posts is for the benefit, not of the company's passengers, but of other persons than the company using the line for locomotion (*Brown v. Great Western Railway Company*, 51 Law J. Rep. Q. B. 156).

*S & W. IV., c. 27, s. 7.*  
*Banning on Limitation, 117.*

A title to land may be acquired against a railway company, although it is not superfluous land (*Bobbett v. South-Eastern Railway Company*, 51 Law J. Rep. Q. B. 161).

*Carriers Act (11 Geo. IV. & 1 Wm. IV., c. 68), s. 1.*

A trunk containing silk, &c., worth more than £10, and undeclared, is "lost" within the meaning of the Carriers Act, when sent the wrong way and delayed, so that the carriers are not liable for injury to the silk (*Millen v. Brauch & Co.*, 51 Law J. Rep. Q. B. 166).

*Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 150.*

A collective notice to pave given to several owners is sufficient, and a separate notice to each not necessary (*Simcox v. Handsworth Local Board*, 51 Law J. Rep. Q. B. 168).

*Dart on Vendors and Purchasers (5th Edition), 157.*

A purchaser who did not make his objection to title till the lapse of the seven days mentioned in the conditions, held not entitled to recover his deposit (*Rosenberg v. Cook*, 51 Law J. Rep. Q. B. 170)—C.A.

As regards the incomes of the professional classes in London, the law stands first, the average yearly income of barristers and solicitors being computed at £575, while ten solicitors and five barristers are said to earn over £10,000 a year.

Box and Cox has just been enacted in real life. It was in Vienna, and the facts have been in an undramatic way disclosed at a police-court. A Madame Rosenthal (the Mrs. Bouncer of the piece) let a room to two men separately. One was engaged at some gas works, and was out all night, including Sundays. The other was porter at the establishment of a tradesman (not a hatter), and was employed all day. At last came the inevitable. One man, having a holiday, found the other in his bed. Mrs. Bouncer (Madame Rosenthal) tried to explain that she had let the room on the condition that one of them should use it only in the day and the other only at night. But the gasman carried the case to the police-court for the return of the caution-money he had lodged with her, and won the day. Plays are frequently founded on real incidents, but it is seldom that incidents, as in this case appear to be founded on a play.

**FEE STAMPS.**—The total revenue from fee stamps in the year ending the 31st of March was £653,449 10s. 2d., and net £650,883 11s. 8d.

**Holloway's Pills.**—Prevision.—As autumn treads on winter, slender, delicate, and pale-faced youths become listless, languid, and debilitated, unless an alterative, combined with some tonic, be administered to quicken their enfeebled organs. This precise requirement is supplied in these noted Pills, which can and will accomplish all that is wanted, provided the printed instructions surrounding them meet with scrupulous attention. Holloway's Pills are especially adapted to supply the medical wants of youth, because his medicine acts gently, though surely, as a purifier, regulator, alterative, tonic, and mild aperient. A very few doses of these Pills will convince any discouraged invalid that his cure lies in his own hands, and a little perseverance only is demanded for its completion.

## BOOKS RECEIVED.

*The Bills of Sale Acts, 1878 and 1882, with Notes showing the alteration in the law as affected by the Act of 1882, and Appendices of Statutes, Rules of Court, Forms and Precedents.* By MICHAEL G. GUIRY, LL.B., of the Middle Temple, Barrister-at-Law. London: Waterlow & Sons, Limited, London Wall, E.C. 1882.

## REVIEWS.

*The Prevention of Crime (Ireland) Act, 1882, with a Review of the policy, bearing, and scope of the Act; Notes on the several Sections, chiefly those on the subject of Summary Procedure for Offences against the Act.* By HENRY HUMPHREYS. Dublin: Hodges, Figgis, and Co., Grafton-street, Publishers to the University. 1882.

"COERCION was not only a failure, it had been a disaster. Suddenly one day Ireland awoke in joy to learn that Mr. Gladstone had turned from his dread experiment to courses more congenial to his nature. Mr. Forster was recalled; the prison doors were unbarred; the Land Act was to be made complete; the 'arrests' victims were to be saved; a peasant proprietary was to become a reality. It seemed too much of happiness—a moment too bright to last. The men to whom this blessed change was ruin, the men for whose designs this reconciliation was utter overthrow, were not to be thus baffled without a blow. How to turn away the spirit of amity, how to bring back the reign of hatred and fury, was the problem for them. They sought its solution, alas! in an act destined to roll, as it were, a sea of blood between the two nations." It was the act of the Phoenix Park assassins; but, adds Mr. A. M. Sullivan, "over the grave of the man who represented a policy of reconciliation and justice, the tears and the hearts of two peoples mingled, who long had warred in anger and hate. Here was an opportunity for such a fusion of feeling, such a grasp of friendship between the two countries, as had not arisen since the memorable settlement of 1782. Never before in our time had any Government such a chance for putting itself at one with Irish national sentiment. The popular leaders proclaimed their determination to take the field against crime, and to lead forth the popular array in behalf of public order, because justice henceforth was to be the law. The Government had opened the prison doors, had proclaimed aloud the abandonment of Coercion, and the advent of relief for the victims of oppression. It needed but a firm front and an honourable perseverance in this direction on both sides, and an era of happiness and peace might have closed a long and dreary strife. Yet it was at this juncture, and under such circumstances, the Government decided on introducing into Parliament a Coercion Bill for Ireland, which was frankly declared to be the worst and most desperate measure of its class ever conceived in the gloomy annals of despotic times." Of the Act thus referred to from his own standpoint by the author of "New Ireland," Mr. Humphreys says: "If it be allowed that what the preamble to this 'Prevention of Crimes (Ireland) Act, 1882,' sets forth is the truth, it can hardly be maintained that the subsequent enactments for the prevention and repression of crime are needlessly severe. The remedy does not appear to be more than adequate to the requirements of the disease. There may be other things to be taken into account; but then, as Lord Bacon says, the law does not judge of the causes of causes, but contenteth itself with the immediate cause, and so the Act does not for its purposes deem it requisite to look for reasons elsewhere. But although other causes be not, by the Act, looked for farther afield, the branches of the magistracy appointed to execute justice in these matters cannot quite exclude from view the means that produced the abnormal state of things to meet which the 'operation of the ordinary law has become insufficient.'"

To those branches of the magistracy, the edition of



the Act now prepared by Mr. Humphreys will indeed prove invaluable; and certainly, the author of the well-known "Justice of the Peace for Ireland" has done all that was substantially needed in order to render the summary procedure for offences against the Act easily administered. His notes and observations appended to the various sections are pertinent and practical; while for convenient reference full marginal readings are added, and a clear and copious Index completes his excellent manual, which begins with a lucid Review of the policy, bearing and scope of the Act. Simple in its plan or outline, this stringent statute is most comprehensive in its character; but, however drastic, "as it is the law, it must, if necessary, be promptly and rigidly enforced, and so as that the intention of the legislature be not frustrated, but yet carried out in a sober and dispassionate spirit, inflicting no needless hardship, worry, or annoyance to innocent and simple folk." To this end we would gladly see the book, from which we quote those admirable remarks, in the hands of all who have to do with the execution of the enactment, as well as of those who will have professional occasion to deal with it; nor, from the constable up, will one be found to cavil with the opinion we express, that the book well deserves their attention and approbation.

Meantime, we heartily hope, with Mr. Humphreys, that long before the end of the statute's allotted duration of three years "the state of things which called this Act into existence will have dissolved and passed away from the country, and so the Act will quietly expire and fall into disuse." "Come what will," he observes, "it is far better that, for the reputation of justice, nothing be over-strained. Better, far better, that the transgressor escape punishment than that the inflexible rules of justice be overpassed to overtake him; for soon or late that personification of the moral reverence for law, the avenging Nemesis, will, for any wrong done in her name, exact a requital." With those estimable and righteous sentiments, the reader may collate the words of the Very Rev. Canon Pope, at the Mansion House meeting, on the 7th inst., when advocating a commutation of the sentence of death passed upon the convict Hynes, convicted of murder, on a trial under the Act: "I wish to say that the majesty of that law should be upheld; and to point out the fearful danger there is that the exasperation which has been caused by the many murders which have been committed with perfect impunity may induce our legislators to stretch the tension of the law too far, and seek for a victim. I fear that the majesty of the law may be deprived of its garb of justice, and I have a dread that it may be made to wear the garb of vindictiveness. It would be calamitous if the exasperation which has been justly caused not only in our own country, but throughout the world, at the fearful crimes that have been committed therein, should induce the law to look for a victim, or, where there is even an appearance of guilt, that a life should be sacrificed as an atonement for the murders committed, and for which there has been no personal expiation." And though there may be many disposed to differ from the speaker in reference to the particular case dealt with, none can dispute the validity of his observations in their general application. "The amelioration of the country would be dearly purchased by the evil of the crime of one murder," he added; "better that we should be reduced to the condition of the slaves of Zanzibar, of Africa, or of India, with the taskmaster's whip over our backs, than that our country should be stained with the guilt of one murder." Strong though this may seem to some now-a-days, the teaching of the true patriots of old has been no other. "I join," wrote Mr. D. Owen-Madden, in 1848, "with the son of our immortal Grattan, in saying, that 'for the honour of Ireland' the system of assassination must be put down. Not merely to save society from anarchy, but to rescue our national character from the infamy cast upon it, the assassins must be put down by every possible and justifiable means. In all our tribulations, in all our past feuds and sufferings, we were still esteemed through Europe as a people endowed with wit and

courage; and every Irishman who really feels for his country must be galled at thinking of the dastardly system of assassination which in some districts had almost become habitual. 'Multitudes,' says Dr. Channing, 'never blush!' If they could do so, my countrymen, on contemplating the foul stains on our national fame cast by the assassins, might truly cry, in the soul-stirring words of Cowley:

"Come the eleventh plague rather than *this* should be!  
Come sink us rather in the sea!  
Come, pestilence, and reap us down!  
Come, God's sword rather than our own!  
Rather let Roman come again,  
Or Saxon, Norman, or the Dane!  
In all the bonds we ever bore,  
We grieved, we sighed, we wept—we never BLUSHED before."

"The country has been stained with blood," exclaimed Canon Pope: "'Accursed shall you be, and accursed shall be the land which drank your brother's blood.' No wonder that we should be afflicted with famine and with pestilence; no wonder that our countrymen should be emigrants. 'Cain, where is thy brother?' The country has been stained with blood. Your country shall be killed, so that it shall give forth no fruit. Your people shall be vagabonds upon the face of the earth." Yes, too truly, in the words of the patriotic "Speranza,"

"Not our wrongs but our sins make the cloud  
That darkens the land like a shroud."

## OBITUARY.

### THE HON. CHARLES JAMES TRENCH.

THE Hon. Charles James Trench, granduncle of Lord Ashtown (3rd Baron), who died at his residence, 6 Merrion-square, south, on the 31st ult., in the 77th year of his age, was a son of the late Mr. Francis Trench (next brother of the first Lord Ashtown), by his marriage with Mary, second daughter of Mr. Henry Mason, of Shrewsbury. Born in 1806, he was called to the Bar in Trinity Term 1830. Mr. Trench, who was until recently County Court Judge and Chairman of Quarter Sessions for the Co. Dublin, was raised to the rank and precedence of a baron's son in 1840.

### MR. RICHARD ANNESLEY BILLING.

Mr. Richard Annesley Billing, who died at his residence, Balaclava-road, Melbourne, on the 21st of June last, was born in 1814, and was called to the Bar in 1839. After practising in Dublin for some years, he left Ireland in 1856, in consequence of ill-health, and in October of that year was admitted a member of the Victorian Bar. He was appointed one of the lecturers in law at the Melbourne University, and for a number of years gave a gold medal as a prize to the student who obtained the highest distinction in his classes. He was several times solicited to become a candidate for Parliamentary honours, but refused, and took no part in politics. At one time he had a leading practice at the Victorian Bar, and was usually retained in cases in which the Crown or the Board of Land and Works was a party, but for the last three years he had retired from general practice. In 1878 Mr. Billing was appointed Queen's Council for Victoria, and in April last he was appointed a County Court Judge.

### MR. CHARLES HENRY TANDY.

Mr. Charles Henry Tandy, who died at Cliff Terrace, Tramore, on the 17th of August last, in the 68th year of his age, was a native of Waterford, and son of an eminent solicitor in that city, his brother Mr. Shipland Morris Tandy being also a solicitor. He was educated at the University of Dublin, where, among other distinctions, he won a silver medal in classics. He was called to the Bar in Hilary Term 1849, joined the Leinster Circuit, and took silk in 1866. Mr. Tandy, who was appointed a Crown Prosecutor for the Co. Tipperary, was standing counsel to the University of Dublin, and Professor of Constitutional, Criminal, and Crown Law at the King's Inns.

## COURT PAPERS.

## HIGH COURT OF JUSTICE.

## CHANCERY DIVISION.—LAND JUDGES.

List of Petitions presented to the Land Judges in the month of July, 1882.

DATE	TITLE OF MATTER	OBJECT OF PETITION	COUNTY	PROFIT RENT	SOLICITOR
July 1	John Patrick Cunningham, owner; <i>Lucy Jane Kearna, petitioner</i>	Sale	Galway	£ s. d. 124 16 6	<i>Maxwell and Weldon</i>
" 4	Robert Langley Hunt, owner; <i>Rev. Jonathan C. Head, petitioner</i>	Receiver and sale	Tipperary	Not stated	<i>George H. Lyster</i>
" 5	Wm. James Griffith, owner and petitioner	Receiver and sale	Sligo	970 10 8	<i>Wm. Neilson and Son</i>
" "	Michael Thomas O'Brien, owner; <i>The National Bank, petitioners</i>	Receiver and sale	Co. Clare	48 0 0	<i>Michael Larkin</i>
" 6	Samuel Livezey, owner; <i>John Buckley, petitioner</i>	Sale	Wicklow	Estimated 52 9 3	<i>John Buckley</i>
" 7	Sir William Carroll, Knt., owner and petitioner	Sale	City Dublin	476 14 7	<i>Mark C. Bentley</i>
" "	Michael Kavanagh and others, owners; <i>Peter Moore, petitioner</i>	Sale	City Dublin	Not stated	<i>John T. Hinds</i>
" 8	John Henry Roper, owner and petitioner	Sale	Cavan, Longford, Meath and Westmeath	471 6 4	<i>William Whitton</i>
" 10	Maurice Fitzgerald and another, owners and petitioners	Sale	Longford	487 13 4	<i>Thomas Kiernan</i>
" 11	Trustees of Anthony O'Reilly and another, owners; <i>Mathew R. W. O'Connor and another, peti- tioners</i>	Sale	Cavan and Meath	Estimated 2,895 12 8	<i>J. E. Tarleton</i>
" "	Andrew Samuel Kirkwood, owner; <i>Wm. Labatt Payne and another, petitioners</i>	Receiver and sale	Roscommon	175 0 0	<i>George H. Lyster</i>
" 12	Richard Keown Boyd, owner; <i>Hugh Watson and James A. G. Johnson, petitioners</i>	Sale	Down, Antrim, Wicklow	Estimated 5,075 10 10	<i>James Murland &amp; Co.</i>
" 18	Phillip W. Creagh, owner; <i>Rt. Hon. Lord Clonbrock and others, peti- tioners</i>	Receiver and sale	Cork and Kerry	559 4 0	<i>Edward Roper</i>
" 14	Andrew Bell Booth, owner; <i>John T. Tallow and another, petitioners</i>	Sale	Cavan	Not stated	<i>John T. Tallow</i>
" 17	Stephen Mackey, owner; <i>National Discount Co. (Ireland), petitioners</i>	Sale	Dublin	75 12 4	<i>Wm. P. M'Evoy</i>
" 18	Peter Alexander Daly, owner; <i>The National Bank, petitioners</i>	Receiver and sale	Galway	478 6 8	<i>Michael Larkin</i>
" "	B. Townley Balfour and others, owners; <i>Blagney T. Balfour, petitioner</i>	Sale	Meath	40 17 0	<i>Edward Carraher</i>
" "	William Cox, owner; <i>Frances Peirce, petitioner</i>	Receiver and sale	Limerick	1,198 0 6	<i>Robert J. Ferguson</i>
" "	Jeremiah Donovan, owner and petitioner	Sale	Cork	71 8 8	<i>Daniel O'Donovan</i>
" 19	Nicholas Butler, owner; <i>Belinda Creagh, petitioner</i>	Sale	Clare and Galway	Not stated	<i>James Blaquières</i>
" "	Thomas Byrne and others, owners and petitioners	Sale	Carlow	488 15 10	<i>John D. Vanston</i>
" 20	Sir James E. Tennant and Settled Estates Act	To sanction Building Lease	Antrim	—	<i>Thomas H. Torrens</i>
" 21	Michael Bishop and others, owners; <i>Mathew Duffey and others, petitioners</i>	Receiver and sale	Co. Dublin	53 0 0 Griffith's Valuation	<i>Leonard Morrogh</i>
" "	William Rodgers, owner; <i>Jane M'Farlane, petitioner</i>	Sale	Tyrone	67 0 0 Griffith's Valuation	<i>King Houston</i>
" 24	W. Langford Rae and another, owners; <i>Catherine Ras and others, petitioners</i>	Sale	Kerry	887 19 8	<i>M'Gillicuddy and Morphy</i>
" "	William M. H. Kirkwood, owner; <i>The Commercial Union Assurance Co., peti- tioners</i>	Receiver and sale	Mayo and Sligo	1,089 17 1	<i>Misward Jones &amp; Co.</i>
" 26	John T. Dillon, owner; <i>Lord Emly and others, petitioners</i>	Receiver and sale	Roscommon	1,496 6 4	<i>John O'Hagan</i>
" "	Samuel Lindsay, junr., owner; <i>Mary Anne Lindsay, petitioner</i>	Sale	King's Co.	Not stated	<i>Adam Mitchell &amp; Son</i>
" 28	James Watson, owner; <i>The Belfast Building Society, petitioners</i>	Sale	Armagh	80 0 0 Estimated letting value	<i>W. E. Armstrong</i>
" 29	Thomas P. Sherlock and another, owners; <i>Richard Leyna, petitioner</i>	Sale	Waterford	1,505 9 0	<i>Maxwell and Weldon</i>
" 31	Fitzameline M. Anketell and another, owners and petitioners	Sale	Tyrone	1,088 11 0	<i>J. C. Smith and R. N. Barrow</i>

COURT OF BANKRUPTCY.

ADJUDICATIONS IN BANKRUPTCY.

The dates of Adjudications are first given, the *Stittings* follow in *Italics*.

Bourke, William, of Main-street, Roscrea, in the county of Tipperary, draper, trading as "William Bourke and Co." August 29; *Tuesday, September 19, and Friday, October 6. H. F. Leahman, solr.*

Teston, Cornelius, of Winthrop-street, in the city of Cork, publican. August 22; *Tuesday, September 19, and Friday, October 6. Thomas Ezham, Son, and Brett, solrs.*

DUBLIN STOCK AND SHARE LIST.

DESCRIPTION OF STOCK	SEPTEMBER					
	Sat. 2	Mon. 4	Tues. 5	Wed. 6	Thur. 7	Fri. 8
*Paid Government						
3 p c Consols ..			99½		99½	
New 3 p c Stock ..		98½	98½	98½	98½	98½
INDIA STOCK.						
4 p c Oct. 1888 Trafic. at ..		103½	103½	103½		103½
3½ p c Jan. 1881 Bk. of Irel ..				100½		
Banks.						
100 Bank of Ireland ..			317	318½	318½	318½
25 <i>Hibernian Banking Co.</i> ..			35½			
20 London and County (Ltd.) ..						
15 London Joint Stock ..						
20 London and Westminster, Ltd ..					70	
10 Do. New ..						
3½ Munster Bank (Limited) ..			7			
Nat. Prov. of England, Lim. ..						
10 National Bank (Limited) ..					23½	
10 National of Liverpool (Ltd.) ..			14½		14½	
25 Provincial Bank ..			27			
10 Do. New ..						
10 Royal Bank ..						
25 Union of Australia ..		64			63½	
Steam.						
50 British & Irish ..						
10 Dundalk (Limited) ..			5½			
100 City of Dublin ..					104½	
50 Dublin & Liverpool Steam Ship Building Co.						
Miscellaneous.						
10 Alliance & Dub. Cons. '82 ..						
8 Do. do. New ..						
7½ Dub. Drapery Whouse, Ltd. ..						
25 Ir. C. S. Building Society ..						
9-4-7 Patriotic Assurance ..						
Tramways.						
10 Belfast Trams ..						
10 Dublin United Tramways ..		10½				
10 L'pl Un'ed Tram & Bus l'ed ..						
10 Nth Metr. Tramway, Lond.						
Railways.						
50 Belfast and County Down ..			46			
50 Belfast and Northern Cos. ..						
50 Cork and Bandon ..						
100 Great Northern (Ireland) ..						
100 Gt. Southern and Western ..		117	116½			116½
100 Midland Gt. Western ..						
100 Waterford & Cent. Ireland ..						
Railway Preference.						
100 Belfast & Nth'n Cos. 4 p c ..						
100 D., W., & W., 4 per cent ..						
100 Gt. South'n & West'n 4 p c ..		107½				
100 Mid. Great Western. 4 p c ..			103½			
Debenture Stocks.						
Belfast & Nth'n Cos. 4 p c ..						
Dublin & Wicklow 4 p c ..						
Gt. Northern (Ireland) 4 p c ..		110		110		
Do. 4½ p c ..					114½	
Do. 4 p c ..					105½	
Do. 4½ p c ..					113	
L'derry & Enniskillen 5 p c ..						107
Waterford & Central 6 p c ..						
Miscellaneous Debent.						
Ballast Office Deb. £92 6s 3d, 4 p c ..		93				
City Deb. of £92 6s 3d, 4 p c ..			92½			
Dub. & Glas. S. P. Co. (1887) 5 p c ..						
Do. (1888), 6 p c ..						
Dub. & Kingstown 4 p c ..			103			

\* Shares not fully paid up are given in *Italics*. r x d

Bank Rate—Of Discount—4 per cent.. 17th August, 1882  
Of Deposit—1 per cent.. 23rd March, 1882

Name Days—September 13th and 26th, 1882.  
Account Days—September 13th and 27th, 1882.

Business commences at 1 30 p.m.

The Stock Exchange and Brokers' Offices will be closed on Saturdays during the month of September.

BIRTHS, MARRIAGES, AND DEATHS.

BIRTHS.

ATKINSON—September 4, at Manorhamilton, County Leitrim, the wife of George A. Atkinson, Esq., solicitor, of a daughter.  
CHEARNLEY—September 4, at Salterbridge, Cappoquin, the wife of Henry Philip Chearnley, Esq., D.L., High Sheriff, County Waterford, of a son and heir.  
BAUNDERS—September 2, at Leinster-road, the wife of Frederick G. Saunders, Esq., solicitor, of a son.  
STAVELEY—September 2, at Somerset House, Nelson-street, the wife of Jones H. Staveley, Esq., A.B., barrister-at-law, of a son.  
WILKINSON—August 29, at Falcarragh, County Donegal, the wife of Mr. John Wilkinson, Clerk of Petty Sessions, of a son.

MARRIAGES.

COHOON and FITZGERALD—September 6, by special licence, William Henry Cohoon, only son of William Cohoon, of Ringsend, Co. Dublin, to Bridget Josephine Fitzgerald, widow of the late John Vincent Fitzgerald, Esq., solicitor, of this city.  
CURRY and BEDINGFIELD—September 7, at Northbourne, Deal, Kent, by the Rev. Thomas Wood, M.A., Vicar of St. Peter's, of London-gerry, to Philippa Frances, youngest daughter of Thomas Forrester Bedingfield, Esq., of Gilford, Western Australia.  
MACLAUGHLIN and CAMPBELL—September 5, at the Private Oratory, Chichester Park, Belfast, by the Most Rev. Dr. Dorian, assisted by the Rev. John Lynch, P.P., V.F., Ballymena, the Rev. James Hamill, Adm., Belfast, and the Rev. F. McKenna, P.P., Portrush, Daniel MacLaughlin, Esq., solicitor, Coleraine, to Mary, eldest daughter of Bernard Campbell, Esq., Belfast.  
MACUIRE and TURNCLIFFE—August 29, at St. Peter and Paul's, Great Crosby, Liverpool, by the Very Rev. Canon Maguire, uncle of the bridegroom, John Francis, eldest son of the late John Francis Maguire, Esq., M.P., Cork, to Lizzie, second daughter of John Turncliffe, Landsdowne, Blundell Sands, Liverpool.  
NORTH-BOMFORD and KAYE—September 5, at St. George's Church, by the Rev. J. A. Chadwick, D.D., Rector of Armagh, assisted by the Rev. George Martin, Rector of Aber, County Meath, and the Rev. A. Elliott, M.A., John North-Bomford, Esq., J.P., of Ferrans, County Meath, late Captain H.M. 29th Regiment, to Mary W. Constance, eldest daughter of W. S. B. Kaye, Esq., Q.C., LL.D., Assistant Under-Secretary to the Lord Lieutenant of Ireland.

DEATHS.

KINCHELA—August 27, at an advanced age, Lewis Chapellier Kinchela, M.D., son of the late John Kinchela, LL.D., formerly Chief Justice at Sydney, N. S. Wales, and nephew of the late Perrott Thornton, Esq., of Greenville, J.P., formerly High Sheriff Co. Cavan.  
M'LAUGHLIN—September 7, at her father's residence, Gardiner's-place, aged 19 years, Margaret Mary, youngest surviving daughter of William M'Laughlin, Esq., Q.C.  
ROWAN—August 11, at his residence, Florence-terrace, Londonderry, William Terence Rowan, Esq., solicitor.  
TRENCH—August 31, at his residence, Merrion-square, Dublin, the Hon. Charles James Trench, formerly Chairman of the County of Dublin, aged 76 years.

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# THE IRISH LAW TIMES AND SOLICITORS' JOURNAL.

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SATURDAY, SEPTEMBER 16, 1882.

No. 816

## PRIVILEGE OF WITNESSES AS TO CRIMINATING QUESTIONS.—III.

THE *cause célèbre* of *The United States v. Guiteau* is the most recent case on the subject of privilege as regards confidential communications between husband and wife, which came under consideration from a novel point of view, so that the judgment (reported in the August issue of the *Western Jurist*) is the more worth quoting from. Said James, J., on the appeal to the Supreme Court of Columbia:—"Mrs. Dunmire, who was married to the defendant in July, 1869, and was his wife for four years, but had been divorced from him, was asked the following question: 'I will ask you to state to the jury whether, in your association with him (the defendant), you ever saw anything that would indicate that he was a man of unsound mind?' The court had ruled that the confidential communications between husband and wife were protected in the examination. The question was admitted under exception, and the answer was: 'I never did.' This question called for the witness's observation of the defendant's soundness or unsoundness of mind, and the objection goes partly on the ground that, notwithstanding the ruling of the court that confidential communications between the husband and the wife were protected, she may have included, as a part of the basis of her answer, what are understood as communications from her former husband. We think that the exhibition of sanity or insanity is not a communication at all, in the sense of the rule which protects the privacy and confidence of the marriage relation, any more than the height or colour, or blindness, or the loss of an arm of one of the parties is a communication. The rule which is supposed to have been violated was established in order that the conduct, the voluntary conduct, of married life might rest secure upon a basis of peace and trust, and relates to matters which the parties may elect to disclose or not disclose. It was provided in order that matters should not come to the light, which would not do so at all without a disturbance and disregard of the bond of peace and confidence between the married pair. Therefore it has not been applied to any matter which the husband, for example, has elected to make public, by doing or saying it in the presence of third persons along with his wife; and it cannot be applied to that which, whether he will or no, he inevitably exhibits to the world as well as to his wife. Some diseases a husband may conceal, and he may choose whether to reveal them or not. If he should reveal the existence of such a disease to his wife, in the privacy of their relation, she may never disclose that communication, even after the relation between them has ceased. But sanity or insanity are conditions which are not of choice, and when the disease of insanity exists, the exhibition of it is neither a matter of voluntary confidence nor capable of being one of the secrets of the marriage relation. The fact that there are instances of cunning concealment for a time, does not affect the general truth that insanity reveals itself, whether the sufferer will or no, to friends and acquaintances as well as to the wife. In short, the law cannot regard it or protect it as one of the peculiar confidences of a particular relation. It may be added that it is difficult to perceive, in any view of this subject, how the witness's denial that she had

seen indications of insanity can be said to reveal any fact which her husband had communicated to her. If our opinion that sanity or insanity cannot be a communication within the meaning of the rule should be wrong, it must be remembered that *sanity* is a presumption of law, and that the wife would seem to reveal nothing to the world, unless she should say that the existence of *insanity* in her husband had been communicated to her by his conduct during their connexion. We are of opinion that no error was committed in receiving this evidence." But while, apart from inter-communications, husband and wife are now competent and compellable witnesses against each other in civil, but not, save so far as the law Act, 1882, previously cited, in criminal proceedings has been altered by the Married Women's Property (14 & 15 Vic., c. 99, s. 3; 16 & 17 ib. c. 83), the Law of Evidence Amendment Act, 1869 (32 & 33 Vic., c. 68, s. 3), renders the parties to proceedings instituted in consequence of adultery, and the husbands and wives of such parties competent witnesses; with the proviso that no witness to any proceeding, whether a party or not, is to be liable to be asked or bound to answer any question tending to show that he or she has been guilty of adultery, unless such witness has already given evidence in the same proceeding in disproof of such adultery. The effect of this statute has already been discussed in a former volume (14 Ir. L. T. 317); but, it may be added that in New York, while husband and wife were rendered competent witnesses in such actions in 1879, the legislature in 1880 thought fit to revert to the original rule, holding them incompetent to establish any fact, except that of marriage. But in general they are deemed competent witnesses for or against each other in civil causes, except with regard to confidential communications and actions of *crim. con.* By the Act of May 10, 1867, entitled "An Act to enable husband and wife, or either of them, to be a witness for or against the other, or on behalf of any party, in certain cases," it is provided that: "Nothing herein contained shall render any husband or wife competent or compellable to give evidence for or against each other . . . in any action or proceeding for or on account of criminal conversation." And this exception was considered in the notorious Tilton-Beecher case (1875), in reference to the admission of Mr. Tilton as a witness. The defendant claimed that Mr. Tilton was excluded altogether, on the ground that the issue was really the adultery of the wife (Mrs. Tilton), and, therefore, the plaintiff's testimony would be "against" his wife. Among others, the case of *Dann v. Kingdom*, 1 N. Y. Sup. 492, was cited where the husband was held to be incompetent under the Act of 1867 to prove the fact of marriage, in an action of *crim. con.* On the other hand, it was argued for the plaintiff that Mr. Tilton was not called to testify "against" his wife, because she was not a party. In refutation of the authority of *Dann v. Kingdom*, *supra*, the case of *Petrie v. Howe*, 4 N. Y. Sup. 85, decided in the same department, was cited. In the latter case it seems that the husband was allowed to testify in an action of *crim. con.*, without objection either from counsel or court, and the point was neither raised by counsel nor passed upon by the court at general term. The defence also contended that the

exclusion of the plaintiff would give the defendant an undue advantage, and if plaintiff was excluded as a witness he could not give his testimony even on general or collateral matters. Judge Neilson decided that the plaintiff was competent to be sworn and to testify in his own behalf; but that as to the principal question at issue, he was not competent to testify in respect to any confidential communication.

#### THE MARRIED WOMEN'S PROPERTY ACT, 1882.

The Act is a measure of the utmost practical importance, and deserves the attention of a far larger public than generally concerns itself with the details of social legislation. It affects every one in England and Ireland who has a wife or husband. It is not couched in unduly technical phraseology. Though it has been discussed more or less fully in both Houses, there would be considerable difficulty in gathering its exact significance from any other source than its own provisions. It has an interest for the student of English institutions, as well as for those who, according to the fine old anti-Malthusian theory, recently revived by Mr. Henry George, have done their duty by the State, and its operation is postponed until the 1st Jan., 1883, as if to give every one ample time for making acquaintance with its sections. The old common law of England, as expounded and glorified by Sir William Blackstone, held, if that be not an inadmissible personification, that the husband was entitled to say to the wife, "What is yours is mine, and what is mine is my own." This simple rule, founded on the primitive maxim that if two ride on a horse one must ride behind, was mitigated and complicated by equitable doctrines concerning trusts. Though what was given directly to the wife became, by operation of law, the property of the husband, yet, if trustees held money on condition of paying the interest to a married woman, they did not fulfil their trust by giving it to her husband. They were bound to hand it over to her, and her receipt, not his, was their legal discharge. On this theory was based the practice of making settlements on the eve of marriage. But while equity, that elaborately technical system sometimes ignorantly confounded with the untutored promptings of natural justice, thus created and recognised the "separate property" of married women, the law remained the same in all cases where no express settlement had been made. Not till the year 1870 did Parliament see fit to rectify this extraordinary anomaly. The Married Women's Property Act of that year, freed from an error of inadvertence by the amending statute of 1874, secured to a married woman for her absolute use the wages which she earned by her own labour and the profits of her own literary, artistic, and scientific skill. Deposits in savings banks were also made her own, together with property to which she became entitled as next of kin, and pecuniary legacies not exceeding two hundred pounds. These tentative advances towards the principles that husband and wife may have separate as well as joint interests, and that it is not in the nature of things that marriage should affect legal ownership, have been greatly extended and simplified by the Act of the present session. A pauper who can persuade an heiress to marry him without a settlement has no moral and should have no legal right to squander her money unless she chooses to let him. In the reverse case settlements will still be necessary, and it may be that the unprotected bridegroom will learn to plead for the safeguard of a secured annuity. He will have the satisfaction of knowing that under this just and comprehensive statute, which consolidates besides amending the law, his wife is bound to maintain him if he would otherwise come upon the parish. Henceforth no one will be at a loss to discover what are the mutual and respective rights and liabilities of married people. He will find them all expressed in a moderately short compass and in fairly plain language. Though there may yet be room for improvement in some particulars, the law will now be substantially in accordance with

sound principle and common sense. The Lord Chancellor is sincerely to be congratulated on his success in contributing to a comparatively barren session so excellent and practical a measure.—*Daily News*.

We print a letter which has considerable force in it. The writer, Mr. Platt, points out some of the evils which, in his opinion, are likely to result from it, side by side with the advantages that were not considered when the measure was under discussion before it passed. These advantages are obvious enough, for the Act will, in the absence of any express stipulation to the contrary, protect all property which the wife earns, gains, or inherits after the marriage from being appropriated or squandered by an unscrupulous or extravagant husband. Thus far its objects are such as no one can find fault with; and in all cases where reckless husbands have married without making a proper settlement, its operation will be distinctly beneficial both to the married couple and to the children. Unfortunately, these benefits are counterbalanced to some extent by drawbacks which have not been publicly exposed with quite sufficient force. Foremost amongst these, in the opinion of our correspondent, is the prospect now opened of "division" in the household. The wife, now that she will have the complete control over her part of the fortune brought into partnership by marriage, may, as Mr. Platt thinks, be inclined to set up a rival power in the domestic circle, and destroy the privileges of her lord and master as the recognised head of the establishment. There is something in this plea, but it must be remembered that in the large number of cases where settlements are made in the usual form, this system has already been for centuries established, and without leading to much of the inconvenience now anticipated. Perhaps a more potent argument against the Act is that it will expose the wife to the treacherous attacks of men who will attempt to ruin her after marriage for the sake of getting some pecuniary benefit out of the property which will still be hers if she quarrels with her husband. There is, moreover, some injustice in holding the husband generally responsible for the expenses of the matrimonial partnership, even where the bulk of the property upon which it is supported belongs to the wife and cannot be touched by him.—*Globe*.

Is the husband still the "better half" of the married entity? Those who have carefully studied the provisions of the Married Women's Property Act, passed last session, will not answer in the affirmative with any great confidence. Opinions, indeed, seem pretty equally divided as to whether husbands are to be congratulated or pitied in regard to the alteration in their married state brought about by that measure. They are certainly relieved of some of the responsibilities; but, on the other hand, they are also despoiled of a good many powers. It is a moot point whether they have any right to continue to describe themselves as the "head" of the domestic establishment. They may still have "an eye like Mars, to threaten and command," but in pecuniary matters a wife with money can securely set this optical demonstration at defiance. There is nothing to surprise us in this further addition to the sum of women's legal rights. One of the most marked social tendencies of modern life has been in the direction of improving the relative position of women. But their legal status attracted comparatively little attention until within a recent period. All the rights of a wife were supposed to be merged in those of her husband. It was taken for granted that the husband and wife were one, and the husband was that one. And this continued to be the current opinion long after the social condition of women had been ameliorated, and men no longer talked before their wives and daughters as Squire Western talked to Sophia. Speaking generally, however, the women of the present generation have not had any serious ground for complaint as to the social treatment accorded them by the other sex. They have needed

legislation in such matters as their employment in factories and mines, and this they somewhat tardily obtained. While these reforms were being gradually effected a new motive power appeared in the shape of a sort of feminine revolt from the dominion of man. A movement was started, the object of which was to redress those wrongs of women which consisted of the withholding from her of her rights. They have claimed a Parliamentary vote, but have, so far, succeeded in obtaining only a vote in School Board elections, with the additional privilege of themselves being elected to the Board. Having gained so much, one would have supposed that the triumphant sex would at least have respected the time-honoured institutions of married life; but it soon appeared that this was the very direction in which women were, with some reason, most determined to push their reforms; and their efforts, as usual, have been rewarded with success. The reversionary interests of married women were first cared for by an Act passed in the year 1857. In 1870 another Act was passed, giving a married woman an exclusive right to the enjoyment of her separate earnings. In 1874 this measure was amended by further legislation, and now we have the Act of last session to complete the business.

The position of a married woman with a separate estate is now almost exactly that of a *feme sole*. She is capable of acquiring, holding, and disposing of, by will or otherwise, all her real and personal belongings against the consent of her husband, and without the intervention of a trustee. She can enter into contracts, and either sue or be sued upon them, and is liable in respect of them to the extent of her personal estate. She can even become bankrupt on her own account—a privilege of which her unenfranchised sisters will not be greatly envious. Should a wife lend her husband money for use in his business, and he afterwards becomes bankrupt, it would appear that her claim upon his estate ranks after that of the other creditors. The new measure also contains some very stringent provisions for prevention of frauds upon creditors by gifts from husband to wife. Such frauds have frequently been committed in the past, though they were not easily effected under the old law governing a married woman's property. Under the new Act it will certainly be less difficult than formerly to effectually and quickly transfer property to a wife, and this fact would have been largely availed of by fraudulent debtors but for the prohibitive clause to which we have referred. The provision that a married woman may effect a policy of insurance on her husband's life for her own separate benefit will possibly alarm a few husbands whose hold on their helpmates' affections is not as strong as it ought to be. In regard to remedies for the protection of her property the married woman is now well off. She can take either civil or criminal proceedings against all persons, including her husband, to secure herself against loss. There is the proper proviso, however, that she shall not bring a criminal action against her husband while she still lives with him. In any anti-connubial proceedings, either husband or wife is competent to give evidence against the other; a fact which opens out a fearful vista of matrimonial revelations under the screw of a sharp cross examination. Something is done for the poor husband in the section which provides that a wife shall continue to be liable for her ante-nuptial debts to the extent of her separate estate. But the husband will also be liable for such debts to the extent of any property which he may have acquired from or through his wife. And, finally, the sections in former Acts, which rendered a married woman having property liable to the parish for the maintenance of her husband and children, are very properly repealed. Taken altogether, the changes in the law outlined above may be regarded as generally beneficial, not only to married women, but to spinsters, bachelors, and the community as a whole.—*Daily Telegraph*.

**THE SUCCESSION DUTY.**—The stampson succession duty in the last financial year produced net, £736,344 8s. 1d.

### THE COMMITTAL OF MR. GRAY.

There seems to be a general opinion among the writers for the lay press that contempt of court can only be committed with regard to proceedings actually pending, and that Mr. Justice Lawson's committal of the Sheriff of Dublin is in some sense a new departure, and an extension, salutary in the particular circumstances, but somewhat dangerous as a precedent, of the doctrine of constructive contempt. It is important that it should be clearly understood that this is not the case. It is quite true that committals and fines for contempt in England have been usually, and for many years past entirely, resorted to only for the purpose of enforcing obedience to a court's orders, or preventing any attempt to influence improperly the mind of the court, or of jurymen, or of the public, with respect to pending or expected proceedings. This limitation is not, however, inherent in the jurisdiction, but has arisen simply from the happy circumstances of our times, which have not only prevented any actual attempt to obstruct the course of justice by bringing its general administration into discredit, but have made it inconceivable that any such intention should be entertained. It is clearly laid down in *Starkie on Slander* (p. 621) that contempt of court may consist in "the publishing reflections on the purity of its proceedings tending to obstruct the course of justice," and that "therefore every writing, letter, or publication which has for its object to divert the course of justice is a contempt of court." A comment upon a past case may evidently have for its object, or may have a natural tendency—and that is sufficient (*Dow v. Eley*, L. Rep. 7 Eq. 49)—to divert the course of justice in a future one; indeed we suppose few persons have any doubt that this was the actual purpose of the publications in the *Freeman's Journal* in the case before us. Nor have there been wanting, even in recent times, cases within the empire in which such comments have been punished as contempt of court. In 1868 the Court of British Guiana, and in 1849 the Chancery Court of the Isle of Man, committed persons to prison for having published in newspapers libellous comments on their proceedings, not apparently made with a view of influencing the result of any case actually pending. One case was brought by way of appeal before the Privy Council (*M. Dermott v. The Judges of British Guiana*, 20 L. T. Rep. N. S.; L. Rep. 2 P. C. 841), and the other by writ of *habeas corpus* before the Queen's Bench (*Crawford's case*, 13 Q. B. 613). But in each case the Superior Court recognised the jurisdiction to commit, held the committal regular, and refused to hear any appeal on the merits of the case. In answer to the argument that committal was not the proper remedy, except in cases where the action of the court was actually obstructed, the Court of Queen's Bench referred with approbation to the judgment prepared by Chief Justice Eardley Wilmot in the case of *R. v. Almon* (which was settled without coming to a hearing), and preserved in his opinions and judgments (p. 243). He there says: "The arraignment of the justice of the judges is arraignment the king's justice; it is an impeachment of his wisdom and goodness in the choice of his judges, and excites in the minds of the people a general dissatisfaction with all judicial determinations, and indisposes their minds to obey them; and, whenever men's allegiance to the laws is so fundamentally shaken, it is the most fatal and most dangerous obstruction of justice, and, in my opinion, calls out for a more rapid and immediate redress than any other obstruction whatever." If we substitute juries for judges these words might seem to have been written with direct reference to the present state of things in Ireland; and assuredly Irish juries who now venture to do their duty are pre-eminently entitled to the benefit of the doctrine quoted from Lord Hardwicke by Lord Eldon in *Ex parte Jones* (18 Ves. 238), that "persons concerned in the business of the court are under the protection of the court, and not to be driven to other remedies against libels upon them in that respect." It cannot be denied that this doctrine

puts into the hands of the judges a power which might under some circumstances, be seriously abused; but should such cases ever arise, the constitution provides sufficient means of dealing with judges who abuse this or any other of the powers entrusted to them.

It is to be hoped that the Government will not be weak enough to be influenced by the suggestion that they ought to pardon Mr. Gray for fear a committee of the House of Commons should hereafter report that his arrest was a breach of privilege. In Mr. Long Wellesley's case, in 1831, the committee appointed by the House reported "that the present case" (*i. e.*, a committal for contempt in disobeying an order of the Court of Chancery) "falls within the principle under which persons committing indictable offences have been considered not entitled to privilege" (2 R. & M. 644), and Lord Brougham, after argument, decided that that report was in accordance with the law. In the case of Mr. Lechmere Carlton, who was committed for attempting to influence the conduct of a master by an improper letter, the committee of the House refused to pronounce an opinion upon the general law, but reported "that, under all the circumstances of the case, Mr. Carlton's claim to be discharged from imprisonment by reason of privilege of Parliament ought not to be entertained" (2 M. & C. 351); and in the case arising out of the Tichborne trial, where Lord Chief Justice Cockburn fined, instead of committing Messrs. Onslow and Whalley, he was careful to guard against any supposition that he refrained from the severer course from any fear that the House of Commons would interfere on the score of privilege (28 L. T. Rep. N. S. 222; L. Rep. 9 Q. B. 229). From these precedents we may gather that it is exceedingly unlikely that any committee would advise the House to interfere to protect Mr. Gray.—*Law Times*.

#### MISCONDUCT OF JURIES.<sup>1</sup>

I. *General Considerations*.—Whether misconduct of the jury will entitle the losing party to a new trial, cannot be answered without taking into consideration several distinctions. 1. Reference must first be had to the nature of the cause on trial; and there are three classes of cases, in each of which, in some jurisdictions, a different rule obtains: First, civil cases, prosecutions for misdemeanour, and actions *qui tam*, and other proceedings which are deemed to partake of the nature of both civil and criminal actions; second, prosecutions for felonies not capital; third, prosecutions for treason and for capital felonies. 2. Another consideration relates to the nature of the particular act of misconduct complained of, and its tendency to prejudice or corrupt the verdict. 3. And, finally, distinctions are taken in some courts as to the time when the act of misconduct was committed: whether it was before the particular juror had been selected and sworn in the case, or during the progress of the trial, but before the jury had retired to deliberate, or after they had received the charge of the judge and had retired to consider of their verdict.

II. *Rules Common to all Cases*.—(1.) *Misconduct not always Ground for new Trial*.—Considering first those rules which are common to all actions, we find it laid down in many books that it is not every act of disobedience to the injunctions of the court, or other misconduct on the part of the members of the jury, which will entitle an unsuccessful party to a new trial. On the contrary, jurors may be guilty of many acts of impropriety which will subject them to punishment, but which will not operate to set aside their verdict when no injury appears to have resulted to the losing party.<sup>2</sup>

(2.) *Eating and Drinking*.—Thus, although the old law prohibited jurors from eating or drinking until they had agreed upon their verdict, yet it was always held that the mere fact that the jurors ate and drank during their

deliberations would afford no ground for a new trial, unless such eating and drinking were at the expense of the successful party, though it would subject the jurors to punishment.<sup>3</sup>

(3.) *Separating*.—So, although by the old law jurors were kept together as prisoners of the court<sup>4</sup> until they had agreed upon their verdict, yet in later times, when justice came to be administered in a less summary manner, so that it was found necessary in some cases to protract the trial for several days, the old rule yielded to necessity, and the jurors were permitted to retire from the bar of the court for needed rest and refreshment, under such rules as the court saw fit to make to prevent them from being tampered with.<sup>5</sup> They were not allowed, in cases of treason or felony, to separate, pending the recesses of the court for these purposes, to go to their homes, or to mingle with the general public; but, according to a precedent set by Lord Kenyon, they were placed in charge of officers who were sworn "well and truly to keep the jury, and neither to speak to them themselves, nor to suffer any other person to speak to them, touching any matter relating to this trial."<sup>6</sup> This rule of practice was transplanted into this country, and the form of the oath thus prescribed has in some States been enacted by statute.<sup>7</sup>

But in the earlier periods of our history, and in some sections of the country at the present time, public accommodations have been so inadequate at the places of holding courts that it has been found extremely difficult, and sometimes wholly impossible, to keep jurors together and entirely isolated from the public, pending these adjournments or during their deliberations. Hence another rule has sprung up, which, in some of the States, is common to all cases, in others not admitted in capital cases, and in others not admitted in any cases of felony; and it is this, that the mere fact that jurors have separated from each other, or from the officer having them in charge during adjournments of the court, or pending their deliberations, is not ground for a new trial. Something more must be shown, sufficient to cast a reasonable suspicion upon the purity of their verdict.<sup>8</sup> This rule is subject to qualifications which will be explained hereafter, chief among which is this: that an unexplained separation, in cases where the jury are required by law or by practice to be kept together, creates a presumption against the integrity of the verdict, such as calls for the granting of a new trial.<sup>9</sup>

(4.) *Holding Communication with Persons not of the Jury*.—Upon the same footing rests the misconduct of holding communications with persons not of the jury. The mere fact that such communications have been held will not vitiate the verdict, unless they were of such a nature as manifestly to corrupt or prejudice the mind

(3) *Purinton v. Humphreys*, 6 Me., 379; *The Commonwealth v. Roby*, 12 Pick., 498, 516; *Thompson v. The Commonwealth*, 8 Gratt., 687, 687; *Wilson v. Abraham*, 1 Hill (N. Y.), 207; *The State v. Sparrow*, 3 Murph., 487.

(4) "When a jury are charged, they are, as it were, prisoners until they are discharged." *Banister, J.*, in *Bishop of N. v. Earl of Kent*, Trin. T., 14 Hen. VII., c. 29.

(5) See, for instance, *Hardy's Case*, 24 How. St. Tr., 414, where this was done after much discussion.

(6) *The King v. Stone*, 6 Term Rep., 577.

(7) See, for instance, the oath prescribed by the statute of Missouri in trials for felony: 1 Rev. Stats. Mo., 1879, sect. 1910.

(8) *The King v. Kinnear*, 2 Barn. & Ald., 462; *The King v. Woolf*, 1 Chit. Rep., 401; *Burns v. Paine*, 8 Texas, 159; *Brandin v. Grannis*, 1 Conn., 402; *The State v. O'Brien*, 7 R. L., 388; *Berry v. The State*, 10 Ga., 511, 524; *Nelson v. The State*, 32 Texas, 71; *The State v. Lytle*, 5 Ired. L., 68, 62; *Wakelield v. The State*, 41 Texas, 556; *Jack v. The State*, 26 Texas, 1; *The State v. Turner*, 26 La. An., 573; *The State v. Madoll*, 12 Fla., 151; *The State v. Fox*, Ga. Dec., pt. 1, p. 85; *Heiser v. Van Dyke*, 27 Iowa, 359; *Cook v. Walters*, 4 Iowa, 72; *Miller v. Mahon*, 6 Iowa, 456; *Smith v. Thompson*, 1 Cow., 221; *Stuteman v. Barringer*, 16 Ind., 263; *Porter v. The State*, 2 Ind., 435; *Edrington v. Kiger*, 4 Texas, 89; *The State v. Igo*, 21 Mo., 459; *Whitney v. The State*, 8 Mo., 185; *The State v. Harlow*, 21 Mo., 448; *The State v. Mcs.*, 15 Mo., 153. But see Rev. Stats. Mo., 1879, sect. 1966. The rule has been laid down in the following capital cases: *Adams v. The People*, 47 Ill., 376; *Kins v. The People*, 30 Ill., 258, 273; *The People v. Douglass*, 4 Cow., 26, 33; *The State v. Babcock*, 1 Conn., 401; *Coker v. The State*, 20 Ark., 53; *Blancki v. The State*, 3 Minn., 427, 431; *The State v. Miller*, 1 Dev. & B. 500, 509; *Crane v. Syre*, 6 N. J. L., 110; *The People v. Bonney*, 19 Cal., 428; *The State v. Brannon*, 46 Mo., 339; *The State v. Barton*, 19 Mo., 227; *Caw v. The People*, 3 Neb., 357.

(9) See cases *infra*, III. (7.)

(1) A Treatise on the Organization, Custody, and Conduct of Juries, by Seymour D. Thompson and Edwin G. Merriam. St. Louis: W. H. Stevenson.

(2) *Purinton v. Humphreys*, 6 Me., 379; *Newell v. Ayer*, 32 Me., 334; *Mason v. Russell*, 1 Texas, 721.



of the particular juror, or otherwise to interfere with the deliberations of the jury.<sup>10</sup> But, as an unexplained separation of jurors from their fellows leads to an inference of tampering, so the fact that jurors have held communications with the successful party to the suit, with his friends, counsel, or agents, the nature of which is not disclosed, will lead to such an inference of tampering as will require the verdict to be set aside;<sup>11</sup> for if the communication were innocent, it would be susceptible of explanation. I shall consider this subject again.<sup>12</sup>

(5.) *Tampering with the Jury.*—But where the successful party to the suit is shown to have attempted, by improper means, to influence the verdict in his favour, whether by corrupting or intimidating particular jurors, or by arousing prejudices in their minds against the opposite party or his cause, the verdict will be set aside, on grounds of public policy, as a punishment to the offender and as an example to others, without reference to the merits of the controversy, and without considering whether the attempt was successful or not.<sup>13</sup>

(To be continued.)

### LAND LAW (IRELAND) ACT, 1881.

#### TO LANDLORDS AND TENANTS.

The Land Commission are desirous to afford further facilities to landlords and tenants, who may so desire, to have rents fixed free of expense and as rapidly as possible. With that view they have framed rules and a form under which parties may apply to the Commission to fix the rent in accordance with the report of two valuers. Under the rules now framed it is open to either party to object and show cause if so advised before the order made on the valuers' report becomes absolute.

In case cause against making the order absolute is allowed, the case may, according to circumstances, either be remitted to the same valuers or sent to be reported on by other valuers, or else may be sent to be heard in the usual course before the Sub-Commissioners.

The rules are as follows:—

167. The landlord and tenant of a holding instead of proceeding pursuant to Rules 143 to 147 inclusive, may serve upon the Court an originating notice in Form No. 73, applying to have a fair rent fixed, and consenting that such fair rent shall be determined pursuant to the report of valuers appointed by the Land Commission. The Land Commission may thereupon, appoint valuers and make an order fixing the fair rent pursuant to the report, unless cause be shown as in next rule. The originating notice, served as above, must be accompanied by the sheet of the Ordnance Map showing the holding.

168. The substance of the conditional order shall be notified by the Land Commission to both parties. Cause against the conditional order being made absolute, shall be shown by notice of motion, which shall be served on the opposite party and on the Land Commission, not later than ten days after the notification by the Commission of the substance of the conditional order. Such notice, showing cause, may be supported by affidavits, and it shall specify—1st, The grounds on which the conditional order should not be made absolute; and 2nd, The order which the party showing cause asks the court to make. The Court on hearing such motion, may, if it be of opinion that the conditional order should not be made absolute, remit the case to the same valuers or send it to be reported on by other valuers, or may send the case down to be heard before

the Sub-Commission in the usual course, or may make such other as, under the circumstances, it may deem right.

159. In cases where an originating notice by a landlord or tenant to fix a fair rent has already been served, it shall be competent for the landlord and tenant, by consent, in Form 74, to agree that instead of the case being heard in the ordinary way the fair rent may be determined by valuers in the same manner, and with the same right of showing cause, as in the preceding rules.

### ARREARS OF RENT (IRELAND) ACT, 1882.

The following GENERAL INSTRUCTIONS for the Guidance of Investigators have been issued by the Land Commission:—

The duties which you have to discharge are indicated in the Act of Parliament (see especially ss. 1 and 5), and in the form of report (H) in the appendix to the rules.

Before you proceed to the district assigned to you, it shall be your duty to communicate with the Petty Sessions Clerk or Sub-Inspector of Constabulary for the purpose of providing a fitting place to hold your inquiry.

By a 40 of the Land Act of 1881, incorporated with the Arrears Act, you are entitled to the use of the Quarter Sessions or Petty Sessions Courts.

If no court-house be available, you can, pursuant to rule 25, hold your sittings in any convenient place, and you may, if necessary, pay for the hire of a room, but this expense is, if possible, to be avoided. Fires and lights in court may also be paid for. The ordinary hour of sitting should be 10 a.m.

Cases will as a rule be listed according to electoral divisions, and it will be desirable, for the convenience of parties, to hold a sitting in each electoral division if possible, even though there may not be a court-house in the division.

You will keep a memorandum in a book, provided for the purpose, of all notices and official letters sent by you through the post or otherwise.

You have power to summon witnesses and enforce the production of rent books, receipts, and all other documents which form evidence on the question you have to try, and the production of which is enforceable by law. You can, if necessary, adjourn an investigation from day to day, or for such time as you may deem requisite. You may in some cases have to consider whether an adjournment should not be had in order to enable the Treasury to intervene.

Forms of summonses will be supplied to you.

If you find that the application is practically unopposed, it will necessarily be your duty carefully to sift the evidence so as to take care that no injustice be done to the public. You have not any direct power to adjudicate as to costs, but if any grounds, in your opinion, exist why one party should pay costs to another, you should state so in your report.

Your reports should be transmitted without delay, by post, to the Comptroller of Arrears, Land Commission, Merrion-square, Dublin. No postage is payable on letters or documents sent to the Land Commission.

We would direct your attention to the following points:—

You are to ascertain whether the holding is one to which the Land Law (Ireland) Act, 1881, applies; you will see by s. 59 of that Act, the several classes of tenancies which are excluded from its operation; you will also have regard to s. 8 of the Arrears Act, bringing holdings subject to existing leases under its operation.

S. 1, sub-a 2, of the Arrears Act enacts that "the saleable value of the tenant's interest shall, so far as the Commissioners think it reasonable, be taken into account in ascertaining whether the tenant is unable to discharge such antecedent arrears." You will inquire and report whether, under all the circumstances of the case, you consider it reasonable to take the saleable

(10) *Barlow v. The State*, 2 Blackf., 114; *The State v. Cucul*, 31 N. J. L., 249, 252; *March v. The State*, 44 Texas, 64, 82.

(11) *The Commonwealth v. Roby*, 12 Pick., 496, 520; *Hamilton v. Pease*, 38 Conn., 115; *Martin v. Morelock*, 39 Ill., 485. See *Pope v. The State*, 36 Minn., 121; *Ned v. The State*, 33 Minn., 304; *Organ v. The State*, 26 Minn., 83; *Hare v. The State*, 4 How. (Minn.), 187; *M'Conn v. The State*, 9 Smed. & M., 465, 469.

(12) *Infra*, VI.

(13) *Cottle v. Cottle*, 6 Me., 140; *Walker v. Walker*, 11 Ga., 206; *Vaughn v. Dotson*, 2 Swan, 348; *Seaton v. Letteorre*, 4 Coldw., 11; *Infra*, VI. (3.)

value of the tenant's interest into account to any and what extent. This should be done so as not to conflict with previous enactment, under which the tenant's inability to pay the antecedent arrears is an inability to make such payment without loss of his holding or deprivation of the means necessary for the cultivation thereof.

In considering whether the tenant has satisfied the rent for the year of the tenancy expiring on the last gale day of 1881, you will have particular regard to the provisions of s. 1, sub-s. 3.

Under that sub-section payments made in the year of the tenancy expiring on the last gale day of 1881, or subsequently, down to the 30th of November, 1882, are deemed payments on foot of the year of the tenancy ending on the last gale day of 1881, so that if there were a May and November tenancy, a payment made between the 1st of May and 1st November, 1881, would be a credit as against the May rent of 1881, but not as against the November rent which had not then accrued due.

Further attention is requested to the provision regarding what is commonly termed "the hanging gale." By the sub-section referred to, wherever, according to the ordinary course of dealing, the May rent is paid in the following November, and the November rent in the following May, the usual time of payment is deemed to be the time when the rent accrued due, so that the March or May rent of 1881 would not, in case of the hanging gale, be deemed to have accrued due until the September or November of that year, and the September or November rent not until the following March or May, 1882.

Accordingly, payments made by the tenant which, in the absence of the custom of the hanging gale, would be credited as against the rent of 1881, may not be so where that custom exists.

#### THE BILLS OF EXCHANGE ACT, 1882.

The Act which is now in operation is our first effort in the way of a code, and as such it is a most important and interesting experiment, that may lead to great things in the future. The subject was certainly a good one to begin upon; and the work, as far as can yet be judged, seems to be thoroughly well done. To have seventeen statutes either wholly or in part repealed is a step in the right direction; while that one Act should apply equally to the three kingdoms is an undoubted gain. Nearly all the statute is old law, but there are one or two new points that are worth noting, while in many cases doubtful questions have been set at rest. Then we see that post-dated bills and cheques are to be held valid, that notarial expenses will be recoverable against an acceptor, and that Christmas day and Good Friday in Scotland are placed in the same position as are those days in England with regard to bills falling due thereon. In one section we find that the custom of Liverpool notaries as to bills drawn upon cotton spinners in Lancashire under which they protest a bill returned by post dishonoured at their own offices instead of at the place of dishonour is made legal. In another it is laid down that where a bill is drawn in one country payable in another the due date is determined by the law of the latter country. This is, of course, not new, but it is well to have it thus clearly stated. No days of grace are allowed by the law of France, so that while bills drawn in Paris upon London get the three days' grace, this is not so *vice versa*. It was assuredly a good idea to make the Act include the Scotch law, and we are glad to see that this assimilation was found to be practicable except in one particular. In Scotland, where the drawee has funds in his hands available for payment the bill operates as an assignment of the sum for which it is drawn in favour of the holder from the time when it is presented to the drawee. The sound sense of this rule will be evident to every man of business, and its adoption in England was strongly recommended by the commission of 1855, but it has not yet been accepted amongst ourselves, and

so it remains a solitary exception in the new code. With regard to the procedure upon bills of exchange no alteration has been made, so that we must continue content with our slow process by ordinary action, while the Scotch still enjoy their rapid proceeding of summary diligence, in favour of which there is much to be said. We cannot, however, get everything at once, and for the present we may rest satisfied with having obtained a clear and complete code of the law relating to bills of exchange.—*Manchester Guardian*.

#### TEXT-BOOK ADDENDA.

[From the *Law Journal*.]

*Statute of Frauds (29 Car. 2, c. 3), s. 4.*

An agreement for sporting held to require a writing (*Webber v. Lee*, 51 *Law J. Rep. Q. B.* 174).

*Parliamentary Registration Act, 1878 (41 & 42 Vic., c. 26), s. 23.*

*Rogers on Elections (13th Edition), 156.*

The revising barrister may amend an objection by inserting the abode of the objector (*Adams v. Bostock*, 51 *Law J. Rep. Q. B.* 175).

*Representation of People Act, 1867 (30 & 31 Vic., c. 102), s. 4.*

*Rogers on Elections (13th Edition), 129.*

The declaration signed by a lodger claimant is *prima facie* evidence of the facts, whether on a first or subsequent claim, and the claimant need not appear to support them (*Nuth v. Tamplin*, 51 *Law J. Rep. Q. B.* 177)—C.A.

*Parliamentary Registration Act, 1878 (41 & 42 Vic., c. 29), s. 5.*

*Rogers on Elections (13th Edition), 75.*

A claimant of a vote who is a lodger cannot claim as tenant of part of a house (*Bradley v. Baylis*, 51 *Law J. Rep. Q. B.* 183)—C.A.

*Dixon on Probate, 391.*

The will of an English lady, the wife of an alien, executed according to English forms, cannot be proved (*In the Goods of Baroness von Buseck*, 51 *Law J. Rep. P. D. & A.* 9).

*Merchant Shipping Act, 1873 (36 & 37 Vic., c. 85), s. 17.*

A ship driven from her moorings in a gale held excused from the liabilities of a want of side lights; but the suit dismissed without costs (*The Buckhurst*, 51 *Law J. Rep. P. D. & A.* 10).

#### BOOKS RECEIVED.

*The Institutes of Gaius and Justinian, the Twelve Tables, and the CXXVIIIth and CXXVIIth Novels. With Introduction and Translation.* By T. LAMBERT MEARS, M.A., LL.D. (Lond.), of the Inner Temple, Barrister-at-Law, &c. London: Stevens and Sons, 119 Chancery-lane. 1882.

*A Manual of the Law relating to Bills of Sale in Ireland, and their Registration under the Bills of Sale (Ireland) Act, 1879 (42 & 43 Vic., c. 50), with a Collection of Forms and Precedents.* By WILLIAM GREEN, B.A., Barrister-at-Law, &c. Dublin: E. Ponsonby, 116 Grafton-street. 1882.

*Principles of the English Law of Contract and of Agency in its Relation to Contract.* By Sir WILLIAM R. ANSON, Bart., D.C.L., of the Inner Temple, Barrister-at-Law, &c. Second Edition. Oxford: At the Clarendon Press. 1882.

*The Elements of Jurisprudence.* By THOMAS ERSKINE HOLLAND, D.C.L., of Lincoln's Inn, Barrister-at-Law, &c. Second Edition (Enlarged). Oxford: At the Clarendon Press. 1882.

REVIEWS.

*The Irish Land Question: what it Involves, and how alone it can be settled. An Appeal to the Land Leagues.* By HENRY GEORGE, author of "Progress and Poverty." London: Wm. Reeves, 185 Fleet-street. Manchester: John Heywood & Sons. Glasgow: Cameron & Ferguson, West Nile-street.

*The Arrears of Rent (Ireland) Act, 1882, together with the Rules, Forms, Notes, and a General Index, and the additional Rules and Forms under the Land Law (Ireland) Act, 1881.* By W. H. KISBEY, Esq., M.A., T.C.D., Barrister-at-Law, author of "The Law and Practice of the Irish Bankrupt Court," &c. Dublin: Hodges, Figgis, & Co., Grafton-street, Publishers to the University.

*A. B. C. Guide to the Arrears Act, 1882. With the Act, Rules, and Principal Forms annexed. For the use of Irish Landlords and Tenants.* By GEORGE FOTTRILL, Jun., Solicitor. Second Edition, Corrected and Enlarged. Dublin: M. H. Gill & Son, 50 Upper Sackville-street. 1882.

"MR. JUSTICE FITZGERALD speaks truth." This polite admission forms the subject of Mr. George's opening remarks, in the singular little tractate now before us. "In charging the Dublin jury in the Land League cases, Mr. Justice Fitzgerald told them that the land laws of Ireland were more favourable to the tenant than those of Great Britain, Belgium, or the United States. As a matter of fact, Justice Fitzgerald is right." Mr. George, thus writing in March, 1881, himself hails from America; and as to it he observes, "Let me ask the men who to applauding audiences are nightly comparing the freedom of America with the oppression of Ireland—let me ask the Representatives who voted for that resolution of sympathy with Ireland, this simple question: What would the Irish landlords lose, what would the Irish tenants gain, if, to-morrow, Ireland were made a State in the American Union and American law substituted for English law? I think it will puzzle them to reply. The truth is that the gain would be to the landlords, the loss to the tenants." And this, too, was said long before the passing of the Arrears of Rent (Ir.) Act, 1882—nay, before the Land Act of 1881 had come into operation; and while applauding audiences had all the reason they ever had for endorsing the land-law views of the orators of the Land Agitation, and sympathising in their anathemas against the landlords. The only wonder seemed to be that none of the rhetoricians of the day thought of pointing his peroration with Byron's lines:—

"For what were all those landed patriots born?  
To hunt, and vote, and raise the price of corn.  
Safe in their barns, these Sabine tillers sent  
Their brethren out to battle. Why? for rent.  
Year after year they voted cent. per cent.;  
Blood, sweat, and tear-wrung millions. Why? for rent.  
They roared, they dined, they drank, they swore they meant  
To die for England. Why, then, live for rent?  
And will they not repay the treasures lent?  
No! down with everything, and up with rent.  
Their good, ill, health, wealth, joy, or discontent,  
Being, end, aim, religion—rent, rent, rent!"

Well, we have had our land-quake, and not yet have we had Mr. George's scheme realised for the nationalization of the land—"not that it be bought from a small class and sold to a larger class, but that it be resumed by the whole people." "How shall this be done? Nothing is easier," in Mr. George's opinion: "The way to make land common property is simply to take rent for the common benefit. And to do this, the easy way is to abolish one tax after another, until the whole weight of taxation falls upon the value of land. When that point is reached," he anticipates, "the battle is won."

Meantime, a slow-moving legislature has just passed two measures, as coming within the present range of practical politics—measures with which the lawyer must needs be satisfied for his purposes, although

they fall far short of the "simple measures" advocated by Mr. George and those who with him, according to his own apt quotation from Emerson, "have hitched their waggon to a star." One of those enactments is the Arrears of Rent (Ir.) Act, 1882; and the other amends the Land Act of last year, as regards the provisions relating to labourers' cottages and allotments. The Land Act gave power to the Commission to impose conditions as to providing accommodation for labourers, where an application is made to the Court for the determination of a judicial rent. The new amending statute makes a similar provision for cases where the landlord and the tenant agree on a "fair rent." For the Commission is empowered (at any time within six months from the passing of the statute—August 18—or within twelve months of the filing of the declaration and agreement as to the fair rent, whichever may happen last) to order the tenant to improve any cottages for the accommodation of the labourers employed on the holding, or to build new cottages for them, or to assign to any cottage an allotment not exceeding half an acre. The order may also fix the terms as to rent and otherwise, on which the accommodation is to be provided. An application for this purpose may be made either by the landlord or by the tenant, or by any labourer *bond fide* employed and required for the cultivation of the holding. In case of non-compliance with the Court's discretion a penalty of £1 per week can be recovered summarily on the complaint of a labourer in whose favour it has been made. These fines will be paid to the guardians in aid of the poor rate. The Commission has, however, authority to remit the penalty.

Now, singularly enough, Mr. Kisbey's excellent little manual, which, he says, may be regarded as a supplement to his edition of the Act of 1881, makes no allusion or reference whatever to the second of the Acts just mentioned. It comprises only the Arrears of Rent Act, some additional Rules which were not in his former book, and the Rules under the new Act made on August 22nd. In addition to these, other Rules were made on the 28th of August, besides the Instructions to Investigators; but these will be found in our own columns. Mr. Kisbey's able pen, however, has done good service in annotating fifteen out of forty-four sections of the Arrears of Rent Act; at the same time that, in the absence of decisions, his opinions must stand altogether on their own merits. Meritorious, indeed, his edition of the Act appears to us to be; and we only wish that he had further enhanced its utility by presenting a comprehensive summary of the scope and effect of the Act, in order to facilitate the task of those who will have to appeal out for themselves the general bearing and inter-connection of the various sections. In this, however, they will be aided by taking advantage of Mr. Kisbey's useful Index to the preceding 85 pages; and if they happen to hit upon one of the sections that are annotated, they will probably find the others in point more or less fully indicated and observed upon. We might, indeed, even from the columns of the daily press, quote several questions of doubt and difficulty on which he has offered no observations; but, so far as he has ventured, he has well performed his task, and his little manual not only deserved the advantages it derives from the admirable manner in which it has been printed and published, but is abundantly entitled to the esteem of the legal profession.

On the other hand, Mr. Fottrill's Guide may be especially recommended to the notice of landlords and tenants, as supplying the very need we have indicated—that of a plain explanatory summary of the scope and effect of the Act, showing what the statute enables them to do towards extinguishing arrears of rent, and how they can most easily and effectually do it. This little book, indeed, is so lucidly and practically written that we should have wished to favour our readers with some quotations from it, and only regret that we are precluded from doing so by not having received it earlier; but, it is faultless in its way and within its scope, and we can confidently recommend it to notice.

**APPOINTMENTS AND PROMOTIONS.**

NOTE BENE.—Information intended for publication under the above heading should reach us not later than Friday morning in each week, as publication is otherwise delayed.

The following gentlemen have been appointed Assistant Land Commissioners:—Mr. Wm. Roper, Barrister-at-Law; Messrs. Thomas Smith, Seamore, Greystones; A. B. Nolan, Swinford, county Mayo; and R. B. Heuston, Ballykedrea, county Tipperary.

**LAW STUDENTS' JOURNAL.**

**THE INCORPORATED LAW SOCIETY OF IRELAND.**

MICHAELMAS SITTINGS, 1882.

**NOTICE.**

The PRELIMINARY EXAMINATION of Candidates for Apprenticeship will be held at the Solicitors' Hall, Four Courts, Dublin, on Thursday and Friday, the 19th and 20th days of October, 1882, at Eleven o'clock.

N.B.—All Papers to be lodged on or before Tuesday, 3rd of October, 1882.

The FINAL EXAMINATION of Candidates seeking admission as Solicitors will be held at the same place, on Monday and Tuesday, the 23rd and 24th days of October, 1882, at the same hour.

By Order of the Council,  
JOHN H. GODDARD, Secretary.

Solicitor's Hall, Four Courts, Dublin.

The Competitive Examination for the Society's Prize will be held on Friday, Monday, and Tuesday, the 20th, 23rd, and 24th days of October, 1882, at Eleven o'clock each day.

N.B.—The decision of the Court of Examiners will be announced on Wednesday, the 8th of November, 1882, at Three o'clock, p.m.

Candidates residing in the Country need not remain in town to hear decision, but can learn same from the Dublin Morning Papers of the day following the announcement.

**THE INCORPORATED LAW SOCIETY OF IRELAND.**

HILARY SITTINGS, 1883.

**FINAL EXAMINATION.**

**NOTICE.**

Candidates wishing to present themselves at the above Examination must lodge their papers, &c., on or before the first day of Michaelmas Sittings, 1882.

By Order,  
JOHN H. GODDARD, Secretary.

Solicitors' Hall, Four Courts, Dublin,  
September, 1882.

**COURT PAPERS.**

**COURT OF BANKRUPTCY.**

**ADJUDICATIONS IN BANKRUPTCY.**

The dates of Adjudications are first given, the Sittings follow in Italics.

Gorman, Patrick, of No. 28 North William-street, in the city of Dublin, Ex-Inspector of the Dublin Metropolitan Police. August 22; Tuesday, October 3, and Friday, October 20. W. G. Bradley & Sons, solrs.  
Smith, Edward, of Feeagh, Moynalty, in the county of Meath, farmer. August 22; Friday, September 29, and Tuesday, October 17. John Mathews, solr.

**DUBLIN STOCK AND SHARE LIST.**

DESCRIPTION OF STOCK	SEPTEMBER						
	Sat. 9	Mon. 11	Tues. 12	Wed. 13	Thur. 14	Fr. 15	
<b>Paid Government.</b>							
3 p c Consols ..	—	—	99	99	99	99½	
New 3 p c Stock ..	—	98½	98½	98½	98½	98½	
<b>INDIA STOCK.</b>							
4 p c Oct. 1882 } Traffic at	—	—	103	102½	—	103	
3½ p c Jan. 1881 } Bk. of Irel. ..	—	—	—	—	—	—	
<b>Banks.</b>							
100 Bank of Ireland ..	—	318½	318½	318½	—	318½	
Hibernian Banking Co. ..	—	—	—	34½	—	—	
35 London and County (Ld'd.) ..	—	—	—	—	—	—	
15 London Joint Stock ..	—	—	46	—	—	—	
30 London and Westminster, Ld'd. ..	—	70½	—	—	—	70½	
Do. New ..	—	—	61½	—	—	—	
10 Munster Bank (Limited) ..	—	—	7	—	—	—	
Nat. Prov. of England, Lim. ..	—	—	—	—	—	—	
10 National Bank (Limited) ..	—	—	24	24	24	24	
National of Liverpool (Ld'd.) ..	—	—	—	—	—	—	
25 Provincial Bank ..	—	27	27	—	26	—	
Do. New ..	—	—	—	—	—	—	
10 Royal Bank ..	—	—	—	28½	28½	—	
2½ Ulster Banking Co. ..	—	—	—	—	—	11½	
25 Union of Australia ..	—	—	—	—	—	—	
15½ Union of London ..	—	—	—	46½	—	46½	
<b>Steam.</b>							
50 British and Irish ..	—	37	—	—	—	—	
10 Dundalk (Limited) ..	—	—	—	—	—	—	
100 City of Dublin ..	—	—	—	104	104½	—	
50 Dublin & Liverpool Steam Ship Building Co. ..	—	—	—	—	—	—	
<b>Miscellaneous.</b>							
10 Alliance & Dub. Cons. Gas ..	—	16½	—	16½	—	—	
8 Do. New ..	—	—	—	—	—	—	
4 Arnott & Co., Limited ..	—	—	—	5½	—	5½	
7½ Dub. Drapery Warehouse, Ltd. ..	—	—	6½	xd	6	—	
25 Ir. C. S. Building Society ..	—	—	—	—	—	—	
9-4-7 Patriotic Assurance ..	—	—	—	—	—	—	
<b>Tramways.</b>							
10 Belfast Trams ..	—	—	—	—	—	—	
10 Dublin United Tramways ..	—	—	—	10½	10½	—	
10 L'pl Un'ld Tram & Bus L'd ..	—	—	12½	—	—	—	
10 N'th Metr. Tramway, Lond. ..	—	—	—	—	—	—	
<b>Railways.</b>							
50 Belfast and County Down ..	—	—	46	—	—	—	
50 Belfast and Northern Cos. ..	—	—	—	—	—	—	
50 Cork and Bandon ..	—	—	—	—	84½	—	
100 Great Northern (Ireland) ..	—	—	119	—	—	—	
100 Gt. Southern and Western ..	—	116	115½	—	115½	115½	
100 Midland Gt. Western ..	—	—	xd	—	86½	—	
100 Waterford & Cent. Ireland ..	—	—	—	—	—	—	
<b>Railway Preference.</b>							
100 Belfast & N'th'n Cos. 4 p c ..	—	—	—	—	—	—	
100 D., W., & W., 6 per cent ..	—	—	—	—	—	—	
100 Gt. N'th'n (Irlnd) gt'd 4 p c ..	—	—	—	107½	—	—	
100 Gt. South'n & West'n 4 p c ..	—	—	—	—	—	—	
100 Mid. Great Western. 4 p c ..	—	—	—	—	—	—	
<b>Debenture Stocks.</b>							
— Belfast & N'th'n Cos. 4 p c ..	—	—	—	—	—	—	
— Dublin & Wicklow 4 p c ..	—	—	105½	—	—	—	
— Gt. Northern (Ireland) 4 p c ..	—	—	—	—	—	—	
— Do. 4½ p c ..	—	—	—	—	—	—	
— Do. 6 p c ..	—	—	—	—	—	127	
— Gt. South'n & West'n. 4 p c ..	—	—	—	—	110	—	
— Midland Gt. West'n. 4 p c ..	—	—	105½	—	—	105½	
— Do. 4½ p c ..	—	—	—	—	109½	—	
— Do. 4½ p c ..	—	—	—	—	—	—	
— L'derry & Enniskillen 5 p c ..	—	—	—	—	—	—	
— Waterford & Central 6 p c ..	—	—	—	—	—	—	
<b>Miscellaneous Debent.</b>							
Ballast Office Deb., £92 6s 2d, 4 p c ..	—	—	—	—	—	—	
City Deb. of £92 6s 2d, 4 p c ..	—	—	—	—	—	92½	
Dub. & Glas. S. F. Co. (1887) 5 p c ..	—	—	—	—	—	—	
Do. (1888), 6 p c ..	—	—	—	—	—	—	
Dub. & Kingstown 4 p c ..	—	—	—	—	—	102½	
Dublin Water Works, 5 p c ..	—	—	—	—	—	—	

\* Shares not fully paid up are given in Italics. † x d

**Bank Rate**—Of Discount—4 per cent.. 17th August, 1882  
Of Deposit—1 per cent.. 23rd March, 1882

**Name Days**—September 26th, and October 11th, 1882.

**Account Days**—September 27th, and October 12th, 1882.

**Business commences** at 1.30 p.m.

The Stock Exchange and Brokers' Offices will be closed on Saturdays during the month of September.

**Holloway's Pills**.—Epidemic Diseases.—The alarming increase of death from cholera and diarrhoea should be a warning to every one to subdue at once any irregularity tending towards disease. Holloway's Pills should now be in every household to rectify all impure states of the blood, to remedy weakness, and to overcome impaired general health. Nothing can be simpler than the instructions for taking this corrective medicine, nothing more efficient than its cleansing power, nothing more harmless than its vegetable ingredients. Holloway's is the best physic during the summer season, when decaying fruits and unwholesome vegetables are frequently deranging the bowels, and daily exposing thousands, through their negligence in permitting disordered action, to the dangers of diarrhoea, dysentery, and cholera.

**BIRTHS, MARRIAGES, AND DEATHS.**

**BIRTHS.**

**BLOOD**—July 16, at Christ Church, Canter'ury, New Zealand, the wife of Alex. F. Blood, Esq., barrister-at-law, of a daughter.

**MARRIAGES.**

**HILL and LONERGAN**—September 13, at St. Stephen's Church, Upper Mount-street, Dublin, by the Rev. J. C. Walsh, D.D., George Thomas Hill, son of the late Lieutenant Thomas Hill, R.N., to Charlotte, daughter of the late Robert Howard, Esq., solicitor, Dublin.

**O'CALLAGHAN and CHAMNEY**—September 7, at Newcastle Church, County Wicklow, by the Rev. Charles Abbott, assisted by the Rev. Louis Rowland, Delamere William O'Callaghan, son of the late John O'Callaghan, of the City of Cork, Esq., solicitor, to Annie, youngest daughter of the late John Chamney, of Coolboy House, County Wicklow.

**DEATHS.**

**STAVELEY**—September 11, at Somerset House, Nelson-street, the infant son of Jones H. Staveley, Esq., B.A., barrister-at-law, aged nine days.

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**A REARERS OF RENT (IRELAND) ACT, 1882.**

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  - D.—Notice by Treasury requiring Investigation of the Case .. 1d.
  - E.—Application by Tenant for an Order for Payment of Arrears to or for benefit of his Landlord .. .. . 1d.
  - F.—Application by Landlord for an Order for payment of Arrears due by Tenant to or for benefit of such Landlord .. 1d.
  - G.—Statement of Property and Effects of the above-named Tenant applicable to the satisfaction of the Arrears of Rent .. .. . 1d.
  - H.—Report of Investigator .. .. . 1d.
  - I.—Notice showing Cause against Conditional Order .. .. 1d.
  - J.—Notice to Landlord of Absolute Order for payment to him or for his benefit of sum in respect of Arrears .. .. 1d.
  - K.—Notice to Tenant that Arrears of Rent of Holding are Released and Extinguished .. .. . 1d.
  - L.—Claim by Landlord for payment of Amount ordered to be paid to or for his benefit, where the Landlord is absolutely entitled .. .. . 1d.
  - M.—Claim by Landlord for payment of Amount ordered to be paid to or for his benefit, where several Holdings are comprised in claim, and where the Landlord is absolutely entitled .. .. . 1d.
  - N.—Claim by Landlord for payment of Amount ordered to be paid to or for his benefit, where Landlord himself is not in receipt of Rent of Holding .. .. . 1d.
  - O.—Claim by Landlord for payment of Amount ordered to be paid to or for his benefit, where Landlord himself is not in receipt of the Rent, and where several Holdings are comprised in the claim .. .. . 1d.
  - P.—Notice by Incumbrancer, Trustee, or Receiver, claiming to be entitled to Arrears of Rent .. .. . 1d.
  - Q.—Notice of Appeal from Order of Legal Assistant Commissioner .. .. . 1d.
  - R.—Application by Landlord for cancelling of Rent-charge under 59th Section of Land Law (Ireland) Act, 1881 .. .. 1d.
  - S.—Application by Tenant for cancelling Rent-charge, created under 59th Section of Land Law (Ireland) Act, 1881 .. 1d.
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**TO THE GENTLEMEN OF THE LEGAL PROFESSION.**

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## LEGAL POSTINGS:

In the HIGH COURT OF JUSTICE in IRELAND,  
CHANCERY DIVISION.—LAND JUDGES.

In the Matter of the Estate of

**JAMES FENTON, and ROBERT FENTON, and THOMAS WALTON GILLIBRAND,** or some or one of them, Owners;

*Ex parte*—THE NORTHERN BANKING COMPANY, Petitioners.

**TO BE SOLD,**

On TUESDAY, the 7th day of NOVEMBER, 1882,

At the hour of Twelve o'clock,

Before the Right Honourable Judge Ormsby,

At his Court, Land Judges' Court, Inns-quay, in the City of Dublin, The aforementioned Property, In Eight Lots, viz.:

Lot. No. 1.—Part of the Lands of Carricknab, containing 146a 3r 27p statute measure, or thereabouts, and Part of the Lands of Corbally, containing 21a 3r 80p statute measure, or thereabouts, both held in Fee-farm, situate in the Barony of Lecale and County of Down Net annual rental, £29 0s. 7d. Tenement valuation, £188 5s.

Lot 2.—Part of the said Lands of Carricknab, containing 118a 0r 28p statute measure, or thereabouts, and part of the said Lands of Corbally, containing 34a 3r 86p statute measure, or thereabouts, both held in Fee-farm. Net annual rental, £106 5s. 10d. Tenement valuation, £180 5s.

Lot 3.—Part of the said Lands of Carricknab, containing 2a 0r 3p statute measure, or thereabouts, held in Fee-farm. Tenants' rents, 6d. Tenement valuation, £20.

Lot 4.—The Lands of Ringhaddy, and its sub-denomination of Castletland, with benefit of Rocks and Scars for wreck and seaweed belonging to same, Island More, Island Dunsay, Dunsay Rock, Green or Hay Island, and Island Darragh, containing in the whole 379a 1r 2p statute measure, or thereabouts, situate in the Barony of Dufferin and County of Down, held in Fee-farm. Net annual rental, £295 4s. 2d. Tenement valuation, £351.

Lot 5.—Part of the Lands of Ballow, containing 141a 1r 28p statute measure, or thereabouts, and the right enjoyed therewith or in respect thereof, to hold four Yearly Fairs, and a Weekly Market, and a Court of Pie Poudre during said Fairs and Markets, situate in the Barony of Dufferin and County of Down, held in Fee-simple. Net annual rent, £154 12s. 9d. Tenement valuation, £215.

Lot 6.—Part of the said Lands of Ballow, containing 28p statute measure, or thereabouts, held in Fee-simple. Net annual rent, 6d. Tenement valuation, £2 10s.

Lot 7.—Part of the said Lands of Ballow, containing 37p statute measure, or thereabouts, held in Fee-simple. Net annual rental, 1s. Tenement valuation, £8.

Lot 8.—The Manor, Town, and Lands of Ardmillan, together with the Rectorial Tithes of said Manor, and also all Courts Leet, Courts Baron, and Customs, and Fairs, and Markets, and comprising the Lands of Ballydrine, otherwise Ballindreen, otherwise Ballydrain, Ballyliddell, otherwise Ballyleghorn, Castle Espie, Tullynakill, together with Watson's Island, Lisbane, otherwise Ballylisbane, Island Reagh, Cross Island, Island Mahle, Bird and Gull Islands, Ringneal, otherwise Ballyranavale, including Rolly Island, Long Island, and Wood Island, Ballymartin, alias Ardmillan—all situate in the Barony of Castlereagh and County of Down, held under a Lease from the late Commissioners of Church Temporalities in Ireland, customarily renewable, as appears from the Orders abstracted in the Rental. Net annual rental, £782 14s. 10d. Tenement valuation, £2,908 15s.

Dated this 5th day of August, 1882.

JOHN MARTLEY, for Examiner.

N.B.—Proposals for the purchase by Private Contract will be received by the Solicitors having carriage of the Order for Sale on or before Saturday, the 28th day of October, 1882, and, if approved of, will be submitted to the Court for confirmation.

**DESCRIPTIVE PARTICULARS.**

Lots 1, 2, and 3 are situate within about three miles of the Town of Downpatrick, which is the County Town, and is in railway communication with Belfast and Newcastle, the latter a fashionable watering place, about seven miles distant. Tullymurry Station, on the Newcastle Line, is distant about one mile from Corbally.

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# THE IRISH LAW TIMES AND SOLICITORS' JOURNAL.

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## PRIVILEGE OF WITNESSES AS TO CRIMINATING QUESTIONS.—IV.

In *Egbert v. Greenwalt* (14 West. Jur. 542), in an action for *crim. con.*, the testimony of the husband and wife, to the effect that they had no intercourse at the time the child was begotten, and that the defendant "must have been its father," was held inadmissible by the Supreme Court of Michigan, in 1880. "According to an ancient rule of the common law," said Graves, J., "the evidence of neither husband nor wife could be received to disprove the fact of sexual intercourse (*R. v. Rook*, 1 Wils. 340); and Lord Mansfield declared that it was 'founded in decency, morality, and policy' (*Goodright v. Moss*, Cowp. 591); and no judge or author has ever dissented from his strong approval. The reason of the rule prescribed limits to its application, but there is no present occasion for special reference to any of the qualifications. That the legislature intended to abrogate it is not to be assumed. No one will contend that the course of the legislature of 1861 was unfriendly to it. Nor can it be fairly argued that the terms or spirit of the amendment then made have supplanted it. The general purpose the legislature had in view was to sweep away a number of objections against the competency of witnesses, but not to break down any rule 'founded in decency, morality and policy;' and, so far as ascertained, the courts, wherever these general changes have taken place, have considered this rule of the common law as untouched: *Tioga County v. South Creek Township*, 75 Pa. St. 436; *Boykin v. Boykin*, 70 N. C. 262; *Chamberlain v. The People*, 23 N. Y. 88; *People v. Overseers of Ontario*, 15 Bart. 286; *Hemminway v. Townner*, 1 Allen, 209; *Stephen, Ev.*, Art. 98. The effect of the statute upon the capability of the wife as a witness for the people, in a prosecution against a person for having committed adultery with her, was fully discussed in *Parsons v. The People*, 21 Mich. 509; but it was not found necessary to consider the present questions. I think the evidence of the plaintiff and his wife, which was adduced to show non-intercourse between them, was inadmissible." Certainly, however, there is room for the expression of an adverse opinion as to the propriety and policy of the rule applied in such cases (and see *Anon.*, 22 Beav. 481, 23 *ib.* 273); and we observe that in a paper read before the Kentucky Bar Association, on the 23rd of June last, by Mr. Wilbur F. Browder, on Competency of Witnesses, the essayist, as regards divorce suits, advocates very strongly the admission of husband and wife to testify on their own behalf. "If marriage," he observes, "be a civil contract, as the books all declare, let ordinary business usages and methods minister to its infirmities and adjust its affairs. The inconsistent pretext of the law should no longer be tolerated. Under the chaste plea of shielding the sacredness of the marital relation from the vulgar gaze, the principals in these domestic dramas are driven behind the scenes, and the expectant public is served with a medley of innuendos and exaggerations, half-seen and half-heard misdoings, by the cook and chambermaid, the hired man and the omnipresent and omniscient next-door neighbour. In the very nature of things, the parties themselves alone know the facts. Matrimonial embarrassments and difficulties are always

stealthy—seldom seen by the outer world—and the cruel and inhuman conduct, which forms one of the grounds of divorce often relied on, can never be proved completely or satisfactorily without invoking the personal knowledge of the parties themselves. They speak by their pleadings, why not by their evidence?" Mr. Browder, by the way, is also an advocate of the right of accused persons to testify for themselves. Many of the States, indeed, have already adopted statutes so permitting (see 12 Ir. L. T. 554, 563, 578, 593; 7 Southern L. Rev., N. S., 688); and it is also so proposed by the long-promised Criminal Code for this country, so that it is worth noting some of the cases (in addition to those already cited) upon such statutes. It has been held the privilege of the witness exclusively to elect whether or not he will testify: *Ruloff v. The People*, 45 N. Y. 218; *Brandon v. The People*, 42 *ib.* 265; *Connors v. The People*, 50 *ib.* 240; *The Commonwealth v. Nichols*, 114 Mass. 286; *The State v. Wentworth*, 65 Me. 234; but, whether, if he testify, his privilege not to answer questions putting his general reputation in issue must be claimed by him, or may be claimed by his counsel, the decisions are not in accord; *The State v. Wentworth*, *ubi supra*; *The People v. Brown*, 72 N. Y. 571. Indeed, whether he can decline to answer questions on that ground is also a disputed point: *Brandon v. The People*, and *The People v. Brown*, *ubi supra* (and see as to impeaching the credibility of witnesses, 15 Ir. L. T. 68; as to cross-examination as to credit, *R. v. Whelan*, 15 Ir. L. T. Dig. 22; and as to evidence as to character, 15 Ir. L. T. 155, 343). But if he elect to testify, he waives his right of immunity from testifying against himself; nor is he at liberty to state a part and withhold another part of the facts within his knowledge: *State v. Wentworth*, *ubi supra*; *State v. Wilham*, 72 Me. 581. It was held in *Woden v. Henshaw* (101 Mass. 200), that he would even be required to disclose confidential communications made to his counsel; but that case is practically overruled by *Montgomery v. Pickering*, 116 Mass. 227, and the contrary has been held in other States: see cases previously cited, *ante*, p. 443; *Brandon v. Brandon*, 39 How. Pr. 193. It has been held that omission to testify is a proper subject (unless otherwise expressly enacted) for comment by counsel and consideration by the jury; *The State v. Lawrence*, 57 Me. 374; but, see cases cited, *ante*, p. 443; and so, where he refuses to submit to a full cross-examination: *The State v. Ober*, 52 N. H. 495; *State v. Wilham*, *ubi supra*. We have already made reference to a former paper (14 Ir. L. T. 466, and see 15 Central L. J. 2) on the subject of compelling a prisoner (apart from such statutes) to furnish personal evidence of his identity, where the cases on that subject have been collected, including *People v. M'Coy* (45 How. Pr. 216), in which a woman, indicted for infanticide, having been examined by physicians in order to determine whether she had been recently delivered, the Court said that the proceeding was in violation of the constitution, declaring that "no person shall be compelled in any criminal case to be a witness against himself," as they might as well have compelled her to testify that she had been pregnant. (*Cf. Anon.*, 22 Beav. 481, 23 *ib.* 273; *Storrs v. Scougal*, N. W. Rep., June 17, 1862; and as to compelling party to write, so as to compare handwriting, on indictments for

forgery, see 28 & 29 Vict., c. 18). In *Gordon v. The State*, noted in the *Boston Reporter* of the 23rd ult., it was held that, where a defendant in a criminal case voluntarily exhibited a scar on his head to sustain his defence, there was no error in requiring him to allow it afterwards to be examined by a physician who was put on the stand in rebuttal by counsel for the State. The prisoner himself exhibited it, and so put it before the jury voluntarily. Such being the case, it became a witness for him; his own voluntary act made it so, and this took the case out of the ruling in 63 Ga. 667, and the case of *Rockwell v. The State*, decided at the last term.

In the issue of the same serial on the 30th ult., by the way, we find a case (*Reilly v. English*, 14 Rep. 285) on another branch of our subject reported, which should here be noted. It appeared that a firm, Brewer & Stewart, formed in 1872, was dissolved in six months. Stewart then began business alone, and continued it until his death in 1878. He had in his store from 1873 a fire-proof safe belonging to Brewer, and after his death the plaintiff demanded the safe, having bought it from Brewer for \$150, of which \$18 was to be allowed for a debt of Brewer, and the balance to be paid when the possession of the safe was had. The defendant, as administrator of Stewart's estate, claimed the safe as property of the estate. After evidence was given tending to prove the plaintiff's case, the defendant produced testimony going to establish that Brewer had sold the safe to Stewart, and that he had been paid for it. Brewer was then called upon to rebut the evidence of the defendant, and asked to state the circumstances under which the safe was removed to Stewart's store, and the agreement between them about it. The question was objected to on the ground that he was not a competent witness to testify to transactions with, or statements made by, Stewart in his lifetime. Cooper, J., in delivering judgment, said:—"The question, it is obvious, went to the very heart of the controversy, and the materiality of the testimony is obvious, whatever might be the purport of the answer: *Hagan v. State*, 5 Baxt. 615. His Honour's ruling seems to have been based upon the idea that the real parties to the suit were Brewer and the personal representative of Stewart, and that the testimony was inadmissible under the Code, sec. 3813 a. That section is: 'In actions or proceedings by or against executors, administrators, or guardians, in which judgment may be rendered for or against them, neither party shall be allowed to testify against the other as to any transaction with, or statement by, the testator, intestate, or ward, unless called to testify thereto by the opposite party.' But this suit is not against the defendant as administrator of Stewart. It is true the original summons, affidavit, and bond, did designate the defendant in his representative capacity; but these words of description (for in the form of action adopted they could only be treated as *descriptio personæ*) were stricken out before the trial by the justice. This suit was from the first in legal contemplation, and, after striking out the descriptive words, in form, an action against the defendant individually. He might rely in defence upon the title of his intestate, but that would not prevent the plaintiff from proving the contract between Brewer and Stewart in relation to the safe; nor, it seems, would it have prevented Brewer, if he had been the plaintiff, from testifying to the contract made with the deceased: *Johnson v. Hall*, 9 Baxt. 351. The statute cannot be extended by the courts to cases not within its terms, upon the idea that they fall within the evil which was intended to be guarded against: *Hughlett v. Conner*, 12 Heisk. 88; *Fuqua v. Dinwiddie*, 6 Lea, 645."

#### VENUE IN CRIMINAL CASES.

The law relating to venue in criminal cases is not altogether free from difficulty. At common law a prisoner could only be indicted for larceny in the county in which the offence was actually committed, but this was altered by 7 & 8 Geo. 4, c. 29, s. 76, of which 24 & 25 Vict., c. 96, s. 114, is a re-enactment. It is there provided that, if a man having stolen or otherwise feloniously taken any chattel, money, or valuable security, or other property whatsoever, in any one part of the United Kingdom afterwards have the same in his possession in any other part of the United Kingdom, he may be indicted, tried, and convicted in that part of the United Kingdom, in which he so had the property, in the same manner as if he had actually stolen it there.

It follows *a fortiori* that a man cannot be tried here for a larceny or other offence committed abroad, and it is also settled law that a prisoner cannot be convicted here for having in his possession property stolen abroad, even if received with a guilty knowledge. This has been decided in a long succession of cases, of which the earliest example is *Reg. v. Proves* (1 Moo. C. C. 349), decided in 1839, where a person who stole goods in the island of Jersey, had them in his possession in the county of Dorset, in which he was indicted and convicted. It was, however, held upon appeal that the conviction was wrong, because the original taking was such whereof the common law could not take notice. This decision has been followed in *Reg. v. Madge* (9 C. & P. 29); *Reg. v. Debruiel and another* (11 Cox, 207); and *Reg. v. John Carr*, reported in the Old Bailey Sessions Papers, Nov., 1877, and tried before Denman, J.

This case was fully argued, the Solicitor-General representing the Crown; but the learned judge held that, the prisoner being in possession of foreign bonds stolen abroad, the court had no jurisdiction to try him, and much stress was laid on *Hogatorum's case* (tried before the late Recorder, Mr. Russell Gurney, and reported in the Sessions Papers), in which the prisoner was found in possession, in a British ship on the high seas, of diamonds stolen at the Cape, and it had been held there was no jurisdiction.

A case of considerable interest was tried before Mr. Prentice, Q.C., at the Middlesex Sessions on the 28th ult., when the prisoner, one Brisker, was indicted for embezzlement. The prisoner was in the employment of Messrs. Challen, who carry on business in the county of Middlesex, and acted as their traveller in the island of Jersey, it being his duty to remit moneys received by him daily to his employers. The prisoner received a particular sum, but did not remit, and wrote to Messrs. Challen subsequently inclosing accounts, but omitting the sum in question, and in one letter denied having received it. It was objected by the learned counsel appearing for the prisoner that the court had no jurisdiction, as the offence had been committed, if at all, in the island of Jersey; that even assuming non-accounting forms a part of the offence of embezzlement, and is not merely evidence of it, the fact that the non-accounting took place in the county of Middlesex would not give the court jurisdiction, because the offence must be begun, continued, and ended in this country. The prosecution relied upon *Reg. v. Rogers* (3 Q. B. Div. 28), in which case the facts were as follows: A clerk whose duty it was to remit at once to his employers in Middlesex all moneys collected by him as their clerk, collected at York, on the 18th April, a sum of money as such clerk, but never remitted any portion of it. On the 19th and 20th April he wrote and posted from places in Yorkshire to his employers in Middlesex letters making no mention of the money so collected; and on the 21st April he wrote and posted at Doncaster, in Yorkshire, to his employers in Middlesex, a letter which was intended to make them believe he had not in fact collected the money in question; and in reply to a question put to them by the learned judge who tried the case, the jury found this fact specifically.

The prisoner was tried and convicted at the Middle-



sex Sessions; but a case was reserved upon the question as to whether he was rightly tried in the county of Middlesex. The court, consisting of Chief Baron Kelly, Justices Field, Lindley, and Manisty, affirmed the conviction; but Baron Huddleston, in an elaborate judgment, dissented on the ground that no part of the offence was committed in Middlesex, and that the prisoner was wrongly indicted in that county. The learned Baron said: "The stealing is the crime, the non-accounting the evidence of it, and as the evidence in the present case shows that the stealing was in Yorkshire, and that the prisoner never was in Middlesex until after he was arrested, I am of opinion that he was not rightly tried in Middlesex." Mr. Prentice stated that, in his opinion, *Reg. v. Rogers* was wrongly decided, and that he entirely concurred with the judgment of Baron Huddleston. We think a little examination will show that this view is based upon a transparent fallacy. Now, to receive money for and on account of an employer, and not account for it at the time, may or may not constitute the offence of embezzlement. The essence of the offence is the felonious intention; and it may well be that, if a traveller be pressed for money, say, to pay his rent with, and for that purpose keeps back some portion of his employer's money, he may have a full intention at the time of ultimately accounting for it.

If the judgments of the majority of the judges be carefully studied, it will be found that what they in effect say is this: We cannot say upon the evidence that the prisoner intended to appropriate the money at the time he took it, he may have had no felonious intention then; but the felonious intention became manifest for the first time by the letter of the 21st April, which, though written in Doncaster, was received in Middlesex; and in *Evans v. Nicholson* (32 L. T. Rep. N. S. 778) the court regarded a letter as speaking continuously from the moment of its being posted until its receipt by the addressee. For this reason we hold that the offence was completed when the prisoner by letter made the false statement to his employers as to the receipt of the money, and that he was so rightly tried in Middlesex. In other words, "We cannot say that the felonious intention or wicked mind was not first developed at the time the letter was written, as the felonious intention is the essence of the offence of embezzlement, and as the letter was received in Middlesex. *Evans v. Nicholson* is sufficient authority for saying that the offence was committed in Middlesex."

Mr. Prentice, Q.C., referred to *Reg. v. Treadgold* (48 L. J. 102, M. C.), and said that this case upheld the decision of Baron Huddleston, and overruled *Reg. v. Rogers*. We are quite unable to follow the learned editor of "Russell on Crimes" in this view, the facts being entirely different. In *Reg. v. Treadgold* it was the prisoner's duty to remit money daily to his employers, and on the 1st and 2nd March, 1878, he collected two sums of money at Newark which he did not account for; the prisoner resided at Grantham, but there was no evidence that he returned there on either of the days above mentioned. In the first week in April one of his employers went to Grantham and saw the prisoner, and taxed him with receiving moneys and not accounting for them, whereupon the prisoner handed his employers a list of moneys he had collected and not accounted for, including the above sums. He was indicted and convicted at the borough quarter sessions holden at Grantham, and the learned recorder, in the case submitted to the judges, stated that he had held he was triable there on the ground that, as he lived at Grantham, he might have returned there on the 1st and 2nd March when the several sums were embezzled. The judges held that there was no evidence to justify this view, and that the embezzlement took place, if at all, at Newark; the fact that the prisoner when taxed made to his employers what amounted in effect to a confession at Grantham, was never alluded to by anyone throughout the case as ground for laying the venue at Grantham.

Chief Baron Kelly, in giving judgment, said: "This

conviction must be quashed. There was no evidence at all which showed the completion of the offence of embezzlement at Grantham. It is quite consistent with the facts stated in the case that there was probably an act of embezzlement at Newark, but even that is not clear. The case states that the prisoner resided at Grantham, and there was no evidence to show that he returned to Grantham on either of the days he received the several sums of money. It further states that one of the prisoner's employers proceeded to Grantham a month afterwards and had an interview with the prisoner, and taxed him with receiving moneys which he had not accounted for to them, and that the prisoner handed to him a list of amounts he had received and not accounted for, in which list the two items charged in the indictment appeared, and there the evidence stops. It is impossible to say on these facts that there was any evidence of embezzlement at Grantham." *Reg. v. Rogers* was referred to in the course of the argument, but if Chief Baron Kelly had intended to imply that he had reconsidered his decision in that case, and had adopted the views of Baron Huddleston, it is inconceivable that neither he, nor Mr. Justice Lindley, nor Mr. Justice Manisty, who also formed part of the court in both cases, should not have said one word about it.

We doubt whether *Reg. v. Rogers* has much authority when applied to *Brisker's* case which was actually before Mr. Prentice, because Jersey is a foreign country, though forming part of the dominions of the Crown, just as the Cape was held to be a foreign country in *Hogatorum's* case.

In the result, after first saying he was bound by the decision in *Reg. v. Rogers*, and could not say that there was not jurisdiction, the learned judge decided otherwise, the learned counsel for the prisoner pointing out that Jersey, being a foreign country, the offence must be begun, continued, and ended in this country in order to give the court jurisdiction, and therefore, that *Reg. v. Rogers* did not apply.—*Law Times*.

#### THE ANCIENT MONUMENTS ACT.

Spontaneously to cherish cromlechs, kistvens, sacred circles, dolmens, and the like—those relics of the prehistoric inhabitants of these isles—does not seem native to the Anglo-Saxon race. It is no excuse that we are not worse than other peoples with remains as mysterious in their midst. Hitherto we have not pushed our concern for these ancient monuments further than inert wonder and archæological speculation. It needed a prophet like Sir John Lubbock—not without faithful disciples—to inculcate the lesson that we ought not only to gaze at such venerable survivals and broach theories upon them, but to preserve them from unnecessary decay and destruction. The Ancient Monuments Bill, adopted by the Government, is at last made law, after a lengthy waiting. There is no definition in the Act of the sort of ancient monument which is entitled to the benefit of the enactment. But the monuments enumerated in the schedule, which may afterwards be added to, show that it is designed to protect a class of ruins peculiarly in need of protection. There are numerous "monuments" of antiquity the very beauty and grandeur of whose ruins may be held to furnish an ample guarantee for their protection. Of such are the ruined castles and abbeys with which this country abounds. But the camp and the cromlech are mostly left to themselves. Perhaps legends as to their origin still float about the neighbourhood. The native does not feel quite comfortable when he passes them in the dark on a stormy night. His awe, however, does not prevent him from carting away in broad daylight a tall monolith which will make a convenient corner-stone for his new cattle-shed, or which seems to him intended by Providence to serve as a scratching-post for his oxen. Sometimes, if the mountain will not come to Mahomet, Mahomet goes to the mountain. Giant stones where they stand make a massive framework for new farm-buildings, and a Roman *vallum* has

been known to afford an excellent line of delimitation for a pigsty. Not merely so mischievous as this utilitarian species of rustic is the visitor who duly inscribes his illustrious name with a vulgarity erroneously supposed to belong exclusively to the Britisher, but really the common attribute of civilised mankind. The tourist only desecrates, while the rustic pillages. The Ancient Monuments Act aims at stopping both the desecration and the pillage. To quote an instance or two, the largest stone in the well-known remains at Abury, or Avebury, in Wiltshire, weighs 60 tons; but it was lighter by 30 tons than another known to have been blasted or otherwise broken up several years ago, by one who probably looked upon a stone, even a Celtic monolith, with as much insensibility as Peter Bell regarded a primrose. In the same way White Horse Stone, a household word of the country near Aylesford, in Kent, has been destroyed within living memory. Even at Stonehenge, a trilithon on the western side, which a little care might have kept standing, and might even now be set up again, is known to have fallen in 1797.

The Ancient Monuments Bill, then, aims at preserving those relics whose very strength, simplicity, and ruggedness seem at first sight to offer no motive to the destroyer, and therefore to disdain any protection which man could give. In truth, they are as much subject to vicissitude as other creations of human hands, and sentimental considerations, if no other, urge that we should arrest, so far as we can, the process of dilapidation. Often we have only a faint inkling of the uses of the weird circles of stones which dot our islands from north to south. A Roman or a Celtic camp is generally recognisable. We are tolerably sure that such and such a hillock is an ancient barrow, or that yonder long and lofty mould is an earth-work. We are more in the dark when we come to two or three huge stones surmounted by another, although plenty of people are confident that they enclosed the ashes of Celtic kings and can even give the departed monarchs a name. But Stonehenge and Abury and their analogues have not yielded to the most penetrating and ingenious conjectures. The British Archaeological Association, which held its annual congress at Plymouth a fortnight ago, did not this year venture far beyond the region of the known. Roman villas, churches, and country halls find them tolerably unanimous, when an excursion to Celtic or Druidical remains develops as many theories as there are members present. Not the personality of Homer nor the origin of the Etruscans has been more prolific of irreconcilable views and mutual derision than the question, For what was Stonehenge intended? Inigo Jones gave it as his opinion that it was a Roman work. Another *savant* of modern date declares that it is nothing but a group of cromlechs from which the soil has been washed or cleared away. The theory most in vogue is that Stonehenge is astronomical in its symbolism, and connected with the worship of the sun. The Friar's Heel, the keystone of the whole, it is pointed out, is so situated and arranged as to mark the rising of the sun at the summer solstice. To this it is answered that there lies prostrate a huge stone which, before it fell, must have effectually shut out any one standing at what is supposed to be the altar from the view of the sun over the Friar's Heel. Some enthusiasts compare Stonehenge with Baalbek; some talk significantly of Gilgal and the Hebrew practice of erecting stone pillars on every available occasion; and some superlative speculators do not shrink from the conclusion that the Druid and Hebrew worships were identical. The same veil of mystery which hangs over Stonehenge envelops, to a great extent, the origin of most of the Celtic remains to be found in the British Isles. *Omne ignotum pro magnifico* is the adage, and our awe for them ought, if anything, to be the greater. National or local legends have in many cases been grafted upon monuments far older than the legends themselves. The Celtic cairn takes to itself a Saxon or a Danish name and innately. The language and traditions of those who erected it have faded away, but fancy still invests the relic with a new history.

The provisions of the new Act are simple enough. The Commissioners of Works in England, the Board of Trustees for Manufactures in Scotland, and the Commissioners of Works in Ireland are respectively empowered to acquire by purchase or gift the monuments mentioned in the schedule, and others which an Order in Council may from time to time add to the number. Inspectors may be appointed to keep in order and preserve, as best may be, the monuments thus acquired; and penalties are instituted for acts of destruction. The language of the Act seems to indicate that in some cases the Commissioners will resort to "fencing, repairing, cleansing, and covering in." It is to be hoped that none of these artificial expedients will be employed except in circumstances of urgency. Many people will agree that the charm of antiquity forthwith departs from a spot when it is surrounded by a hoarding, scoured, and scraped, or roofed over. Better a natural decay than such an artificial life. It is to ward off the hand of the wilful destroyer, and not the weather, that the Act is most needed. Protected from human assault, and with the soil beneath them maintained in a firm state, pillars, cromlechs, and "rooking-stones" may be expected to last as long as they have lasted already. Barrows and intrenchments will need little attention from the Commissioners when it has become impossible for the land to fall into the hands of some improving landlord who makes no more account of a *tumulus* than of an ant-hill. The schedule comprises most of the best known ancient monuments in the three kingdoms. It is odd, however, that Cornwall, a county so rich in remains of Celtic Britain, should not contribute a single site to the list marked out for preservation. Sir John Lubbock evidently and with reason expects that many owners of well-known ancient sites will hand them over to the safe keeping of the Commissioners. He himself, it may be mentioned bought the site of the Abury remains to save them from the destruction which was overtaking them. Certainly the Act is only permissive, and permissive Acts are not noted for efficacy. But although a long period may elapse before the last monument even of those named in the schedule becomes vested in the representatives of the State, we can hardly doubt that the process of transfer will be speedily initiated.—*Times*.

#### MISCONDUCT OF JURIES.

(Continued from page 461, ante.)

III. *Rules peculiar to particular Classes of Actions.*—(1.) *Separation of the Jury.*—Considering, next, those rules which are different in the different classes of actions already named, let us look to those which relate to the separation of the jury as a ground for a new trial. It is not the general practice in this country to isolate jurors in civil cases from the rest of the public during the necessary adjournments which take place in the progress of the trial. On the contrary, they are permitted to return to their homes at night and to mingle freely with the public, after receiving an admonition from the bench not to converse with anyone, nor to receive communications from anyone, touching the cause on trial. In these cases they are not subjected to any restraint until they have received the charge of the judge, and have retired to consider of their verdict, when, regularly, they are to be kept together and prevented from communicating with persons not of the jury, until they have agreed upon their verdict. But even then, where their deliberations are protracted, or where, from the hour of adjournment, or other circumstance it seems necessary, it is believed to be within the discretion of the judge to allow them to separate for needed rest or refreshment before making up their verdict. For it would be an absurd restraint to prevent jurors, during the adjournments of a protracted trial, to separate and mingle freely with the public, and then to imprison them after its close until they should have agreed upon their verdict. Persons known to be members of the jury would not be less likely to be approached improperly after the termination of trial

than during its progress. Courts have, therefore, in civil cases, not only exercised a sound discretion in regard to the disposition of the jury pending their deliberations, but it has even been held that a statute<sup>14</sup> requiring them to be confined under the care of an officer until they shall have agreed upon their verdict, or until they shall have been discharged by the court, is directory merely, in its application to civil cases.<sup>15</sup>

(2.) *Separation in Civil Cases not Ground for new Trial.*—It follows almost as a necessary conclusion that the fact that the jury in a civil case have separated without leave of the court after the cause has been committed to them, and before they have agreed upon their verdict, is not, as mere matter of law, ground for a new trial; nor will a new trial be granted in such a case unless the facts touching the separation are such as to raise reasonable suspicions of abuse.<sup>16</sup> If such a rule will hold as to a general dispersion of the jury, it will follow, for stronger reasons, that the temporary absence of a single juror from the jury-room, or from his fellows, through a mistake of duty, will not afford ground for disturbing the verdict, unless there is proof of other misconduct on his part, or of improper attempts to influence his vote as a juror, though it may be a contempt of court which will subject him to punishment.<sup>17</sup>

(3.) *Nor in some States in Cases of Felony.*—In some of the States this rule has been extended to prosecutions for felony, and the judges have exercised the discretionary power of discharging the jury upon the adjournments of the court from day to day, even in capital cases;<sup>18</sup> or, in such a case, of allowing a single juror to leave the box for a time while the trial is in progress, the proceedings being, of course, suspended to await his return.<sup>19</sup> And, corresponding to this, we find that some courts have so far relaxed the rule of the common law as to hold that a separation of the jury in cases of felony, even where there is no necessity for it, is no ground for a new trial, in the absence of circumstances which excite suspicion of abuse.<sup>20</sup>

Thus, in Iowa it is within the discretion of the court, after the jury is sworn and before the cause is submitted to them, to permit them to separate, or to keep them in charge of a proper officer.<sup>21</sup> It is not error, therefore, for the court to refuse, on the application of the defendant, to direct that the jury should be kept together during the trial, unless it is made apparent that the court in some manner exceeded the discretion vested in it, or exercised it to the prejudice of the defendant's rights.<sup>22</sup>

In Ohio the same rule obtains. Whether jurors shall be permitted to separate during the progress of the trial is no longer an open question in that State; it is settled that it is a matter committed to the sound discretion of the court.<sup>23</sup> "In both civil and criminal cases the court may, in their discretion, during the progress of the trial, permit the jury to disperse for the purpose of obtaining food and rest, and may, in either case, direct them to bring in a sealed verdict; but in no case can the jury, after they have retired to consider of their verdict, be permitted to separate and disperse until they have agreed."<sup>24</sup>

In Indiana there is a statute relating to State trials, in the following language: "When jurors are permitted to separate after being empanelled, and at each adjourn-

ment, they must be admonished by the court that it is their duty not to converse among themselves, nor to suffer others to converse with them, on any subject connected with the trial, or to form or express any opinion thereon until the case is fully submitted to them."<sup>25</sup> This statute permits the separation of the jury during the trial, and before the cause is submitted to them, without their being in charge of a sworn officer; and the case of *Jones v. The State*,<sup>26</sup> which holds the contrary, is no longer regarded as authority.<sup>27</sup>

In Missouri, the law was formerly well settled that the separation of the jury in a criminal case will not invalidate their verdict or furnish grounds for a new trial if there is no reason to suspect that they have been tampered with, or have acted improperly.<sup>28</sup> The rule has been applied equally in all criminal cases, including capital felonies.<sup>29</sup> It has been applied indifferently to cases where the separation took place before the jury retired to deliberate on their verdict, and to cases where it took place after they had retired.<sup>30</sup> It has been applied equally in cases where the separation was in violation of the duty of the separating jurors, and in cases where it was with the sanction of the court<sup>31</sup> and with the consent of the prisoner.<sup>32</sup> But now, by a recent statute,<sup>33</sup> "the court may grant a new trial . . . when the jury has been separated without leave of the court, after retiring to deliberate upon their verdict, or has been guilty of any misconduct tending to prevent a fair and due consideration of the case." This, it is seen, does not touch the case of separations before the jury have retired to consider of their verdict. It therefore leaves the rules of the foregoing cases in force in most of their applications.

The judges of the Court of Appeals of New York have not been unanimous upon this question. In a case where it was presented and considered at unusual length, six out of eight of them were of opinion that the court has power to permit the jury to separate during the progress of a capital trial, upon the application of the prisoner, or upon his consent tendered without solicitation, pending the adjournments of the court from day to day. Four of the judges were also of opinion that the court has power, in its discretion, independent of the consent of the parties, to permit the jury thus to separate. From both propositions two of the judges dissented, and upon the last point two of them expressed no opinion.<sup>34</sup> The conclusion of the court is aided by the fact that the only statute upon the subject in New York provided as follows: "The proceedings prescribed by law in civil cases in respect to the empanelling of juries, the keeping them together, and the manner of rendering their verdict, shall be had upon the trial of indictments,"<sup>35</sup> and that there was no statute in New York requiring the confinement and isolation of juries in civil cases.

(4.) *The true Rule otherwise in Capital Felonies.*—There can be no question, however, that the foregoing rule, at least in its application to capital felonies, is an entire departure from the rule of the common law. The rule of that law was no doubt uniform in all cases of felony, for by that law all felonies were capital. By that law, courts had no power in such cases to permit the jury to separate after they had been charged with a case; and such a separation anciently worked a discharge of the

(14) Comp. Stats. Vt. 272, sect. 23.

(15) *Downer v. Baxter*, 30 Vt. 467, 474.

(16) *Smith v. Thompson*, 1 Cow. 221; *Brandin v. Grannis*, 1 Conn. 402, note; *Downer v. Baxter*, 30 Vt. 467; *Evans v. Foss*, 49 N. H. 490; *Anthony v. Smith*, 4 Bow. 503; *Pulaski v. Ward*, 2 Rich. L. 119.

(17) *Milo v. Gardiner*, 41 Mo. 649; *Parkins v. Esmal*, 2 Kan. 326; *Burill v. Phillips*, 1 Gall. 840; *Alexander v. Dunn*, 5 Ind. 122, 126; *Graves v. Moad*, 7 Swed. & M. 45; *Oram v. Bishop*, 12 N. J. L. 153.

(18) *The State v. Anderson*, 2 Bailey, 559; *Bilanati v. The State*, 3 Miss. 427.

(19) *The State v. McElmurray*, 3 Strobb. 28.

(20) *Stephens v. The People*, 4 Park. Cr. 369, 497 (affirmed 19 N. Y. 649); *The People v. Douglas*, 4 Cow. 26; *The People v. Ransom*, 7 Wend. 417.

(21) Code 1851, sect. 3611.

(22) *The State v. Gillick*, 10 Iowa, 98.

(23) *Sargeant v. The State*, 11 Iowa, 473; *Davis v. The State*, 15 Ohio, 73, 83.

(24) *Sargeant v. The State*, supra, per Read, J.

(25) 2 Rev. Stats. Ind. 376, sect. 112.

(26) 2 Blackf. 475.

(27) *Evans v. The State*, 7 Ind. 271.

(28) *The State v. Brannon*, 45 Mo. 329; *The State v. Harlow*, 21 Mo. 446; *The State v. Igo*, 21 Mo. 459; *The State v. Barton*, 19 Mo. 237; *The State v. Mix*, 15 Mo. 153; *Whitney v. The State*, 8 Mo. 165.

(29) *The State v. Brannon*, supra; *The State v. Harlow*, supra.

(30) *Whitney v. The State*, 8 Mo. 165; *The State v. Igo*, 21 Mo. 460.

(31) *The State v. Brannon*, 45 Mo. 329.

(32) *Ibid.*; *The State v. Mix*, 15 Mo. 153.

(33) 1 Rev. Stats. 1879, sect. 1964.

(34) *Stephens v. The People*, 19 N. Y. 649 (affirming a c. 4 Park. Cr. 369, 495, 503). This case follows the cases of *The People v. Douglas*, 4 Cow. 26, and *The People v. Ransom*, 7 Wend. 428, and in effect overrules the case of *Eastwood v. The People*, 3 Park. Cr. 95; though it is to be distinguished from all three of these cases on the ground that in them the question was as to the effect of an unauthorized separation:

(35) 2 Rev. Stats. N. Y. (2d. ed.) 648.

prisoner,<sup>36</sup> although in modern times it is merely ground for a new trial, even where unauthorised.<sup>37</sup> The provisions of our national and State constitutions which guarantee the right of trial by juries are understood to be intended to preserve that right substantially as it existed at common law. I affirm with confidence that where a jury empanelled to try a capital felony are permitted to separate, to mingle with the community, and to imbibe their prejudices, before rendering their verdict, the prisoner has been denied the right of trial by jury within the meaning of these constitutional provisions.

Upon this subject I feel justified in quoting at some length the language of Chief Justice Whelpley, of New Jersey, in a case in which he delivered the opinion of the Supreme Court of that State. He said:—

"It is clear that from the earliest times, as far back as tradition itself extends, it was a part of the method of proceedings, in the system of English law, in all capital cases to sequester the jury, to a certain extent, from the rest of the community. No one acquainted with the subject will deny that this practice prevailed for many successive ages, and so far as is known to me, it has never been departed from by any English judicature. In this State, almost from the epoch of its settlement by our ancestors to the present moment, as we are informed by history, both printed and oral, the same formula has been observed. From these admitted incidents, then, it would seem to be incontestably plain that the formula itself is invested with every possible claim to be considered a part of that legal system which this court is bound to sustain and administer. It is not a matter of unsubstantial form, but one of the means provided by the law to reach the result of a verdict founded exclusively on the evidence delivered in open court in the presence of the parties. It is, therefore, as much a right of the defendant as any other act which the law requires, by immemorial usage, to be performed at the trial. It is altogether impossible to admit the right of the court, at its pleasure, to waive the performance of this act. If the seclusion of the jury can be dispensed with before the charge of the court, why not dispense with it after such charge? And if the power to alter in one respect the admitted mode of ancient procedure is conceded to the court, what power to alter the forms of trial can be denied? Upon this point the case of *Stephens v. The People*,<sup>38</sup> was cited and relied on; but I must protest, with emphasis, against the introduction into the jurisprudence of this State of the doctrine upon which that case is placed. The theme is there treated, not as an inquiry as to the existence of power, but as a question of mere expediency.

"In the opinion delivered in the case, it seems to be considered as a matter but of small moment that the form of placing the jury apart from the rest of the public, in all capital cases, has been observed from the most remote era; but the argument proceeds upon the notion that the court can and should change the form, on the ground that the restraints upon the jury incident to such form are not compatible with the multifarious business, the comfort, and the intelligence of the present age. It is scarcely necessary to remark that this argumentative position, if tenable, will enable the courts, at their pleasure, to demolish any part and all parts of those forms of trial which are the safeguards of all private rights, and which have been established for centuries. It is, in effect, to assume that the entire trial by the country is in the hands of the court. Why put the intelligent witnesses of this age under pledge of an oath? Why doom the man whose affairs are pressing to the tedium of a protracted cross-examination? Why require of our intelligent jurors an unanimous verdict? The oath of the witness, the right of cross-examination, the unanimity of the jury, all rest upon the foundation of immemorial usage alone. It appears

to be altogether illogical, admitting the great antiquity of the form of the separation of the jury from the mass of the community in capital cases, to maintain the right of the court to abolish such form, without at the same time admitting the right of the court to retain or set aside, at will, all the other essential circumstances which go to make up the proceedings of a trial at law. But it is enough for us to know that the court has heretofore laid claim to no such power; that it has ever conformed its practice with implicit obedience to the ancient usages, leaving to the legislative department of the government the task to modify the law so as to place it in harmony with the ever-shifting conditions of human life. Ascertaining, then, that the practice, in capital cases, of keeping the jury to a certain extent in privacy during the entire course of the trial, has, with complete uniformity, always prevailed, I feel bound to recognise in such form an institute of law which is wholly beyond the control of the court, and which belongs to the citizen, as a right. I entertain no doubt that in this State a conviction in a capital case, which should be founded on an order of the court for the jury to disperse during its recess, would be quite as illegal and unsustainable as would be a conviction which would ensue the ruling of the court permitting a witness to be examined without the test of an oath, or some equivalent sanction.

"I conclude, then, that the jury, in a case in which the life of a prisoner is at stake, must, during the continuance of the trial, be kept separate to the extent of the ancient practice, and that this is a requisition of absolute law, and is not, in any measure, a matter resting in the discretion of the court. It would be superfluous, after coming to this result, to enlarge at any length on the evident propriety of the legal form in question, or to do more than advert to its efficacy to keep the jury from the reach of the contagion of that excitement which generally infects the popular mind during the trial of a person charged with a flagitious crime, and its tendency to indicate to the community, and to keep alive in the heart of the jurors themselves, a lively sense of the solemnity and great importance of the office with which they are clothed. These and many similar considerations might be used in vindication of the legal practice under review, but they seem out of place on an occasion when not the propriety, but simply the existence of the form, is under discussion. It is the business of courts to ascertain what the law is, not to defend it when ascertained."<sup>39</sup>

(To be continued.)

#### MURDER BY POISONING.

Attention is directed to a little village in Hungary, where, until recently, as alleged, a gipsy woman, now seventy years of age, has for a long time carried on a prosperous trade as poisoner. Upwards of a hundred husbands or lovers are said to have been "done to death" under the direction and with the aid of this malevolent hag. By the treachery of her daughter the culprit has at length been brought to justice. The medical aspect of this case has not yet assumed a form which would justify us in making it the subject of professional remark. The most we know of the affair, and that solely from common report, is that the poison employed has, thus far at least, eluded the measures taken for its discovery. "Even now that the bodies of some of her victims have been exhumed, they show no signs of poisoning, though the stomachs are eaten away." It is stated that the destroyer of life "excited no suspicion because the drugs she administered acted slowly, though surely, and in their effects simulated the symptoms of disease." This is the hideous and significant feature of the case, giving ground for more than common dread lest the black art of the Eastern poisoner should find its way into Western Europe. It is an unexplained but most happy circumstance that, although European communities are every now and

(36) Co. Lit. 227 b.; 3 Inet. 110; note in 7 How. St. Tr. 487, where many precedents are collected.

(37) *Williams v. The State*, 45 Ala. 57; *The People v. Reagle*, 60 Barb. 527, 544.

(38) 19 N. Y. 549.

(39) *The State v. Cucuel*, 31 N. J. L. 262-264.

again demoralised by the revelation of some atrocious case of poisoning, that mode of murder has not, and let us hope never will, become naturalised amongst us. The hideous and manifold possibilities of death being brought about by means which cannot be detected by the victim or those around him are enough to scare any community. It is well that we in England have no ground for serious alarm in regard to this crime of secret poisoning. At the same time, it is wise to be ever on the alert. It may be doubted whether, with all the perfection of our vaunted system of registration, we are as secure as we might be if only more attention were bestowed on all cases of chronic or slow disease of anomalous character. It is in connexion with maladies of this nature danger lurks. It cannot be disguised that there are deadly substances capable of inducing changes of tissue that must end in the death of the organism into which they are introduced. Against the administration of these "poisons" there is practically no safeguard. The scrutiny to which mysterious maladies are subjected cannot be too close, and it would tend to the triumph of justice over skilled crime, if attention were less exclusively directed to the recognition of those known mineral and vegetable drugs which are classed as poisons. It is not desirable to say more than this; but so much may and ought to be said in the interests of public prudence and the security of human life.—*Lancet*.

#### THE IRISH LAND COMMISSION.

The following Instructions for Assistant-Commissioners under the altered method of procedure have been issued:—

1. It will be seen on reference to the Delegation Order that the powers of the Sub-Commission may be exercised by any two members, of whom the Legal Assistant-Commissioner shall be one.

2. The contemplated mode of procedure is as follows:—A Valuer is attached to each Sub-Commission, who shall value the farms together with one of the Lay Assistant-Commissioners. The Commissioner accompanying the Valuer is to be the same by whom the case is heard in court, conjointly with the Legal Assistant-Commissioner.

Thus the Legal Assistant-Commissioner sits in court with one of his colleagues alternately, his other colleague during that time visiting, conjointly with the Valuer, those holdings of which he had heard or was about to hear the cases in court.

3. In carrying this out it will be desirable that the business should, so far as possible, be so divided as that cases on one estate should be heard and the holdings visited by the same Assistant-Commissioner. Subject to this recommendation the Land Commission desires to leave the Sub-Commission free to arrange its own business in the manner it may deem most convenient.

4. The Valuer shall take notes of the particulars of his valuation according to a settled form, and shall in every way assist the members of the Sub-Commission charged with the case in arriving at a just decision.

5. If the Valuer should be unavoidably absent, with leave of the Commission (as may happen where he is obliged to give evidence in cases of holdings valued by him for parties before his engagement as Court Valuer), the Sub-Commission may proceed according to the former practice, and let the holdings be visited by both of the Lay Assistant-Commissioners.

6. The Legal Assistant-Commissioner may, in all cases in which he deems it necessary or proper, require the second Lay Commissioner to visit and report on the holding.

7. As parties may be absent when decisions are given some time after the hearing, it shall be the duty of the Registrar to the Sub-Commission to notify by letter to the parties, landlord and tenant, or their solicitors, the result of the decisions.

#### LABOURERS' COTTAGES.

8. A copy of instructions, designs, and specifications issued by the Commissioners of Public Works, on the 31st July, 1882, in reference to labourers' cottages, is transmitted herewith for the use of each Sub-Commission.

9. Every order in respect of erection of a labourer's cottage should be made for the building of one or other of the dwellings suggested by the Board of Works in the accompanying papers.

10. It is desirable that when Sub-Commissions make orders for the building of labourers' cottages the same form of words should be used in the order in each case, except as regards the number designating the design and plan of the house to be erected.

11. It is requested that the form of order be as follows:—

And we further order that the tenant do within months from the date of this order erect a labourer's cottage upon the said holding, such cottage to be built according to plan, design, and specification No. 1 or No. 2, as the case may be, issued by the Commissioners of Public Works on the 1st July, 1882.

12. Any tenant applying to the Board of Works for a loan for the purpose of building a labourer's cottage will be supplied by that Board with all necessary information. A copy of the order of the Sub-Commission should be forwarded with the application.

13. Any tenant intending to build a labourer's cottage, in compliance with an order of a Sub-Commission, without a loan, will be supplied, on application to the Secretary of the Land Commission, with a plan, design, and specification, in conformity with the order of the Sub-Commission.

14. With regard to loans for the improvement of labourers' cottages, the Board of Works have informed the Land Commission that they will "entertain any application, however small, provided the sum applied for be sufficient to carry out the order of the Land Commission Court. It would, however, be well for the Sub-Commission Court to name some adequate sum, to leave a margin for contingencies and costs chargeable by the Board, and the Board on receiving their inspector's report would limit the actual loan to the sum necessary.

"But the Board would point out as an objection to making very small loans that the costs of inspection, &c., chargeable to the loan would be in a very high proportion to the amount available for expenditure; and they would further observe that where a fair rent has been secured to a tenant for 15 years, on a holding large enough to employ labour outside his own family, it would seem that the tenant should be able to incur the small expenditure necessary, without assistance."

15. When an order is made by a Sub-Commission for the improvement of a cottage, it should specify, as much in detail as possible, the extent and nature of the improvements directed.

By Order,

DEMS GODLEY.

24, Upper Merrion-street, Dublin,  
September, 1882.

#### PUBLICANS' CERTIFICATES.

At Kildysart annual licensing sessions on Wednesday last, before Messrs. T. Rice Henn and P. Purcell, justices, the validity of the payment of 2s. 6d. to the petty sessions clerk for filling and countersigning a publican's certificate was questioned by a publican named B. Heher, on the grounds that he had filled the certificate himself, and that the supervisor at Ennis informed him that the signature of the petty sessions clerk was not required. The clerk objected to the renewal, stating that while he had got a list of all the publicans in the district from the clerk of the peace, he did not receive Heher's. Besides, the names of six householders in the certificate as to character were in

applicant's own handwriting. Applicant stated his name was in the registry, that he had the consent of the householders, and insisted that as the police had no objection to the renewal, the magistrates should sign it without emolument to the clerk. The magistrates held that the householders' signatures should be their own, and objected to sign, whereupon the applicant left the court, filled another form, got the householders themselves to sign, and presented it then to the magistrates who signed it.

### CORRESPONDENCE.

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

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

### PREVENTION OF CRIME ACT.

TO THE EDITOR OF THE IRISH LAW TIMES.

SIR.—There was a case came before two R.M.'s at Carrick-on-Suir, under the 11th section of the Act, a short time ago, and the defendant tendered himself and was examined by his solicitor as a witness, by virtue of sub-section 2, which declares that "Upon the hearing of a charge under this section against a person, that person may, if he thinks fit, be examined as an ordinary witness in the case."

It appeared that there were several persons with the accused on the occasion in question, but all of them got off except him. The Sessional Crown Solicitor, on cross-examination, asked the accused:—"Who were your companions on this night?" He said, "I will not tell you."

An application was then made to commit him for contempt, under the 13th section of the Petty Sessions Act, in not answering the question, or not giving any excuse for not doing so, but the magistrates, on consultation, held the accused was not bound to answer any question unless what he wished.

Do you think the magistrates were right in this decision?

Yours truly,

A SUBSCRIBER.

[We should prefer to decline answering questions of this kind—which might assume a wider range—and do not see that any useful purpose would be served by offering our opinion; but, other correspondents may well express theirs, as such matters clearly fall within the province of this department.—ED.]

### APPOINTMENTS AND PROMOTIONS.

**NOTE BENE.**—Information intended for publication under the above heading should reach us not later than Friday morning in each week, as publication is otherwise delayed.

The Right Hon. the Attorney-General has appointed David Lynch, Esq., Crown Prosecutor for the North Riding of Tipperary; Stephen P. Curtis, Esq., to the South Riding of Tipperary; and Henry William Lover, Esq., Crown Prosecutor for the City of Kilkenny.

### BOOKS RECEIVED.

*Criminal and Judicial Statistics, 1881, Ireland. Part I.—Police—Criminal Proceedings—Prisons. Part II.—Civil Proceedings in Central and Larger and Smaller District Courts.* Presented to both Houses of Parliament by Command of Her Majesty. Dublin: Printed by Alex. Thom & Co., 87, 88, & 89 Abbey-street, the Queen's Printing Office. For Her Majesty's Stationery Office. 1882.

### LAW STUDENTS' JOURNAL.

#### THE INCORPORATED LAW SOCIETY OF IRELAND.

MICHAELMAS SITTINGS, 1882.

#### NOTICE.

The PRELIMINARY EXAMINATION of Candidates for Apprenticeship will be held at the Solicitors' Hall, Four Courts, Dublin, on Thursday and Friday, the 19th and 20th days of October, 1882, at *Eleven o'clock*.

N.B.—All Papers to be lodged on or before *Tuesday, 3rd of October, 1882*.

The FINAL EXAMINATION of Candidates seeking admission as Solicitors will be held at the same place, on Monday and Tuesday, the 23rd and 24th days of October, 1882, at the same hour.

By Order of the Council,

JOHN H. GODDARD, *Secretary*.

Solicitor's Hall, Four Courts, Dublin.

The Competitive Examination for the Society's Prize will be held on Friday, Monday, and Tuesday, the 20th, 23rd, and 24th days of October, 1882, at *Eleven o'clock each day*.

N.B.—The decision of the Court of Examiners will be announced on Wednesday, the 8th of November, 1882, at *Three o'clock, p.m.*

Candidates residing in the Country need not remain in town to hear decision, but can learn same from the Dublin Morning Papers of the day following the announcement.

#### THE INCORPORATED LAW SOCIETY OF IRELAND.

HILARY SITTINGS, 1883.

#### FINAL EXAMINATION.

#### NOTICE.

Candidates wishing to present themselves at the above Examination must lodge their papers, &c., on or before the *first day of Michaelmas Sittings, 1882*.

By Order,

JOHN H. GODDARD, *Secretary*.

Solicitors' Hall, Four Courts, Dublin,  
*September, 1882.*

### COURT PAPERS.

#### COURT OF BANKRUPTCY.

#### ADJUDICATIONS IN BANKRUPTCY.

*The dates of Adjudications are first given, the Sittings follow in italics.*

Flanagan, Thomas, of Ennistymon, in the county of Clare, draper. September 8; *Tuesday, October 3, and Friday, October 20. Bennett Thompson, solr.*

Kidd, George, of Raheen, Strabarth, in the county of Wexford, farmer. September 8; *Tuesday, October 3, and Friday, October 20. John Mathews and Thomas J. O'Dempsey, solrs.*

Moore, James, of Ballyllyn, in the county of Donegal, farmer. September 5; *Tuesday, October 3, and Friday, October 20. Horace Wilm, solr.*

Reynolds, Bernard, of No. 8 Bolton-street, in the city of Dublin, vintner. September 8; *Tuesday, October 3, and Friday, October 20. M. Larkin & Co., solrs.*

Whittle, James, of Longford, in the county of Longford, master tailor in Her Majesty's 18th Regiment of Hussars. September 5; *Tuesday, October 3, and Friday, October 20. Casey & Clay, solrs.*

There were 179,206 persons committed to prison last year, of whom 60,840 (40,619 males and 20,221 females) could neither read nor write.

DUBLIN STOCK AND SHARE LIST.

DESCRIPTION OF STOCK	SEPTEMBER					
	Sat. 16	Mon. 18	Tues. 19	Wed. 20	Thur. 21	Fri. 22
*Paid Government.						
— 3 p c Consols ..	—	99½	99	99½	—	—
— New 3 p c Stock ..	—	98½	98½	98½	—	98½
INDIA STOCK.						
4 p c Oct. 1888 } Trafal. at ..	—	103	103	—	—	—
3½ p c Jan. 1891 } Bk. of Irel. ..	—	—	—	—	—	—
BANKS.						
100 Bank of Ireland ..	—	—	318	318½	318½	—
25 Hibernian Banking Co. ..	—	—	—	—	—	34
20 London and County (Ltd.) ..	—	—	—	—	77½	—
15 London Joint Stock ..	—	46½	—	—	—	—
20 London and W'minster, Ltd ..	—	—	—	70½	—	70½
10 Do. New ..	—	—	—	—	—	—
3½ Munster Bank (Limited) ..	—	7	—	7	—	—
— Nat. Prov. of England, Hm. ..	—	—	—	—	—	—
10 National Bank (Limited) ..	—	23½	—	—	24	23½
10 National of Liverpool (Ltd.) ..	—	14½	—	14½	—	—
25 Provincial Bank ..	—	—	26½	—	—	—
10 Do. New ..	—	—	—	—	—	—
10 Royal Bank ..	—	—	—	—	—	—
2½ Ulster Banking Co. ..	—	—	—	—	—	—
25 Union of Australia ..	—	—	—	—	—	—
15½ Union of London ..	—	—	—	—	—	—
Steam.						
50 British & Irish ..	—	—	—	—	—	—
100 City of Dublin ..	—	10½	—	—	—	—
50 Dublin & Liverpool Steam Ship Building Co. ..	—	—	—	—	60	—
50 Peninsular and Oriental ..	—	—	—	—	—	—
Miscellaneous.						
10 Alliance & Dub. Cona. Gas ..	—	16½	—	—	—	—
8 Do. do. New ..	—	—	—	—	—	—
4 Arnott & Co., Limited ..	—	—	—	—	—	—
7½ Dub. Drapery Warehouse, Ltd. ..	—	—	—	—	—	—
25 Ir. C. S. Building Society ..	—	—	—	—	—	—
10 M'Kenzie & Sons (Ltd.) ..	—	—	—	—	6	—
4 National Discount, Inc., Ltd ..	—	—	—	—	—	—
9-4-7 Patriotic Assurance ..	CLOSED	—	—	—	—	—
Tramways.						
10 Belfast Trams ..	—	—	—	—	—	—
10 Dublin United Tramways ..	—	—	10½	—	10½	10½
10 L'pl Un'td Tram & Bus Ltd ..	—	12½	—	—	—	—
10 N'th Metr. Tramway, Lond. ..	—	—	—	—	—	—
Railways.						
50 Belfast and County Down ..	—	—	—	—	—	—
50 Belfast and Northern Cos. ..	—	—	—	52	—	—
50 Cork and Bandon ..	—	—	—	—	—	—
100 Great Northern (Ireland) ..	—	—	—	—	119½	—
100 Gt. Southern and Western ..	—	116½	—	—	—	116½
100 Midland Gt. Western ..	—	86½	86½	87	—	—
100 Waterford & Cent. Ireland ..	—	—	—	—	—	—
Railway Preference.						
100 Belfast & N'th'n Cos, 4 p c ..	—	—	—	—	—	—
100 D., W., & W., 6 per cent ..	—	—	—	—	—	—
100 Gt. N'th'n (Ireland) 4 p c ..	—	—	—	—	—	—
100 Gt. South'n & West'n 4 p c ..	—	—	—	—	108½	—
100 Mid. Great Western, 4 p c ..	—	—	101½	—	—	—
Debenture Stocks.						
— Belfast & N'th'n Cos, 4 p c ..	—	—	—	—	—	—
— Dublin & Wicklow 4 p c ..	—	105½	—	—	105½	105½
— Gt. Northern (Ireland) 4 p c ..	—	—	—	—	—	—
— Do. 4½ p c ..	—	—	114½	114½	—	—
— Do. 5 p c ..	—	—	—	—	—	—
— Gt. South'n & West'n, 4 p c ..	—	—	—	—	—	—
— Midland Gt. West'n, 4 p c ..	—	105½	105½	—	—	106
— Do. 4½ p c ..	—	—	—	—	—	—
— Do. 4 p c ..	—	—	—	—	—	—
Miscellaneous Debent.						
Belfast Office Deb., £92 6s 3d, 4 p c ..	—	—	—	—	—	—
City Deb. of £92 6s 3d, 4 p c ..	—	—	—	—	—	—
Dub. & Glas. S. P. Co. (1887) 5 p c ..	—	—	—	—	—	—
Do. (1888), 6 p c ..	—	100½	—	—	100	—
Dub. & Kingstown 4 p c ..	—	—	—	—	102½	—
Dublin Water Works, 5 p c ..	—	—	—	—	—	—

\* Shares not fully paid up are given in *Italics*. † x d

Bank Rate—Of Discounts—4 per cent., 17th August, 1882  
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BIRTHS, MARRIAGES, AND DEATHS.

BIRTHS.

PRICE—September 19, at the Retreat, Greystones, the wife of George Robert Price, Esq., barrister-at-law, of a son (stillborn).

MARRIAGES.

GIRVIN and GIRVIN—September 14, at the Church of the Holy Trinity, Halstead, by the Rev J. Greenham, assisted by the Rev. L. Cornah, William J. Girvin, Esq., solicitor, Armagh, to Rowena, eldest daughter of Robert Girvin, Esq., Oaklands Park, Halstead, Essex.

MERRILL and CRAWFORD—September 19, at Temple Michael, Longford, by the Rev. W. R. Moore, B.A., J. Merrill, Esq., 18th Hussars, to Anne Phillips, only daughter of the late Henry Crawford, Esq., barrister-at-law, and J.P. for the County of Longford.

DEATHS.

TOWNSEND—September 18, at Cliff House, Dunmore East, J. H. Townsend, Esq., solicitor, late of Saintsbury, Killiney.

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# THE IRISH LAW TIMES AND SOLICITORS' JOURNAL.

VOL. XVI.

SATURDAY, OCTOBER 7, 1882.

No. 819

## OUR WIVES.—I.

OUR readers are aware that by virtue of the provisions of the "Married Women's Property Act, 1882," which received the Royal assent upon the 16th of August last, and will come into operation on the 1st of January next, a large proportion of the married women of Ireland, as well as of England, will upon that day enter upon an entirely new and much-sought-for existence; but probably very few persons in this country have as yet any very distinct notion of the extent or precise character of the changes which this Act involves. It takes some time fully to realise the various effects of a statute which is about to confer upon every woman who happens to be then *under coverture*, or will subsequently become so, what may be described as a substantially unrestricted legal status—the capacity, so far as regards any woman whose marriage takes place any time after the close of the present year, to keep for herself, free from the control of her husband (without any marriage settlement, and without even the intervention of a trustee), all property of any description, movable or immovable, which was her own at the time of her marriage, and as regards every wife, whether married before or after that time, the capacity to hold and enjoy for her separate use, all property that will, after this year, devolve upon her, or be acquired by her in any trade or occupation, or otherwise, and to dispose of any of the hereinafore mentioned property by will or otherwise; and lastly—what, it is sometimes forgotten, is of paramount importance to the class of wives that will be chiefly affected by the Act—the capacity to bind themselves and others by contracts readily enforceable by law, thereby qualifying wives, for the first time in our legal history, to transact upon equal terms all ordinary business dealings with business men (45 & 46 Vict., c. 75, sections 1, 2, and 5). It is, furthermore, worthy of note that by section 1, sub-section 4, it is expressly enacted that "Every contract entered into by a married woman with respect to and to bind her separate property shall bind not only the separate property which she was possessed of or entitled to at the date of the contract, but also all separate property which she may thereafter acquire," thus reversing, in favour of persons having dealings with her, the rule laid down in the case of *Pike v. Fitzgibbon*, L. R. 17 Ch. Div. 454. Since 1870, married women have been competent to bring actions in their own names, just as if they were *femes sole*, for the enforcement of contracts entered into with them in respect of the limited class of statutory separate property created by the Act of that year (33 & 34 Vict., c. 93; see sub-section 11), and "for the protection and security" of it. Corresponding but wider provisions are contained in the enactment of this year (45 & 46 Vict., c. 75; see sections 1 and 12), which confer upon her the same direct remedies against all persons as if she were a *feme sole*, and give them with respect to all her separate property, including the new classes of property brought into that category by the new statute.

We wish, for the reasons we are about to state, to direct particular attention to the facilities for enforcing by law, claims against the separate estate of a married woman, which are affected by the two following sub-sections of section 1:—

Sec. 1, sub-sec. 2.—"A married woman shall be capable of entering into and rendering herself liable in respect of and to the extent of her separate property, on any contract, and of suing and being sued *either in contract or in tort, or otherwise*, in all respects as if she were a *feme sole*, and her husband need not be joined with her as plaintiff or defendant, or be made a party to any action or other legal proceeding brought by or taken against her; and any damages or costs recovered by her in any such action or proceeding shall be her separate property; and any damages or costs recovered against her in any such action or proceeding shall be payable out of her separate property, and not otherwise."

Sub-sec. 5.—"Every married woman carrying on a trade separately from her husband shall, in respect of her separate property, be subject to the bankruptcy laws in the same way as if she were a *feme sole*."

We observe in some quarters what appears to be an undue tendency to take a dark view of the possibly injurious influence upon home life and upon the peace of the domestic circle, that may accrue from an enactment like this, giving, as it does, to a wife (should she think fit to exercise it) absolute control as against her husband of what the law now allows her to call her own property; though previous long experience in the analogous case of the settlement of a woman's property to her separate use, points rather to a different conclusion; and it is to be borne in mind that marriage settlements of any kind can still be entered into where desirable, after the Act comes into operation (sect. 19). While the public mind has been perhaps too much troubled by such domestic considerations, too little attention has been hitherto directed to the other aspect of the question—namely, that in which, *not* the new relations of the husband and wife to one another are considered, but the improved relations introduced by the Act between the wife alone, or the husband and wife, on the one hand, and third parties with whom they, or either of them, wish to have dealings, on the other. Paradoxical though the statement may seem at first, it is nevertheless true that perhaps no one of the disabilities under which wives have hitherto laboured has pressed so hardly upon many a one amongst them, as that which has resulted from her practical incapacity to incur liabilities that could always be enforced against herself, cheaply and directly, without bringing before the court some other person, either husband or trustee, and from the consequent insecurity justly felt by the public as regards all business dealings with her. A little consideration, however, will satisfy us that, as the law has heretofore stood, many wives have suffered severely from the well-founded reluctance of traders and others to enter into business dealings with them. For instance (and this case is typical of a numerous class), many a married woman whose husband is abroad or engaged in some occupation which requires him to reside, to a greater or less extent, away from her—not to mention the case of wives who are not on terms with, or have been deserted by, their husbands—is thereby placed in great difficulty with respect to the obtaining of the goods necessary for the carrying on of some business, in procuring the possession of a house to reside in or let out in lodgings, or in any other way working out a livelihood; for, under such

(10 Ex. 698), this view was doubted by Lord Wensleydale, who indicated his adhesion to the doctrine of *R. v. Garbett*, though deeming the rule still (1855) unsettled; while again, in *Siblebottom v. Adkins* (27 L. J. Ch. 152), Stewart, V.C., dissented from the rule laid down in *Fisher v. Ronalds*, though admitting that there might be cases in which the witness would be the sole judge. On the other hand, in *Adams v. Lloyd* (3 H. & N. 351), Pollock, C.B., approved of *Fisher v. Ronalds*, adding: "The only exception I would make would be this—if the circumstances disclosed made the judge perfectly certain that the witness was trifling with the court, and availing himself of a rule of law in which in fact there was no ground, then I think it is the duty of the judge to insist on his answering." But then, in *R. v. Boyes* (1 B. & S. 311, 30 L. J. Q. B. 801, 5 L. T. N. S. 147), an express and well-considered decision was pronounced on the subject, in 1861, holding that a witness can only claim the right of refusing to answer a question when the court is satisfied that there is any real danger of a prosecution if he does answer (and that the privilege cannot be claimed after a pardon under the great seal for the supposed offence). And in *Ex p. Scholfeld, re Firth* (6 Ch. Div. 230) there is a *dictum*, or something more, of James, L.J., in 1877, to the same effect.

#### "LAW JOURNAL REPORTS" FOR OCTOBER.

In the monthly number of the *Law Journal Reports* for October twenty-six cases are reported, of which nineteen are from the Chancery Division, and seven from the Queen's Bench Division.

Of the Chancery cases *Hurst v. Hurst*, in the Court of Appeal, is a case in which a life interest in certain freeholds and leaseholds, settled by will, with remainder to the children of the life tenant, and an acceleration on his alienation or bankruptcy, was held as to the freeholds well charged by the life tenant, who was heir-at-law of the testator, but not as to leaseholds, which were subject to a residuary bequest. In *Munster v. Cammel & Co.*, a power under the articles of a company for the directors to fill casual vacancies among themselves was held well exercised, although an annual meeting had occurred between the vacancy and the appointment. In *Ex parte Pitt, re Gosling*, a bankruptcy was held by the Court of Appeal validly closed, although there were no assets; but, on reopening it, notices must be given to creditors since the adjudication to prove against property acquired since that date. In the case of *Re Dickinson, ex parte Rosenthal*, the Court of Appeal held the requirement of a deposit within twenty-one days from entering an appeal in bankruptcy to be imperative as to time. In *Whittaker v. Whittaker* the uncorroborated testimony of a widow as to loans made to her deceased husband was held not a sufficient proof against his estate. In the case of *Re Hyatt's Trust* an order under the Trustee Acts was made vesting property in new trustees when the existing trustees refused to transfer. In the case of *In re the Great Western (Forest of Dean) Coal Consumers' Company* a petition to wind up by the holder of a charge was ordered to stand over for six months, the company undertaking to give notice of other proceedings and not to wind up voluntarily. In *The Attorney-General v. The Shrewsbury and Kingsland Bridge Company* the Attorney-General was held entitled to sue for interference with public ways without proof of actual injury. In *The Mayor of Hyde v. The Bank of England* property acquired by a local authority under the powers of an Act was held "vested under" the Act, so as to pass to a borough under section 310 of the Public Health Act. In the case of *In re Ward, ex parte Ward*, in the Court of Appeal, the obtaining of a quotation on the Stock Exchange by fraud was held not to affect contracts by persons not parties to the fraud and a claim for the balance of money due from

a defaulter on the Stock Exchange, whose assets had been distributed by the Stock Exchange assignee, was held maintainable. In the case of *Re Reynolds, ex parte Reynolds*, the Court of Appeal laid down that the statement of a witness that answers will criminate him is not conclusive; but the Court must be satisfied, allowing due latitude, that the witness is in peril. In *Ex parte Vanderlinden, re Pagosa*, an amendment to a petition in bankruptcy was allowed, although it stated, contrary to the fact, that the petitioner was unsecured, he having told the bankrupt that the security was worthless, and being willing to give it up. In the case of *Re Clarke* an infant was ordered to be educated in the Roman Catholic religion when such appeared to be the intention of his Protestant father, and seemed most beneficial. In the case of *In re the Oak Pits Colliery Company (Limited)* the Court of Appeal held that a landlord was not entitled to priority in respect of rent accruing since the liquidation when the property was in the possession of the company's mortgagees. In the case of *Re Higgins and Hichman's Contract*, it was held that where the vendor's predecessor in title had covenanted with a railway company not to use the property as a public-house, he did not make "a good title" according to his agreement. In *Hill v. The Midland Railway Company* the defendants were held entitled to enter on lands for the purpose of making a tunnel on paying the estimated value of the easement into Court, although they had power to take the easement only in the event of the jury or arbitrator finding that no damage would be done to the surface. In *The Midland Railway Company v. The Haunchwood Brick and Tile Company*, a bed of clay was held by Mr. Justice Kay to be "mines deemed to be excepted out of the conveyance" to a railway company, within the meaning of the Railways Clauses Consolidation Act. In *Glen v. Gregg* it was held by the Court of Appeal that the sanction of the charity commissioners was not required to an action to administer the trusts of a place of religious worship. In *Andrew v. Aitken* the executors of a defendant were held entitled to an *ex parte* order to prosecute his counter-claim.

Of the Queen's Bench cases *Brown v. The Great Western Railway Company*, a gallant attack of an individual on a great company, is the first. The Court of Appeal held that when the Great Western Railway Company amalgamated with the Birmingham and Oxford Junction Railway, on condition of reducing the tolls to a penny a mile, this fare was payable in respect of the distance from Acton to Paddington, although originally the Great Western were entitled to charge 2s. for this distance of five and a half miles. It is also held that the company is not bound to maintain mile posts on the railway for the benefit of ordinary passengers, but only with a view to persons who may run their own trains. In *Thompson v. Farrey* the Court of Appeal lay down the law as between shipowners and the Board of Trade in detaining a vessel suspected of unseaworthiness. The Board may detain, provisionally, if there appear reasonable grounds for so doing, although those grounds turn out to be unfounded, and the question of reasonableness is for the jury, not the judge. In *Griffiths v. Earl Dudley* it was held that a workman may contract himself and his representatives, in case of death, out of the Employers' Liability Act. In *Wall v. Taylor* it was held that the public performance of a musical composition, without the consent of the proprietor of the copyright, is forbidden irrespectively of the place being a place of dramatic entertainment. In *Burman v. Rodocanachi* the House of Lords held that the value in a valued policy only binds the parties; and that, if the insured recovers more in respect of loss against which he was not insured from other sources, he is not trustee for the insurer. In *Morgan v. Thomas* a devise of land to L. for life, and after death to his issue and their heirs, was held to confer only a life interest on L. in spite of Shelley's case. In *Ford v. Kettle* an affidavit of attestation of a bill of sale, which only verified the signature of the solicitor, was held insufficient, as it did not prove his presence when the grantor executed.—*Law Journal*.

## THE RELEASE OF MR. GRAY, M.P.

Although Mr. Gray is released from prison we hope that the subject of contempt of court will not be forgotten, but will be considered dispassionately, like other questions of legal procedure. There is no doubt that the courts should have power to repress and punish manifest contempts committed in open court. Thus, if a man insults or assaults a judge in court, he shall be liable to prompt fine and imprisonment; but there should be an appeal if the punishment exceeds a certain limit—say above £100 or six weeks' imprisonment. The present system is certainly contrary to the usual system of our procedure. The judge tries both law and fact, he may even be judge in his own case; for though, if the contempt was a personal insult, possibly some other judge would try it, yet if the contempt was only personal in the sense that it related to a trial over which a judge was presiding, he would probably try it himself. But the most serious aspect of the case is, that it may involve imprisonment for life. Thus, if a party to a suit is ordered to do some act and refuses, a lifelong imprisonment may be the result. Surely this ought to be avoided. If a plaintiff obstinately refuses to obey some order of the court during a trial, let his suit be dismissed; if a defendant let his defence be struck out. So if a defendant is ordered to do some physical act, such as pull a wall down, the simplest plan is to authorize either the plaintiff or an officer of the court to pull it down, and if needful send police to protect the workmen. The present plan is really absurd; the punishment is so greatly in excess of the fault, and after all, does not necessarily obtain obedience.—*Law Times*.

There can be little doubt that in exercising the prerogative which was vested in him alone, Mr. Justice Lawson had due regard to the expression of public opinion which was called forth by the strong measure which he felt it his duty to take, but none who knows his character would believe that he would have yielded to any pressure, however powerful and urgent, if he did not feel that a necessity for so stern a vindication of the sovereign authority of the court was no longer needed. He has been subjected to obloquy and insults on the part of those whose habit it is to malign the judges and endeavour to excite popular prejudices against them, but he has borne the attacks with calm and dignified indifference, unshaken as he was by the conviction that the step which he took was imperatively called for by the circumstances, and that the lesson which he gave would prove as salutary as it was undoubtedly severe. It was fully justified by the result. The course of justice which had been hindered and imperilled by the rash and intemperate writings which he condemned, writings which were calculated to paralyse the hand of the law and deter the jurors and officials from discharging their duty, has been clear and smooth. Perfect freedom has been secured to all, and the trials which, in all probability, would otherwise have been abortive, have ended in every case in the conviction of the guilty criminals. It is impossible to measure the value of the service thus rendered to the peace and welfare of the country, and whatever may be thought upon the abstract question whether a judge should be entrusted with an absolute uncontrollable power to punish for contempt of court, it cannot be with truth denied that the occasion was most critical and the offence proportionately great, having regard to the possible consequences and to the high and responsible position of the offender. The sole object which the judge had in view was to further the ends of justice and, that having been effected, he felt at liberty to yield to a generous inspiration and cancel the unsatisfied portion of the sentence.—*Times*.

Messrs. Kegan, Paul & Co., are about to publish two volumes of poetry from the Irish judicial bench. These are a new edition of Mr. Justice O'Hagan's excellent translation of *The Song of Roland*; and *Hymni Usitati Latine Reddita*, by Mr. Justice Lawson.

## THE LAW RELATING TO BURGLARS.

Sharp experience is the only school for brutalized intelligences, and a burglar or two shot dead and his slayer not treated as a criminal, but rather as a public benefactor, would be an event as strictly in accordance with law as it would be likely to discourage further enterprises in that particular walk of crime. As it is, we are aware, a serious thing to tell a man that he is entitled to take a fellow-creature's life, we proceed, without further comment, to give our authorities for the position we have laid down.

In the municipal law of this country, we find a practical consensus of opinion to the effect that the killing of a burglar taken in the act of burglary falls under the head of justifiable homicide. The fallacy into which people have fallen on this point seems to be based on the idea that the only justification possible in such cases is that of personal danger to the man who is called upon to cope with the burglar. This is not so; a forcible and felonious attempt against a man's house or goods justifies the use even of extreme force in defence thereof just as much as a similar attempt against his person. Indeed in certain cases, not necessary to be referred to here, the law would appear to allow even greater latitude in the protection of the house than of the person. Burglary, from its very nature, comprises such an attempt both against house and goods; and accordingly in all the text-books it figures, so to speak, as the representative crime which it is lawful to repel by any amount of force. Thus in East's "Pleas of the Crown" we read:—"A man may repel force by force in defence of his person, habitation, or property against one who manifestly intends or endeavours by violence or surprise to commit a known felony such as robbery, arson, burglary, and the like, upon either. In these cases he is not obliged to retreat, but may pursue his adversary until he has secured himself from all danger; and, if he kill him in so doing, it is called justifiable self-defence." The next quotation is from Bacon's "Abridgment," a work of considerable authority, which we give, merely omitting immaterial parts, which we have also done in some of the succeeding extracts:—"It is clear that the killing of a person in the defence of a man's person, house, or goods, is justifiable in the following instances, as where the owner of a house, or any of his servants or lodgers, kills one who attempts to burn it or to commit in it murder, robbery, or other felony." So, again, Foster—"An attempt is made to commit burglary in a habitation; the owner, or any part of his family, or even a lodger with him, may lawfully kill the assailant to prevent the mischief intended." In Stephen's "Blackstone" we find that "If any person attempts to break open a house in the night-time, and shall be killed in such attempt either by the owner of the house or the servant attendant upon him, or by any other person present and interposing to prevent mischief, the slayer shall be acquitted and discharged." Again in Archbold's "Criminal Law" it is laid down as follows:—"If a person attempt burglariously to break any dwelling-house in the night-time, and be killed in the attempt, the slayer shall be acquitted and discharged, for the homicide is justifiable, and the killing is without felony; and not only the person whose property is thus attacked, but his servants or other members of his family, or even strangers who are present at the time, are equally justified in killing the assailant;" and the author specially lays down that the person defending his house is not constrained to give way to the offender. Mr. Justice Stephen in his "Digest of Criminal Law" states the law on the point as follows:—"Intentional infliction of death or bodily harm is not a crime when it is done by any person in order to prevent the commission of burglary, or any other felony in which the felon so acts as to give the person who kills or wounds him reasonable ground to believe that he intends to accomplish his purpose by open force," and he adds as a rider, "provided that the object cannot be otherwise attained." Mr. Justice Stephen would seem to imply that burglary is a felony

the commission of which entitles a man to believe that the burglar intends to accomplish his purpose by open force. But even if the existence of this reasonable ground be an additional condition, we cannot see that it materially affects the position. In the ordinary course of such events, a man becomes suddenly aware of the presence of a burglar in his house; that burglar has *ex hypothesi* committed a crime of violence in breaking in; it is perfectly reasonable, therefore, to suppose that, unless prevented, he will proceed to accomplish his purpose—namely, that of stealing in a dwelling-house, in itself a felony—by force, whereby we understand not necessarily force as applied to the person. Nor do we believe that Mr. Justice Stephen would contend that a man placed in such a position is to forego the advantage that the possession of arms may give him, and, on the possibility that he may be able to eject the burglar by main force, to enter on a personal struggle with him with a view to ascertaining whether "his object can be so attained."

Summing up the authorities, then, it seems beyond question that in English law, if a householder, or anyone acting on his behalf, finds an intruder in or about to break into his house at night, with an obvious intention of committing a forcible felony therein, he is justified in shooting or otherwise killing him, without parley or previous warning, even setting aside the element of imminent peril to his own life which can scarcely be absent from such a case. It is perhaps unnecessary to add that the reverse of the proposition will not hold, and that the burglar who in such circumstances kills anyone, even though he has himself been repeatedly shot at or wounded first, is most unquestionably guilty of murder.—*Saturday Review*.

Plate and jewels are luxuries, and need especial care. A millionaire can afford to have an immense safe constructed in the butler's room, and to have it guarded by a night watchman. This is absolute security—as absolute, at any rate, as human affairs permit. But in a small household where there is no man servant, no safe, and no night watchman, we put a premium on burglary when we keep plate or jewels to any considerable amount. The whole philosophy of the matter is summed up in the well-known line of Juvenal—"Cantabit vacuus coram latrone visitor." For the rest there has been of late much dispute as to whether a householder is justified in shooting a burglar. Many learned disquisitions have been written on the subject; and, upon the whole, if we are to look to such antiquated sources of knowledge as Bacon's "Abridgment," and Coymyn's "Digest," and Hale's "Pleas of the Crown," we shall find it definitely ruled that a householder has a clear right to shoot a burglar *in delicto*. It is doubtful, however, whether old law is always good law, and the suburban householder will perhaps do best to restrain his impetuosity. Mr. Justice Hogan, of the Tombs, at New York, once captured an entire gang of thieves by a very ingenious paradox. Knocking at the door of the room in which they were, he announced his intention of entering, and arresting the whole dozen of them. The answer was that they would fire on him. The retort of Hogan was that, while they had only one man to fire at, he had a dozen, and that the chances were twelve to one in his favour. The burglar of the present day is well aware of this fact. He is one man against a dozen, and the chances are proportionately in his favour. The one instrument to be used against him with safety is, as we said last week, a blunderbuss well charged with swan-shot. A blunderbuss is now an antiquity, but it might well be revived, like Chippendale furniture and Queen Anne architecture. Of the orthodox kind, with a nozzle like that of an ophicleide, it will scatter a charge worthy of a mitrailleuse. It will not kill the burglar, but it will most certainly give him material for subsequent reflection. A country house protected by an honest watchman with a good blunderbuss is practically safe.—*Observer*.

Except in some special cases of felony, a man may not kill his assailant, unless he was himself at the moment in imminent danger of being killed. Even then, the act will amount to manslaughter, unless he can farther show that before delivering the mortal blow, he "retreated as far as he conveniently or safely could, to avoid the violence of the assault," and did so, to adopt the quaint language of an old authority, "not fictitiously, or in order to watch his opportunity, but from a real tenderness of shedding his brother's blood." The second principle, which is commonly embodied in the old legal maxim that a "man's house is his castle," justifies a man, although no violence has been offered to his person, in taking the aggressive, when a trespass has been committed on his house or lands. All necessary and reasonable force may be used to eject the intruder, although here, again, the law in its anxiety to discourage breaches of the peace, requires that, before stronger measures are resorted to, the wrongdoer shall be requested to leave; and it is only upon his refusal, expressed or to be inferred from his conduct, so to do, that the right to expel him by violence arises. If the trespasser seek to defend his wrongful possession by force, the rightful owner may retaliate upon him, and to avoid death, may even kill him, without being obliged, as in other cases, first to retreat, for as Hale says, "He has the protection of his house to excuse him from flying, as that would be to give up the protection of his house to his adversary." But unless and until his own life is in danger, the occupier of a house is not justified in killing an ordinary trespasser, whether he enter by night or by day.

Such being the general theory of the law, it might seem as though there were some ground for the complaint that it leaves the respectable householder comparatively powerless, in the presence of a burglar of average skill and resolution. The burglar will for obvious reasons, not as a rule, attack, unless he is first attacked, and to shoot him in cold blood would clearly not be an act of excusable homicide within the ordinary meaning of the term. On the other hand, it would be a mere farce to commence proceedings by politely requesting him to leave the house, and to follow up his refusal by "gently laying hands" upon him, and conducting him to the front door. Accordingly, the law, recognising the peculiar atrocity of the crime of nocturnal housebreaking, and sanctioning the universal instinct, which has led all civilised codes to regard it as justifying extreme measures of self-defence, has always treated this as a somewhat exceptional case. As long ago as the reign of Henry VIII., an Act of Parliament was passed by which it was provided that, "if any person attempts to break open a house in the night-time," and is killed in the attempt by one of the inmates, "the slayer shall be acquitted." This statute has since been repealed, but the better opinion appears to be that it simply embodies the common law, and that in substance the rule which it lays down is still in force. It must be remembered, however, that the protection is only given in cases where it is clear that a burglary is actually being committed or attempted, and when the criminal is slain while engaged in the act. The law in no way countenances the notion that any chance nocturnal trespasser may be safely shot at, on the suspicion, however well founded, that he is present with a felonious purpose. But provided it were perfectly plain that a burglary was being perpetrated, the Courts would, doubtless, still hold that the slaughter of the burglar was an act justified by the circumstances. Upon the whole, the law in this matter seems, as the English Criminal Law usually does, to embody the common sense view of the case, and to steer a judicious middle course between two equally perilous extremes. To restrict the householder who finds himself suddenly at the dead of the night in the presence of a burglar to the same measures of self-defence which he could employ against a mere trespasser, would be to treat an exceptionally atrocious crime with strangely misplaced tenderness. To permit him, on the other hand, to take away with impunity the life of any uninvited intruder

whom he found on his premises after nine in the evening, on the mere suspicion that his victim was contemplating or engaged in a felony, would lead to a constant recurrence of tragic mistakes, and would expose such useful servants of the public as policemen and firemen to intolerable dangers.—*Spectator*.

MISCONDUCT OF JURIES.

(Continued from page 499, ante.)

V. *Drinking Intoxicating Liquors*.—There has been some division of opinion among the courts upon the question whether the mere fact that a jury drink intoxicating liquors during the progress of the trial, or while deliberating upon their verdict, is a sufficient ground for a new trial. Some courts have held, in criminal cases, that the use of such liquors, in quantities however small, without leave of the court, will be good cause for setting aside the verdict, without inquiring what effect it had upon the jurors who drank it;<sup>81</sup> and the rule has also been applied in civil cases,<sup>82</sup> even where the juror during the trial, drank brandy in a trifling quantity, and, as he explained under oath, for necessary medicinal purposes.<sup>83</sup> But the courts generally have adopted the more reasonable rule, that the mere fact that members of a jury have, during the trial of a cause, or while deliberating on their verdict, drank intoxicating liquors, will not be ground for a new trial, unless there is some reason to suppose that such liquors were drunk in such quantities as to unfit them for the performance of their duties, or unless such liquors were furnished by the party in whose favour the verdict was afterward rendered.<sup>84</sup> The circumstances must be such as to create a reasonable suspicion that the indulgence may have improperly influenced the verdict.<sup>85</sup>

A few cases apparently take a distinction between the use of intoxicating liquors by the jury pending adjournments of the court, and the circulating of it among them during the progress of the trial. Thus, in an old case in New York, it appeared that while the case was on trial before a justice of the peace, intoxicating liquors were circulated among the jury while sitting as such; that one of the jurors was *disguised* with the liquor thus given him; and that the plaintiff in error objected to the circulation of liquor among them while thus sitting. This was held a flagrant case of misbehaviour.<sup>86</sup> In an earlier case in the same State, it appeared that after the evidence on the trial before a justice of the peace and a jury had closed, each of the parties, by permission of the justice, treated the jury to a bottle of whiskey, in order, as the return stated, to "enable them to listen to the remarks of counsel." This was regarded as an act of gross misconduct on the part of the justice; and, as the verdict was also against the merits, the judgment was reversed.<sup>87</sup> On the other hand, where, pending an adjournment of such a trial, a bottle of liquor was passed around among the jurors and other persons present, and no harm appeared to have resulted from it, the verdict was not disturbed. In view of these cases it was said by Oldham, J., in a case in

Arkansas, that the circulation of spirituous liquors among the jury while sitting as such, even with consent of the parties, is cause for reversing the judgment.<sup>88</sup> But even this rule cannot be of universal application; for, obviously, circumstances may arise, though rarely, making it proper for the judge, even without consent of the parties, to permit jurors to partake of intoxicating liquors for medical purposes during the progress of a trial.<sup>89</sup>

Although the fact that a juror drank intoxicating liquors, in violation of his duty, may not be sufficient in a particular case to avoid the verdict, yet it seems that it may be thrown in as a make-weight in support of a motion for a new trial; so that if the act was accompanied with other circumstances of misconduct—as, where a juror separated from his fellows to drink in a bar-room,<sup>90</sup> or where, being interrogated touching his qualifications as a juror, he concealed a bias which he entertained against the opposite party<sup>91</sup>—a new trial may properly be granted.

VI. *Improper Communications*.—(1.) *Between a Juror and the successful Party, his Agent or Attorney*.—The grounds on which courts set aside verdicts, to punish attempts at tampering with the jury, have already been stated.<sup>92</sup> It is not to be supposed, however, that the principle there laid down extends so far as to require that the verdict shall be set aside whenever it appears that a communication has taken place between a juror and the prevailing party, or his counsel. Inadvertent remarks touching the case, in the presence of a juror, not knowing him to be such;<sup>93</sup> inadvertent remarks made by the counsel of the prevailing party, in a public place, touching the merits of the case, in the hearing of some of the jurors,<sup>94</sup> or the act of such counsel in asking a member of the jury if they had agreed upon a verdict,<sup>95</sup> have been held not to have this effect. But where the prosecutor in a criminal case exhibited at the place of trial, and at other public places, during the trial, certain papers which had a tendency to create an impression unfavourable to the accused, a verdict against him was set aside; he was held entitled to the benefit of the rule, the same as an unsuccessful party in a civil case.<sup>96</sup>

(2.) *Between a Juror and Third Persons*.—In conformity with the principle elsewhere stated,<sup>97</sup> the mere fact that a juror is shown to have conversed with a bystander with regard to the case during the progress of the trial, is not sufficient ground for a new trial, unless it be made to appear probable that his mind was thereby improperly influenced.<sup>98</sup> Some courts favour the rule which has been stated with reference to unlawful separations,<sup>99</sup> and hold that where it appears that there has been such a communication the verdict will be set aside, unless it also appear that the successful party receive no benefit therefrom;<sup>100</sup> the difference between the two classes of cases being, that in the one case the mere fact of a communication between a juror and a third person creates a presumption against the integrity of the verdict, and in the other case it does not.

(3.) *Between a Juror and Friends of the prevailing Party*.—If, during the progress of a trial, friends of the prevailing party have had conversations with members of the jury, or have made declarations in their hearing, with the obvious purpose of influencing the verdict in his favour, the direct tendency of which was so to influence it, the verdict will not be allowed to stand; and this is so, although it may not appear, in point of fact, that

(81) *The People v. Douglas*, 4 Cow. 26, 36; *Jones v. The State*, 13 Texas, 168, 179; *The State v. Baldy*, 17 Iowa, 39; *The State v. Bullard*, 16 N. H. 139, 145. In Iowa this view is no longer taken. *Williamson v. Reddish*, 45 Iowa, 550; *Van Buitrek v. Daugherty*, 44 Iowa, 42.

(82) *Leighton v. Sargent*, 81 N. H. 120, 137; *Gregg v. M'Daniel*, 4 Harr. (Del.), 387; *Ryan v. Harrow*, 27 Iowa, 494 (overruled, as stated in preceding note).

(83) *Brant v. Fowler*, 7 Cow. 562.

(84) *W1 son v. Abrahams*, 1 Hill (N. Y.), 207; *Pelham v. Page*, 6 Ark. 535, 539; *The State v. Upton*, 30 Mo. 397; *Coleman v. Moody*, 4 Hen. & M. 1; *Redmond v. Royal Ins. Co.*, 7 Phila. 167; *Tripp v. County Commissioners*, 3 Allen, 556; *Russell v. The State*, 53 Miss. 367, 382; *Pope v. The State*, 36 Miss. 121, 136; *Roman v. The State*, 41 Wis. 312, 316; *Kee v. The State*, 28 Ark. 155, 165; *Larimer v. Kelly*, 18 Kan. 78; *Westmoreland v. The State*, 45 Ga. 225, 232; *The State v. Jones*, 7 Nev. 408, 414; *Richardson v. Jones*, 1 Nev. 405; *The State v. Caulfield*, 23 La. An. 148; *Stone v. The State*, 4 Humph. 27; *Ross v. The State*, 11 Humph. 491; *Thompson v. The Commonwealth*, 8 Gratt. 639, 649.

(85) *Roman v. The State*, 41 Wis. 312, 316; *Bronson, J.*, in *Wilson v. Abraham*, 1 Hill (N. Y.), 207; *The State v. Jones*, 7 Nev. 408; *Larimer v. Kelly*, 18 Kan. 78; *Parinton v. Humphreys*, 3 Me. 379.

(86) *Ross v. Davis*, 4 Cow. 17.

(87) *Kellogg v. Wilder*, 15 Johns. 455.

(88) *Pelham v. Page*, 6 Ark. 535, 538.

(89) See, for instance, *United States v. Gibert*, 2 Sumn. 19, 81.

(90) *Creek v. The State*, 24 Ind. 151; *Davis v. The State*, 35 Ind. 496, 499.

(91) *Studely v. Hall*, 22 Ma. 198.

(92) *Ante*, II., (5).

(93) *Wise v. Bosley*, 32 Iowa, 34; *Shes v. Lawrence*, 1 Allen, 167.

(94) *Turner v. St. John*, 3 Coldw. 376.

(95) *Carnaghan v. Ward*, 8 Nev. 80.

(96) *The State v. Hascall*, 6 N. H. 352, 360, 363.

(97) *Ante*, II., (8).

(98) *Barlow v. The State*, 2 Blackf. 114; *The State v. Counsel*, 31 N. J. L. 249, 263; *March v. The State*, 44 Texas, 64, 82; *The State v. Fruge*, 28 La. An. 857.

(99) *Ante*, III., (7).

(100) *Hamilton v. Pease*, 38 Conn. 115.

the verdict was influenced by the unlawful conversations and although they were had without the knowledge of the prevailing party.<sup>101</sup>

VII. *Hearing Testimony after retiring.*—It is settled, and upon grounds too obvious for discussion, that if a jury, after retiring to consider of their verdict, hear other testimony, it will be ground for a new trial.<sup>102</sup> Where, therefore, after the jury retired, a witness who had been examined on the trial was sent for by them, admitted into their room, and re-examined, without the knowledge or consent of the court or of the parties, a new trial was granted.<sup>103</sup>

VIII. *Examining Documents not in Evidence.*—For the same reasons, if the jurors take out, or send for books and papers which were not admitted in evidence, and examine them in their room, pending their deliberations, a new trial will be granted, unless it is manifest that there was nothing in the documents so examined of a nature to influence their minds in favour of the verdict which was rendered.<sup>104</sup> For it would be idle to rule out incompetent documentary evidence, if the jury are afterward allowed to take it to their room and consider it while making up their verdict. But where a paper is taken out through inadvertence and soon after withdrawn,<sup>105</sup> or where the papers taken out consist of books which have been used on the trial and frequently referred to by witnesses,<sup>106</sup>—in these and like cases new trials have been refused. So, it is regarded as a safe practice in Pennsylvania to allow the parties to submit to the jury statements of their respective claims, in the nature of bills of particulars, plats of the land claimed in the suit, and the like. These memoranda serve to preserve in the minds of the jury masters which have been detailed to them orally by the witnesses, and so long as they understand that the memoranda themselves are not evidence, no prejudice is deemed to result from it.<sup>107</sup> So, if the paper is wholly immaterial to the issues, and if its delivery to the jury did not involve any attempt at tampering, it will furnish no ground for disturbing their verdict.<sup>108</sup> But the court must see that it was immaterial; and if the chances are equal whether or not it influenced the jury improperly, a new trial ought to be granted.<sup>109</sup> The question is not, however, so much whether the paper was technically material to the issues on trial, as whether it was of a nature to mislead or prejudice the jury against the losing party.<sup>110</sup>

IX. *Taking Documentary Evidence to the Jury Room.*—Whether the court will permit the jury, on retiring to consider of their verdict, to take to their room depositions and other documents which have been read in evidence, is probably a matter of sound discretion with the judge presiding at the trial.<sup>111</sup> Where all the testimony examined at the trial is in writing, it will ordinarily be proper to send it out with the jury;<sup>112</sup> but it is objectionable to allow the jury to take such depositions to their room unless all the testimony which has been adduced at the trial is in the form of depositions, or other written instruments, so that all of it may be taken

out by the jury.<sup>113</sup> And even then, where parts of depositions have been suppressed, the whole deposition ought not to be sent to the jury, since the jury are likely to read the suppressed portions as well as the rest, and be influenced by them.<sup>114</sup> If such depositions are sent to the jury room, and it afterwards appear that the excluded portions were of such a character as to influence the minds of the jury to the injury of the unsuccessful party, a new trial must be granted.<sup>115</sup> The reason which excludes depositions from the jury room where all the testimony has not been given in writing, and sent out, is that the jury, by reading a second time the written evidence, are unconsciously led to give undue weight to that portion of the testimony; the witness who testifies orally speaks but once to the jury, in open court, but he whose testimony is thus reduced to writing speaks twice to them: first in court, and afterwards in the jury room.<sup>116</sup> But where such a deposition is taken out by the jury without leave of court or consent of parties, a new trial will not necessarily be granted.<sup>117</sup> Such a fact does not create a presumption against the verdict such as arises where the document taken out had not been received in evidence; on the contrary, it must appear that the deposition was read by the jury, or some of them, and that it was of itself so important that a re-reading of it would probably lead them to lay undue stress on the facts therein stated.<sup>118</sup> But if the deposition so taken out contain portions which have been excluded as evidence, and it is not clear what influence the excluded portions may have had on the verdict, then this presumption will work a new trial.<sup>119</sup> If a deposition, parts of which have been thus excluded, is handed to the jury by the counsel for the prevailing party, the verdict will be set aside without reference to the merits, upon the principle which avoids verdicts for tampering,<sup>120</sup> unless it is shown that it was wholly inadvertent and that no prejudice resulted from it,<sup>121</sup> and although it fully appear that the rejected portions were not read by the jury.<sup>122</sup> Upon the principle which admits the affidavits of jurors to sustain their verdict, if it appear by the affidavits that a paper which thus improperly went to the jury room was not read by any of them, a new trial will not be granted.<sup>123</sup>—*Southern Law Review.*

#### JUDGE O'HAGAN, AND "LIVE AND THRIVE."

Mr. Justice O'Hagan has paid Mr. Healy, M.P., a compliment of which his constituents may be proud. He has made a passage in Mr. Healy's speech at Wexford on Sunday the subject of a long letter to the *Freeman*, in which he takes the trouble to refute a slander which was repeated by the flippant young gentleman who represents the County Wexford. Irrespective of the person who made it, the charge which was brought against the learned Chief Commissioner hardly called for so much trouble. It referred to the words "live and thrive," which were uttered in Mr. Justice O'Hagan's statement when opening the Land Commission Court last year. The phrase attracted unusual attention at the time, and no ordinary importance was given to it, as a key to the meaning to be put upon the Act by the Sub-Commissioners. It naturally called forth a good deal of criticism at the time, and the sentiment which it was supposed to express has been re-echoed through

(101) *M'Daniels v. M'Daniels*, 40 Vt. 363; *Bradbury v. Cony*, 62 Me. 223; *Nesmith v. Clinton Fibre Ins. Co.*, 3 Abb. Pr. 141. See also *Hamilton v. Pease*, 38 Conn. 118; ante, II., (8).

(102) *Edson v. The State*, 9 Yerg. 406, 410; *Booby v. The State*, 4 Yerg. 111; *Luttrell v. Mayville, Ac., R. Co.*, 18 B. Mon. 291; *The State v. Brazil*, 9 Ga. Dec. 107; *Smith v. Graves*, 1 Brev. 18; *Deacon v. Shreve*, 22 N. J. L. 178. See also *Offt v. Vick*, Wash. (Miss.) 99.

(103) *Luttrell v. Mayville, Ac., R. Co.*, supra.  
(104) *Alger v. Thompson*, 1 Allen, 453; *Sheaf v. Gray*, 2 Yeates, 273; *Mundy v. Lambie*, 126 Mass. 367; *Hutchinson v. Deane*, 8 Cranch, 291; *Benson v. Fish*, 6 Me. 143; *United States v. Clarke*, 3 Cranch C. Ct. 152.

(105) *Templeman v. M'Cleary*, 5 Cranch C. Ct. 163.  
(106) *Lott v. Mason*, 3 Stroph. 178, 183.  
(107) *O'Hara v. Richardson*, 46 Pa. St. 385, 389. So in Georgia, *Way v. Arnold*, 18 Ga. 181, 191.  
(108) *Lonsdale v. Brown*, 4 Wash. C. Ct. 148, 157; *Page v. Wheeler*, 5 N. H. 91; *The People v. Wilson*, 8 Abb. Pr. 137; *Peacham v. Carter*, 21 Vt. 515.

(109) *Cowen, J.*, in *Farmers' Bank v. Whinsfield*, 24 Wend. 419, 428.  
(110) *Walker v. Hunter*, 17 Ga. 384, 414; *Benson v. Fish*, 6 Me. 141.  
(111) *Hosford v. Willett*, 9 N. Y. 170, 175 (denying the dicta of Cowen, J., in *Farmers' Bank v. Whinsfield*, 24 Wend. 175); *Hatgrove v. Millington*, 8 Kan. 480.  
(112) *Hatgrove v. Millington*, supra.

(113) *Negro Jerry v. Townsend*, 9 Md. 146, 159.  
(114) *Wood v. Stewart*, 7 Vt. 149; *Hopkinson v. Steel*, 12 Vt. 589; *Warden v. Warden*, 22 Vt. 583; *Kent v. Tyson*, 20 N. H. 121, 127; *Foster v. M'O'Blende*, 13 Mo. 88, 91.  
(115) *Ransom v. Curtis*, 19 Ill. 456, 481.  
(116) *Shields v. Guffy*, 9 Iowa, 322; *Ransom v. Curtis*, 19 Ill. 456, 480.  
(117) *Andrews v. Tinsley*, 19 Ga. 203.  
(118) *Shields v. Guffy*, 9 Iowa, 322.  
(119) *Shepherd v. Thompson*, 4 N. H. 213, 217.  
(120) *Ante*, II., (5).  
(121) *Sheaf v. Gray*, 2 Yeates, 273; *Foster v. M'O'Blende*, 13 Mo. 88, 91; *Page v. Wheeler*, 5 N. H. 91, 92.  
(122) *Lonsdale v. Brown*, 4 Wash. C. Ct. 148, 157; *Via. Abr.*, tit. "Verdict," G. 3, pl. 19.  
(123) *Hackley v. Hastie*, 3 Johns. 282.

every Land Court in the country. It so happened, however, that the words were omitted from the legal report of the proceedings of the Court, prepared by two members of the Bar, who were supposed to be official, but who, it seems, were not responsible to the Commissioners or subject to their control. This incident afforded an opportunity for casting an imputation upon the Court, and ground for a question in the House of Commons by Mr. Gray, who found in the omission a circumstance of the gravest suspicion. It was only by accident that the learned Chief Commissioner discovered what was meant by the question, for until then he knew nothing about the report referred to. On making inquiry, he discovered that the two law reporters had omitted the passage from the report of his opening observations. He immediately wrote to Mr. Forster, who answered the question in the House. But Mr. Gray still suspected something wrong. He apparently did not believe the assurance given by Judge O'Hagan that he had nothing to do with the omission of the words, and he expressed himself dissatisfied. The learned Commissioner then sent a full categorical statement of the facts, explaining that Messrs. Roche and Dillon, who issued the report, did so without consulting him or submitting any report for revision and correction. It was, we cannot help thinking, a singular course for the reporters to take to omit the most remarkable words in the whole statement, but Mr. Justice O'Hagan knew nothing about it.—*Daily Express*.

It appears that no official report was submitted to Parliament at all by the Judge, and the report on which the allegation was founded is one published by two legal gentlemen from which the passage in which the phrase occurs has been omitted. It is explained by Judge O'Hagan that he described as a just rent such a rent as might be fairly paid, and "yet permit a tenant not deficient in those qualities of industry and providence, which are expected in any walk of life, to live and thrive." The phrase thus amplified, which is as the Judge spoke it, is something very different from the generally received idea. It is to be regretted that so important an expression of opinion should have been omitted from any report, even a purely legal one, and thus have given rise to so much misconception.—*Free-man's Journal*.

#### MR. GIBSON, M.P.

No Parliamentary speaker on either side has advanced to the front with greater rapidity than Mr. Gibson. Having filled, little more than two years ago, with no apparent incongruity, the post of official subordinate to Mr. Lowther, he has made such excellent use of his opportunities that he may now be counted a certain member of the next Conservative Cabinet. Mr. Gibson's rise has, no doubt, been hastened by a somewhat accidental concurrence of favourable conditions. It does not often happen in political life that an ambitious and able man is lucky enough to find a subject upon which he possesses the exclusive information of a specialist, absorbing public attention, and deciding the fate of a Ministry, at a moment when his own party is exceptionally poor, both in the technical knowledge which the occasion demands, and in general debating power. Yet this has been Mr. Gibson's good fortune during the session of 1881 and 1882. No measure was ever submitted to Parliament that raised a greater number of complex and unintelligible issues than the Irish Land Bill of last year. In that pathless waste of intricacies, in which so many even of the most clear-headed critics floundered hopelessly and lost their way, Mr. Gibson moved with the sure and easy step of a man to whom every inch of the ground was familiar. His speech on the second reading was, in its way, a masterpiece. For nearly two hours, with breathless speed and unflagging animation, he dragged the House through all the highways and byways of the Bill, penetrating every hole and corner of it, exposing every hidden flaw, tracking out the unsuspected consequences of unobserved

provisions, multiplying illustrations, and accumulating instances, to the manifest embarrassment of his opponents and the bewildered admiration of his exhausted followers. When at last he sat down, and it was seen that no Minister ventured, on the spur of the moment, to reply, the Conservatives were seized with a fit of exultation which lasted for nearly a week, and Mr. Gibson was admitted on all hands to have passed from the second rank among the debaters of his party into the first. The position so won he has since not only maintained but improved. Over and over again, in the protracted debates on the Land Bill last year and on the Arrears Bill during the present session, his special knowledge, reinforced as it always is by a ready tongue and a business-like habit of mind, has been of invaluable service to the Opposition. Mr. Gibson, however, has been careful from the first to let it be known that he will not be content with the reputation of a mere specialist. Even in the House of Commons he has several times made excursions into the field of general politics, and he is rapidly becoming one of the most indefatigable, and at the same time one of the most popular of the platform speakers of his party. He is a vigorous, and, within his reach, a highly effective speaker, of whom may at least be said that whatever his hand finds to do—from the hazardous adventure of crossing swords with Mr. Gladstone in the House of Commons, down to the bloodless work of beating the drum and waving the flag at a Conservative demonstration—he does it manfully and with all his might. To a party officered and led as the Opposition is at present in the Lower House, the value of such a recruit cannot be easily appraised.—*Spectator*.

#### THE MARRIED WOMEN'S PROPERTY ACT, 1882.

This Act marks an epoch in that legislation which for the last twelve years has been changing the legal relationship between man and wife in this country. As an organ of insurance interests, it is in our province to consider the Act in its bearings on the practical business of life insurance. It is often the case that Acts passed with the good intention of improving the position of certain classes have, in practice, been found to have caused vexatious trouble and needless expense to those intended to be benefited by them. It is, therefore, comforting to see so much good work done in this instance. We think that a widow may, under the Act, effect a policy for the benefit of her children which will not unless fraudulent—and then only to the extent specified—be subject to the claims of her creditors. A widower ("any man") seems also empowered to make a similar provision for his children. It also seems competent to include a second wife, if the policy is so drawn as not to exclude her. It is only reasonable that a future wife should be entitled to share with the children generally, seeing that a policy of assurance is often the principal, if not indeed the only, provision which her husband may be able to make for her. It is not necessary to state in the policy that it is effected under the Act, and it may be that a policy opened before the passing of this Act in favour of a woman married before the passing of the Act will, under sect. 5, be held to accrue to her when the Act comes into force. It may also be allowable, under sects. 7 and 10, for a husband to transfer to his wife, by indorsement thereon, a policy on his life opened before the Act, if the transfer is duly intimated, and provided he is solvent at the date of transfer and such transfer is not in fraud of his creditors. The provisions for payment of the sum assured are somewhat similar to those in the Married Women's Policies of Assurance (Scotland) Act, 1880, as regards payment to the legal personal representatives of the assured, and payment may safely be made to them in default of notice to the office that a trustee has been appointed. Where the estate is less than £300, or where administration is necessary, it may sometimes be more economical and convenient to take out administration for the purpose of giving a discharge to the office, than to apply to the court for

appointment of a trustee. In cases where administration is required for other purposes, the policy moneys will often fall to be paid to executors and administrators to be held by them in trust. It seems, however, desirable in all cases, and especially where the amount is considerable, that the power of appointing trustees by separate memorandum should be exercised. It is difficult within the compass of a policy to fully state the objects of the trust, and it is desirable that the trustees should be able to retain the deed under which they are to act, which is not the case when their instructions are contained in the policy which has to be given up to the office at settlement of the claim. It should also be kept in view that, where no directions are given to the executors as to the purposes of the trust and investment and apportionment of the sum assured, they may naturally feel inclined to renounce probate, because, if they accept as executors, they will also have to act as trustees of the policy moneys, and may hesitate to accept the trust if they are without instructions for their guidance. It is also more probable, where the objects of the trusts are stated in a separate memorandum, that the interests to be taken by the *cestuis que trust* will be delared. The want of direction on this point has been a source of trouble, and has necessitated special applications to the court with uncertain result. There is one class of policies, extensively issued by insurance offices, in which the sum assured is payable at death or on the assured attaining a specified age. In the case of a husband assuring his life on this scale for the benefit of his wife and children, the sum assured would, on his attaining the specified age, vest (in default of appointment of trustees) in the husband in trust. It might be thought desirable in such policies to make the sum assurable payable to some other trustee. In the event of it being necessary to surrender a policy opened under the second clause of the section, or of a loan being necessary, it appears that payment of the surrender value will have to be made, or the loan advanced, to a trustee "duly appointed." In the case of a loan, we should say that only money necessary to pay premiums could be borrowed, unless the memorandum appointing trustees confers power to borrow for purposes of the trust, such as the advancement of the children. We may add that policies which, at the commencement of this Act, are standing in the sole name of a married woman, are, under sect. 6, to "be deemed, unless and until the contrary be shown, to be the separate property of such married woman," and that under sect. 2, policies belonging before marriage to any woman who marries after the commencement of this Act will remain her separate property. Also, that under sect. 18 a married woman, who is an executrix or administratrix, may discharge a policy forming part of the estate without the concurrence of her husband.—*Review.*

#### TEXT-BOOK ADDENDA.

[From the *Law Journal*.]

##### *Banning on Limitation*, 28.

Concealed fraud is a good reply to a plea of the Statute of Limitation in an action for false representation (*Gibbs v. Guild*, 51 Law J. Rep. Q. B. 228).

##### *Elmer on Lunacy* (6th Edition), 119.

A lease of property belonging to a lunatic may be validly executed by his committee on his behalf (*Lawrie v. Lees*, 51 Law J. Rep. Chanc. 209)—H. L.

##### *Dart on Vendors and Purchasers* (5th Edition), 169.

Upon a sale of a lease, subject to the usual condition that production of the last receipt for rent should be conclusive evidence of performance of the lessee's covenants or waiver of breaches, held that a good title was shown, notwithstanding continuing breaches (*Lawrie v. Lees*, 51 Law J. Rep. Chanc. 209)—H. L.

## CORRESPONDENCE.

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

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

### THE EFFECT OF ARRANGEMENTS IN BANKRUPTCY.

TO THE EDITOR OF THE IRISH LAW TIMES.

SIR,—Could any of your readers give me any information or advice regarding the following case, which, as the amount due is small, and the costs already incurred large in proportion to the amount which is recoverable, would not be worth expense to submit a case to counsel:—

A. sued B. for a sum due for goods sold. On the last day for appearance to the writ B. obtained protection of the Bankruptcy Court, and subsequently carried an arrangement (against which, however, B. voted) to pay a small dividend by four instalments extending over sixteen months. At the time of the arrangement A. was paid the costs payable on the writ, if settled within four days after the date of service. Promissory notes, unsecured, were issued for the instalment. The first has fallen due, was duly presented, and has been dishonoured. Does the original cause of action revive, and is A. in the same position that he would have been at the time for appearance if B. had not taken protection; at which time, as the writ was specially endorsed, he would, default of appearance, have been entitled to mark judgment for the full amount?

Is not the composition arrangement no longer binding on A.? Does not a composition under court merely act as a stay of proceeding, conditional on the debtor carrying out the arrangement?

Is not A. entitled now to mark judgment on the original writ without any further notice?

I have spoken to several professional gentlemen on the subject, but they all say that they have not before had a case of this kind since the Judicature Act came into force. One of them, however, suggested that the only remedy would be to sue on the composition bills; but this, besides being a matter of giving the debtor several weeks before he would be able to proceed, would necessitate the action being brought into the County Court, and would require the creditor to travel considerably over 100 miles to attend at court, besides being a loss of probably two or three days time.

Any information or reference to text-books which treat of this particular point in a practical manner would much oblige,

Yours truly,

SUBSCRIBER.

### THE PRELIMINARY EXAMINATION.

TO THE EDITOR OF THE IRISH LAW TIMES.

SIR,—Some time ago a number of letters appeared in your Journal with reference to the advisability of adding a few new subjects to the present Preliminary Examination, and thereby making it a slight test of the educational qualifications of those presenting themselves at it. To those letters, however, no attention appears to have been paid by the Incorporated Law Society, although there is no subject of more importance to the profession, and none that requires more urgently their consideration.

The Preliminary Examination was at first planned for the purpose of satisfying the Law Society that those passing it had received at least a fair education; but to suppose that in these days of professional grinders it is any guarantee whatever of education is the greatest of fallacies.



The consequence of the present system is that the ranks of the profession are being filled up by men who should never have been admitted into it, and who certainly never would have been if intelligence or education had been a necessary qualification.

To see the absurdity of this Examination we have only to compare it, for example, with the Matriculation Examination of the Royal University. Now this latter is, in every sense of the word, an easy examination, and one which any person who is fit to enter upon the studies of a profession should without difficulty be able to pass; but although this is only an introduction to further study it is a hundred times more difficult than the Preliminary Examination, after which no further study is necessary.

I would, therefore, earnestly impress upon the Incorporated Law Society the necessity of raising the standard of the Examination referred to, and thus directly of placing the profession in a more respectable position; and I feel confident that if the opinion of Mr. Goodman is asked on this subject he cannot but agree in every particular with every word I have written.

Yours, &c.,  
T.MOR.

11th October, 1882.

**LAW STUDENTS' JOURNAL.**

THE INCORPORATED LAW SOCIETY  
OF IRELAND.

MICHAELMAS SESSION, 1882.

**LEGAL EDUCATION.**

**NOTICE.**

WILLIAM HICKSON, Esq., Professor of Law for the Profession of Solicitors, will deliver his Course of Lectures for the Michaelmas Session, in the Lecture Hall, Solicitors' Buildings, Four Courts, on *Mondays and Thursdays, at 10 Minutes before 10 o'clock, a.m.*

The first Lecture will be delivered on *Monday, the 6th day of November, 1882.*

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

By Order,

WILLIAM HICKSON, *Professor.*

Solicitors' Buildings, Four Courts, Dublin,  
*29th September, 1882.*

**COURT PAPERS.**

**COURT OF BANKRUPTCY.**

**ADJUDICATIONS IN BANKRUPTCY.**

*The dates of Adjudications are first given, the Sittings follow in Italics.*

Fahany, John, of Tubbercurry, in the county of Sligo, draper. September 26; *Tuesday, October 24, and Friday, November 10. Wm. Findlater & Co., solrs.*

Stitt, Thomas, of Stranddown, in the county of Down, builder. October 8; *Friday, October 27, and Tuesday, November 12. M. A. Gavin and W. J. Brett, solrs.*

**Holloway's Pills.**—Epidemic Diseases.—The alarming increase of death from cholera and diarrhoea should be a warning to every one to subdue at once any irregularity tending towards disease. Holloway's Pills should now be in every household to rectify all impure states of the blood, to remedy weakness, and to overcome impaired general health. Nothing can be simpler than the instructions for taking this corrective medicine, nothing more efficient than its cleansing powers, nothing more harmless than its vegetable ingredients. Holloway's is the best physic during the summer season, when decaying fruits and unwholesome vegetables are frequently deranging the bowels, and daily exposing thousands, through their negligence in permitting disordered action, to the dangers of diarrhoea, dysentery, and cholera.

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INDIA STOCK.						
4 p c Oct. 1882 } Traffic at ..	102½	—	102½	102½	102½	102½
3½ p c Jan. 1881 } Bk. of Irel. ..	—	—	—	—	—	100
BANKS.						
100 Bank of Ireland ..	—	318½	318	318	—	318½
35 Hibernian Banking Co. ..	—	—	—	33½	—	—
3½ Munster Bank (Limited) ..	—	7	7	7	—	7
— Nat. Prov. of England, lim. ..	—	—	—	—	—	—
10 National Bank (Limited) ..	—	—	—	24	24	24
10 National of Liverpool (Ltd.) ..	—	—	—	14½	14½	—
15 Provincial Bank ..	—	—	—	—	—	—
10 Do. New ..	—	—	—	—	—	23
10 Royal Bank ..	—	—	—	—	—	29½
STEAM.						
100 City of Dublin ..	—	—	102½	—	—	—
10 Dundalk (Limited) ..	—	—	—	x d	—	—
50 Peninsular and Oriental ..	—	—	—	—	—	—
MISCELLANEOUS.						
10 Alliance & Dub. Cons. Gas ..	—	—	16½	16½	16½	—
8 Do. do. New ..	—	—	—	—	—	—
4 Arnott & Co., limited ..	—	—	—	6	—	—
4 Cannon & Co. Lin. & Hd ..	—	—	—	4	—	—
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100 Midland Gt. Western ..	—	—	—	88	88½	—
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100 Dublin and Kingstown ..	—	—	—	—	—	234
DEBENTURE STOCKS.						
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— Midland Gt. West'n, 4 p c ..	106	—	—	—	—	—
— Do., 4½ p c ..	—	—	109	109½	109½	109½
— Do., 4½ p c ..	—	113	—	113½	—	—
— Waterford & Central 5 p c ..	—	—	—	—	—	—
MISCELLANEOUS DEBENT.						
Ballast Office Deb., £2 6s 2d, 4 p c ..	—	—	—	—	—	93½
City Deb. of 1873 6s 2d, 4 p c ..	—	—	92½	92	—	92½
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Do. (1888), 6 p c ..	100½	—	—	—	—	—
Dub. & Kingstown 4 p c ..	—	102½	—	—	—	—
Dublin Water Works, 5 p c ..	—	—	—	—	—	—

\* Shares not fully paid up are given in Italics. † x d

Bank Rate—(1) Discount—4 per cent., 17th August, 1882

Of Deposit—1 per cent., 23rd March, 1882.

Name Days—October 26th, and November 15th, 1882.

Account Days—October 27th, and November 14th, 1882.

Business commences at 1 30 p.m.

**BIRTHS, MARRIAGES, AND DEATHS.**

**BIRTHS.**

ATKINSON—October 6, at Fitzwilliam-square, the wife of John Atkinson, Esq., Q.C., of a son.

**DEATHS.**

KAVANAGH—October 3, at Arghnacloy, Ballybrack, after a few days' illness, Morgan Butler Kavanagh, Esq., barrister-at-law, of Merrion-square, only son of the late Morgan Kavanagh, Red Acres, County Kilkenny, aged 37 years.

SCANNELL—September 26, at Tivoli, Cork, Thos. Joseph Scannell, Esq., solicitor, son of the late Joseph Scannell, Esq., barrister-at-law, aged 50 years.

SCULLY—October 3, at George's-terrace, Ballybough-road, Dublin, James Aymer, eldest surviving son of the late James Daniel Scully, Esq., barrister-at-law.

STUART—October 7, at Dalkey, William James Stuart, Esq., solicitor, youngest surviving son of the late Rev. David Stuart, D.D.

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# THE IRISH LAW TIMES AND SOLICITORS' JOURNAL.

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## OUR WIVES.—II.

ALTHOUGH the new Married Women's Property Act will not come into operation until the 1st of January next, there are some results of its provisions which require immediate attention—such, for instance, as the necessity for introducing into conveyances, clauses restraining anticipation of corpus as well as of income, in cases where the desired result could previously have been attained without the introduction of such words. In order to understand how this comes about, it is necessary to observe that the word "property" in the Act is interpreted, by section 24, to include "a thing in action;" that section 5 provides that every woman married before the commencement of this Act shall be entitled to have and to hold *and to dispose of*, as her separate property, "all real and personal property her title to which, whether vested or contingent, and whether in possession, reversion, or remainder, shall accrue after the commencement of this Act . . . ;" and that a still more extensive power of acquiring property to her separate use, and the right of disposing thereof, is conferred by the Act upon women married after it comes into operation; because the effect of these provisions is that a married woman, whether married before or after the Act comes into operation, will, unless expressly restrained from alienating, be able to dispose of her own reversionary interests in personalty, including all *choses in action*, provided her title thereto has accrued after the termination of the present year. Heretofore, although a wife's charge upon land not expressly settled to her separate use, could, like any other interest of hers in land, be disposed of by her conjointly with her husband, before it came into possession, by deed acknowledged in pursuance of the Fines and Recoveries Abolition Act, there was no means by which a husband and wife, or either of them, could effectively alienate, before it fell into possession, the interest of a wife in mere personalty, unless in the very limited class of cases which were, as we shall see, dealt with by "Malins' Act" (20 & 21 Vict., c. 57); and, accordingly, many marriage settlements and other instruments intended to secure the wife against any alienation being made of her property during coverture, have been framed in reliance solely on this rule of law. Thus, the existing law upon this subject is pointedly illustrated by Lord St. Leonards in his Handy Book on Property Law (8th ed., 1869, p. 137), where he says, "although a married woman with her husband can convey or transfer all her interests in real property, yet neither can her husband deprive her, nor can she deprive herself, of any interest provided for her out of mere personal estate—funded property for example—to take effect upon her husband's death. So that if you provide a portion for your daughter on her marriage, and settle it on her husband for life, and then on your daughter for life, and then to the children, you may feel assured that your daughter will benefit by your bounty on her husband's death. Many attempts have been made in Parliament to take away this security, and to enable the husband and wife to sell her life interest, and so strip the woman of the provision made for her. These attempts have hitherto been successfully resisted." He adds that a partial measure (referring to "Malins' Act") had "been carried, providing that

married women may, by deed acknowledged in manner required by the Act, with their husbands' concurrence, dispose of every future or reversionary interest to which the woman, or her husband in her right, shall be entitled in any personal estate under any instrument made after the 31st December, 1857, and relinquish or release any power she has, or her right or equity to a settlement out of any personal estate; but this power does not extend to any reversionary interest which she is restricted from alienating, nor does it enable her to dispose of any interest in personal estate *settled upon her by any settlement, or agreement for a settlement, made on the occasion of her marriage.*" No doubt Lord St. Leonard's views on these matters are now old fashioned, and to us it is obvious that Malins' Act, as above accurately summarised by him, gave no relief in many cases where the inability to dispose of such property pending the coverture, though a source of great embarrassment to the parties interested, was never contemplated by the testator or settlor, being merely an unforeseen result of an imperfectly known rule of law. However, the tables are now completely turned by the provisions of the new Act making the reversionary interests in personalty which accrue to a wife after the 31st December next, her separate property, and liable to be disposed of by her at once; and it is for this reason that we wish to point out, that unless care be now taken by the framers of the "settlements, deeds, and other instruments" under which such interests will, after the Act comes into operation, "accrue" to married women, that an express clause restraining anticipation during the coverture, be inserted therein in every case where (as may often happen) such restraint is considered necessary, one of the most important objects of the instrument may be defeated. The case of *In re Ellis' Trusts* (L. R. 17 Eq. 409), decided by Jessel, M.R., in 1874, indicates the extent to which clauses of the kind we speak of may be safely relied on to protect from alienation, not the income only, but also the corpus of a fund; and it will be observed that section 19 of the "Married Women's Property Act, 1882," preserves to the fullest extent all the legitimate powers of settling property upon a married woman and of fettering her separate property by clauses in restraint of anticipation, that at present exist.

Besides indicating the general character of the provisions of the new Married Women's Property Act which are intended to confer upon every married woman, from the first of January next, the legal right to withhold her own earnings and other property from her husband, and to deal therewith as she thinks advisable, without his intervention, we have already directed attention to the importance of the provision of the first section (*vid.* sub-section 2), which renders the joinder of the husband as a party to the action no longer necessary either where the action is brought in right of the wife, or, where she is the substantial defendant and it is sought thereby to fasten liability upon her. We then dwelt more particularly upon the inconvenience and injury which had resulted to married women from their incapacity to bind themselves by contracts which could be enforced directly against themselves or their property under the previous, and still existing, state of the law, and referred, for illustration, to the well-known case of *Handcock v. Lablache* (12 Ir.

L. T. & S. J. 145), in which the non-joinder of the husband as a defendant to an action, brought for the purpose of charging the separate earnings of his wife with the amount of a debt due by her alone, was held fatal, although the address of the husband, who was living apart from her, could not be discovered. Closely connected therewith, although somewhat different in character from this subject of the capacity of a wife to incur such liabilities by contract as can be enforced by an action in which she alone is defendant—matters, as they are, of mixed “substantive” and “adjective” law—are the provisions of the new law as regards the continuing liability of wives upon contracts entered into by them, and torts committed, before marriage, and as regards the corresponding limitations upon the liability of the husband, with respect thereto. The new legislation upon this branch of the subject is sufficiently clear, and is contained in sections 13, 14, and 15; we shall, therefore, notice it very briefly. Before 1870 the husband as well as the wife should be made a defendant in such an action, and upon the judgment so obtained execution might be issued against the husband; and if any wife were sued alone, in respect of such a liability, she could plead “coverture,” and this was an answer to the action against her. If she did not so plead, and it did not otherwise appear from the pleadings that she was a married woman, judgment might, of course, be marked against her. By the Act of 1870 (August 9) it was provided that “a husband shall not, by reason of any marriage which shall take place after this Act shall come into operation, be liable for the debts of his wife contracted before marriage, but the wife shall be liable to be sued for, and any property belonging to her for her separate use, shall be liable to satisfy such debts, as if she had continued unmarried” (section 12); but this enactment applied to debts only, and the husband’s personal liability for his wife’s torts and breaches of contract committed before marriage, remained unchanged. So matters continued from August 9, 1870, until July 30, 1874, when the Act 37 & 38 Vict. c. 50 was passed, which, after reciting that “it is not just that the property which a woman has at the time of her marriage should pass to her husband, and that he should not be liable for her debts contracted before marriage, and that the law as to the recovery of such debts requires amendment,” proceeds to provide that “a husband and wife married after the passing of this Act may be jointly sued for any such debts” (s. 1); and that “the husband shall, in such action, and in any action brought for damages sustained by reason of any tort committed by the wife before marriage, or by reason of the breach of any contract made by the wife before marriage, be liable for the debt or damages respectively, to the extent only of the assets hereinafter specified” (see section 2): section 5 enumerates in detail the classes of assets here referred to—being the only assets regarded by this statute as having been acquired by the husband by virtue of his marriage. It is further provided, by section 4, that, “when a husband and wife are sued jointly, if by confession or otherwise it appears that the husband is liable for the debt or damages recovered or any part thereof, the judgment to the extent of the amount for which the husband is liable shall be a joint judgment against the husband and wife, and as to the residue, if any, of such debt or damages, the judgment shall be a separate judgment against the wife”—a provision the inadequacy of which is well illustrated by the difficulties which arose in the recent case of *Morris v. Cranwell and wife* (15 Ir. L. T. Rep. 32). In this complex and—at least as regards procedure—most inadequate state, the law with respect to actions founded upon the wife’s ante-nuptial contracts

and liabilities at present stands; and, under the circumstances, we think, that intending plaintiffs in such cases—if not pressed for time—would act wisely by postponing the bringing of the action until next year; because, a plaintiff, by adopting this course, will have more intelligible rules of procedure to follow, and may at the same time be able (if necessary) to attach by his judgment against the wife, new descriptions of separate property which will not come within that category till the new Act comes into operation.

For sections 13, 14 & 15 enable the plaintiff to select as a defendant either the wife alone, the husband alone, or the husband and wife jointly, and indicate with sufficient particularity the results which shall follow from adopting either course. We may observe, for instance, that the doubt discussed by the learned editor of Griffith’s “Married Women’s Property Act,” 4th edition, p. 64, as to whether a judgment creditor under section 4 of the Act of 1874, could proceed on his joint judgment against both the husband’s assets and the wife’s separate estate, “and in addition, have the benefit of the separate judgment against the wife, in the event of his remedy under the joint judgment proving unproductive as inefficient,” has been set at rest after this year by sec. 15 of the Act of 1882, which expressly enacts that in any such action against husband and wife jointly, if it appear that the husband is liable for the debt or damages recovered, or any part thereof, the judgment to the extent of the amount for which the husband is liable shall be “a joint judgment against the husband personally and against the wife as to her separate property; and as to the residue, if any, of such debt and damages the judgment shall be a separate judgment against the wife as to her separate property only.” In concluding our remarks upon this branch of the subject we shall merely observe that the general character of these ante-nuptial liabilities themselves (as distinguished from the machinery for the enforcement of them) may be roughly summed up by saying that from the time that the new Act comes into operation every woman will, after her marriage, continue liable in respect and to the extent of her separate property, for all debts contracted and all contracts entered into or wrongs committed by her before marriage, including any sums to which she may be liable as a contributory under the Acts relating to Joint Stock Companies, and (see s. 24) as regards all liabilities by reason of a breach of trust or devastavit committed by her in the capacity of a trustee, executrix, or administratrix before (or after) her marriage; and, on the other hand, her husband will be liable on foot of all his wife’s said liabilities (except as regards her breaches of trust and devastavits) but only to the extent of “all property whatever belonging to his wife which he shall have acquired or become entitled to from or through his wife, after deducting therefrom any payment made by him and any sums for which judgments may have been *bona fide* recovered against him at law in respect of any of the wife’s said ante-nuptial liabilities.”

#### INVESTING IN EGYPT.

Prince Bismarck’s notable scheme, by which the British trustee is to control the Suez Canal as an investor of the money in his charge, imputes more patriotism and less prudence than is ordinarily possessed by this rather prosaic person and his advisers. A more minute acquaintance with English law than would be expected even from one who knows everything, would have suggested a better plan. By a statute passed in 1867, a trustee may “invest any trust fund in his possession, or under his control, the interest of which is or shall be guaranteed by Parliament.” Let Parliament guarantee, say, three and a-half per cent. on the capital of the

Suez Canal, and in these days when Consols are above par, and Irish land out of the question, trustees may be tempted to turn their eyes to Egypt. As things are, the investments of trustees must not be built on the sand.

A more practical suggestion might be made in regard to investments. By section 23 of the Settled Land Act of last session "capital arising under this Act from settled land in England shall not be applied in the purchase of land out of England, unless the settlement expressly authorises the same." Why not allow the capital to be laid out in land in the colonies?—a form of investment now becoming not uncommon among great English landowners, and at once patriotic and prudent.—*Law Journal*.

#### THE CONTAGIOUS DISEASES ACTS.

The elaborate report of the Select Committee, who have for three sessions been inquiring into the operation of the Contagious Diseases Acts, declares unhesitatingly that the purposes of the Acts have been amply fulfilled. Their beneficial effects from a hygienic and social point of view are incontestably proved by a copious mass of evidence; and it is evidently the opinion of the Committee that the Acts should be extended rather than repealed. The report deals also with the objections that have been raised to their provisions on legal and constitutional grounds. It has been said, for instance, that the Acts involve the recognition of vice by the State, and are therefore an outrage on public morality. To this the Committee reply that the Acts give prostitution no more toleration than it enjoyed before their existence; and it is not the Acts, but the ordinary laws that so tolerate it. "All that the Acts have done is to insist that the toleration permitted by the institutions of the country shall be exercised with less detriment to public health." A distinction is also drawn between the operation of the Acts and the Continental systems, in that the former make an attempt at reclamation an essential part of the effort to check the evil. Again, it is sometimes alleged that the Acts violate constitutional rights by conferring unusual powers over the person of the woman: in answer to which the report adduces instances of other diseases, against which special precautionary enactments have been passed. In all these the main purpose is "to diminish disease in the community by insisting on its prevention or cure in the individual." To the objection that the Acts subject women to restraints and penalties from which men are free, the Committee think it sufficient to answer that this follows necessarily from the nature of the case, and that it is only a particular class of women that are in this position. They deny also that the Acts were passed with any view of furthering the principle that vice should be encouraged by offering comparative immunity to its indulgence. A further objection that has been raised is of the highest importance in connexion with the administration of the law—viz., that respectable women have been capriciously and erroneously exposed to a degrading examination. It is a matter of public congratulation, that, on this point, the Committee are able to report favourably. The instances of abuse, they say, are very rare, and the police have, on the whole, acted with care and discretion. Special attention is also called to the fact that, in the course of sixteen years, no proceedings have been taken against the police in this respect.—*Law Times*.

**THE DANGERS OF MORALISING.**—The Judge: "Prisoner, you have been convicted by a jury of your countrymen of the crime of grand larceny. The Court is sorry for you. You look as if you had seen better days; as if you may have had a good father and loving mother, as well as decent friends and companions. What has become of your former companions?"—Prisoner, with a doleful expression of countenance: "Judge, you and me are all that's left of the old gang."—*American Paper*.

#### INDEMNITY OF TRUSTEES FOR WRONGS.

Much of the work done in this country, especially connected with sanitary matters, is accomplished by the agency of trustees and guardians, and other officials who usually act gratuitously, being elected by ratepayers or other constituents. In such cases it is often a question how far the body of trustees are responsible for some wrongful acts done by their servants, and if responsible, how far personal responsibility is incurred by themselves. There are two liabilities usually involved. The first is, whether the trustees are responsible to the third person injured; and secondly, if they are, whether they are personally held harmless, and so can indemnify themselves for the compensation paid by them by charging the same on the fund under their disposal. This is always an interesting question both to the wrongdoers and the injured person, and concerns a great variety of individuals.

Though the doctrine of trusts is remote from the practice of justices of the peace, yet it is not to be forgotten that public trustees are very much on the same footing as private trustees as regards their right to an indemnity out of the fund which they administer. And hence the doctrines of the Chancery Division of the High Court as to the indemnity of trustees who are the great functionaries under the supervision of that court, are almost identical with those which apply to guardians, overseers, and all kinds of statutory trustees, who are so much mixed up with magisterial business. One of the fundamental rules of equity is, that as a trustee acts gratuitously, and as he is liable to mistakes, or his servants are so, it is reasonable that he should not pay out of his own pocket for any mistake or loss suffered in the honest exercise of his duty. This doctrine appeals to the common sense of every one who can reflect on the course of business. And it is not wonderful that many illustrations of the rule occur in the decisions of both branches of the High Court of Justice.

To refer first to the rule acted on in Courts of Chancery, a case of *Bennett v. Wyndham*, 4 De G. F. & J. 529, once arose where a testator had devised his estates to trustees to possess and manage the same and pay the rents to a tenant for life in the usual way. Mr. Fane was the resident and managing trustee, and in course of his management it was discovered that some timber was wanted for roofing a barn on the estates. The trustee marked some oaks to be felled for the purpose, and gave orders to the bailiff to have them felled. The bailiff sent for that purpose the woodcutters, who were usually employed on the estate. One of these trees overhung a deep sunken lane, and as it fell a large bough swept into the lane and struck a person of the name of Leaney, a veterinary surgeon, who happened to be passing by, and broke his leg. Leaney made a demand for compensation against the trustees which they considered exorbitant, and the parties being unable to come to terms, Leaney brought this action, and recovered judgment for £1,200 and costs. This sum the trustee paid and afterwards sought to be reimbursed out of the trust estate. The tenant for life concurred, but urged that the sum should be charged on the inheritance, and not on his life estate. The Master of the Rolls expressed a clear opinion that the damages arising from a tort must be borne by the trustee personally. But on appeal the Lords Justices reversed this decision. Knight Bruce, L.J., observed that the trustee in this case appeared to have meant well, and to have acted with due diligence, and to have employed a proper agent to do an act, the directing which to be done was within the due discharge of his duty. The agent makes a mistake, the consequences of which subject the trustee to legal liability to a third party. This liability as between the trustee and the trust estate must be borne by the estate; and so the court decided.

The Court of Chancery had sometimes also to decide similar questions relating to guardians and overseers, who are, so to speak, statutory trustees, and have the same advantage in like cases. One rather curious case gave a good deal of trouble to the court and to the

parish officers as to the imprisonment of a pauper. In *Attorney-General v. Pearson*, 2 Coll. 581, it appeared that the parish officer of Islington one day received information that a man named Eliot was found wandering about in a blanket, instead of wearing his clothes, and had damaged the premises in which he resided. The vestry clerk sent the relieving officer to make inquiries, and after hearing the circumstances the clerk considered it necessary that Eliot should be conveyed to the workhouse in a strait waistcoat, and afterwards should be taken before the magistrate to be examined. This was done, but owing to the medical officer withdrawing his certificate of insanity Eliot was discharged by the magistrate. He at once brought an action against the overseers and the relieving officer and everybody mixed up in the matter; and a separate claim also against the vestry clerk. He obtained a verdict for £200 in the first action, and the second action was not tried. The sum paid for damages and costs was charged in the parish accounts, but the ratepayers in open vestry met and disputed the item. Ultimately an information was filed against the parish trustees to compel them to pay the sum themselves and refund it. A long argument in the Court of Chancery followed, and vigorous contention was made to saddle this sum on the parish trustees. The Vice-Chancellor delivered a very long judgment on the whole details. He said that the acts of which complaint was made by the two actions, whether wholly or partly legal, were acts of the parish trustees and were done *bona fide* without any wrong intention upon the part of themselves and their agents and servants, or any one or more of them, and on the contrary with an intention upon the part of all to obey the law. They were acting duly in the execution and performance of the duties incumbent on the trustees. The belief they entertained, and on which they acted, was such a belief as any person in their position and circumstances might, from the apparent facts, have entertained without affording just ground for questioning their prudence, or diligence, or capacity, or honesty. The judge, therefore, allowed the trustees to charge the disputed sums on the rates.

The same views have been acted on in courts of law as to the indemnification of public trustees. In *Hall v. Smith*, 2 Bing. 156, an action was brought against certain commissioners for lighting, watching, and paving the town of Birmingham, or rather against the clerks. The point, however, involved was whether the commissioners were liable personally to pay compensation. The commissioners were alleged to have dug a deep ditch in a street in Birmingham, placed a quantity of rubbish near the same without any guard, or fence, or light, and the plaintiff not knowing of the heap when riding across the street fell into the ditch and broke his thigh, and the horse was also injured. The commissioners had employed a contractor, and the contractor had employed a labourer to do the work, and it was owing to the negligence of the workman employed by the contractor that the accident occurred. The action arose in the year 1824, and since then we have become more familiar with the points that occasionally arise and entail personal liability. But at that date the court, after taking time to consider, laid down the law which was deemed applicable, and the same law applies still. Best, C.J., said, if commissioners under an Act of Parliament order something to be done which is not within the scope of their authority, or were themselves guilty of negligence in doing that which they were empowered to do, they rendered themselves liable to an action; but they were not answerable for the misconduct of such as they were obliged to employ. If they were liable personally, who would be hardy enough to undertake any of those various offices by which much valuable yet unpaid service is rendered to the country? Our public roads are formed and kept in repair; our towns lighted and paved; our lands drained and protected from inundation; our internal navigation has been improved; ports have been made and kept in order, and many other public works are conducted by commissioners who act spontaneously. Such commissioners will act no longer,

if they are to make amends from their own fortunes for the conduct of such as must be employed under them. It would be much better that an individual injured by the act of an agent should endure an injury unredressed than that the zeal of the most useful members of the community should be checked by subjecting them to a responsibility for agents from whose services they derive no benefit, and who are seldom under the immediate control of their employers whilst they are employed on the works they are ordered to do. If by taking their office of commissioners they have not undertaken the performance of the duties in detail, with what justice can they be charged with the consequences of the neglect of them? The verdict was accordingly entered for the defendants.

There may be difficulty occasionally in deciding whether the trustees have done something so illegal and so entirely beyond the scope of their authority that they will be held personally liable, and will have no claim to reimbursement. But when the injury done to a third party is done as it is usually, merely owing to some error of judgment such as all mankind are liable to, then no personal liability can befall them. This was well illustrated in the case of *Southampton Bridge Company v. Local Board of Southampton*, 8 E. & B. 801. The plaintiffs had the management and control of the floating bridge over the river Itchen at Southampton, and of the canals and approaches, and were entitled to recover tolls and profits from travellers and traffic. The defendants were the local board, and it was alleged that they negligently constructed certain sewers, that great quantities of filth and sewage matter were poured into the canals and approaches, so as to obstruct and damage the working of the bridge and cause offensive stenches. The plaintiffs had consequently been put to great expense in removing the sewage, and they claimed this expense from the local board. The defendants demurred, and part of the argument was that they had no funds out of which to pay any such claim, even if it were sustained, and the case turned partly on the words of the statutes. The Court of Queen's Bench came to the conclusion that there was nothing to prevent an action for negligence being brought against the local board. The court said that it had been argued that there were no funds in the hands of the local board applicable to the payment of damages recovered in an action, and no doubt there was difficulty in the matter. It might be that such damages were to be paid out of the general district rate. However, it was not necessary to determine that point. Then it was said that if such a payment could be made out of the rates by the board, it was a great hardship on the ratepayers that they should be made to pay for the blunders or neglect of the board. That objection, however, seemed to be met by the consideration that the members of the board are elected by the ratepayers, and were therefore their representatives. There would be greater injustice perhaps if it were held that persons injured by the negligence or wrongful acts of the board had no remedy. Upon the whole, therefore, an action for negligence might be maintained against the local board.

The result, therefore, seems to be that in all cases where damages are incurred by some default of the trustees or their servants in a matter within their jurisdiction to do, the damage is part of the necessary expenditure incurred in the ordinary discharge of the public duty, and as such must be defrayed out of the fund or general rate.—*Justice of the Peace.*

#### THE SETTLED LAND ACT.

Although the Settled Land Act (45 & 46 Vict., c. 38) does not come into operation until after the 31st Dec. next, there are some points connected with it which are of immediate importance to conveyancers. Large powers will be attached to the estates of "tenant for life" and other limited owners in a few months time, so that it will be a matter for the consideration of the conveyancer, even now, whether he shall insert the

ordinary powers in any deed or will; and he should certainly endeavour to avoid any clash between the powers under the settlement, or will, and those under the Act, and not rely upon sects. 45, 56 for a remedy. If in a will of small property he feels inclined to trust to the Act, he must remember that sect. 15 excepts the principal mansion house—which apparently may be a cottage—from tenant for life's power of sale and leasing without consent, so that often it will be necessary in the deed or will to make provision as to this (see sect. 57). Also the near approach of the time for the coming into operation of the statute may make it wise to delay some transaction which would now be costly or less beneficial to the parties. Moreover, by waiting till next year, money which is held on trust to be laid out on settled land may be sometimes invested at higher interest or spent on the property in improvements (sects. 21, 25). We hope in a future series of articles fully to explain and annotate this important statute, especially with a view to the needs of conveyancers; so we content ourselves now with just indicating some points which require immediate attention.—*Law Times*.

**THE RIGHT OF PRIVATE DEFENCE.**

A correspondent of the *Times* writes as follows:—"Will you permit a former Indian magistrate, who has tried a great number of burglary cases, and committed for trial a great number of gang robbery cases, to draw attention to the admirable provisions of the Indian Penal Code in respect of the right of private defence? In view of the burglaries which are the pest of suburban life, and of the necessity of keeping firearms at hand, and of using them under certain circumstances, which I apprehend every householder to be under, I think it is as well that the public should become aware what are the provisions in respect of the right of private defence of a wise and intelligible code of laws under which the lives and property of some 250,000,000 of our fellow-subjects are protected. Under Indian law nothing is an offence done in the exercise of the right of private defence. This right extends to the protection of one's own or another's body and of one's own or another's property. It does not exist when there is time to have recourse to the protection of public authorities. More harm must not be caused in its exercise than is necessary for the purposes of defence. The right extends to the causing of death in cases of severe assault and of gross outrage against the person, including wrongful confinement. It commences and ends with the apprehension of danger. Death may also be caused in exercise of the right of private defence of property in cases of robbery, housebreaking by night, mischief by fire in a building, &c., and of theft and house trespass, when fear of death is involved. Now, let my fellow suburban householders act on these principles in respect of any burglars who may enter their houses, and whatever the English law may be, I doubt if they will not be upheld in their action. Danger to person and to property is involved in the burglaries of the present day, and we householders must not shrink from the duty of protecting ourselves and society from such pests because our law may be obscure and may not clearly enunciate what common sense dictates."

**CONTEMPT OF COURT.**

The attention of Mr. Justice Day, the vacation judge, having been drawn to reports appearing in newspapers of private judicial proceedings heard before him in chambers, it was represented to the learned judge that the Master of the Rolls had decided that the reporting or publishing of private judicial proceedings was a contempt of Court, and rendered the reporter liable to be committed. In reply, the judge's clerk writes: "I am directed by Mr. Justice Day to say that he intends to adopt the same rule as that adopted by the Master of the Rolls with regard to reporting in chambers."

**COMMUNICATION BETWEEN SOLICITOR AND CLIENT IN PRESENCE OF A THIRD PERSON.**

The doctrine that professional communications made to legal advisers are confidential and privileged is well established in English law. Whether, however, the term "privileged communication," often used in reference to this doctrine, is the best that could have been selected, is doubtful, when we consider that the natural meaning of the words "privileged communication" is, that the subject-matter of the communication is in itself privileged, not that the communication is one which may, or may not, be privileged, according to the class of persons present when it is made. This ambiguity in the term itself seems to have left the exact limits of the operation of the rule as to privileged communications somewhat undefined, and it is to the question, what are the exact limits of this rule, that we wish to direct attention. Now, one of the commonest things, indeed, an every-day occurrence among the lower middle class, is for clients to consult their solicitors in company with a friend. The presence of a third person seems to give them the courage needful for so formidable an interview. What is the position of this third person in regard to "privileged communications?" He is present at the consultation, and becomes acquainted with all the points in the client's case. The client is protected from disclosing any communication made by him to his legal adviser, and his legal adviser is not permitted, save with his client's consent, to make known any such communication. May the third person present at the interview, in the character of a friend, disclose information thus obtained? Is it a wholly "privileged communication," or is it a communication privileged only as between solicitor and client strictly? Before we attempt to answer this question, let us state a case which recently came under our notice. A testator who had made a valid will leaving all his property to a brother, was near death, and desired to make another will. The village schoolmaster, A., and his son, B., were called in, and a will leaving everything to D. a sister of the testator (who was keeping house for him), was drawn up and executed. The testator died, and D. accompanied by A. went to a neighbouring solicitor to instruct him to obtain probate of the second will. The solicitor put certain questions to A. and, finding that the will had been irregularly attested, he declined to act in the matter. Subsequently the brother of the testator brought to the same solicitor the first will, and this having been properly executed the solicitor undertook to get it proved. Probate of the first will was opposed, on the ground that it was revoked by a subsequent will, and the action was remitted by the Probate Court to the assizes for trial. On the trial of the action, the solicitor who was acting for the brother was called, and evidence of what passed between him and D. and A. was objected to on the ground of privilege. D. on being called, swore that she was in and out of the room at the time the will was executed, and did not see it signed, but knew they were signing it; and as to what passed at the solicitor's office, she claimed privilege. B. the son of A. swore that the will was properly attested. A. swore the same, and on being cross-examined as to what passed at the solicitor's office, counsel for D. claimed privilege. The judge was inclined to think that there was privilege, and so ruled, but reserved the point at the request of counsel. It was never cleared up, as the case was compromised. Here, then, we have a case where the whole issue depended upon the question of privilege or no privilege. No doubt it is a case which can very seldom arise, but still it seems strange that the text-books contain no reference to any single case bearing directly upon the presence of a third person present at an interview between solicitor and client.

If, however, we may apply the rules of common sense to such a case, we should be inclined to say that, if a client wished his communications with his solicitor to be secret, he should take measures to secure their

privacy. It seems difficult to draw a distinction between such a case and that of a client saying something in a loud voice to his solicitor in court, so that it may be overheard by a dozen other people. And surely, if this occurred, the mouths of a dozen people could not be stopped. The only decision which seems to be at all near the case in point is that of *Fountain v. Young*, 6 Esp. 113, where it was held that a communication made to one who was not a solicitor, under the mistaken idea that he was one, was not privileged. Whether this would be still considered to be good law is, perhaps, doubtful, but if it goes rather far in declaring that privilege cannot be extended in cases of mistake, it seems, at any rate, to lay down the principle that the doctrine of privilege must not be carried beyond the strict limit of solicitor and client. At the same time there is, doubtless, much to be said in favour of the view that communications between a client and his solicitor are absolutely privileged. But considering the doubt which exists in the matter, solicitors will do well to caution clients who consult them in company with a friend, as to the possibility of danger in this respect, for it may easily happen that matters disclosed in consultation should be made the foundation of purely vexatious litigation.—*Solicitor's Journal*.

#### RECENT DECISIONS ON ATTACHMENT OF THE PERSON.

The provisions of the orders under the Judicature Act, and other recent legislation, made considerable alterations in this very important means of enforcing the decisions of the courts, and preserving them from the decaying process which disregarding judgments, or open contempt, is sure to occasion. By Order XLIV., r. 1, a writ of attachment is to have the same effect as such a writ issued out of Chancery had before the Judicature Acts, but a very important change has been introduced by rule 2, which requires that no writ of attachment shall be issued without notice to the party against whom the attachment is to be issued. In some respects this very reasonable provision as to notice has been construed rather strictly. Thus it applies to all orders made since the Judicature Act came in force, whether the suits in which the orders have been made are being carried on under the old law or the new practice (*Dallas v. Glyn*, 34 L. T. Rep. N. S. 897; 3 Ch. Div. 190). And "An attachment against the sheriff for not returning a writ of *f. fa.* is not as formerly obtained as of course, but since Order XLIV., r. 2, can only be applied for 'on notice.'" *Jupp v. Cooper* (5 C. P. Div. 26). And in *Eynde v. Gould* (9 Q. B. Div. 335), not only was this principle upheld, but the Court refused to give a rule nisi (which had been granted in *Jupp v. Cooper*), and rejected the argument that a rule nisi would in fact operate as a notice. This also conflicts with *Fowler v. Ashford* (45 L. T. Rep. N. S. 46).

There are several cases on the question of what amounts to sufficient service of notice of motion. In *Browning v. Sabin* (5 Ch. Div. 511) it was held that service on the solicitors on the record of the defendant was sufficient; see also *Richards v. Kitchen* (36 L. T. Rep. N. S. 730). In *Re a Solicitor* (42 L. T. Rep. N. S. 310; 14 Ch. Div. 152), leaving the notice of motion at the person's residence was considered enough, where the residence was unknown. But in *Mann v. Perry* (44 L. T. Rep. N. S. 248) service on the solicitor in the case was held insufficient. As to substituted service, see *Tilney v. Stanfeld* (W. N. 1880, p. 77; 28 W. Rep. 582). The preliminaries to the motion must be strictly complied with: see *Re Holt* (40 L. T. Rep. N. S. 207; 11 Ch. Div. 168; Alph. Pr. 362, 367.)

An interlocutory order may be enforced by attachment (*Hutchinson v. Hartmont*, W. N. 1877, p. 29). By Order XLII., r. 20, orders may be enforced like judgments. Judgment includes "decree," and "order" includes rule (Judicature Act, 1873, s. 100).

The cases in which attachment may be ordered may be divided into those for disobedience to a judgment or order to pay money, and those for disobedience to

some other judgment or order of the court. The first class is much limited by the Debtors Act (32 & 33 Vict., c. 62), s. 4, which abolished imprisonment, not only for debt, but generally for nonpayment of money, except in certain exceptional cases. There are, however, several cases mentioned in sect. 4 in which imprisonment for one year is still permitted on nonpayment of money. These are: (1) penalties, (2) sums recoverable summarily, (3) certain defaults by trustees or quasi trustees, (4) certain defaults by a solicitor, (5) default of bankrupt to pay salary, (6) defaults as to payments under Debtors Act 1869. See, as to these generally, *Wms. Bank*, 2nd edit. 562; *Seton*, 4th edit. 1567; *Alph. Pr.* 361. The third exception applies not only to trustees properly so called, but to an agent who received bills that he might discount them and hand the proceeds to the owner (*Hutchinson v. Hartmont*, W. N. 1877, p. 29); and see *Marris v. Ingram* (41 L. T. Rep. N. S. 613; 13 Ch. Div. 338). It has been held not to include a director who has been ordered under sect. 165 of the Companies Act to pay the value of gratuitous shares given him (*Metcalf's case*, 42 L. T. Rep. N. S. 178; 18 Ch. Div. 813), nor a trustee who has merely omitted to take steps to recover trust money (*Ferguson v. Ferguson*, 10 Ch. App. 661). As to attaching a receiver, see *Poster v. Bell* (L. Rep. 9 Eq. 173); *Re Aiken* (8 L. Rep. Ir. 50). Formerly the court was bound to order the attachment of a defaulting trustee, but by 41 & 42 Vict., c. 54, s. 1, a discretion is given to the court to inquire into the whole circumstances, and grant or refuse an attachment as it thinks fit. Practically, where a trustee has not been guilty of any moral delinquency, and there is no prospect that the attachment will cause the repayment of the money, attachment will be refused (*Marris v. Ingram*, *ubi sup.*, explaining *Barrett v. Hammond*, 10 Ch. Div. 285; see also *Street v. Hope* (10 Ch. Div. 286) and *Re Mackenzie* (44 L. T. Rep. N. S. 618).

As to defaults by a solicitor, see *Re White* (23 L. T. Rep. N. S. 387); *Re Hope* (26 L. T. Rep. N. S. 814; L. Rep. 7 Ch. App. 523); *Harvey v. Hall* (28 L. T. Rep. N. S. 734; L. Rep. 16 Eq. 324); and *Re Ball* (L. Rep. 9 C. P. 104). He cannot be attached under this sub-section simply for nonpayment of costs as an unsuccessful litigant (*Re Hope*). See *Alph. Pr.* 362; *Seton* 1568. The court has now a discretion to refuse attachment in cases falling within this sub-section (41 & 42 Vict., c. 54).

Besides the six cases mentioned in sect. 4 of the Debtors Act, there is also power under sect. 5 to commit for six weeks, for ordinary debts where the debtor can pay but will not. It is not sufficient that his wife has considerable separate estate: (*Chard v. Jarvis*, 9 Q. B. Div. 178.) As to the distinction between procedure under this section and attachment for contempt, see *Edaile v. Viner* (41 L. T. Rep. N. S. 745; 13 Ch. Div. 421), and *Alph. Pr.* 367; *Seton*, 1569.

An order for payment of costs constitutes a debt within sect. 5 (*Hewison v. Sherwin*, L. Rep. 10 Eq. 53; and see *Reg. v. Pratt*, L. Rep. 5 Q. B. 176, 182). If the order is for payment of a debt by instalments, each instalment becomes a separate debt, for default in payment of which a separate order to commit may be made (*Hornail v. Bruce*, L. Rep. 8 C. P. 378; *Evans v. Wills*, 1 C. P. Div. 229); but a second warrant of committal will not be issued for the same default. The Debtors Act applies to an application under 41 Geo. 3, c. 90, s. 6, to enforce an order of the Irish Court of Chancery: (*Ferguson v. Ferguson*, L. Rep. 10 Ch. App. 661.)

Where an order alternatively directs either the doing of some act or the payment of money, attachment may be issued for disobedience (*Harvey v. Hall*, L. Rep. 11 Eq. 81); but where a party has obeyed an order, except that he has not paid costs, he cannot be committed for nonpayment of costs (*Mickelthwait v. Fletcher*, 27 W. R. 798); and where he was committed for not answering, and afterwards cleared his contempt by filing his answer, he was discharged from custody, although he had not paid costs; the Court, however, still ordered him to pay costs: (*Jackson v. Mawby*, 1 Ch. Div. 86.)

In *Earl of Lewis v. Barnet* (6 Ch. Div. 252) the Court



refused to discharge a bankrupt defaulting trustee until he had passed his final examination. He was attached before the bankruptcy, so it was held that the Bankruptcy Act, 1869, s. 12, did not apply, and *Cobham v. Dalton* (L. Rep. 10 Ch. App. 655) was distinguished. It seems that sect. 12 of the Bankruptcy Act does not extend protection to a compounding debtor: (*Pashler v. Vincent*, 8 Ch. Div. 825.) The Debtors Act does not apply to Crown debts: (*Re Smith*, 2 Ex. Div. 47.)

On application for the order, costs should be asked for; they are in the court's discretion (*Abud v. Riches*, 2 Ch. Div. 363), and will in some cases be given as between solicitor and client (*Tilney v. Stanfeld*, W. N. 1880, p. 77); see also *Beall v. Smith* (L. Rep. 9 Ch. App. 85). In the usual form no period is named for the period of detention, even in cases where it is limited to a year: (Alph. Pr. 366; Seton, 1569.) Such a form was held regular in Ireland: (*Re Aiken*, 8 L. R. Ir. 50). It seems that an order must be obtained for the discharge, although the year has expired since the committal: (*Nalty v. Aylett*, 80 L. T. Rep. N. S. 735)—*Law Times*.

#### THE INSURANCE ON DR. LAMSON'S LIFE.

The *Hampshire Post* states that Dr. Lamson's life was insured in the Scottish Widows' Assurance Office for £1,000, but only one premium had been paid prior to the arrest of the assured on a charge of poisoning his brother-in-law. Immediately before Lamson's conviction, the policy was assigned absolutely to Mr. A. W. Mills, the solicitor by whom he had been so zealously defended, to cover the balance of the costs of the defence. On the strength of a decision in the House of Lords—that, under such circumstances as those in the case of Lamson, a policy of insurance is void, even though such policy provide that death at the hands of justice shall not vitiate it—the company might have successfully resisted payment. They have, however, declined to avail themselves of any advantage on this ground, and have paid to Mr. Mills the full amount for which his client's life was insured—£1,000.

#### NICE POINTS IN FRENCH LAW.

A man wishing to steal fowls clambers over a garden-wall at night, and breaks into a fowl-house. He has a ladder or crowbar in his hands, but makes no use of either to inflict bodily hurt on those who capture him. Nevertheless, this man is a felon who has committed a burglary which the quarter circumstances aggravates, that is, in the night with escalade (climbing over walls), with effraction (breaking open a door), and a main arme (with a weapon in his hand). He can only be tried at the assizes, and, if convicted on the four counts, must get eight years' seclusion, or twenty years' transportation. On the other hand, take a man who by false pretences obtains admission to a house or shop, intending to commit a robbery there. He lays hands on some valuable, and being surprised in the act, catches up a poker and knocks his detector down, inflicting a serious wound. This man's crime is evidently worse than that of the other who went after the fowls—his is only a misdemeanour, however, for he gained admittance to the house without violence, and was unarmed; his catching up the poker, although it may have been a premeditated act, inasmuch as he intended from the first to defend himself somehow if caught, was, equally speaking, only an act of impulse committed on the spur of the moment and without malice prepense. Therefore, this man can only be tried by a correctional court, and cannot get more than five years' imprisonment. Again, if a man, wishing to inflict on an enemy some grievous bodily harm, walks into a café, says a few angry words to him, and disfigures him by smashing a decanter upon his face, it is a misdemeanour, extenuated by the apparent absence of premeditation. The man walked into the café unarmed, and in the heat of quarrel picked up the first weapon that came to his hand. It might fairly be alleged that the man knew that he should find a decanter in the

café, and that his quarrel was purposely entered into, but the law will not take account of this. If, on the contrary, the man entered his enemy's house with a loaded stick in his hand and assaulted his enemy with that stick, he would be a felon who must go to the assizes on a charge of attempted murder. It might be that the man had taken the stick without reflecting that it had a leaden knob, but the onus of proving that his intentions were not murderous, and that in fact when he entered the room he did not even propose to commit a common assault, would rest upon himself. A jury would probably judge his case according to his antecedents, and if it were shown that his past life was not blameless he might fail to get extenuating circumstances, and might receive twenty years' transportation.—*Cornhill Magazine*.

#### PARENTAL RIGHTS.

The case of *Vidler v. Collier* is probably the strongest recent instance of the interference of the Court with a father's right to the custody of his infant son. The boy in this case was seventeen years of age, and was entitled to some benefit under the will of his maternal grandfather. His father, who was a widower, being in difficulties, his maternal relations had procured him an appointment as apprentice engineer in the Government dockyard at Devonport, where he had been two years. The father, who had failed as a farmer in England, and was an undischarged bankrupt, had taken passages for himself, his son, and five younger boys, to Manitoba, where he could procure a free grant of prairie land. The executors of the grandfather brought an action for the administration of his estate, thus making the infant a ward of court, and moved for an injunction to restrain the father from taking him out of the jurisdiction. Vice-Chancellor Bacon granted the injunction, refusing to allow any ward of court to be removed from a fair prospect of earning his living for the doubtful experiment of "gipsying in Manitoba." The Court of Appeal declined to interfere with the Vice-Chancellor's decision, considering it proved that it was for the interest of the infant that he should remain, though they gave the father leave to send for him after a year if he should succeed in Manitoba. The decision was based upon the ground of the infant's benefit only, and the principle has always been that a father cannot be deprived of the custody of his children merely because his means are small and the children would be better educated elsewhere, unless there are other reasons, which make the father unfit to have the custody of his infant children.—*Public Opinion*.

#### THE JUDGE, THE SAHEB, AND THE OLD WOMAN.

The *Brahmo Public Opinion* says:—The other day Mr. Justice Norris, while going home from court, saw a Sahab recklessly driving and running over an old native woman. His lordship immediately got out of the carriage, ran after and stopped the Sahab, and asked him to take the woman to a hospital, at the same time telling him that he should not have driven so furiously. The Sahab, a genuine Anglo-Indian, replied that Sahabs in this country do not care to take people to the hospital. Mr. Justice Norris cried shame to the Sahab, observing that to him humanity did not seem to be different here from what it is at home. He then came back and took the woman up in his own carriage to the hospital and placed her there. We trust and hope long residence in India will not chill the fervour of this genuine English spirit.

LORD CHIEF BARON POLLOCK was one of the most dexterous imitators of handwriting, and used to amuse himself by sending letters in other people's names and handwriting so correct that the person imitated would swear to its being his own work. Many practical jokes arose out of this little amusement.

## TEXT-BOOK ADDENDA.

[From the Law Journal.]

*Buckley on the Companies Acts (3rd Edition), 242.*

A witness examined under section 115 of the Companies Act, 1862, may be attended by counsel and solicitor, who may re-examine him for the purpose of explaining his evidence, and may take and carry away notes (*In re Cambrian Mining Company*, 51 Law J. Rep. Chanc. 221).

*Judicature Act, 1873, s. 50, Order LVIII., Rule 15.**Wilson on the Judicature Acts (2nd Edition), 329.**Lely and Foulkes on the Judicature Acts (3rd Edition), 262.*

Appeals from a judge in chambers must be brought within twenty-one days, to be computed from the date of the refusal, where no order is made; and, where an order has been made, from the perfecting of the same (*Healty v. Newton*, 51 Law J. Rep. Chanc. 225)—C. A.

*Daniell's Chancery Practice (6th Edition), 264.*

Auctioneers who, having been parties to a fraud, were rightly made co-defendants to an action for rescission of a contract and return of the deposit, were held not entitled to be dismissed on paying the deposit into Court, with costs up to such payment (*Healty v. Newton*, 51 Law J. Rep. Chanc. 225)—C. A.

*Folkard on Slander and Libel (4th Edition), 135.*

A man who, in defence of his own property, slanders the title of another, will not be held liable to an action unless it can be shown that he had a *malis fide* intention to injure (*Halsey v. Brotherhood*, 51 Law J. Rep. Chanc. 233)—C. A.

*Jarman on Wills (4th Edition), 782.*

Where there is a gift of land the word "appurtenances" does not properly, either in a deed or will, include other land. But in a will, if circumstances and context show that other land was intended to pass as appurtenant, the word is flexible enough to carry it (*Cuthbert v. Robinson*, 51 Law J. Rep. Chanc. 239).

*Buckley on the Companies Acts (3rd Edition), 171.*

The mere fact of there being fraudulent misrepresentation in the prospectus is not sufficient to induce the Court to order a winding-up (*In re Haven Gold Mining Company*, 51 Law J. Rep. Chanc. 242)—C. A.

## CORRESPONDENCE.

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

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

## THE PRELIMINARY EXAMINATION.

TO THE EDITOR OF THE IRISH LAW TIMES.

SIR,—I have read in your Journal of the 14th inst. a letter signed "Timon," relative to the Preliminary Examination of Candidates for Apprenticeship. I am sorry, as well as surprised, to see the evident lack of knowledge which, on his part, exists concerning the subject about which he writes. Referring to the Preliminary Examination, "Timon" in his letter states "that to suppose that, in those days of professional grinders, it is any guarantee whatever of education is the greatest of fallacies." Now, it is quite manifest, from this alone, that he knows little or nothing about the examination, the subjects for which it is his desire should be augmented. At the present time, the Preliminary Examination is considered to be a good and sufficient test of the candidate's education, not by me

alone but by gentlemen much higher educated than "Timon." It is obvious that the consequences of the present system of examination are, that the ranks of the legal profession are being filled up by gentlemen of good education, and not "by men who should never have been admitted into it, and who certainly never would have been if intelligence or education had been a necessary qualification," as stated by "Timon." This is a gross insinuation—that the Incorporated Law Society admit into the ranks of the profession individuals who have neither intelligence nor education. Such is admittedly not so; for there are none admitted into the profession but who *must* have satisfied the examiners as to their education, and those who have education generally have intelligence, therefore "Timon's" statement regarding this is illogical and untrue. Furthermore, he, in support of his object, and in order to see what he calls the absurdity of the examination in question, compares it with the Matriculation Examination of the Royal University, and states that the latter is a *hundred* times more difficult than the Preliminary. This statement is totally devoid of truth. Such, indeed, would not be expected to emanate from the pen of an individual insane, and anything more absurd would be difficult to conceive. It is a comparison which clearly shows that "Timon" knows little about the examinations of which he in his letter makes mention. To say that the Matriculation Examination is more difficult than the Preliminary is perfectly untrue. For the Preliminary Examination the Latin course is—1st Book of Cæsar, Sallust, and 1st three Books of Virgil; whereas the Latin course for the Matriculation Examination is merely the 4th and 5th Books of Cæsar and the 1st Book of Virgil. A very great difference is here visible, and the other subjects for the Preliminary are more in number and more difficult in nature than those for the Matriculation, and yet "Timon" has the audacity to state that the latter is a *hundred* times more difficult than the former. The Latin course for the Preliminary is even more extensive than the Latin course for the B.A. examination in the Royal University. I would not be antagonistic to any movement which had for its object the furtherance of sound education, and if I could, but for a moment, think that the object of "Timon" was for that purpose, or that the present course for the Preliminary was insufficient, I should altogether refrain from saying anything in condemnation of his letter. On the contrary, I would endeavour to support him; but it is obvious that his object is not to further education but to embarrass those who may in future have to pass the Preliminary. It is entirely premature for "Timon" to dictate to such a body of learned gentlemen as those who constitute the Incorporated Law Society. "Timon's" letter from first to last is contrary to reason, and I consider he is almost dispossessed of that which he pretends to advocate. The Incorporated Law Society are highly competent to judge what is necessary for the Preliminary Examination, and well know that the present course therefor is quite sufficient to test the education of the candidate, and know their business better than to be dictated to or influenced by "Timon."

I am Sir,

Your obedient Servant,

BENEFICIUM.

17th October, 1882.

FRACTIONS OF A PENNY.—Among the last Acts passed in the session was one relating to the revenue. It recites that "fractions of a penny" have never been paid by the Bank of England on account of dividends on the National Debt, and the fractions so accumulated unpaid have exceeded £140,000. The Bank of England are now required, when directed by the Treasury, to certify the amount in hand arising from "fractions of a penny" not paid on account of dividends, and the Treasury may by warrant order the same to be paid into the Exchequer. By a schedule to the Act it appears that, up to March 31 *inst.*, the "fractions of a penny" have amounted to £143,272 11s. 2d.

LAW STUDENTS' JOURNAL.

THE INCORPORATED LAW SOCIETY OF IRELAND.

MICHAELMAS SESSION, 1882.

LEGAL EDUCATION.

NOTICE.

WILLIAM HICKSON, Esq., Professor of Law for the Profession of Solicitors, will deliver his Course of Lectures for the Michaelmas Session, in the Lecture Hall, Solicitors' Buildings, Four Courts, on Mondays and Thursdays, at 10 Minutes before 10 o'clock, a.m.

The first Lecture will be delivered on Monday, the 6th day of November, 1882.

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

By Order, WILLIAM HICKSON, Professor.

Solicitors' Buildings, Four Courts, Dublin, 29th September, 1882.

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

THE INCORPORATED LAW SOCIETY OF IRELAND.

SOLICITORS' APPRENTICES.

NOTICE.

An Examination in the business of the last Session of Lectures will be held on Tuesday, the 7th day of November, 1882, for the convenience of Gentlemen who were unavoidably prevented from attending the regular Examination in last July. Any such Gentleman, if desirous of being examined, will please to send in, on or before the 30th day of October, instant, a written application to the Secretary's Office, addressed to the Professor of Law, stating the circumstances which prevented his attendance in July, with a Certificate from his Master that, having inquired, he believes the Apprentice's non-attendance was caused by the circumstances stated.

The Applicant will be afterwards apprised whether his attendance at the intended Examination can be permitted.

By Order, WILLIAM HICKSON, Professor.

Solicitors' Buildings, Four Courts, Dublin, 19th October, 1882.

COURT PAPERS.

COURT OF BANKRUPTCY.

ADJUDICATIONS IN BANKRUPTCY.

The dates of Adjudications are first given, theittings follow in Italics.

Byrnes, Roderick, and John J. Byrnes, trading as Roderick Byrnes, and Son, of Island Bann Mills, Nenagh, in the county of Tipperary, millers. October 6; Friday, November 8, and Tuesday, November 21. Peter V. Kennedy, solr.

Redmond, Edmond, of Main-street, Gorey, in the county of Wexford, draper and grocer. September 29; Tuesday, October 31, and Friday, November 17. Maxwell & Weldon, solrs.

Holloway's Pills.—Though good health is preferable to high honour, how regardless people often are of the former—how covetous of the latter! Many suffer their strength to drain away ere maturity is reached, through ignorance of the facility afforded by these incomparable Pills of checking the first untoward symptoms of derangement, and re-instating order without interfering in the least with their pleasure or pursuits. To the young especially it is important to maintain the highest digestive efficiency, without which the growth is stunted, the muscles become lax, the frame feeble, and the mind slothful. The removal of indigestion by these Pills is so easy that none save the most thoughtless would permit it to sap the springs of life.

DUBLIN STOCK AND SHARE LIST.

OCTOBER

Table with columns: DESCRIPTION OF STOCK, Sat. 14, Mon. 16, Tues. 17, Wed. 18, Thur. 19, Fri. 20. Rows include Government, India Stock, Banks, Miscellaneous, Debenture Stocks, and Dublin Water Works.

\* Shares not fully paid up are given in Italics. † x d Bank Rate—Of Discount—4 per cent., 17th August, 1882. Of Deposits—1 per cent., 29rd March, 1882. Name Days—October 26th, and November 14th, 1882. Account Days—October 27th, and November 15th, 1882. Business commences at 1 30 p.m.

BIRTHS, MARRIAGES, AND DEATHS.

BIRTHS.

CREAGH—October 8, at Mallow, the wife of W. P. Creagh, Esq., solicitor, of a daughter.

MARRIAGES.

SHELL and KENNICOTT—At St. Mary of the Angels' Catholic Church, Bayswater, by the Rev. J. Keating, O.C.S.C., Henry Shell, Major Royal Artillery, youngest son of the late James Shell, Esq., Q.C., of Dungannon, County Tyrone, to Elizabeth Mary (Lilla), daughter of the Rev. R. Dutton Kennicott, Vicar of Stockton-on-Tees, Durham.

WATTERS and JOHNSTON—October 11, at St. Patrick's Church, Dundalk, by the Rev. Michael J. Watters, S.M., brother of the bridegroom, Alexander A. Watters, of Dundalk, Merchant, to Mary Agnes, eldest daughter of Arthur Johnston, Esq., solicitor, Dundalk.

DEATHS.

KERNAN—October 19, at Upper Prince Edward-terrace, Blackrock, Charles, second son of Chas. Kernan, Esq., solicitor, aged 41 years. LOUGHEED—October 14, at Portarlington, Henry M. Lougheed, Esq., solicitor.

M'CARNEY—October 16, at Middleton, Co. Cork, suddenly, Alexander M'Carthy, Esq., solicitor, aged 80 years. O'DONOVAN—October 11, at Sligo, Mary Elizabeth, the beloved child of Daniel O'Donovan, Esq., solicitor.

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# THE IRISH LAW TIMES AND SOLICITORS' JOURNAL.

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SATURDAY, OCTOBER 28, 1882.

No. 822

## PRIVILEGE OF WITNESSES AS TO CRIMINATING QUESTIONS.—VII.

CONFLICTING, however, as are the *dicta* of the English Judges, and irreconcilable as is the decision in *Temple v. The Commonwealth* with that in *The Queen v. Boyes*, it is satisfactory to have now an express judgment of the Court of Appeal in *Ex p. Reynolds* (which will be found fully reported in the October issue of the *Law Journal*), after a full examination of, at least, the English authorities, that a witness is not the sole judge whether a question put to him may tend to criminate him; and that, in order to entitle him to the privilege of silence, the court must see, from the circumstances of the case and the nature of the evidence which he is called upon to give, that there is reasonable ground to apprehend danger (as to the various descriptions of which, see Seton, *Decrees*, 4th ed., 160, 1346) to him from his being compelled to answer—a bare possibility of legal peril to him not being sufficient to entitle him to protection (*cf. M'Laughlin v. Prior*, 9 Ir. L. T. Dig. 22); but, that if the fact of the witness being in danger be once made to appear, great latitude should be allowed him in judging for himself of the effect of any particular question. "The principle, no doubt, is important, because the liberty of the subject is at all times a sacred matter, and if I saw there was any chance of the answer to any one of these questions forming a link in a chain of evidence which might ultimately lead to the conviction of the witness, I would not compel him to answer," said Bacon, C.J., in the court below; and the case itself exemplifies the difficulties incident to administering the rule it establishes, but the facts need not be more particularly mentioned as the court expressly abstained from deciding that the witness should answer the particular questions asked. Suffice it to say that, while the maxim *Nemo tenetur seipsum accusare* constitutes one of our most salutary institutional safeguards of the private rights and personal liberty of the subject, the ruling in *Ex p. Reynolds* appears to us to furnish a necessary and adequate protection against its abuse, at the same time that, no doubt, as observed in the *Justice of the Peace* of the 9th ult., the rule there laid down "demands of the judge an acute and penetrating glance into the complications of the whole case, before he can be sure that the witness is not merely pretending to be alarmed, in order to get rid of a disagreeable duty in answering the questions put." So limited, the law (which, moreover, admits self-inculpatory evidence given out of court, and not elicited by appeals to the hopes or fears of the accused) still sufficiently averts the danger of assisting to convict a man out of his own mouth, by possibly false statements induced by the flattery of hope or suspicion of fear. "Perhaps our law has gone even too far in that direction," observed Jessel, M.R., in *Ex p. Reynolds*; "and, without at all impugning the policy of the law, there certainly must be a larger policy, which requires a person to answer, where the judge thinks that he is not *bona fide* objecting with the view of claiming privilege to protect himself, but to prevent other parties getting that testimony which is necessary for the purposes of justice." Be this as it may, the practice must now be taken as settled; although, considering that the principle affected was itself of comparatively recent introduction, silently

crystallised into a *regula juris*, and that the practice had been the subject of such conflicting decisions—both principle and practice springing, also, from judicial considerations of policy—we cannot but regret that liberty to appeal to the House of Lords was refused.

For our own part, as already intimated, we do not propose to enter here into a discussion of the question of policy, which, by the way, as regards defendants in criminal cases, was debated at the Social Science Congress on the 22nd ult.; but, we may observe that we do not regard the commonly added statutable provisions, against the accused being prejudiced by his failure to avail himself of permission to testify, as amounting to any real safeguard that he shall not suffer thereby, even when administered in such a favourable spirit as was shown in *Austin v. People* (102 Ill. 261), in which we find it held by the Supreme Court of Illinois, last March, that any allusion to or comments by the prosecution in a criminal case on the fact that the defendant has not testified as a witness in his own behalf, especially when allowed by the court notwithstanding the defendant's objection, is such a violation of the letter and spirit of a statute of this kind, and such an error, as to require the reversal of a conviction, when the proofs of guilt are not so clear and conclusive that the court can affirmatively say the accused could not have been harmed through that cause. [As to criminating admissions of one joint defendant not being evidence against the other, see *People v. Stevens*, Alb. L.J., Sept. 23, 1882, p. 259; and as to evidence of husband for wife, when not accused but accusing, see 13 Ir. L. T. 463; and as to wife's continuing disability, after divorce, to testify in reference to confidential marital communications, see *Homan v. Homan*, 14 Rep. (Boston) 475, Oct. 11, 1882.] "It may be asked," writes Mr. Maury, "whether it is in the power of courts or legislatures to prevent the accused's failure to testify from prejudicing him in the minds of the jury. It is a fact in the case which the jury have derived from the infallible evidence of their own senses, and which must needs force itself on their minds. The failure of an accused to make an explanation in reply to an extra-judicial imputation of crime is not only relevant but strong evidence against him; but how tremendous must be the effect of his silence on that supreme occasion which is to decide forever the question of his guilt or innocence? A great and philosophical jurist says on this subject: 'The prisoner is invited to silence by being assured that it will do him no injury, when in the nature of things the jury cannot but infer guilt from false representations or from silence, without any motive but that of concealing the truth; either of which circumstances, when they occur, are given in evidence according to our present practice' (Livingstone's Int. Rep. to Code of Procedure). You might as well try to 'bind the sweet influences of the Pleiades or loose the bands of Orion' as try to erase from the minds of the jury a material relevant fact which has become a part of their consciousness through the evidence of their own senses. Indeed, if it were possible for the mind to escape the influence and effect of such evidence, there is no test by which it could be determined whether that result had been attained. No man of a high sense of honour would ever trust himself to sit as arbiter in a case where he had been in a position to contract the bias of a partisan,

however firm his belief in his ability to do justice, because he would be conscious of the want of a touchstone by which to know that his mind was not, after all, under the dominion of some subtle, sinister, influence. No legislative command, no direction from the bench, can ever shake the intuitive conviction of men that the operations of the mind are beyond the control of human law, and, as a consequence, so long as statutes allowing the accused to testify exist, so long will innocent men be coerced to take the stand by the dread of being compromised by their silence. These views are not without judicial sanction" (citing *State v. Lawrence*, 57 Me. 581; *State v. Cleaves*, 59 ib. 298; *State v. Bartlett*, 55 ib. 216; *Ruloff v. The People*, 45 N. Y. 221). Be it added that we do not hold with the many writers who regard the rule excluding parties from being witnesses in civil cases as identical in principle with that which excludes the accused in criminal prosecutions. Suffice it to say, however, that as pointed out in a paper on "Profert of the Person in Criminal Cases," in the *Central Law Journal* of the 15th ult., the object of a criminal examination is not merely to investigate the facts and discover the truth (which is the province of the grand jury), but to obtain a fair trial of the accused, using only lawful evidence; while the introduction of the principle in question, protecting the accused (not to be confounded with the rule that made interest a disqualification in civil cases), was causally connected with the manner in which criminal justice was administered prior to the revolution of 1688, as pointed out by Mr. Maury. "Seeing," he adds, "that this great principle was introduced soon after the liberties of the English people were placed on a more stable foundation, and more securely guarded against the encroachments of prerogative, we do not think the careful student of the criminal jurisprudence of England can fail to be convinced that the change effected by this principle was not unwarranted, or the result of a sentimental tenderness for criminals, or a predilection for bad evidence, or a connivance at crime, as Mr. Bentham thought, but was a natural sequence of the change from tyranny to liberty, from a cruel and truckling judiciary to a judiciary made independent, that it might stand indifferent between the crown and the prisoner. It was a change demanded by the spirit of an age which had no tolerance for a procedure so intimately associated with the despotism from which the nation had so happily escaped, and which was to the mind what the rack and the thumb-screw had been to the body." This amelioration was effected, says Mr. Jardine (*Cr. Tr.*), "by the good sense and humanity which advancing civilisation has necessarily introduced into our institutions." And even if it be thought that the rule ought not to be now maintained to shield the objects of a criminal charge, it is still quite possible, with Mr. Goodeve, to distinguish in favour of retaining the privilege of witnesses as to questions tending to criminate them.

#### LEGAL EDUCATION.

"THE profession of the law is as ancient as justice, as noble as virtue itself. But it necessarily results that it calls for all the solicitude of government. It concerns too closely the fortune, the honour, and the life itself of citizens to be neglected. Those, whose purpose it is to practise it, ought to be held to make proof of their studies, of their capacity, of their good morals, and of their probity."

Since this eloquent exclamation of d'Aguesseau, how much has been said and written on the subject of the reform of legal education, and yet still the question

remains in a state of unrest. Nay, now more than ever since the introduction of Lord Selborne's bill into Parliament for the creation of a State school of law, discontent with existing systems is being manifested wherever English law holds sway; and the legal serials of Canada and America, alike with our own, present the expression of a common feeling that the time is ripe for fresh practical consideration of the educational requirements that should be exacted, in order to qualify the present generation of students for a profession that so closely concerns "the fortune, the honour, and the life itself of citizens." Of the importance of this subject, indeed, it cannot for a moment be doubted that the Incorporated Law Society, too, is profoundly sensible, and the correspondence published in our columns in reference to the preliminary examinations may well serve to add a stronger zest to inquiry, nor will it fail in utility whether the result be to establish that the prevailing system is satisfactory or that it is susceptible of improvement.

But, however much is to be demanded in the way of compulsory education, a wide margin must ever remain for the exercise of voluntary self-education. Here, indeed, the field is limitless, but hardly less are the difficulties to be encountered; and to enlarge the opportunity for independent acquisition of knowledge, while lessening the impediments incident to it, such associations as the Solicitors' Apprentices' Debating Society (whose opening meeting is elsewhere announced) must particularly commend themselves to the attention of all who desire to acquire or strengthen what Spencer calls "intellectual muscle." We cannot, indeed, too strongly impress upon apprentices the substantial practical advantages to be thus derived, and we earnestly recommend the association to their notice. Few better aids to legal education exist, and none better calculated to cultivate and develop the intellectual qualities of the future members of the solicitors' profession; and truly, the apprentice who has availed himself of this resource will never have reason to think his time thrown away. He will have gone through a preparation perhaps more fitted than any other to render him expert and ready in the performance of the active functions of his vocation, and, facilitated by this preparatory trial, he will find it the more easy to discharge them. Young Indian lawyers, at all events, have more reason to find fault with the kind of trial they have to pass before entering into practice, as would appear from the following extract from the *Indian Spectator*:—"The young Desai of Olpad, who returned from England the other day after qualifying himself as barrister, has passed through another and a less pleasant trial. He has been sat upon by the orthodox, and has, at their command, eaten of the 'five products of the cow,' and re-entered caste."

#### QUARTERLY INDICES TO CASES.

The Index to Cases published quarterly in this Journal has proved of so much practical utility to the profession, that we have been engaged in considering whether further improvements might not be introduced; and we hope that its next issue will be found still more satisfactory. *Inter alia*, we propose to add references to the cases in the "Law Reports," &c., and generally to make the Index as complete as possible. Meantime, we should feel obliged to subscribers for any suggestions they may offer on the subject.

CHIEF JUSTICE MORRIS AT ROME.—Chief Justice Morris, who with his wife has been spending part of his holidays in Rome, has had a private audience of Leo XIII. before leaving for Athens and Constantinople.

## ON BANKRUPTCY.

The following is the text of a paper, by Mr. W. H. S. MONCK, the learned Chief Clerk of the Court of Bankruptcy, read before the recent meeting of the Social Science Congress at Nottingham:—

Although my experience of bankruptcy has not been a very long one, it has enabled me to arrive at some conclusions on the subject which, in view of the contemplated changes in the law, I think it desirable to bring before you. I am aware that conclusions drawn from the present state of the law and practice of bankruptcy in Ireland cannot be applied to England without qualification; but, discontent with the existing conditions of affairs is as prevalent on one side of the Channel as on the other, and the ordinary complaints, moreover, appear to be of a very similar character in both instances. I may add that Irish creditors have given a practical verdict on the merits of the English system which is not without its significance. The Irish Act of 1872 gave the creditors the option of having the bankrupt's estate administered by a Trustee and Committee of Inspection instead of the Official and Trade Assignees, but they have hardly availed themselves of this option in one case out of fifty. The chief defects of the system, however, appear to exist equally in both countries, and, in my opinion, can only be remedied to a very limited extent by any amendment of the law or increased activity on the part of the officials. Organisation on the part of the creditors themselves would, I believe, accomplish more towards removing the evils complained of than all other remedies put together. These evils may I think be classed under three heads, viz.:—1, Imperfect realisation of the bankrupt's estate (including the acceptance of inadequate compositions, whether in bankruptcy or arrangement); 2, Excessive costs in collecting and distributing the bankrupt's assets; and 3, Errors in distribution, including the admission of debts not really due (whether wholly or in part), and proportional overpayments to particular classes of creditors. A fourth head—Delay—might perhaps be added. For all these defects the best remedy would, I think, be afforded by the formation of what I would term a Creditors' Association, considering the number of persons in this Kingdom who live by selling goods on credit and who often depend on payments made by their debtors to meet their own obligations. There should be no difficulty in founding such an association provided that the public was satisfied of its utility; and experience seems to prove that without such a central organisation the creditors of the individual bankrupt or arranging debtor will hardly ever be found ready to act in concert. In fact, they are often unaware even of each others existence at the very time when vigorous and united action on their part is most requisite. The association ought, as I shall hereafter notice, to be made to a large extent self-supporting, but it would be a mistake to endeavour to render it *in itself* a commercial success. Its object should not be to realise a profit but to render bankruptcies and arrangements more productive. I shall point out briefly what it should seek to accomplish under each of the heads already enumerated, pointing out at the same time the amendments of the law which seem to me desirable. Before entering on this discussion, however, I may state that the amendment of the law should be one of the objects of the association. Its managers would soon become aware of the defects of the present legislation, and would be the most competent persons to point them out to Parliament or in many cases to the judges of the court; for under existing statutes the judges possess considerable legislative powers, exercisable by what are known as General Orders; and the improvement of our bankruptcy legislation by means of revised General Orders is not attended with the difficulty, delay, and expense that usually occurs in the amendment of the statutes.

The first defect in the present system which I noticed is the imperfect realisation of the bankrupt's estate. This, together with the cost of realising, often leads to the acceptance of insufficient compositions, the creditors

believing that a small or ill-secured composition is preferable to the administration of the estate in bankruptcy. Bankrupts' stocks as a rule sell for less than their intrinsic value. They are generally not of a very inviting character, and no one attends on behalf of the creditors to bid them up to a fair price. If there was an association willing to purchase them at reasonable prices, they would probably realise much more than at present without involving any pecuniary loss to the society. Again, the properties of bankrupts are often liable to mortgages, rents, or other charges, which make the trustee or assignees very cautious about interfering with them, especially if the funds available for making good the losses which may be occasioned thereby are scanty. Valuable interests are sometimes sacrificed through this timidity, and even where a sale ultimately takes place, I usually find that little or nothing has been received out of the premises during the interval between the bankruptcy and the sale, while head-rents, taxes, and interest have accumulated, and the premises have not improbably fallen into disrepair. An association willing to purchase mortgaged premises or leaseholds in which there is any interest, or to indemnify the trustee or assignees against the consequences of taking possession, would here prove of great utility to the creditors. The collection of debts due to the bankrupt is usually very incomplete, besides occasioning much expense and delay. An association willing either to purchase these debts, or to collect them at such a percentage as would on the average cover the expense of collection, would greatly increase the amount derived from this source. Questionable assignments of portions of the bankrupt's property, moreover, often pass unchallenged from want of funds to dispute them. An association willing to advance money for the purpose, to be reimbursed by a percentage on the property recovered, would often lead to successful efforts to set these transactions aside; and nothing would have a greater tendency to put an end to fraudulent assignments than the certainty that they would be disputed. Bills of exchange and promissory notes, too, might sometimes be taken up with advantage when the bankrupt was the drawer or indorser and the acceptor's name was good. It is sometimes very difficult to prevent banks from receiving (between dividends and securities) more than twenty shillings in the pound in respect of some of the bills held by them, and even where this is not the case, the additional sum that might have been received by pressing the acceptor is lost to the estate. As to insufficient or dishonest compositions, I have already noticed that a great check would be given to them by rendering bankruptcies more productive. But the association should not stop here. It should be a part of its business to watch arrangements and compositions, to hold proofs of debt and proxies for such creditors as were willing to pay a trifling charge for the purpose, and to turn every suspicious transaction into bankruptcy. When speaking of dishonest compositions or arrangements, I do not refer solely to those in which the sum offered is too small. In many cases the amount is sufficient, but is payable by promissory notes bearing either the name of the debtor alone or of the debtor together with some man of straw. In the interval between the resolution and the maturity of the notes the debtor or bankrupt makes away with his property and possibly absconds, leaving little or nothing for his creditors, or, to vary the programme, he pays some of the notes leaving the others unpaid, thus adding fraudulent preference to the fraudulent disposition of his assets. Indeed, the notes actually paid may be those payable to relatives or friends to whom nothing is really due, and whose names were placed on the composition list by a further act of fraud. On the proper mode of preventing this last kind of fraud I shall touch hereafter, but at present I will say that I think the Creditors' Association should set its face against all compositions payable by bills of exchange or promissory notes. The advantage to the creditor of a negotiable instrument with such names to it is seldom considerable, and when payment by instalments has to

be accepted, a cash payment made through the court—no creditor to receive anything until enough had been lodged to pay that instalment to all—seems to me the proper mode of liquidation. When the amount lodged was insufficient and bankruptcy did not supervene, the sum lodged should be divided rateably. This system would not, of course, dispense with the sureties (or surety) who might be bound to lodge enough money to cover one or more of the instalments in case the principal neglected to do so, and banks would soon find means of advancing money on the security of the instalments to be lodged, together with the personal undertaking of the borrower. That the promissory note system is eminently unsatisfactory will, I think, be admitted; and the proportion of these notes which are ever negotiated, in Ireland at least, appears to be very small.

With regard to the realisation of the bankrupt's estate but little amendment in the law seems requisite. Greater facilities for selling mortgaged property should, however, be given to the assignees or trustees, and it should be provided that the landlord or mortgagee could not require them to pay any larger sum than the net amount received by them out of the premises until a demand of possession had been made and compliance therewith refused—such possession, if given to the landlord, to terminate the lease and liberate the assignees or trustee from all further or personal liability in relation to it. The assignees or trustee should, also, be empowered to compel any creditor to realise all collateral securities which he held, unless the person giving them was in substance a surety for the bankrupt, and to retain any dividends payable to him until these securities were realised. But, this latter point would be unimportant if the suggestion subsequently made as regards secured creditors should be adopted.

The second evil to which I referred is the large amount of costs and expenses incurred in bankruptcies. Here the association could not effect so much as in the former instance, and its chief utility would perhaps consist in calling the attention of the judges to the defects in the General Orders, and of Parliament to the defects in the existing law. In my capacity of taxing officer, I have been struck with some of the anomalies of the scale of solicitors' costs—anomalies which, I believe, exist equally in England. Thus, when the act of bankruptcy is absconding, sittings for the examination of the bankrupt are fixed and advertised in the usual way; a summons requiring his attendance for examination is issued with full knowledge that it cannot be served—or perhaps it is served on some member of his family, and an affidavit of service duly sworn and placed on the files of the court though the man is 1,000 miles away. The sitting duly comes off; the bankrupt is called and does not appear; an order is made up and filed solemnly recording this fact; and the solicitor, in addition to the various preliminary charges, becomes entitled to the highest fee that is allowed for any attendance at court! The higher or lower scale of costs depending on the estimated assets not the amount actually realised, the taxing officer is compelled to follow this estimate even when its error is manifest; and it is even contended that when the bankrupt has made no estimate of his assets (which often occurs in the very poorest cases) the higher scale becomes *ipso facto* applicable! Besides, however, calling attention to anomalies of this kind there is one thing which the association—if allowed a *locus standi*—could accomplish directly. It could employ an agent to attend on the taxation of solicitors' costs and see that these were reduced to their legitimate figure. My own experience has satisfied me of the difficulty of taxing costs properly when there is no real opposition. An energetic opponent almost always detects errors and overcharges which would otherwise have escaped me; and it may be remembered that a solicitor does not suffer either in purse or in reputation by including in his bills of costs overcharges, or charges for work not done at all, which, if inserted in an ordinary tradesman's bill, would be regarded as monstrous. The object of the association,

however, should not be simply to cut down the solicitors' charges. One who has really done his utmost for the benefit of the estate should be dealt with liberally, while the mere cost-maker should experience no mercy. The solicitor should be fairly remunerated for every real service conferred by him in realising the estate and keeping down the claims against it; but the largest bills of costs are sometimes furnished in cases where, though all the forms permitted by the court have been exhausted, there has been positive neglect as regards everything of practical value. I may here remark that, in my opinion, the solicitor's remuneration for business transacted out of court—in collecting debts, for instance, and otherwise realising the bankrupt's estate—should be made more largely dependent on results than at present. The higher and lower scales of costs, moreover, should be extended to charges and sales by mortgagees, or else the costs of charge and sale should, in the absence of special circumstances, be limited to a percentage on the proceeds. Solicitors, moreover, are not the only persons whose charges require to be watched and moderated. Auctioneers, valuers, accountants, caretakers, and employees of every kind (to say nothing of sheriffs) frequently seek to retain, or to exact, more than they are entitled to, and sometimes succeed. If such charges were subjected to the scrutiny of an agent of the association, they might often be reduced. In this respect the Irish system of official assignees seems to me preferable to the trustee system adopted in England. The official assignee must vouch all his accounts before an officer of the court at a public sitting held for the purpose, and this officer is bound to disallow every item which he regards as improper. Having been passed as correct by the officer, there is a further public audit of the account before the judge. At either of these public sittings an agent of the society could attend and object to any item which seemed excessive or improper.

This last remark applies equally to the third defect which I noticed in the present bankruptcy system—errors in the distribution of the funds. No debt is admitted in an Irish bankruptcy until it has been brought before a judicial officer at a public sitting at which any interested party can object. The presence of an agent of the association at these meetings would, however, prove of great use to the presiding officer, who at present has often to start the objection himself, and, no doubt, in some cases fails to do so; but the great utility of such an agent would be in arrangements, where the officer is in fact bound to admit any debt returned on the debtor's statement of affairs, unless some interested party objects to it. It has been held that the arranging debtor cannot get his certificate of conformity without providing a composition for all the creditors returned on his statement of affairs whose debts have not been judicially disallowed, and it would evidently be unjust to deprive him of his certificate because some of his (alleged) creditors do not choose to bring forward their claims for investigation before the court. A formal objection by an interested party would compel them to do so, when, I believe, it would often appear that the debt could not be proved, or at least could not be proved for the full amount returned in the debtor's statement. Here, however, I think an alteration of the law is desirable. The arranging debtor should be held to have satisfied all his obligations when he has paid the composition to all creditors whose debts have been proved or admitted in the matter; and if a creditor having notice of the proceedings neglects to take the proper steps to have his debt proved or admitted, the consequences of his neglect should be the same as in bankruptcy. With this alteration in the law, there is no reason why proofs and claims should not be scrutinised with as much care in arrangements as in bankruptcies; and the court should have power to increase the amount of the composition, in case it appeared that the amount of debts placed on the composition list was materially less than those returned on the statement of affairs. An arranging debtor could then gain little by returning sham debts as due to his friends on his statement of affairs; more especially if



all proofs and claims were investigated, and as far as possible disposed of, before a resolution accepting or rejecting the composition was arrived at. Arrangements in fact should be in all respects assimilated with compositions after bankruptcy.

Another serious error in distribution takes place as regards secured creditors, using that phrase in its widest sense for creditors who have any other mode of procuring payment of the debt except the ordinary dividend out of the bankrupt's estate. Here, I think, an amendment of the law is requisite, and I will briefly indicate what I think that amendment ought to be. I would, as I have intimated, treat every creditor who has any other remedy for any part of his debt as a secured creditor, the only exception being when the other person who (or whose property) was liable could prove against the bankrupt's estate for any payment which he might have to make. This would be the case, for instance, if the other person was a surety for the bankrupt, or if the bankrupt had given him a bill or promissory note for a debt due by the bankrupt, which he afterwards discounted. But wherever the liability was not of this character—wherever payment, if made by the other party, would really go to relieve the bankrupt's estate—I would require the secured creditor to make an estimate of the value of his securities, and to prove against the bankrupt's estate for the balance only. This estimate should be subject to the same provisions as regards redemption and realisation with the estimates of the value of securities made under the present system; but, I would allow the creditor to amend his estimate at any time before the final dividend, on satisfying the court that any depreciation which had taken place in the value of the securities was not the result of his own default. With this change in the law, a society willing to purchase securities at their estimated value (when satisfied that they were worth it) would often prove a great boon to all parties concerned. The amendment of the law, however, is what seems to me really essential. Using the phrase "secured creditor" in its widest sense, I would only allow him to prove against the bankrupt's general estate for the amount which would be totally lost in case he did not prove, or which, if not proved by him, would be proved by some one else. Whether his security consists of a lien on the bankrupt's estate, or on some one else's estate, or in the personal liability of some one else, or in a right to a dividend out of some other estate seems to me immaterial. If the creditor can obtain full payment of his debt otherwise than by means of a dividend out of the bankrupt's estate, I would give him no dividend out of it; and if he can obtain payment of part of the debt otherwise than by means of the dividend, I would give him no dividend upon that part of it. I would, moreover, exclude any proof of debt upon a contract or covenant, the sole object of which was to secure a debt. A proof for the amount of the debt, less by the value of the security (if any), would suffice to meet all the ends of justice. It seems to me inequitable to permit a creditor to prove for the whole amount of his debt as unsecured, and at the same time for the value of a covenant by the bankrupt to insure his life in order to secure it. At all events, the creditor should be bound to apply the dividends, or the value of the covenant, towards keeping up the policy, and should give the estate credit for the increased value of the policy when the dividends were exhausted.

If this amendment of the law was adopted, it would render my next head of faulty distribution unnecessary—viz, payment of full dividends where only a part of the debt is due, the residue having been discharged otherwise than out of the bankrupt's estate after the proof of debt was admitted. Thus, the full amount of £100 is due on foot of a bill of exchange when proof is admitted, but is reduced to £25 before a dividend is declared by payments from other parties. The creditor receives his dividend on £100, which is really four times the rate at which the dividend is declared. It is true that he is not to receive more than twenty shillings in the pound in all; but there is, in fact, no machinery for

ascertaining whether he has or has not received more than that sum in respect of this particular bill, and it is plain that his dividend may be altogether in excess of those paid to the other creditors, even where the total payments fall short of twenty shillings in the pound. But, whatever becomes of the law on this point, every creditor who receives payment of any part of his debt from other sources should be bound to give information forthwith to the trustee or assignee, and some penalty should be imposed in cases where this information was withheld. Till this is done, the qualification which the judges introduce into their judgments—that the creditor is not to receive in all more than twenty shillings in the pound—is a mere salvo. The creditor is not bound to mark the payments made on account on his bills of exchange. Even if he did so, the person to whom the bill is produced, on payment of the dividend, probably has not at hand the information which would enable him to say whether more or less than twenty shillings in the pound had been paid; and if he had that information in examining a bundle of perhaps over 100 bills, the fact that one or two had been fully discharged would probably escape his observation. Payment of more than twenty shillings in the pound, in respect of one or more of a batch of bills, is not, I believe, an unusual occurrence; but I have not heard of an instance in which it was detected in the office of the Official Assignee. I am strongly of opinion not only that all payments, otherwise than out of the bankrupt's estate, should be forthwith notified, but also that the debt should be immediately reduced by the amount so notified, whether it is due on foot of a bill of exchange or otherwise.

Landlords are another class of creditors who seem to me unduly favoured under the present system. I would abolish the right of distress after bankruptcy unless the trustee or assignee accepted the tenancy. They might, on their acceptance, be bound to pay the rent in full, and to make good any breaches of covenant which had occurred; but if they disclaimed and gave up possession of the premises, I would leave the landlord to prove for his rent, and for any other losses which he had sustained, as an ordinary creditor. The question is sometimes complicated by the existence of a mortgage. In that case, I would allow the trustee or assignee to serve a notice on the mortgagee, requiring him either to take possession and pay the rent, or else to give up his mortgage—the adoption of the former alternative rendering him subject to the ordinary liabilities of a mortgagee in possession. Leases often contain clauses against alienation without the landlord's consent. I would enable the Court of Bankruptcy to dispense with these clauses in case such consent was unreasonably withheld. Clauses of forfeiture in case of bankruptcy are likewise not infrequent. Now, since the landlord can require the trustee or assignee, within a limited time, either to accept the lease and pay the rent in full, or else to give up the land—thus affording him all the benefits of a forfeiture—there is no rational ground for a forfeiture on bankruptcy, and the court should be at liberty to relieve against it. Every device for rendering the bankrupt's property unavailable after adjudication should be discouraged. The landlord should not be permitted (even under the pretext of a contract for valuable consideration) to assist in defrauding the creditors. He has in justice a right either to his rent, or to his land and dividend; but, I cannot see that he has a right to anything more. For example, A. sells goods on credit to B., who stores them on land which he rents from C.—which is no unusual case. B. becomes a bankrupt. Where is the justice of paying C. in full, while A., out of whose goods the payment was made, receives a small dividend, or perhaps nothing at all? The law of distress has been already limited in the case of bankruptcy. If natural justice is consistent with its limitation, why not also with its abolition? I may add, that where a distress is made before bankruptcy I would place it on the same footing with an execution for the like amount.

Another species of faulty distribution consists in

payment of dividends to money-lenders who have swollen their real demands by interest at exorbitant rates, and even by compound interest. Here, also, an amendment of the law is requisite, though something might be effected if an agent of the association was present to expose the nature of the transaction whenever such a claim was brought forward for proof. Persons in difficulties often borrow money at the most extravagant rates, the lenders being well aware that the risk of bankruptcy is considerable. I would propose that interest at a rate exceeding 10 per cent. should not be allowed on any debt until all the other creditors had been paid in full, and that compound interest should likewise be disallowed. Nor would I permit this rule to be varied although bills of exchange had been obtained, or judgments entered up in respect of the interest in question. Such an enactment might lessen the amount of these loans, but that would, I think, be a step in the right direction. Loans at very high rates of interest seldom enable a man to right himself, and when they fail to accomplish that object they almost always diminish the dividends which are paid when bankruptcy finally supervenes. It is time that we regarded bankruptcy as one of our institutions, and looked on devices for unduly deferring the catastrophe as forms of concealed fraud. When a man cannot meet his liabilities in full, and has no prospect of being able to do so, he should squander no more of his creditors' money, and should proceed without delay to make a fair distribution of what he has left. Nor should he make any payment in full whether under pressure or otherwise, for against such pressure the court of Bankruptcy can, and will, protect him, if appealed to for the purpose. This protection, however, is now granted in arrangements, only on condition of the arranging debtor paying the costs. It is otherwise in bankruptcies. I would here, also, assimilate the law in the two cases, and remove all hindrances to the complete protection of deficient estates. The arranging debtor should of course satisfy the court that the estate was really deficient. In scrutinising proofs of debt and other claims, none require greater care than judgments obtained a short time before the failure—especially when obtained by default. Such proofs could, even under the existing law, be impeached by the agents of the association; but I should be disposed to enact that, whenever a judgment has been obtained by default within six months before the filing of a petition in arrangement or bankruptcy, the creditor should prove upon the consideration for the judgment. Where that was established—for the full amount—I would allow him to add the costs of the judgment to his claim, but overmarking the judgment should be punished by the loss of the costs.

Lastly, the association might accomplish a good deal towards preventing unnecessary delay in the realisation and distribution of the bankrupt's assets. What is called the law's delay is very frequently the solicitor's delay; but solicitors' delays are largely increased by the present scale of costs, which renders it quite a laborious undertaking to draw them in the first instance, and to tax them in the second. I had lately before me a bill of costs containing 3,650 items, the average amount of an item being under five shillings. As I can only devote one day in the week to the taxation of costs, the time which the solicitor required to vouch the various items comprised in the bill in question may be imagined. A simpler scale of costs, accompanied with fines for overcharges, would reduce the labour of the taxing officer by nine-tenths, and that of the solicitor in preparing and vouching his bills of costs by at least one half; and it may be remarked that when there is any pressure of business in a solicitor's office the task of drawing a bill of costs, comprising all the multifarious items included in the present scale, is naturally deferred for a more convenient season. Independently of this, however, an association whose agents were constantly on the watch would abridge the duration of the present proceedings in various ways. Trustees, assignees, solicitors would all be anxious to avoid being brought before the court

on a well-founded charge of delay, and the purchases made by the association, especially those of outstanding debts, would enable estates to be wound up at an earlier period.

#### AUDIENCE OF SOLICITORS UNDER THE PREVENTION OF CRIMES ACT.

On the 20th inst. Mr. David Lynch, Barrister-at-Law, opened an inquiry in the County Courthouse, Tralee, into the applications of persons in the county of Kerry for compensation under the 19th section of the Prevention of Crimes Act.

The case of Patrick Murphy having been called on, *G. Raymond*, stated that before the application was gone into he had a preliminary objection to make. He objected to the appearance of any solicitor in these cases, the words of the Act being that the parties should be represented by counsel.

*Mr. J. W. Roche*, solicitor, who appeared for the applicant, hoped the Commissioner would give a wider interpretation to the word "counsel" than that insisted upon by Mr. Raymond. He submitted that the word "counsel" did not necessarily mean barrister, but meant any practitioner who gave legal advice or assistance to a suitor.

*Mr. Lynch* pointed out that under the Petty Sessions Act a counsel was a person who had been called to the Bar, and if it had that meaning, then how was he to give it a different interpretation under the present Act, which stated that "The parties should be heard personally or by counsel." It appeared to him that the word "counsel" meant a barrister either at the inner or the outer Bar.

*Raymond*.—A solicitor appearing in this way incurs a serious liability.

*Mr. F. O. Downing*, solicitor, who was concerned for a number of applicants, regretted exceedingly that this objection had been made by a member of the Kerry Bar. As long as he had the honour of practising as a solicitor in Kerry the greatest amity and good feeling had existed between the different branches of the profession. In any action the solicitors intended to take at that investigation they never meant to derogate from the rights or privileges of the Bar. They merely intended to vindicate what they believed to be their own rights. They were of opinion that the Legislature never contemplated that in every small case of this description the parties should be put to the serious expense of bringing counsel down from Dublin to represent them. Such an interpretation of the Act would involve the greatest hardship to the claimants and the ratepayers interested in opposing the application. The word "counsel" might mean a barrister, but he submitted that there were no words in the section excluding a solicitor from appearing at the investigation. He was informed that at Ballinasloe *Mr. Byrne, Q.C.*, who had been deputed to hold a similar inquiry, decided that solicitors could appear before him; and he therefore asked for the sake of uniformity and for the sake of the public interest that in the exercise of the discretion which he had, and which it was his duty to interpret liberally, he should not exclude the professional body of whom he (*Mr. Downing*) happened to be the senior, from appearing before him. If he did his decision would cause serious hardship to the parties interested and great dissatisfaction to the public generally.

*Mr. Neligan*, solicitor, concurred in the observations of *Mr. Downing*.

*Mr. J. P. Broderick*, solicitor, who was also concerned in a number of cases, said he should regard it as the most extraordinary and unmitigated slight upon the profession to which he had the honour to belong if the word "counsel" were held to bear the limited meaning which was sought to be put upon it by interested members of the Bar. At the last assizes Judge Barry said he considered it a great misfortune that Acts of Parliament were framed in England, because English draftsmen were supremely ignorant of the requirements

of this country; and in that observation of his lordship he entirely concurred. He had received very large fees from the parties for whom he was concerned on the express assurance that he should not employ counsel, because his clients did not believe in counsel, nor had they any confidence in them.

*Mr. B. O'C. Horgan* endorsed the sentiments of the preceding speakers, and pointed out that, as his clients were unable to fee counsel, it surely could not be expected that he should fee them out of his own pocket.

*Raymond* entirely reciprocated the kindly feelings referred to by *Mr. Downing*, but at the same time he was bound to stand up for the rights of his order, and he therefore called upon the Commissioner to construe the section strictly.

*Mr. LYNCH* said he had listened throughout the case to the very able arguments addressed to him. He had nothing to say to questions of hardship or inconvenience. He had merely to determine the meaning of the Act of Parliament under which he was sitting. The words of the Act were that "the parties shall be heard personally or by counsel," and his sole duty was to say what was the meaning he attached to the word counsel. In his opinion the word counsel had a well-defined and well-understood meaning, namely—a gentleman who had been called to the Bar and who acted on behalf of clients. Having heard that this point was to be raised he looked into the several Acts of Parliament in which the word counsel was used, and he found, for instance, that counsel were excluded from practising in registry courts in Dublin, whereas solicitors were allowed to practise. Questions of hardship should be addressed to the Legislature and not to him, as he said he had only to determine what was the meaning to be attached to the word "counsel." In his opinion it meant a gentleman who had been called to the Bar, and not a solicitor.

*Mr. Broderick*.—Then we decline to instruct counsel in any of these cases.

*Messrs. Downing, Broderick, Neligan, Roche, M. J. Horgan, R. Huggard, B. O'C. Horgan, and C. Morphy*, the solicitors engaged in the several cases then left the court.

*Mr. LYNCH* decided, in consequence of this incident, to proceed first with the cases in which counsel had been instructed before the investigation opened.

In the same Court, on the 21st inst.,

*Mr. W. T. Neligan*, solicitor, applied to the Chairman for permission to act for *Thomas Clifford*, whose case was shortly to be taken up.

The CHAIRMAN said that yesterday morning, immediately after the commission opened, when the first case was called on—namely, that of *Patrick Murphy, junior*—*Mr. Raymond*, counsel, rose and objected, and said that he (Chairman) had no jurisdiction, under section 19, sub-section 1, of the Prevention of Crimes Act, to hear a solicitor. He called upon him to give an interpretation of the words of the Act of Parliament. He had the question very fully argued and discussed between the counsel and the solicitors present in court, and *Mr. Raymond's* application amounted to this to him—Was he entitled, by the Act of Parliament under which he sat legally to hear a solicitor advocating on behalf of either party? He carefully considered the words of the Act of Parliament, and also the provisions of other Acts of Parliament, and he came to the conclusion that he had no discretion whatever in the matter when the Act said that parties would be heard personally or by counsel. Having, therefore, come to the conclusion that he had no discretion, he, with very great reluctance—for he believed he was coerced by the Act of Parliament—agreed not to hear solicitors. Of course, having ruled that yesterday the same ruling should be made again to-day.

*Mr. Neligan*.—Yes, but in case that counsel withdraw their objection?

The CHAIRMAN said that certainly there was no choice on the part of the counsel as to the solicitors in a ques-

tion which was ruled on by the court at the commencement of the investigation. He was asked to give an interpretation of the Act of Parliament, and he gave it in the only way which he believed he could give it, and he did not see any way to go back from any interpretation which he believed to be right.

*Mr. Broderick*, solicitor, said that they had held a conference of the profession to-day, and that they (the solicitors) had come in the belief and in the confidence that the objection would not be made to-day, otherwise they would have adhered to the resolution yesterday to leave the court and not appear at all, as they considered it an unmerited slight upon their branch of the profession.

The CHAIRMAN.—You don't mean to say that I have passed any slight upon your profession?

Several Solicitors.—Oh! no, certainly not.

*Mr. Broderick*.—I would disclaim any such thing. It is entirely in this extraordinary Act of Parliament.

*Raymond*.—No slight has been passed by anyone; it was in consequence of the Act of Parliament it was necessary to make that application. There has since been an application by counsel to withdraw, but there is no doubt that counsel only should be heard, except the parties personally. The ruling which the court made yesterday is quite correct. I am very sorry the master could not be arranged. It is not merely, as we said before—

The CHAIRMAN.—It is useless to discuss it further.

The solicitors again left the court, and the applicant decided to go on with the case.

In the same Court, on the 33rd inst.,

*Mr. Neligan*, solicitor, said that the members of his profession had given the matter involved in the ruling of the court on Friday last their most careful attention, and they were glad to find that the public opinion of the country had amply justified the course they had adopted. They felt that they could without loss of dignity or self-respect, reconsider their position. They had done so; and having regard to the public interests involved in this Act of Parliament, and its serious importance to individuals and localities, and in fact to the due administration of justice, they thought that having vindicated their position, they ought no longer to be an obstacle to a more effectual working of the Act; and they were now, as they always had been until the excuse was raised, prepared to instruct barristers in such cases as the parties desired them, always maintaining their own right to appear as ratepayers, without counsel, before the investigation.

After some further discussion, the subject was allowed to drop.

#### PRESENTATION TO MR. HENRY HUMPHREYS.

The Associated Clerks of Petty Sessions in Ireland, at their annual meeting, paid a graceful compliment to their president, *Mr. Henry Humphreys* of Cork (author of a work on "Justices of the Peace"), by presenting to him a handsome silver tea and coffee service, value for 120 guineas, in token of their esteem for his personal character and worth, and as a grateful recognition of the many benefits they have derived from the measures successfully promoted by him for their advancement.

#### LORD SALISBURY ON POLICE INTERROGATORIES.

The Marquis of Salisbury presided at the Hertford Quarter Sessions on the 16th inst., and, in delivering the charge to the grand jury, said there was one circumstance which came out in two of the cases on which he should like to make an observation. It appeared that in two of the cases some of the evidence consisted of statements made by the prisoner to the police, in one case in reply to what seemed to be almost a cross-examination on the part of the policeman, and in the other in reply to a challenge from the officer, and in both cases the policemen were in plain clothes.

Evidence of this kind must form part of the material on which a jury must base a decision, and it could not be excluded from a court of justice. He did not wish to attach any blame to the policemen, who no doubt acted in accordance with what they believed to be their duty; but he drew attention to it because it appeared to him that there was a danger of a practice growing up which was inconsistent with the principles with which the law was administered in this country. The law declared that a prisoner should not be examined as to his innocence or guilt, except in court. With the merits or demerits of this rule they had no concern, but surely while that was the rule, it was inconsistent that a private cross-examination should take place. If it were desirable—and he would give no opinion as to whether it were or were not—that prisoners should be examined, at least it should be done in open court, before judges and juries, and with the assistance of counsel.

#### ENGLISH, SCOTCH, AND IRISH JUDGMENTS.

Among the statutes of importance to the legal profession passed last session is the Inferior Courts Judgments Extension Act, 1882 (45 & 46 Vict., c. 81), which was printed in the September number of the *Law Journal Reports*. It deals with a subject which occupies the attention of Parliament less frequently than it ought—namely, the closer association of the three kingdoms in legal administration. Ireland has laws based on the same principles as the laws of England; Scotland is a part of the same island, under the same Crown and Parliament, and all three possess the same ultimate Court of Appeal; and yet the law Courts of each look upon the Courts of the others as foreign Courts. The attitude of Scotch lawyers towards English law is not unnaturally that of some suspicion. They are jealous of the legal system under which they were educated, and are inclined to suspect designs on the part of their more powerful neighbour to swamp their own jurisprudence in his own. It would, no doubt, be a great advantage if the three kingdoms had but one system of law between them; but if an assimilation took place, there is no reason why full weight should not be given to those points in which the Scotch differs from the English law. As things stand, it was not till 1868 that judgments in the Courts of one of the sister kingdoms had any validity or recognition in the Courts of the others. It was necessary in England to bring an action on a Scotch judgment just as on a French or an Austrian judgment. A system by which the judgments of the superior Courts of one of the three kingdoms might be registered in the others was established by 31 & 32 Vict., c. 54. Inferior Court judgments were, however, left as before. Probably Scotland lost most by this omission, because her inferior Courts have a larger jurisdiction than those of her neighbours. It was, probably, for this reason that no opposition came from the quarter whence alone it was possible to the bill, which is now an Act; but the Act, as we shall see, is disfigured by some provisions which can only be accounted for by the existence of some international jealousy unworthy of any one of the three countries involved.

The first nine sections of the Act require little more than statement without comment. Judgments obtained in inferior Courts in England, Scotland, or Ireland are to entitle the judgment creditor to a certificate of the officer of the Court on payment of a fee. This certificate may be registered in an inferior Court in either of the other two kingdoms. Process may then issue in the new Court as if the judgment were one of its own. At this point we come upon one of the limitations placed on the operation of the Act. The process is only to be against the "goods and chattels" of the judgment debtor. His land cannot be taken, neither can his person. This limitation cannot, of course, be justified on principle, and is an illustration of a weakness in the British Parliament to make to bites of a cherry. In ten years' time or so, some case of extreme hardship will occur, when another Act will be passed, extending the

present Act to executions against land. It is noticeable that the Act of 1868 was not limited to execution against goods, but gave the registered judgment the same effect as a judgment of the Court in which it was registered; so that the present limitation is all the more glaringly unnecessary. Section 9 provides that no judgment shall be registered in an inferior Court which amounts to a greater sum than that over which the Court has jurisdiction. Scotch inferior Court judgments, which may be prevented, under this provision, from registration in English or Irish inferior Courts, may, however, be registered under the Act of 1868 in the superior Courts. A similar privilege is not given to English and Irish judgments, probably because it was supposed that the jurisdiction of English and Irish inferior Courts would always be coextensive, and those of Scotland more extensive than either. Changes, however, may take place. It would have been well to make the Act more elastic and capable of surviving any such changes.

Section 10 evidently contains the main difficulties of the Act. It provides that "this Act shall not apply to any judgment pronounced by any inferior Court in England against any person domiciled in Scotland or Ireland at the time of the commencement of any action, unless the whole cause of action shall have arisen, or the obligation to which the judgment relates ought to have been fulfilled, within the district of such inferior Court, and the summons was served upon the defendant personally within the said district." Similar provisions relate to the judgments in Scotland and Ireland, and a *certiorari* or similar process in a superior Court is given to enable registration to be prevented. It is useless now to discuss the smallness of the policy which was unable to allow that the Courts of each of the three kingdoms might be trusted to see that judgments were not obtained without due notice to the defendant, but it may be pointed out that the usefulness of the Act is largely impaired by this provision. Take the case of the judgment of an English inferior Court which it is proposed to enforce in Scotland. It is not enough that the creditor has a judgment; he must have a judgment of peculiar sanctity. He must consider whether the defendant was, when the action was commenced, domiciled in Scotland. If so, the judgment is useless unless two circumstances accompany it—(1) that the whole cause of action arose in the district, or the obligation ought to have been fulfilled in the district; and (2) that the summons was personally served on the defendant within the district. To give an illustration. If a Scotchman goes away from Brighton without paying his hotel bill, he cannot be effectually sued in the Brighton County Court unless he can be served within the Brighton district. This limitation as to personal service goes far to nullify the Act, which, moreover, brings into fresh use the very inconvenient test of domicile—one of the most difficult of questions to decide, and one which ought not to be employed as a test. It will never be safe to assume that an Irishman or a Scotchman is not domiciled in those countries. The Irishman may be an absentee landlord, and the Scotchman frequently retains some interest in the soil of his birth. Moreover, a man may have two domiciles; and if one of these is not English it is of little use to obtain a judgment in an English County Court with a view to registration. Of course, if a judgment to which the Act does not apply is registered and execution issued, the creditor will be guilty of a trespass in addition to exposing his proceedings to the *certiorari* allowed by the Act.—*Law Journal*.

JUSTICE MAULE was singularly dexterous in picking locks, and which he could not only open but close again, with no other appliance than a stout piece of wire. He had acquired the art by the frequent loss of his keys when at the bar. He used to tell the story how upon one occasion he astonished a country locksmith who had been called in and pronounced a portmanteau beyond his skill, and which the judge opened with ease.

CONDITIONS OF SALE.

Mr. E. C. Ellis writes as follows to the *Law Times* :—  
 "In response to your invitation to your subscribers to offer suggestions on the proposed *Law Times* Conditions, I venture to make the following observations as to the deposit and memorandum of agreement :—By condition 3 it is provided that the purchaser shall immediately after the sale pay to the vendor or his solicitor the deposit. In your observations on the memorandum you state that the memorandum can either take the form of an agreement between the parties or of an acknowledgment by the purchaser with an agreement to complete, and a ratification by the auctioneer as agent for the vendor, and you suggest that the latter form is preferable. The form of memorandum, however, given by you applies to the case of the vendor's solicitor receiving the deposit and confirming the sale, both of which he is expressed to do as agent of the vendor. Now, grave objections appear to me to present themselves to the use of the word 'agent,' either as applied to the solicitor or the auctioneer. In the case of *Edgell v. Day* (18 L. T. Rep. N. S. 829) it appeared that E. instructed the defendant, a solicitor, to sell certain real estate. By the conditions of sale the deposits were to be paid to the defendant as 'agent of the vendor.' The defendant attended the sale, and received the deposits, giving receipts in which he described himself as 'agent of the vendor.' E. having demanded the deposits, the defendant claimed to hold them as stakeholder till the completion of the sale. In an action by the executrix of E. to recover the deposits and interest at 5 per cent. it was held that the defendant was a mere agent, and, as such, was bound to hand over the deposits to his principal, and, having failed to do so, was liable to pay interest at 5 per cent. during the time that the money was in his hands. The case of *Harrington v. Hoggart* (1 B. & Ad. 577) was cited, being the case of an auctioneer, in which Lord Tenderden was represented to have expressly said that if the auctioneer had been an agent he would have been liable. It seems, therefore, that a solicitor signing the form of memorandum proposed in your article would be liable to hand the deposit over to the vendor whether the purchase were completed or not, and that a similar result would obtain in the case of an auctioneer. I would suggest, therefore, that for the word 'agent,' 'stakeholder' should be substituted in reference to the receipt of the deposit, and would submit, with great deference, for your consideration, the following form of memorandum which I invariably make use of myself in sales by auction :—

" MEMORANDUM.

"I, of , do hereby acknowledge that at the sale by auction this day of 18 , of the property mentioned in the within particulars, I was the highest bidder for lot , and was declared the purchaser thereof, subject to the within conditions, at the price of pounds, and that I have paid the sum of pounds by way of deposit and in part payment of the said purchase money to Messrs. as stakeholders, and I hereby bind myself, my heirs, executors, and administrators, to pay the remainder thereof, and to complete the said purchase according to the aforesaid conditions.

	£ s. d.
"Purchase money . . . . .	. . . . .
"Deposit . . . . .	. . . . .
"Balance . . . . .	. . . . .

"As agents for the vendor, we confirm this sale, and as stakeholders acknowledge to have received the deposit above mentioned.  
 "Abstract to be sent to ."

PARLIAMENTARY PAPERS.—The proceeds of the sale of Parliamentary papers in the last financial year was £3,019 10s. 11d.

THE LAW OF LIBEL.

Mr. T. Hughes, Q.C., Judge of the Nantwich County Court, on the 11th inst., gave an important decision on the law of libel by deciding that an editor might alter an advertisement to prevent a libel. An application had been made by Dr. Mackie, of the *Warrington Guardian*, for a small account, the payment of which had been refused on the ground that he had changed "machinations" to "doings." This was brought forward as a test case and decided in favour of the newspaper.

TEXT-BOOK ADDENDA.

[From the *Law Journal*.]

*Buckley on the Companies Acts (3rd Edition) 169.*

When the Court is satisfied that the business for which a company was formed cannot be carried on, a winding-up order will be made, though the company is not insolvent, and against the wishes of a majority of shareholders (*In re Haven Gold Mining Company*, 51 Law J. Rep. Chanc. 242)—C. A.

*Partition Act, 1868, s. 8.*  
*Shelford's Real Property Statutes, 748.*

Where, under an order made in a partition action during the infancy of parties entitled, land has been actually sold, such land will thenceforth devolve as personalty (*Mordaunt v. Benwell*, 51 Law J. Rep. Chanc. 247).

*Sugden on Powers, 829.*

An agreement by trustees of a settlement to lease the property—"the lessee to do the necessary repairs"—was held within a power to lease to any person who should improve or repair the property, or covenant to do so [*Doe v. Withers*, 2 B. & Ad. 896; 1 Law J. Rep. K. B. 83 questioned] (*Truscott v. Diamond Rock Boring Company*, 51 Law J. Rep. Chanc. 259)—C. A.

*Hodges on Railways, 130.*

Where directors of a railway company, whose borrowing powers were exhausted, raised a loan by means of a transaction which was in effect a mortgage of rolling stock under the guise of a nominal sale, in an action against the company a defence that the transaction was *ultra vires* was held good at law (*Yorkshire Railway Wagon Company v. Maclure*, 51 Law J. Rep. Chanc. 253).

APPOINTMENTS AND PROMOTIONS.

NOTA BENE.—Information intended for publication under the above heading should reach us not later than Friday morning in each week, as publication is otherwise delayed.

Mr. Alfred C. Wallace, solicitor, has been elected Town Clerk of Limerick.

Mr. H. Story has been elected Clerk of Petty Sessions for Monasterevan.

Mr. N. Taylor has been elected Clerk of Petty Sessions for Fintona.

Mr. James M. Lowry, B.A., has been promoted to the position as a First Class Clerk in the Consolidated Record and Writ Office, vacated by the decease of Mr. R. W. Buchanan, M.A.

BOOKS RECEIVED.

*A Collection of Concise Precedents of Wills. With Introduction, Notes, and an Appendix of Statutes.* BY CHARLES WEAVER, B.A. (T.C.D.). London: Stevens and Sons, 119 Chancery-lane. Law Publishers and Booksellers. 1882.

*The Solicitors' Diary, Almanac and Legal Directory, 1883, &c.* Revised by H. S. BOND, Esq., of the Solicitors' Department, Inland Revenue Office, Somerset House. Thirty-ninth Year of Publication. London: Published by the Proprietors, Waterlow and Sons, Limited, 95 and 96 London-wall.

## CORRESPONDENCE.

*Letters and communications intended for publication, and addressed to THE EDITOR, 33 Upper Sackville-street, Dublin, must be authenticated by the name of the writer, not necessarily for publication, but as a guarantee of good faith.*

## THE PRELIMINARY EXAMINATION.

TO THE EDITOR OF THE IRISH LAW TIMES.

SIR,—I fully agree with "Timon" that the "Preliminary" should be such an Examination as would ensure the possession of a fairly liberal education by members of our profession.

The *malapropisms* that I have heard from professional brethren's lips at times, and the gross ignorance at other times, have often made me blush for the profession, and causes me to long for a preliminary test of education which would obviate similar displays from the coming race.

Why not add Greek and French to the course, and some alternative subjects, such as Euclid, Algebra, English Literature, and Modern History?

I am not an advocate for a hard and fast list of subjects. Difference of taste and capacity should always be consulted, and the Oxford undergraduate plan adopted in examinations as far as possible.

I lately heard a solicitor explaining away a confusion of names borne by a certain individual in a certain case; and meaning to say that one of the names was an *alias*, he solemnly informed the bench that it was "merely an *alibi*."

For goodness sake let us have such an entrance examination as will prevent such *blunders* in future; else we shall have members of our learned (?) profession soon calling *alibis*—owing to association of ideas—by the familiar *alias* of *Arabia*.

Yours,  
A SOLICITOR.

TO THE EDITOR OF THE IRISH LAW TIMES.

SIR,—It is not my intention to endeavour to convince the person styling himself "Beneficium" that the preliminary examination is not a proper test of education, or that it is less difficult than the B.A. examination of the Royal University, as I would hardly be justified in asking you to give space to a letter having such an object. "Beneficium" appears to be an individual who, like a noted character in one of Byron's poems, has no great love for learning or the learned; and, if he thinks that the fact of his having passed the preliminary examination entitles him to consider himself properly educated, of course that is a matter entirely for himself; yet, notwithstanding his simulated indignation, I say that every word in my former letter is perfectly true, and the Incorporated Law Society must know that it is true, and I sincerely hope that they will give it their consideration, as there is no other subject they could give their attention to with more advantage to the profession.

Education is still advancing, and probably will continue to do so, if ignorance can find no abler advocate than poor "Beneficium."

25th Oct., 1882.

Yours  
TIMON.

## LAW STUDENTS' JOURNAL.

KING'S INNS.

MICHAELMAS SESSION, 1882.

## LEGAL EDUCATION.

GEORGE V. HART, Esq., King's Inns Professor of the Law of Personal Property, Pleading Practice, and Evidence, will deliver his Course of Lectures in the Lecture Room, at the King's Inns, on Tuesdays and Fridays, during the Michaelmas Session.

Professor HART will lecture during the Session on "The Law of Personal Property." The books to be referred to in connexion with the course will be "Williams on Personal Property," "Snell's Principles of Equity," and "Broom's Commentaries on the Common Law."

The First Lecture will be delivered on Friday, the 3rd November, at half-past Four o'clock.

The Lectures of the Professor will be delivered at Five o'clock, p.m., but all Students are to be in attendance in the Lecture Room at half-past Four o'clock, p.m.

The Course will contain Twelve Lectures, all open to the Public.

During Michaelmas Session, attendance on the Lectures of any one of the Law Professors in the University of Dublin, in addition to any other required attendance, will be accepted in lieu of attendance upon the King's Inns Professor of Constitutional and Criminal Law, and the Law of Torts, and such attendance followed by attendance on the King's Inns Professor when appointed, commencing in Hilary and ending in Easter Session, 1883, will be deemed an attendance on a continuous Course within the meaning of Rules X. and XIII.

"X.—A continuous Course of Lectures shall be delivered by each of the Professors, commencing in Michaelmas Term in each year, and consisting of Three Terms of Lectures. The number of Lectures in each term shall be Twelve, and the qualifying number to be attended by each Student shall be nine."

"XIII.—Each Student must attend three terms of the Lectures of each of the two Professors at the King's Inns, and of two of the three Professors in the Law School of Trinity College, Dublin, including at least one complete Course, commencing with Michaelmas Term, with each of two Professors. Attendance at Lectures may be commenced with any Term, but must extend over two years at the least. The Courses to be completed commencing with Michaelmas Term may be selected by the Student, and may be attended in the same year."

Extract from DUBLIN UNIVERSITY CALENDAR for 1882.

Monday, October 30th, International Law Lectures begin.  
Tuesday, October 31st, Civil Law Lectures begin.  
Wednesday, November 1st, Feudal and English Law Lectures begin.

By Order,  
JOHN D. O'HANLON,  
Under-Treasurer.

KING'S INNS, 19th October, 1882.

THE INCORPORATED LAW SOCIETY  
OF IRELAND.]

## SOLICITORS' APPRENTICES.

## NOTICE.

An Examination in the business of the last Session of Lectures will be held on *Tuesday, the 7th day of November, 1882*, for the convenience of Gentlemen who were unavoidably prevented from attending the regular Examination in last July. Any such Gentleman, if desirous of being examined, will please to send in, on or before the 30th day of October, instant, a written application to the Secretary's Office, addressed to the Professor of Law, stating the circumstances which prevented his attendance in July, with a Certificate from his Master that, having inquired, he believes the Apprentice's non-attendance was caused by the circumstances stated.

The Applicant will be afterwards apprised whether his attendance at the intended Examination can be permitted.

By Order,  
WILLIAM HICKSON, Professor.

Solicitors' Buildings, Four Courts, Dublin,  
19th October, 1882.

**LAW STUDENTS' DEBATING SOCIETY.**

The opening meeting of the 58rd session of this Society was held on Monday last. An address on the subject of the reform of real property law was delivered by the auditor, and among the speakers were Mr. Justice O'Hagan, Mr. Webb, Q.C.; Mr. Richey, Q.C.; and Mr. J. Gibson, Q.C.

**SOLICITORS' APPRENTICES' DEBATING SOCIETY.**

The opening meeting of this Society will be held on Monday Evening, the 18th of November, when the auditor, H. C. Weir, Esq., LL.B., will deliver the inaugural address.—M. J. Bannin, Hon. Sec.

**COURT PAPERS.**

**LAND JUDGES.**

Sittings for next Week so far as same are appointed.

Before the Rt. Hon. JUDGE FLANAGAN.

**THURSDAY.**

IN CHAMBER.—J. Trueman, confirm sale.—W. Deane, do.—E. A. Browne, allocate.

Before EXAMINER (Mr. Kennedy).

W. Ledwidge, rental.—P. Lacy, do.—J. L. Hackett, do.—Trustees R. M'Question, ditto.

**FRIDAY.**

**SALES IN COURT.**

H. LEADNER, . . . . .	3 lots.
S. OLDFIELD, . . . . .	3 lots.
J. KENNY, . . . . .	4 lots.
J. LENNON, . . . . .	2 lots.
ASSIGNEES W. H. PHILLAN, . . . . .	3 lots.
G. PAINÉ, . . . . .	2 lots.
H. J. LINDSAY, . . . . .	1 lot.
P. LEONARD, . . . . .	1 lot.

Before EXAMINER (Mr. Kennedy).

J. T. M'Donough, rental.—T. Kelly, do.—H. M'Kavly, ditto.

Before the Rt. Hon. JUDGE ORMSBY.

**THURSDAY.**

IN CHAMBER.—Administrator M. Montgomery, confirm sale.—W. Coleman, do.—G. Murdock, do.—M. R. Dalway, do.—G. V. Stewart, do.—J. Young, do.—E. Turner, ditto.

IN COURT.—S. A. Kelly, final schedule.—S. E. Goodwin, ditto.

**FRIDAY.**

Before EXAMINER (Mr. M'Donnell).

Rev. A. W. West, rental.—B. O'Malley, do.—J. Forde, do.—W. C. Josephs, do.—A. H. Irwin, do.—P. Rogan, do.—R. S. Armstrong, ditto.

**HIGH COURT OF JUSTICE.**

**CHANCERY DIVISION.—LAND JUDGES.**

*List of Petitions presented to the Land Judges in the month of August, 1882.*

DATE	TITLE OF MATTER	OBJECT OF PETITION	COUNTY	PROFIT RENT	SOLICITOR
Aug. 8	Robert Mecredy, owner; Robert White, petitioner	Sale	Galway	£ s. d. In owner's possession	H. and W. Stanley
" 4	William Cox, owner; Thomas Turner and another, petitioners	Receiver and sale	Limerick	1,198 0 10	Thomas Kift
" "	Richard Jebb Posenett and others, owners; George Posenett, petitioner	Sale	Antrim	214 9 10	James Torrens and Son
" 5	James Moorhead, owner; Hugh C. Kelly, petitioner	Sale	Belfast	115 0 0	Robert Kelly
" 11	Hugh MacTernan, owner; Catherine Nevill, petitioner	Sale and receiver	Kilkenny	248 4 2	H. G. Hinson
" 12	Arthur George Judd, owner; Charles Cooper, petitioner	Sale and receiver	Clare	541 7 10	Michael Larkin and Co.
" "	Bartholomew Ernis, owner; Owen Boyle, petitioner	Sale	Meath	88 15 4	Edward Caraher
" 17	Francis C. Peet, owner; Sarah Blake and another, petitioners	Sale and receiver	Kerry	808 8 4	Lane and Lane
" 28	Thomas E. Rotheram, owner; Emily Rotheram, petitioner	Sale	Meath	Not known	Dudgeon and Emerson
" 26	Robert James M'Mullen, owner; Belfast Discount Company, petitioners	Sale	Belfast	Not stated	M. A. Galvin
" 29	Charles L. Fitzgerald, owner; Michael C. C. Burks, petitioner	Sale and receiver	Mayo	8,858 9 9	James Campbell
" 80	Administrator of Murdock Campbell, owner; National Bank, petitioners	Sale	Queen's Co.	Not stated	Michael Larkin
" 81	John Doyle and another, owners; Frederick Barnett, petitioner	Sale	Dublin	Not known	Henry C. Stephens

COURT OF BANKRUPTCY.

ADJUDICATIONS IN BANKRUPTCY.

The dates of Adjudications are first given, the Sittings follow in Italics.

**Evans, Henry F.**, formerly of Frogmore Lodge, Youghal, in the county of Cork, but now of Esplanade-terrace, Bray in the county of Wicklow, gentleman. September 26; Tuesday, October 31, and Friday, November 17. *Richard Daoren*, solr.  
**Theobald, John Seymour**, of North Main-street, Bandon, in the county of Cork, shopkeeper. October 6; Friday, November 8, and Tuesday, November 21. *John L. and W. Scallan*, solrs.

DUBLIN STOCK AND SHARE LIST.

DESCRIPTION OF STOCK	OCTOBER						
	Sat. 21	Mon. 23	Tues. 24	Wed. 25	Thur. 26	Fr. 27	
<b>*Paid Government.</b>							
— 3 p c Consols ..	100	—	100	100	100	—	
— 3 p c Reduced ..	—	—	—	—	100	—	
— New 3 p c Stock ..	100	100	100	100	100	100	
<b>INDIA STOCK.</b>							
4 p c Oct. 1838 } Trafalgar at ..	—	102	103	103	103	103	
3 1/2 p c Jan. 1821 } Bk. of Irel. ..	—	—	100	—	—	—	
<b>Banks.</b>							
100 Bank of Ireland ..	—	—	319	319	—	—	
25 <i>Hibernian Banking Co</i> ..	—	—	—	—	—	34	
20 <i>London and County (Ltd.)</i> ..	—	—	—	—	79	79	
15 <i>London Joint Stock</i> ..	—	46	—	47	—	47	
20 <i>London and Westminster, Ltd</i> ..	70	—	—	—	71	—	
10 <i>Do. New</i> ..	63	—	—	—	—	—	
3 1/2 <i>Minster Bank (Limited)</i> ..	6	6	6	—	—	—	
— <i>Nat. Prov. of England, Lim.</i> ..	—	—	—	—	—	—	
10 <i>National Bank (Limited)</i> ..	23	24	24	24	24	24	
25 <i>Provincial Bank</i> ..	—	—	—	—	—	—	
10 <i>Do. New</i> ..	—	—	—	—	—	—	
25 <i>Standard of B. S. A., Ltd</i> ..	—	—	—	56	—	—	
<b>Steam.</b>							
100 <i>City of Dublin</i> ..	—	—	—	—	100	100	
<b>Miscellaneous.</b>							
10 <i>Alliance &amp; Dub. Cons. Gas</i> ..	—	—	—	16	16	16	
8 <i>Do. do. New</i> ..	—	—	—	—	—	—	
4 <i>Arnott &amp; Co., Limited</i> ..	—	—	—	—	—	6	
<b>Tramways.</b>							
10 <i>Dublin United Tramways</i> ..	—	—	—	—	—	10	
<b>Railways.</b>							
50 <i>Belfast and Northern Cos.</i> ..	—	—	—	—	53	—	
100 <i>Dublin, Wicklow, &amp; W'ford</i> ..	—	—	76	—	—	—	
100 <i>Great Northern (Ireland)</i> ..	—	—	—	—	—	119	
100 <i>Gt. Southern and Western</i> ..	—	—	116	—	—	—	
100 <i>Midland Gt. Western</i> ..	—	—	—	—	89	89	
<b>Railway Preference.</b>							
100 <i>Gt. Nth'n (Ireland) 4 1/2 p c</i> ..	—	—	—	—	—	—	
100 <i>Do., guaranteed 4 1/2 p c</i> ..	—	—	—	113	113	—	
<b>Debenture Stocks.</b>							
— <i>Belfast &amp; Nth'n Cos., 4 p c</i> ..	—	—	106	—	105	—	
— <i>Cork and Bandon, 4 p c</i> ..	—	—	—	—	—	99	
— <i>Do., 4 1/2 p c</i> ..	—	105	—	—	—	107	
— <i>Gt. Northern (Ireland) 4 p c</i> ..	—	—	—	—	—	—	
— <i>Do., 4 1/2 p c</i> ..	—	114	—	—	—	—	
— <i>Gt. North'n &amp; West'n 4 1/2 p c</i> ..	—	—	—	—	—	—	
— <i>Gt. South'n &amp; West'n, 4 p c</i> ..	—	—	—	—	—	—	
— <i>Midland Gt. West'n, 4 p c</i> ..	—	—	—	105	—	—	
— <i>Do., 4 1/2 p c</i> ..	—	—	—	—	—	109	
— <i>Do., 4 1/2 p c</i> ..	—	114	—	—	—	—	
<b>Miscellaneous Debent.</b>							
— <i>Alliance &amp; Cons. Gas, 4 p c</i> ..	—	99	—	—	99	—	
— <i>Ballast Office Deb., £22 6s 2d, 4 p c</i> ..	—	—	—	—	—	—	
— <i>City Deb. of £22 6s 2d, 4 p c</i> ..	—	—	—	—	—	—	
— <i>Dub. &amp; Glas. S. P. Co. (1887) 5 p c</i> ..	—	—	100	100	—	—	
— <i>Do. (1888), 6 p c</i> ..	100	—	—	—	—	—	
— <i>Dub. &amp; Kingstown 4 p c</i> ..	—	—	—	—	—	—	
— <i>Dub. Port &amp; Docks, 4 1/2 p c</i> ..	—	—	100	—	—	—	

\* Shares not fully paid up are given in Italics. † x d

Bank Rate—Of Discount—4 per cent., 17th August, 1882  
 Of Deposit—1 per cent., 23rd March, 1882

Name Days—November 14th and 29th, 1882.  
 Account Days—November 15th and 30th, 1882.

Business commences at 1 30 p.m.

*Holloway's Ointment and Pills*—Coughs, Influenza.—The soothing properties of these medicaments render them well worthy of trial in all diseases of the respiratory organs. In common colds and influenza the Pills, taken internally, and the Ointment rubbed over the chest and throat, are exceedingly efficacious. When influenza is epidemic, this treatment is the easiest, safest, and surest. *Holloway's Pills* purify the blood, remove all obstacles to its free circulation through the lungs, relieve the over-gorged air tubes, and render respiration free, without reducing the strength, irritating the nerves, or depressing the spirits; such are the ready means of saving suffering when anyone is afflicted with cold, coughs, bronchitis, and other chest complaints, by which so many persons are seriously and permanently afflicted in most countries.

The following is a verbatim extract from a report of a wife-beating case in one of the London police courts the other day:—John Smith, witness for prosecution, is under examination. "Now, what do you know of this matter, Mr. Smith?" "I know everything. I seed Brown beat his wife." "How did he beat her?" was the text of the question put by the magistrate. "How did he beat her!" exclaimed the witness, with a look of scorn. "How would you beat your wife?" This to the worthy magistrate, who desired the witness to answer the question. "Well," at length said the witness, "Brown uses his boots, as I never do. I only uses my fists. I have often told him those here boots would get him into trouble." The worthy Smith was immediately turned out of the court by order of the magistrate.

A CRIMINAL information was laid before the Jersey Royal Court on Saturday last, by Her Majesty's Attorney-General in his capacity of Public Prosecutor against the publisher of the *British Press and Jersey Times* for the publication of an anonymous letter alleging dereliction of duty on the part of the police in failing to bring to justice two persons who were reported to have committed a burglary at the residence of Captain Seymour a few weeks ago, and who carried off a quantity of silver plate. It was alleged that out of family considerations the matter had been hushed up, though the police were well acquainted with the guilty parties. The Court ordered the arrest of Mr. Esnouf, the publisher, who had refused to give up the name of the writer.

BIRTHS, MARRIAGES. AND DEATHS.

BIRTHS.

GAVAN DUFFY—October 21, Lady Gavan Duffy of a son.

MARRIAGES.

FLEMING and FRENCH—October 18, at Cappagh Church, by the Very Rev. the Dean of Clonfert, assisted by the Rev. R. S. O'Loughlin, Rector of Sixmilcross, Hans Beresford Fleming, Esq., only son of Hans Fleming, Esq., M.D., Omagh, to Emily Beatrice, fourth daughter of Theophilus Holton French, Esq., granddaughter of the late George French, Esq., Q.C., Mountjoy-square, Dublin.

DEATHS.

DONNELLY—October 20, at his residence, Adelaide-road, in the 58th year of his age, Thomas Donnelly, Esq., solicitor, of this city.

FUNERAL REQUISITES OF EVERY DESCRIPTION.

49. WALLER, 50, DENZILLE-STREET. 3/7

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## LEGAL POSTINGS:

In the HIGH COURT of JUSTICE in IRELAND,  
CHANCERY DIVISION.—LAND JUDGES.

In the Matter of the Estate of

**JAMES FENTON, and ROBERT FENTON, and  
THOMAS WALTON GILLIBRAND, or some or one of them,**  
Owners;  
*Es parte*—THE NORTHERN BANKING COMPANY,  
Petitioners.

TO BE SOLD,

On TUESDAY, the 7th day of NOVEMBER, 1882,

At the hour of Twelve o'clock,

Before the Right Honourable Judge Ormsby,

At his Court, Land Judges' Court, Inns-quay, in the City of Dublin,  
The aftermentioned Property, in Eight Lots, viz.:-

**Lot No. 1.**—Part of the Lands of Carricknab, containing 146a 3r 27p statute measure, or thereabouts, and Part of the Lands of Corbally, containing 21a 3r 80p statute measure, or thereabouts, both held in Fee-farm, situate in the Barony of Lecale and County of Down. Net annual rental, £29 0s 7d. Tenement valuation, £188 6s.

**Lot 2.**—Part of the said Lands of Carricknab, containing 118a 0r 28p statute measure, or thereabouts, and part of the said Lands of Corbally, containing 34a 3r 86p statute measure, or thereabouts, both held in Fee-farm. Net annual rental, £105 6s 10d. Tenement valuation, £180 5s.

**Lot 3.**—Part of the said Lands of Carricknab, containing 2a 0r 3p statute measure, or thereabouts, held in Fee-farm. Tenants' rents, 6d. Tenement valuation, £30.

**Lot 4.**—The Lands of Ringhaddy, and its sub-denomination of Castleland, with benefit of Rocks and Scaps for wreck and seaweed belonging to same, Island More, Island Dunsay, Dunsay Rock, Green or Hay Island, and Island Darragh, containing in the whole 279a 1r 2p statute measure, or thereabouts, situate in the Barony of Dufferin and County of Down, held in Fee-farm. Net annual rental, £295 4s 2d. Tenement valuation, £351.

**Lot 5.**—Part of the Lands of Ballow, containing 141a 1r 28p statute measure, or thereabouts, and the right enjoyed therewith or in respect thereof, to hold four Yearly Fairs, and a Weekly Market, and a Court of Pie Poudre during said Fairs and Markets, situate in the Barony of Dufferin and County of Down, held in Fee-simple. Net annual rent, £14 12s 9d. Tenement valuation, £225.

**Lot 6.**—Part of the said Lands of Ballow, containing 23p statute measure, or thereabouts, held in Fee-simple. Net annual rent, 6d. Tenement valuation, £2 10s.

**Lot 7.**—Part of the said Lands of Ballow, containing 87p statute measure, or thereabouts, held in Fee-simple. Net annual rental, 1s. Tenement valuation, £5.

**Lot 8.**—The Manor, Town, and Lands of Ardmillan, together with the Rectorial Tithes of said Manor, and also all Courts Leet, Courts Baron, and Customs, and Fairs, and Markets, and comprising the Lands of Ballydrine, otherwise Ballindreen, otherwise Ballydrain, Ballyliddel, otherwise Ballyleghorn, Castle Espie, Tullynakill, together with Watson's Island, Lisbane, otherwise Ballylisbane, Island Reagh, Cross Island, Island Mahle, Bird and Gull Islands, Ringneal, otherwise Ballyranvale, including Rolly Island, Long Island, and Wood Island. Ballymartin, alias Ardmillan—all situate in the Barony of Castlereagh and County of Down, held under a Lease from the late Commissioners of Church Temporalities in Ireland, customarily renewable, as appears from the Orders abstracted in the Rental. Net annual rental, £783 14s 10d. Tenement valuation, £2,408 16s.

Dated this 5th day of August, 1882.

JOHN MARTLEY, for Examiner.

**N.B.**—Proposals for the purchase by Private Contract will be received by the Solicitors having carriage of the Order for Sale on or before Saturday, the 28th day of October, 1882, and, if approved of, will be submitted to the Court for confirmation.

## DESCRIPTIVE PARTICULARS.

Lots 1, 2, and 3 are situate within about three miles of the Town of Downpatrick, which is the County Town, and is in railway communication with Belfast and Newcastle, the latter a fashionable watering place, about seven miles distant. Tullymurry Station, on the Newcastle Line, is distant about one mile from Corbally.

**Lot 4.**—Ringhaddy—is situate on the Shore of Strangford Lough, about four miles north of the important Town of Killybegh, and the remainder of the Lot consists of adjacent Islands in that Lough. There is an abundant supply of Sea Weed on the Shore.

Lots 5, 6, and 7 Ballow—are situate adjacent to the Village of Killinchy, and within about five miles of the Town of Saintfield, a Station on the Belfast and County Down Railway.

**Lot 8.**—The Manor of Ardmillan—is situate on the Shore of Strangford Lough, within about two miles south of the Town of Comber, Station on the Belfast and County Down Railway.

For Rentals and further particulars, apply at the Registrar's Office, Land Judges, Inns-quay, Dublin; or to

OWEN MARCH, Esq., Solicitor, Rochdale;  
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In the HIGH COURT of JUSTICE in IRELAND.

CHANCERY DIVISION.—LAND JUDGES.

COUNTY OF TYRONE.

SALE,

On TUESDAY, the 7th day of NOVEMBER, 1882.

In the Matter of the Estate of

**NATHANIEL MAYNE,**  
Owner;

*Es parte*—ELIZABETH ANNE HURST,  
Petitioner.

TO BE SOLD BY PUBLIC AUCTION,

In Two Lots,

Before the Right Honourable Judge Ormsby,

At his Court, Inns-quay, in the City of Dublin,

On TUESDAY, the 7th day of NOVEMBER, 1882,

At the hour of Twelve o'clock noon,

**Lot 1.**—Consisting of the Lands of the Ballyboes of Terligan and Teerhagan, otherwise Sesinghmore, now known as Terligan only, containing 264a 0r 17p statute measure, held in fee-farm, and producing a yearly profit rent of £109 14s 11d; and

**Lot 2.**—Consisting of part of the Lands of Tullybleety, containing 109a 3r 7p statute measure, also held in fee-farm, and producing a yearly profit rent of £86 4s 4d—all situate in the barony of Lower Dungannon and county of Tyrone.

Dated this 19th day of August, 1882.

IGNATIUS O'KEEFE, for Examiner.

## DESCRIPTIVE PARTICULARS.

The Lands of Terligan, exclusive of 86a 0r 6p in the owner's possession, of which the purchaser will get immediate possession, are let to yearly tenants, whose aggregate rents amount to £125 14s, which are, with one exception, judicial rents, and are only subject to £16 19s 1d head rent and rentcharge. The Lands of Tullybleety are all let to yearly tenants, the gross rent amounting to £97 10s, and subject to £11 6s 7d for head rent and rentcharge. The Lands of Tullybleety and Terligan, although they lie nearly two miles apart, are about an equal distance from the town of Aughnacloy, in county of Tyrone, both of them lying within 2½ miles of that town. Aughnacloy is a capital market town, and the lands are situate in a most orderly and peaceful neighbourhood. The Lands of Tullybleety are not a mile distant from the main line of road from Caledon to Aughnacloy, and lie within about eight miles of the Caledon Station on the Great Northern Railway. The Lands of Terligan lie close to the main line of road from Aughnacloy to Dungannon.

For rentals and further particulars apply at the Office of the Registrar of the Land Judges, Inns-quay, Dublin; to  
WILLIAM CAREY and SON, Solicitors, No. 1 Wellington-quay, Dublin; and to  
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# THE IRISH LAW TIMES AND SOLICITORS' JOURNAL.

VOL. XVI.

SATURDAY, NOVEMBER 4, 1882.

No. 823

## CONTEMPT OF COURT.

Now that a Committee of the House of Commons is sitting in reference to the recent committal of Mr. Gray, M.P., for contempt of court (see *ante*, p. 499)—a case in which, it will be remembered, Lawson, J., relied on his previous decision in *Re M'Alcese*, 7 Ir. L. T. & S. J. 185 (the report of which he subsequently approved, Ir. R. 7 C. L. 148), commented on, *ib.* 181—it may not be inopportune to draw attention to *Re The Publisher of the "Northern Argus" Newspaper*, which we find reported in the *Queensland Law Journal* of Sept. 1st, 1882. "I am so convinced," said Lord Fitzgerald, in *Re The Tyrone Election Petition* (7 Ir. L. T. Rep. 166), "that the best safeguard we have in the administration of justice is the influence of healthy public opinion, that I would not, if I could, restrict the press in its just and free criticism on the proceedings in courts of justice, and on the conduct of particular judges in their administration of the laws; on the contrary, I would invite such criticism in a fair spirit and for the public good, but subject to the limitations laid down by Lord Hardwicke, Lord Romilly, and Malins, V.C." But, just because what may or may not fall within those limitations has to be decided, on summary process, by the judges themselves, it is the more interesting and instructive to observe the practical result in individual cases; while we presume that what would be punished as contempt of court in Queensland would probably not escape in this country.

Now, it appears that the action of *Macdonald v. Tully* having been tried at *nisi prius*, and a verdict having been given for the plaintiff, the case, on motion for judgment, was referred back to a jury for re-assessment of damages. Shortly afterwards, and before the second trial, an article was published in the *Northern Argus* reflecting upon the decision of the judges, and suggesting that it was influenced by improper motives. The writer thus began:—"We deferred making any comment upon the judgment pronounced by the Supreme Court on the 15th July, inst., in the case of *Macdonald v. Tully*, until the arrival of certain information. As that information is now to hand, we shall endeavour to show that the judgments pronounced by His Honor Chief Justice Lilley, and His Honor Mr. Justice Lutwyche, were not in accordance with opinions held and expressed by either gentleman when the case first came on for hearing." Further on, he says he will show that they have "from some unaccountable cause changed their opinions;" and the last paragraph declared that "it is a melancholy subject for consideration that, if a Queenslander requires justice at the hands of the Queensland Government, he should be compelled to appeal to the mother country; it is a sad thing for us all, that law and politics are here twin brothers and go hand-in-hand." The defendant was, accordingly, called upon to show cause why he should not be attached for contempt of court; and the decision was pronounced by Lilley, C.J., Lutwyche, and Harding, J.J. Said the former learned judge:—"The law gives authority to the court to prevent its proceedings being rendered powerless and suitors being deprived of the benefit of an impartial administration of justice. The respondent will be punished for his attempt to succeed—but fortunately I believe, not

for his success in preventing the due administration of justice. Individually I should be disposed to pass over the offence as one of very little consequence, if I could see that no further mischief was likely to arise from writings of this kind being repeated, but I have a duty to perform, and that is to maintain—and more especially among persons whose minds may be biased by writings of this kind—the fullest possible respect for those who administer the law within the colony. The writer of the article complained of has said that he was not aware that the matter was still under the consideration of the court, but thought it had passed to a final stage within the colony. I regret I cannot say that I fully believe that statement, because the article itself contains internal evidence of the strongest kind that he knew that the matter had been referred to the decision of another jury. There can be no doubt whatever, at all events there is no doubt in my mind, that the article was expressly written and most carefully compiled, and it bears evidence of the most careful research with the view of directing the minds of the jury in opposition to the possible direction of the judge who may preside at the trial. It was designed, I think, and no reasonable man can doubt it after reading the article, to influence the jury to resist the authority of the judge, to lead them, in fact, to assume the functions of the judge, and refuse to perform their duty as jurors properly within the lines of the law. It would have been enough if a simple direction to that effect had been given to the jury, but when it is combined with language attributing to the judges a corrupt administration of justice, the article becomes more serious in its character. The administration of the law—the judges who delivered the judgment of the court in *Macdonald v. Tully*—are charged with this, that having decided that the plaintiff had a right, they deliberately in order to deprive him of the fruits of their judgment upon that right, referred the case to the jury for re-assessment of damages, and in that respect—for such must be the inference—going against their own conviction that he was entitled to the damages awarded by the jury. They are in fact charged with corruption in the administration of justice, and that they were influenced in their conduct by some political bias or motive. I have said that so far as the court is concerned we might very well leave our administration of justice to the opinion and sense of propriety and judgment of our fellow-colonists, and it is only from a consideration of the possible consequences which might result from a repetition of such conduct amongst those who are not so well instructed, that it is necessary to visit this offence with some punishment which must be of a severe character. It would be, I think, a grave scandal if judges were to be called upon to enter into the public press to defend their judgments, motives, and characters against anonymous writers. No one would be less disposed to interfere with the just influence of the press than I am. Large privileges have been necessarily conceded to it from its great general public usefulness, but if that indulgence—for it is nothing else—is to pass into absolute license, and our fellow-colonists are publicly told that no confidence can be placed in the judges who are moved by corrupt motives—for that is the effect of the article—that license may become a

serious evil, and our administration of justice would be intolerable because ineffectual. The punishment inflicted upon this defendant will not be dictated by any feeling on the part of the court. The defendant has a right to complain. Whether it is a matter between the public or private individuals makes no difference; there is not one rule of law and justice for a private individual, and another for the Government. We must regard this as an offence against Mr. Tully, who has certain great interests in his hands. I think myself that the defendant should be fined. We will not go to the extent of sending him to prison on this occasion—what punishment a repetition may provoke I do not think it is necessary to say. He has given no assurance that it will not be repeated, but if he does, it will be dealt with when the time arrives." Lutwyche, J., in concurring said:—"Remarks of this kind so far as the judges themselves are concerned might well be allowed to pass, but it is in connexion with the wrong done to the defendant in the action that I look at the observations directed against the judges. I cannot do better than cite the opinions and language of Lord Erskine, in *Ex parte Jones*, (13 Vesey, 238), as expressed by his judgment in a similar matter. The Lord Chancellor said:—"It never has been or can be denied that a publication not only with an obvious tendency, but with the design to obstruct the ordinary course of justice is a very high contempt." And in speaking of the case which he had under consideration he says:—"The object of the writer is by defaming the proceedings of the court, to procure a different species of judgment from that which would be administered in the ordinary course, and by flattering the judge, to taint the source of justice." In this case, the person now supposed to be personally before the court, but in reality upon whose conduct we have to pass our judgment has not flattered the judges, but has endeavoured to obtain the same end by abusing them and so to pervert the ends of justice and wrong the defendant by inducing the future jury to disregard the direction of the judge, and to mulct the colony in damages which the State would not fairly be called upon to pay." Harding, J., in also concurring, observed that one of the grave imputations was, "that we have political judges, and that when a Government case comes on for consideration the people of the colony cannot obtain justice here. I think this article is written with the view of inducing the jurors to discredit those judges and to disregard the judge who would direct them as to the law on the re-assessment of damages. A man is presumed to know the law, and it has been laid down both in England and America, that the only case where that presumption does not hold is where he is a jurymen in the box—there he is presumed to be ignorant of all law and he must take it from the judge on the bench. If that be a correct definition of the duty of a jurymen, what does this article state with reference to the jury who are going to try this case. It tells them to discredit the law which the judge shall give them. That is a grievous dereliction of duty on the part of the press, and, in my judgment, if the action required it, deserves punishment, and no light punishment either. But their Honors have in this case, with the dignity which they uphold and have upheld in this colony for so many years, said that they pass it over; consequently I pass it over also, and do not allow it to influence the judgment I have arrived at. But at the same time, I think, the defendant in the case, whether it be Mr. Tully or the Government, is entitled to have it borne in mind in considering the amount of injury which the writer has done or may do him in his litigation. With regard to the second breach of the rules of this court, namely, that this article attempts to prejudice the

fair trial of the question, I agree with their Honors, and so far as they have criticised the article, I think it unnecessary to say anything, but I think I can adopt the observations made in the case of *Ex parte Howell*, (8 N. S. W. Reports, 356), by Mr. Justice Hargrave. He characterised the article there complained of as a 'most abominable one,' and that is my opinion of this article. I think the writer of it should be punished severely."

Now, possibly some curiosity may be felt as to what would be considered a "severe" punishment for such an offence at the antipodes. And be it observed, the defendant avoided anything like a proper expression of contrition, and shirked an apology as much as possible—throughout, in fact, making no admission of his having done wrong, and no promise that he would not do wrong in the future. "His apology is limited to his sorrow that he did not wait till he could attack this court and the defendant's case with safety," said Harding, J.

He was fined £50, and ordered to pay the costs.

#### THE HON. MR. JUSTICE ANDREWS.

THE announcement (confirmed by the Attorney-General, in the House of Commons, last Monday) that Mr. William Drennan Andrews has been appointed a Judge of her Majesty's High Court of Justice in Ireland, is indeed gratifying in the extreme. Succeeding to the seat in the Exchequer Division vacated by Baron Fitzgerald, the first member of that court who will not bear the time-honoured title of Baron brings to the Bench judicial powers of the highest order, a clear and logical intellect, and a rare knowledge of law both civil and criminal, acquired not alone from studies to which his devotion amounted to a passion, but from a large practical experience in the foremost rank of his profession.

Mr. Andrews (whose family has given to the law other representatives, so respected as his uncles the late Robert Andrews, Q.C., Chairman of the Co. Donegal, and the late James Andrews, senior member of the eminent Belfast firm of Andrews and Maclean, solicitors) was educated in the University of Dublin, where he took the degree of LL.D. Called to the bar in Easter Term, 1855, he joined the North-East Circuit. Unlike his predecessor on the Bench, he rapidly rose into practice, and many were they who, yet remembering the earlier efforts of the young advocate in the Exchequer Chamber, predicted that his career would be crowned by the highest distinctions. Not until July 1872, however, did he receive silk; but, he who, without having held any intermediate law office under the Crown, has now been promoted to a seat in that tribunal which seems destined to maintain its pre-eminence, had long ago achieved public and professional recognition as meriting the highest legal honours, while the courtesy and kindness of his disposition and his exalted personal character had won for him universal esteem and respect. It was indeed with feelings of the strongest sympathy and regret that it was learned, about a year ago, that, in consequence of impaired sight, he had been obliged temporarily to relinquish active practice, and his recovery, accompanied by a promotion so well won, is truly gratifying. Beyond all question, the Administration (in whose interest, opposing Lord Castlereagh, he contested the Co. Down in 1878, on the decease of Mr. Crawford), in now raising him to the Bench, has done what no one, of whatever politics, can disapprove.

FORFEITED SUITORS' MONEY.—In the year ending the 31st of March the County Courts' forfeited suitors' money was £1,107 14s. 3d.

## ADDRESS TO THE HON. F. A. FITZGERALD.

An influential requisition has been presented to the Father of the Bar, to convene a meeting in order to afford the members of the Irish Bar an opportunity of expressing their respect and esteem for the Hon. F. A. Fitzgerald, on the occasion of his retirement from the Bench.

## CRIMINAL APPEAL.

The Trades Union Congress, which had been holding a discursive session at Manchester for a week, concluded its meetings on 23rd September, by adopting a resolution in favour of the abatement of "a grave and serious anomaly in the jurisprudence of this country," by the establishment of a Court of Criminal Appeal. "It is," said Sir John Holker, "startling to consider that while a man who is mulcted in £25 damages in a civil action can obtain a new trial if the verdict was against the weight of the evidence, a man who is convicted of murder by an erroneous verdict has no remedy." We have at present a threefold system of criminal appeal: on questions of procedure by proceedings in error; on questions of law by case reserved for the Court of Crown Cases Reserved; on questions of fact, but only in mitigation of punishment, by petition to the Crown through the Home Secretary. But of proceedings in error Sir John Holker said that "the lawyers, if only they could bring themselves to be perfectly honest, would admit they were a sealed book." The Court of Crown Cases Reserved is cumbersome, and cannot take into account points of law which are not raised at the trial and decided against the prisoner. The appeal to the Home Secretary is eminently unsatisfactory. He is probably not a trained lawyer; he sits *in camera*; he decides on *ex parte* evidence written and unsworn and not submitted to cross-examination; and, if satisfied that there has been a miscarriage of justice, he concludes an informal inquisition by pardoning a man for an offence which he has never committed. The reform necessary is of a very slight character, being rather a readjustment than a change. No new Court is required, but simply the application, with certain modifications, to all criminal trials of the rules now in force in criminal trials in the Queen's Bench Division.—*Law Journal*.

## THE SETTLED LAND ACT.—I.

[From the *Law Times*.]

In the *Law Times* of the 30th Sep., 1882, p. 364, we gave a short synopsis of this most important statute, but we now propose more fully to discuss its provisions, and show how it affects both wills and settlements. At the same time we shall point out the alterations in the law which have been made by other recent legislation; for there are many provisions in the Conveyancing Acts, 1881 and 1882, which greatly affect wills and settlements, and which, therefore, for the convenience of both the adviser on the law and the conveyancer, should be considered at the same time. We propose to explain in detail how far reliance may safely be placed upon the Acts by the draftman, and where clauses usually introduced into wills and settlements may be omitted or modified.

While the main object of the Act is to facilitate transfers, by placing wide powers in the hands of "tenant for life," it has also, as the full title denotes, the subsidiary intention of facilitating improvements of land (see sects. 25-30), and it has the further object of affording landowners the opportunity of getting better interest for money which represents settled land (sect. 21). It is an Act for the relief of the "limited owner" as well as for the benefit of the public generally. The subject-matter of the Act is mainly "settled land"—i.e., "land" subject to "settlement," but both "land" and "settlement" have very wide definitions (sect. 2), and a further extension is given by sect. 63. Sect. 57 relates to what are called "heirlooms," and sects. 32,

33 to money liable to be laid out in the purchase of land to be settled.

It will be convenient for us to mention some of the abbreviations we propose to use in these articles. We shall denote the present Act as S. L. A.; the Conveyancing and Law of Property Act, 1881 (44 & 45 Vict., c. 41), as C. A.; the amendment Act of this year (45 & 46 Vict., c. 39) as C. A. Am.; the Settled Estates Act, 1877 (40 & 41 Vict., c. 18), as S. E. Act, 1877.

The Act commences immediately after the 31st Dec., 1882. It applies to Ireland subject to modifications (sect. 65), but not to Scotland (sect. 1).

*What is a Settlement.*

A definition of a settlement is given in sect. 2 (1) founded on sect. 2 of the S. E. Act, 1877, but having some differences in language. It includes wills and all kinds of settlements and agreements, whether made by Acts of Parliament, deed, or otherwise, by virtue of which any land or any estate or interest in lands stands limited to or in trust for any person *by way of succession*. The "settlement" may be made by any number of instruments, and either before or after the Act. Thus the Act is retrospective.

Estates reverting to a settlor, or descending to his heir, are considered as comprised in the settlement (sect. 2 (2)).

The definition of a settlement is still further extended by sect. 63 to certain instruments by which land is conveyed on trusts for sale and settlement of the proceeds. Thus the Act affects settlements and wills of land as personalty. It must be remembered that "settlement" includes "will."

*What is Settled Land.*

This includes land, and any estate or interest therein, which is the subject of a settlement (sect. 2 (3)). Of course where only a partial interest—*e.g.*, a forty years' lease—is settled, the Act will apply only to the partial interest which is settled, and not to the reversion. But in some cases the person to whom power is given by the Act with respect to a partial interest may concur with the owners of other interests for the purposes of the Act. See sects. 19, 27.

"Land" includes incorporeal hereditaments, and also an undivided share in land (sect. 2 (10) (i)). Hereditaments is the widest possible word: (Co. Litt. 6a; David i. 90.) By virtue of Lord Brongham's Act (18 & 14 Vict., c. 21), s. 4, "land" in succeeding statutes includes "messuages, tenements and hereditaments, houses and buildings of any tenure" unless a contrary intention appear. It was therefore needless to provide in the S. L. A. that land should include messuages, &c. "Land" also includes an undivided share in land (sect. 2 (10) (i)).

The Act is further extended by sect. 59, which places "land" belonging to an infant absolutely on the same footing as settled land. This is not restricted to land to which the infant is entitled in fee simple, but applies to a leasehold or other partial interest which belongs to an infant absolutely otherwise than under a settlement. See above definition of land (sect. 2 (3)). But although infants' land is to be deemed "settled," the Act makes no provision as to any instrument being deemed a settlement in case of infants' absolute interests, but the practical working of sect. 59 depends on sect. 60. Compare C. A., s. 41, which declares that infants' fee simple and leasehold interests shall be settled estates within the S. E. Act, 1877; and see Wolst. & T. 67; Clerke & Brett, 2nd ed. 148. "The determination of the question whether land is settled land, for purposes of this Act, or not, is governed by the state of facts and the limitations of the settlement at the time of the settlement taking effect:" (sect. 2 (4)). After discussing what is the subject-matter over which the powers to be given by the Act are to be exercised, we must explain who is to exercise the powers.

*Who is Tenant for Life.*

"The person who is for the time being, under a settlement, beneficially entitled to possession of settled land

for his life is, for purposes of this Act, the tenant for life of that land, and the tenant for life under that settlement" (sect. 2 (5)).

Now "possession of land" includes receipt of income, and income includes "rents and profits" (sect. 2 (10) (i.)); so, in the result, a person beneficially entitled to receipt of rents and profits for his life is tenant for life. There is no necessity for either physical possession or ownership of the legal estate.

"If, in any case, there are two or more persons so entitled as tenants in common, or as joint tenants, or for other concurrent estates or interests, they together constitute the tenant for life for purposes of this Act" (sect. 2 (6)). This applies only when all the persons are entitled under a settlement. Sect. 19 provides for cases where some are so entitled and others are not.

A person being tenant for life within the foregoing definitions shall be deemed such notwithstanding incumbrances (sect. 2 (7)). There are, however, many provisions in the Act protecting incumbrancers. See sects. 5, 20 (2), 50 (3).

#### *Who is to be deemed Tenant for Life.*

An infant absolutely entitled to land is to be deemed tenant for life (sect. 59). Hence, an infant to whom land belongs in fee simple is deemed tenant for life; so also, if his interest is partial, he is, for the purposes of this Act, tenant for life only of that partial interest whereof he is in reality absolute owner. We shall hereafter consider the case of infants more fully and especially with respect to other statutory legislation. We wish now merely to show the scope of the present Act.

#### *Who has the Powers of Tenant for Life.*

It would not be correct to say that all persons popularly known as limited owners are here included. The powers are not given to beneficed clergymen and other corporations sole, but still, with few exceptions, they are given to all persons who have estates greater than, or resembling, life estates, and are not absolute owners. Sect. 58 enumerates nine classes of persons so favoured. We shall, in future, refer to these only as limited owners, excluding those others who do not, under this Act, receive the powers of tenant for life. The following, then, have these powers:—(i.) (vii.) Tenant in tail of almost every description; (ii.) Tenant in fee simple with executory limitation, gift, or disposition over. In the case of instruments coming into operation after the 31st Dec., 1882, executory limitations over will sometimes become void, and incapable of taking effect, by virtue of sect. 10 of the C. A. Am. In such cases the fee simple would become absolute; (iii.) Person entitled to base fee; (iv.) (v.) Tenants for years determinable on life, and tenants *pur autre vie* (not merely holding under leases at rents). For definition of "rent," see sect. 2 (10) (ii.); (vi.) Tenant for his own or any other life whose estate is liable to cease in any event during that life . . . or is subject to trust for accumulation of income; (vii.) Tenant in tail after possibility of issue extinct; (viii.) Tenant by the curtesy; (ix.) "A person entitled to the income of land under a trust or direction for payment thereof to him during his own or any other life, whether subject to expenses of management or not, or until sale of the land, or until forfeiture of his interest therein on bankruptcy or other event." In this case a trust for sale is not essential, so that it differs from the trusts dealt with by sect. 63.

In the above cases any reference in this Act to death as regards a tenant for life shall, where necessary, be deemed to refer to the determination by death or otherwise of the estate of the limited owner (sect. 58 (3)).

In case of infant being tenant for life or otherwise a limited owner the powers are exercisable by the trustees of the settlement, or, if there are none, as the court shall direct. This will also be the case under settlements where the infant is not tenant for life, but would be if he were of full age (sect. 60). See sect. 2 (8) for explanation who are trustees.

Married woman, being a tenant for life or otherwise a limited owner, and entitled to her separate use, may act as *feme sole* (sect. 61 (2)). This Act applies to land which becomes her separate property under the Married Women's Property Act, 1882 (45 & 46 Vict., c. 75). See sect. 1 of that Act as to women married after the 31st Dec., 1882, and sect. 5 as to women married before that date.

When a married woman is not entitled to her separate use or for her separate property, she and her husband together will have the powers of tenant for life (sect. 61 (3)).

A restraint on anticipation will not prevent a married woman exercising powers under this Act (sect. 61 (6)).

The committee of a lunatic may exercise the powers of tenant for life, but there must first be an order made on petition (sect. 62).

When land is held on trust for sale and settlement of the proceeds, the person beneficially entitled to the income of the land until sale has the powers of tenant for life with regard to the land (sect. 63). This section contains certain modifications (sect. 63 (2)).

In our next article we propose to consider the effects of the Act in relation to settlements and wills already in operation.

(To be continued.)

#### THE DUTIES OF POLICE CONSTABLES.

Mr. C. E. Howard Vincent, Director of Criminal Investigations, has just issued an abridged edition of his "Police Code and Manual of the Criminal Law," to which the following address to police constables on their duties, written by Mr. Justice Hawkins, has been prefixed:—

In the few words I purpose addressing to you it is not my intention to define every duty of a police constable, but rather to point out some matters that all who desire to become good officers ought constantly to bear in mind, for, by strict attention to them, every man may assuredly raise himself to a high position in the force, and, by neglect of them, he is equally sure always to occupy a low one. First of all, let me impress upon you the necessity of absolute obedience to all who are placed in authority over you, and rigid observance of every regulation made for your general conduct. Such obedience and observance I regard as essential to the existence of a police force. Obey every order given to you by your superior officer without for a moment questioning the propriety of it. You are not responsible for the order, but for obedience. In yielding obedience, let the humblest member of the force feel that, by good conduct and cheerful submission, he may himself rise to be placed in authority to give those orders he is now called on to obey. As to the regulations, a single moment's reflection will teach you that, when so many men of different classes and habits are enlisted in one service, some rules applicable to all are necessary for the purpose of insuring uniformity in discipline, action, conduct, and appearance; therefore it is that there are regulations exacting sobriety, punctuality, cleanliness, and many other matters to which I need not refer. The slightest disobedience in one begets a bad example to others, and if this bad example is followed by a few it is calculated to disorganize and bring discredit upon the whole body. Let me now say something to each of you as to the mode in which your obligations to the public ought to be performed. Depend upon it, to become a good and efficient officer you must, when on duty, allow nothing but your duty to occupy your thoughts. You must studiously avoid all gossiping. You must not lounge about as though your sole object was to amuse yourself and kill the hours during which the public has a right to your best services, and during which constant vigilance and attention to what is passing around you is expected from you. It is this gossiping, lounging habit which sometimes gives rise to the observation that a policeman is never to be found when he is most wanted. Moreover, a man who gives way to such a habit never observes with so much

accuracy that which occurs before his eyes, as he who makes it his endeavour to fix his attention upon all that is passing about him. This is a habit not difficult to acquire if you are in earnest, and when once acquired you will find the cultivation of it a source of pleasure, and the hours of duty will be much less irksome. I may add, too, that the man who takes no pains to acquire this habit, for want of attention, generally makes a very bad and inaccurate witness. I wish you to feel the importance of a steady constant endeavour, by your vigilance, to prevent crime as much as possible, and not by your negligence tempt persons to commit it; as you do if you fail in attention to your duty. To my mind, the constable who keeps his beat free from crime deserves much more credit than he does who only counts up the number of convictions he has obtained for offences committed within it. It is true the latter makes more show than the former, but the former is the better officer. The great object of the law is to prevent crime; and when many crimes are committed in any particular district one is apt to suspect that there has been something defective in the amount of vigilance exercised over it. Whatever duty you may be called on to perform keep a curb on your temper. An angry man is as unfit for duty as a drunken one, and is incapable of calmly exercising that discretion which a constable is so often called on to exercise. Be civil and listen respectfully to everybody who addresses you, and if occasionally you are remonstrated with for the course you are taking, do not hastily jump to the conclusion, as some constables do, that the person who so remonstrates wishes to obstruct you in the execution of your duty. Beware of being over-zealous or meddling. These are dangerous faults. Let your anxiety be to do your duty, but no more. A meddling constable who interferes unnecessarily upon every trifling occasion stirs up ill-feeling against the force, and does more harm than good. An over-zealous man who is always thinking of himself, and desiring to call attention to his own activity, is very likely to fall into a habit of exaggeration, which is a fatal fault, as I shall presently show you. Much power is vested in a police constable, and many opportunities are given him to be hard and oppressive, especially to those in his custody. Pray avoid hardness and oppression, be firm but not brutal, make only discreet use of your powers. If one person wishes to give another into your custody for felony you are not absolutely bound to arrest. You ought to exercise your discretion, having regard to the nature of the crime, the surrounding circumstances, and the condition and character of the accuser and the accused. Be very careful to distinguish between cases of illness and drunkenness. Many very serious errors have been committed for want of care in this respect. Much discussion has on various occasions arisen touching the conduct of the police in listening to and repeating statements of accused persons. I will try, therefore, to point out what I think is the proper course for a constable to take with regard to such statements. When a crime has been committed, and you are engaged in endeavouring to discover the author of it, there is no objection to your making inquiries of, or putting questions to any person from whom you think you can obtain useful information. It is your duty to discover the criminal if you can, and to do this you must make such inquiries, and if in the course of them you should chance to interrogate and to receive answers from a man who turns out to be the criminal himself, and who inculpates himself by these answers, they are, nevertheless, admissible in evidence, and may be used against him. When, however, a constable has a warrant to arrest, or is about to arrest a person on his own authority, or has a person in custody for a crime, it is wrong to question such person touching the crime of which he is accused. Neither judge, magistrate, nor juryman can interrogate an accused person, and require him to answer questions tending to criminate himself. Much less, then, ought a constable to do so, whose duty as regards that person is simply to arrest and detain

him in safe custody. On arresting a man the constable ought simply to read his warrant, or tell the accused the nature of the charge upon which he is arrested, leaving it to the person so arrested to say anything or nothing as he pleases. For a constable to press any accused person to say anything with reference to the crime of which he is accused is very wrong. It is well also that it should be generally known that if a statement made by an accused person is made under or in consequence of any promise or threat, even though it amounts to an absolute confession, it cannot be used against the person making it. There is, however, no objection to a constable listening to any mere voluntary statement which a prisoner desires to make, and repeating such statement in evidence; nor is there any objection to his repeating in evidence any conversation he may have heard between the prisoner and any other person. But he ought not by anything he says or does, to invite or encourage an accused person to make any statement without first cautioning him that he is not bound to say anything tending to criminate himself, and that anything he says may be used against him. Perhaps the best maxim for a constable to bear in mind with respect to an accused person is, "Keep your eyes and your ears open, and your mouth shut." By silent watchfulness you will hear all you ought to hear. Never act unfairly to a prisoner by coaxing him by word or conduct to divulge anything. If you do, you will assuredly be severely handled at the trial, and it is not unlikely your evidence will be disbelieved. In detailing any conversation with an accused person, be sure to state the whole conversation from the commencement to the end in the very words used; and, in narrating facts, state every fact whether you think it material or not, for you are not the judge of its materiality. Tell, in short, everything, as well that which is in favour of an accused as that which is against him, for your desire and anxiety must be to be fair, and assist the innocent, and not convict any man by unfair means, such as suppressing something which may tell in his favour, even though you feel certain of his guilt. Unfairness is sure to bring discredit upon those who are guilty of it. If an accused in a conversation with you states any circumstances which you have the means of inquiring into, you ought, whether these circumstances are in his favour or against him, to make such inquiry, and witnesses who can prove or disprove the truth of the statement ought to be taken before the magistrate when the prisoner is examined; and if an accused person desires to call witnesses, the police should assist him to the best of their power. I cannot too strongly recommend every constable, however good he may fancy his memory to be, to write down word for word every syllable of every conversation in which an accused person has taken a part, and of every statement made to him by an accused person, and to have that written memorandum with him at the trial. The last but most important duty I would enjoin upon you is, on every occasion, "Speak the truth, the whole truth, and nothing but the truth." Let no considerations, no anxiety to appear of importance in a case, no desire to procure a conviction or an acquittal, no temptation of any sort to induce you ever to swerve one hair's breadth from the truth—the bare, plain, simple truth. Never exaggerate, or in repeating a conversation or statement add a tone or colour to it. Exaggeration is often even more dangerous than direct falsehood, for it is an addition of a false colour to truth; it is something more than the truth, and it is most dangerous, because it is difficult to detect and separate that which is exaggeration from that which is strictly true; and a man who exaggerates is very apt to be led on to say what he knows to be false. On the other hand, suppress no part of a conversation or statement, nor any tone or action which accompanies it, for everything you suppress is short of the whole truth. Remember always what reliance is of necessity placed in courts of justice upon the testimony of policemen, and bear constantly in mind that in many cases the fate of an accused man, which means his life or his liberty, depends upon that testimony, and seriously

reflect how fearful a thing it is for a man to be convicted and put to death, or condemned to penal servitude or imprisonment, upon false testimony. Remember, also, when you are giving evidence, that you are not the person appointed to determine the guilt or the innocence of a person on his trial, nor have you any right to express an opinion upon the subject. Your duty is a very simple and easy one—namely, to tell the court all you know. The responsibility of the verdict, whether it be guilty or not guilty, rests entirely with the jury or the magistrate (if the case is tried in a police court), and they have a right to expect from you everything within your knowledge to enable them to form a just conclusion. It is right I should tell you that willfully to tell a falsehood, or pervert the truth, in a court of justice is perjury; and you all know perjury is a crime punishable with seven years' penal servitude, and your own common sense will tell you that when perjury is committed by an officer of justice he deserves and ought to receive a very severe sentence. Resolve, then, on every occasion to tell the plain, unbiassed, unvarnished truth in all things, even though it may for a moment expose you to censure or mortification, or defeat the object or expectations of those by whom you are called as a witness. Depend upon it such censure or mortification will be as nothing compared to the character you will earn for yourself as a truthful, reliable man, whose word can always be implicitly depended upon, and the very mortification you endure will be a useful warning to you to avoid in the future the error you have candidly confessed. I could write a good deal more on the subjects I have touched, but then my address would be too long for this little work, which is intended for your guide, and wherein you will find your duties upon various occasions more fully defined. I have only endeavoured in a few friendly sentences to point out to you a line of conduct, the steady adoption of which will enable every man in the police service to feel that he is on the high road to all he can desire, having regard to the important and very responsible calling he has selected for himself.

#### ABOLITION OF JUDICIAL OATHS.

In the current number of the *North American Review*, Judge Edward A. Thomas writes in favour of abolishing oaths in legal proceedings, on the ground that it is futile and unjust to require them. He objects to them in theory because they imply that God punishes perjury more severely than falsehood, and in practice because they do not restrain perjury, and exclude those who do not believe in a future state of rewards and punishments from testifying. He also raises the minor practical objection that men recognising various forms of oaths, it is sometimes inconvenient and unseemly to introduce the form which the particular witness considers binding on his conscience—as for example, the finger or toe of a Brahmin for a Hindoo to kiss, or a cow for a Parsee to hold by the tail, or a saucer for a Chinaman to break, or a cock for him to behead. He also objects to the inconsistency of the law in varying and adapting the form to the same conscience, according to circumstances—as political oaths more or less "iron-clad"—and to the carelessness and irreverence with which oaths are generally administered. The last objections are out of the question as to the morality and policy of requiring oaths. The idea of this essay is not new; it was strongly urged by Jeremy Bentham, as the essayist points out. It seems to us that the truth as usual lies between the extremes. It would be injudicious to dispense with oaths; it is unjust to exclude a man from testifying because he does not believe in a future state of rewards and punishments. The form, while it does not wholly prevent perjury, does something toward it; it restrains some; it makes many reflective and careful. It is no hardship upon anyone who is willing to take it. For the considerable class who are unwilling to take it, allowance should be made. Allowance is made for some of them, such as Quakers. But there are many good men who do not believe in any God or future life,

or believe in them in a different form from that generally accepted by Christians. These men should not be shut out and stigmatised. We know of no reason why Col. Ingersoll should not be as competent and as credible a witness as Henry Ward Beecher; Ralph Waldo Emerson, it would seem, should have been as respectable a witness as Dr. Hall; Professor Tyndall as Dr. McCosh. But there should be a form of some sort to impose solemnity and dignity upon the proceeding; to impress the witness with the importance and responsibility of his position; and to mark his public acknowledgment of the sanction and the consequences. Men who profess to believe in God and a future state of rewards and punishments should be sworn by all the sanctions which their profession implies; others should at least be made publicly to acknowledge the solemnity of the occasion and solemnly to pledge themselves to tell the truth. We hope the day will never come when a man can give testimony in the same way he would tell the story to another out of court. We hate, as deeply as anybody, the making of a man's religious belief the test of his competency as a witness, but we see no reason why an "unbeliever" should be excused from a settled and common form, as nearly equivalent to the usual one as can be devised, which he shall recognise as binding his conscience. Judge Thomas objects to the public exposure of a man's unbelief, and the consequent "distrust and obloquy." The exposure may be "disagreeable," as he insists, but we see no help for that. We do not think that any man should be permitted to pass for a Christian if he is not, nor that he should be ashamed of not being what he thinks he ought not to be. When he says that the exaction of oaths leads to perjury he is technically right, inasmuch as there can be no perjury without oath; but it is not true that they lead to falsehood, for it is not the exaction of the oath, but the determination of the witness to lie, that induces falsehood, and this determination does not spring from the oath.—*Albany Law Journal*.

#### CONTEMPT OF COURT.

The restriction of the power to commit criminally for contempt of court, which is to be made the subject of a Government bill next session, is only an application of principles which have long been recognised. At common law the judges had an unlimited discretion to fine or imprison for misdemeanours. Magna Charta declared that fines ought to be *secundum modum delicti*; and the Bill of Rights prohibits cruel and unusual punishments and excessive fines. Modern legislation has not only fixed the punishment for felonies within precise limits, but for most misdemeanours. The other misdemeanours, and among them criminal contempts of court, have not hitherto had their respective penalties prescribed, partly because of the difficulty of defining them, and partly because of their infrequency. Contempts of court peculiarly call for limitation in respect of punishment, because both verdict and sentence are in the hands of the judge, who is in some instances also the prosecutor. In the case of County Court judges, punishment for contempt is limited by the County Court Act of 1846 to seven days' imprisonment and £5 fine, and the offence must be committed either in court or while the judge is going to and from the court. Courts of quarter sessions, as courts of record, have the same unlimited power to punish for contempt as the superior courts, except that, in case of an excess of jurisdiction, an appeal may be made to the High Court. Justices in petty sessions seem to have no power to punish for contempt; and according to the practice of the metropolitan bench, a magistrate who is insulted in his place simply orders a summons to be taken out before another justice. A power given to the judges to commit for trial on the spot, similar to that possessed in cases of perjury, would meet many of the exigencies to which the unsatisfactory practice of convicting of contempt of court is now applied; but, as we understand the proposal, it is not to take away the



jurisdiction of summarily convicting for contempt, but to limit the punishment, and perhaps give an appeal.

The absence of an appeal in cases of contempt is a mere accident. The Judicature Acts allowed an appeal against all orders of the High Court; but they excepted criminal cases, in order to protect the finality of the decisions of the Court for the Consideration of Crown Cases Reserved. The terms of the exception, however, went further than its object, and instead of being confined to cases in which that court had jurisdiction, it extended to all criminal cases, and, amongst them, to criminal contempts of court. If the Court for Crown Cases is abolished, and appeal in criminal cases allowed by motion, as in civil and County Court cases, all criminal cases, including summary convictions for contempt of court, will go to the Court of Appeal, and, if necessary, to the House of Lords.—*Law Journal*.

We trust that the Select Committee appointed to inquire into the circumstances of Mr. Gray's imprisonment will not find itself precluded from inquiring into the history and the development of the law of contempt. The earliest instance mentioned of its existence was the committal of Prince Henry by Chief Justice Gascoigne. It was not recorded in the year-books at the time, and some maintain that the story is apocryphal. However this may be it is somewhat singular that acts which would now by common consent be declared to amount to contempt, meriting condign punishment without formal trial on the part of the offended judge, were in early times made the subject matter of special penal enactments. The Court of Chancery introduced the practice of imprisoning those who, whether from obstinacy or inability, failed to comply with its decrees, but in all these cases it was presumed that the individual could purge his contempt and secure his liberty by obeying the orders of the court. The punishment by the common law judges of acts done outside the precincts of the courts on the ground of contempt does not, we believe, date anterior to the time of Lord Mansfield. On one occasion a prosecutor sought to influence the entire jury panel by circulating amongst them a pamphlet previous to the trial of the case in an assize town. An application was made to Lord Mansfield, one of the judges of assize, to deal with it as an outrageous act of contempt, and to commit the offender to prison. The Chief Justice, however, declined, on the ground that he had no power to do so, but he directed the case to stand over to the next assize, and ordered an indictment to be preferred against the offender. This was the proper course, and we see no reason why it should not have been taken with respect to Mr. Gray. It is not probable that the Government have yet settled on the form their measure will take, but we may assume that whilst leaving the judges all the necessary authority to vindicate their dignity and to prevent any interference with the administration of justice in their courts, it will restore those guarantees for the liberty of the subject and for the fitting trial of alleged offenders which have of late years gradually disappeared.—*Morning Post*.

#### AUDIENCE OF SOLICITORS UNDER THE CRIMES PREVENTION ACT.

In the House of Commons on the 2nd inst.,

Mr. SEXTON asked the Chief Secretary for Ireland whether he had observed that in one of the courts for investigation of claims for compensation for injuries under the Crimes Prevention Act the Commissioner refused to hear solicitors on behalf of the parties, on the ground that section 19 of the Crimes Prevention Act prescribed that the parties should be heard either personally or by counsel, and that this provision shut out solicitors from a hearing; and whether, considering the poverty of the ratepayers in many parts of Ireland, and the cost of engaging counsel in Dublin, the Government would take such steps as might be necessary, either by introducing a short Amending Bill, or otherwise, to facilitate protection of the interests of the rate-

payers in cases of claims for compensation by entitling solicitors to appear?

Mr. TRAVELMAN said the question, being a legal one, should have been addressed to the Attorney-General for Ireland, but he was advised that while the 19th section of the Act in the first sub-section gave the absolute right of audience to parties personally or by counsel, the second sub-section gave investigating barristers, for the purposes of the investigation, all the same powers as justices sitting at quarter sessions, and there was nothing to prevent him hearing a solicitor if he thought fit. He had observed that solicitors had been heard by other investigating barristers appointed by his Excellency under this section. In his view no further statute appeared to be necessary.

#### INTERESTED JUSTICES.

We have from time to time noticed the decisions of the High Court on this subject, and the latest is of sufficient importance to call for attention. The case is *Reg. v. Lee and others*, and has been reported J. P., p. 404, and at 9 Q. B. D. 394. The facts were shortly these. In the borough of Wakefield the sanitary committee of the town council, who were the local authority under the Public Health Act, 1875, passed a resolution directing the town clerk to prosecute one S. for exposing for sale meat unfit for human food, contrary to the provisions of the Act, and at the hearing of an information laid in pursuance of this resolution S. was convicted before four justices of the borough, who imposed a penalty upon him. One of the justices was a member of the sanitary committee, and had been present at the meeting at which the resolution was passed. A rule was obtained in the High Court for a *certiorari* to bring up and quash the conviction on the ground that the justice just mentioned was disqualified by interest from sitting as a justice on the hearing of the information. It was contended that any disqualification which might otherwise have existed was removed by the Public Health Act, 1875, s. 258, which provides that "no justice of the peace shall be deemed incapable of acting in cases arising under this Act by reason of his being a member of a local authority." But the court (Field and Cave, JJ.) held that this section had not the effect of enabling a person to act as prosecutor and judge in the same matter. Section 258 of the Public Health Act, 1875, merely provided that the fact of membership of a sanitary authority should not disqualify: it did not provide that a justice who had acted as a member of the authority in directing a prosecution for an offence under the Act was a sufficiently disinterested person to be able to sit as a judge at the hearing of the information. The rule was therefore made absolute.

It will be observed that this decision proceeds on the same ground as *Reg. v. Milledge*, 4 Q. B. D. 332. There a town council had passed a resolution that steps should be taken against one B. for the removal of a nuisance. A summons was accordingly issued, and at the hearing two of the justices were members of the council, and had taken part in the discussion when the resolution was passed. It was held that they could not act both as prosecutors and as judges, and the order made by them was therefore quashed.

These cases must be carefully distinguished from other recent decisions. In *Reg. v. Justices of Huntingdon*, 4 Q. B. D. 522, three justices who were members of a town council, and as such had taken an active part in the making of an order under the Dogs Act, 1871, sat to hear a complaint for non-observance of the order. It was held that they had no such interest in the subject matter of the prosecution as to disqualify them. This was quite different from *Reg. v. Lee* and *Reg. v. Milledge*, for the justices had taken no part in ordering the prosecution. Had they done so, then, according to the latter cases, they would have been disqualified as having been both prosecutors and judges in the same matter.

Again in *Reg. v. Handsley and others*, J. P., p. 119, 8 Q. B. D. 386, the objection taken to the justice was

merely that he was a member of the town council. He had not directed the prosecution nor had he acted in any way in or about the issuing of the summonses. The court, consisting of the same judges as decided *Reg. v. Lee*, held that it was not enough to show merely that an adjudicating justice was a member of the town council, and as such had a pecuniary interest in the result of the complaint or information, or that he was a member of the corporation which was charged with the duty of prosecuting the offence which he sat to adjudicate upon. It was necessary in order to disqualify him to show that he had such a substantial interest in the result of the hearing as to make it likely that he had a real bias in the matter.

It must not be forgotten that these decisions, except *Reg. v. JJ. of Huntingdon*, were all given in cases where there was a section similar to the 258th of the Public Health Act, 1875, and the principle of *Reg. v. Handley* was in the judgment of the court confined to such cases. That of *Reg. v. Milledge* and *Reg. v. Lee*, however, is of universal application. It proceeds upon the maxim *nemo debet esse iudex in sua propria causa*, no man shall be both prosecutor and judge.

When, therefore, a justice is a member of the sanitary authority he is not thereby disqualified from adjudicating upon informations or complaints at the instance of the sanitary authority, unless either he has a substantial interest in the result of the hearing of the case, or has taken such a part in the ordering of the proceedings as to bring him within the principle of *Reg. v. Lee*.—*Justice of the Peace*.

#### PRACTICE CASES IN CHANCERY.

There are three practice cases of considerable importance in the September number of the *Law Journal Reports*. The first is *Comton v. Preston*, regarding the right to counter-claim for the possession of land; the second is *Hunt v. Chambers*, regarding the right of parties to a jury; and the third is *Anderson v. Butler's Wharf Company*, regarding the mode of appealing from a Chancery judge's order in chambers. *Hunt v. Chambers*, both from its subject-matter and the fact of its being in the Court of Appeal, claims attention first. It was an action by the landlord of a farm against the executors of his tenant, for rent, and breach of a covenant to repair. It contained a claim for the administration of the estate in case the defendants did not admit assets. The defendants admitted assets in the statement of defence, but denied the liability, and gave notice that the action should be tried by a jury. Thereupon the plaintiff applied to Vice-Chancellor Bacon, that the action should be tried by a judge. The Vice-Chancellor made the order; but on appeal it was reversed by the Master of the Rolls and Lords Justices Cotton and Lindley. The question was one of those in which predisposition to the form of trial by a judge is likely to influence the discretion of the judge; but it cannot be said that either of the three judges in the Court of Appeal was, from his antecedents, likely to depreciate the Chancery form of trial. The matter was decided by a close reference to the Rules of Procedure. The Vice-Chancellor acted under Order XXXVI, Rule 26, which provides that "the judge may, if it appear desirable, direct a trial without a jury of any question or issue of fact, or partly of fact and partly of law, arising in any cause or matter which, previously to the passing of the Act, could, without any consent of parties, be tried without a jury." The present action, as it claimed an administration, could have been tried in Chancery without a jury before the passing of the Act. Whether the fact that the defendants admitted assets did or did not make it the less such an action, is a question of much interest, upon which the opinion of the Court would have been desirable; but the decision is based rather on the effect of Rule 3 of the same order. That rule provides that, "subject to the provisions of the following rules, . . . the defendant may, upon giving notice to the effect that he desires to have the issues of fact tried before a judge and jury, be entitled to have the same so tried." It is

not very clear drafting to give a right subject to rules following, and, in those rules, to subject the right to the discretion of the judge; but the least effect that could be given to Rule 3 was to read it so as to give the party a *prima facie* right to trial by jury. It is for his opponent to make out that the case ought not to be tried by a jury. The Court of Appeal were satisfied that the Vice-Chancellor did not so construe the rules, but that he acted as if he had an absolute discretion. They therefore overruled his decision, guarding themselves against the supposition that they were interfering with the exercise of a discretion. The action for convenience of trial was also transferred to the Queen's Bench Division, which must be taken to be the practice on a jury trial being in prospect. The decision may be looked upon, so far as it goes, as a check to the tendency of the day to prefer trial by a judge.

The action of *Comton v. Preston* was for a declaration that the plaintiff had a first charge on a portion of a certain estate, and for a foreclosure. The defendant—the Imperial Bank—claimed the first charge for itself; and, by way of counter-claim, asked for a declaration that it was entitled to the possession of another portion of the estate, and also damages for a false recital. The plaintiff applied to strike out the counter-claim. In granting this application Mr. Justice Fry exposes some of the inconsistencies of the rules. Two rules deal with the subject of embarrassing counter-claims, of which Order XIX., Rule 8, allows an application to be made before trial, and Order XXII., Rule 9, allows an application before reply—the grounds on which the application is allowed being differently expressed, but, in the main, depending on convenience of trial. Mr. Justice Fry further refers to Order XVII., Rule 2, forbidding "other causes of action to be joined with an action for the possession of land," intimating an opinion that this rule applies also to counter-claims, although not so deciding. In the result, he comes to the conclusion that this counter-claim would be embarrassing, as the land in question is different from the land which is the subject of the claim. We cannot help thinking that this is a narrow application of a system a main object of which was to prevent multiplicity of actions.

The third case, that of *In re Butler's Wharf Company*, involves a subject on which we have commented before. The company was in liquidation, and the liquidator took out a summons for leave to bring an action for goods sold by the company. There was a cross-summons by the proposed defendant claiming from the liquidator a balance in his favour. The matter was adjourned to the Vice-Chancellor in Chambers, and he made an order. The liquidator desired to appeal; and a motion was made in Court for a certificate that the Vice-Chancellor did not desire to hear arguments in Court, or, in the alternative, for a discharge of the order. The original practice was for the judge to give a certificate that he did not wish to hear argument in Court or to adjourn the case for argument. Mr. Justice Chitty in *Holloway v. Cheston*, 51 Law. J. Rep. Chanc. 208, laid down that the right course was to move the judge to discharge his order made in chambers. Vice-Chancellor Hall, in the present case, declined to follow Mr. Justice Chitty, and ordered the matter to be mentioned to him again in chambers, thus apparently returning to the former practice. The inconveniences of the practice begun by Mr. Justice Chitty were pointed out by us at the time of his decision, and these inconveniences are insisted on by Vice-Chancellor Hall. It may be doubted, however, whether the inconveniences in question are greater than the inconveniences of the practice being constantly changed. The object of the Judicature Acts was to introduce uniformity of practice before every Court and every judge in relation to the same subject-matter, and yet we find Vice-Chancellor Hall saying, "I have never adopted that practice," as if he were entitled to a practice of his own. It is difficult to get rid of old abuses, which, like weeds, crop up again after they have been, to all appearance, killed. The Chancery judges, like the other judges, are only parts of a whole. They are bound by the practice of the

High Court as expounded by their colleagues and the Court of Appeal, and have no right to introduce a private practice applicable to themselves. The case referred to is less important in itself than as an indication of a bad practice which may spread if not checked.—*Law Journal.*

#### ARABI'S JUDGES.

Ismail Eyoub Pasha, the president of the commission of inquiry, is a Circassian, and was the immediate predecessor of Colonel Gordon in the administration of the Soudan. It is stated that he was removed from his post on being charged with complicity in the slave trade. Ali Ghelib Pasha is a Turk, was an adherent of the ex-Khedive Ismail Pasha, and is a *protégé* of Sultan Pasha's, Yussuf Chondi Pasha, Mohamed Zéky Pasha, Saad-ed-Din Bey, Mohamed Hamdy Bey, Monstapha Ragheb Bey, Solomon Yourry Bey, and Monstapha Khoubrusi are all either Turks or Circassians, and were thrown out of employment by the National party Ministry. Mohamed Moukhtar Effendi is an Egyptian, was an officer of the Engineers, and talks English and French. He went with Raouf Pasha to the Soudan after Colonel Gordon's return. He received protection from Arabi, and was in his camp at Kafir-dawar, but deserted from it in September last. Mohamed Raouf Pasha, the president of the court-martial, is an Egyptian from Upper Egypt. During the war he passed between Cairo and Alexandria. He signed the National manifesto at Cairo, but definitely joined the Khedive the day before the battle of Tel-el-Kebir. Ibrahim Pasha el-Ferik, Ismail Kamil Pasha, Hussein Assim Pasha, and Kurshid Pasha are all Turks or Circassians, and were thrown out of employment by the National party. Suleyman Niazi Pasha, Osman Latif Pasha, Ahmed Hassaneim Pasha, and Suleiman Nadjati Bey are all either Turks or Circassians.

#### THE SALARIES OF SMALL JUDGES.

A comparison made between the salaries paid to magistrates and judges in various civilized countries leads, as most people are aware, says the *Globe*, to the conclusion that in Great Britain the judicial staff is better treated, and has a greater chance of being recruited from the most competent men, than anywhere else. It is in the case of judges occupying the highest position of all that this contrast is, perhaps, the most remarkable and the most in favour of our country; but there is also a strong balance to our advantage in the lower ranks of the judicial corps, as will readily be seen by a glance at the comparative table published by a French paper, which has been at the pains to collect these statistics. These figures show that in Italy, where the administration of justice is probably more scandalous than in any other part of Europe, the tariff of pay is also lowest, as the salaries of even the first class of *juges de paix* amount to less than £100 per annum. In Belgium, where there is only one scale of salaries for all officials in this position, the amount is £120, but in Switzerland, where the same rule prevails, it is no less than £180. In Austria and Holland there are three classes, and the pay ranges from £150 to £250, being uniformly higher in the smaller country, where the relative purchasing power of money is much less. In Germany the rate varies from £165 to £290, in Prussia from £150 to £375, and in Russia the officials corresponding to the *juges de paix* receive from £240 to £350. As for France, where there are no less than nine classes of judges of this description, their salaries vary from as high as £320 a year to as low as about £75. These salaries are compared by the French statistician with those of the English County Court judges, set down at £1,500, though he confesses that the functions of these latter officials correspond rather more nearly with those of the judges of the tribunals of First Instance than with those of the *juges de paix*. He forgets also to mention the fact that a very large part of the business

coming before these last-mentioned dignitaries is done in England by the local magistrates, for whose services the nation pays nothing at all.

#### NEW BARRISTERS.

The following gentlemen will be called to the Bar at the present Sittings:—

Robert Francis Harrison, Esq., Scholar, T.C.D., and B.A., University of Dublin, eldest son of the Hon. Michael Harrison, of Mountjoy-square, in the City of Dublin, one of the Judges of the Common Pleas Division of Her Majesty's High Court of Justice in Ireland. Mr. Harrison obtained the John Brooke Scholarship of £50 per annum, to continue for three years, at the Honor Examination, held on 24th and 25th ult., and takes rank accordingly. Mr. Harrison also obtained First Class Scholarship in International and Constitutional Law, in January, 1882, and First Class Scholarship in Real and Personal Property, in June, 1882, at the Middle Temple.

Charles Francis Bastable, Esq., B.A., and Professor of Political Economy, University of Dublin, only son of the Rev. Robert Bastable, of Rathgar, in the County of Dublin. Mr. Bastable obtained the Exhibition of £21 per annum, to continue for three years, at the Honor Examination, held on 24th and 25th ult., and takes rank accordingly.

William Archibald Kilpatrick, Esq., Scholar, T.C.D., and B.A., University of Dublin, eldest son of Hugh Alexander Kilpatrick, late of Ballylane, in the County of Armagh, Esq., deceased. Mr. Kilpatrick obtained the prize of £21 at the Honor Examination, held on 24th and 25th ult., and takes rank accordingly.

William Philip Ross, Esq., eldest son of John Ross, late of Belfast, in the County of Antrim, contractor, deceased.

William Morgan Jellett, Esq., Scholar, T.C.D., and B.A., University of Dublin, eldest son of the Rev. John Hewitt Jellett, Provost of Trinity College, Dublin.

Henry Daniel Conner, Esq., B.A., University of Dublin, only son of Daniel Conner, of Manch, in the County of Cork, Esq., J.P.

George Chichester May, Esq., B.A., University of Dublin, second son of the Right Hon. the Lord Chief Justice May, of Fitzwilliam-square, in the City of Dublin.

Robert William Lucas, Esq., B.A., University of Dublin, eldest son of Edward Wm. Lucas, of Raconnell, in the County of Monaghan, Esq.

George Archibald Tindall, Esq., B.A., University of Dublin, only son of William Tindall, of Bellaray, in the County of Meath, Esq.

Wood Gibson Jefferson, Esq., B.A., University of Dublin, only son of Thomas Ross Jefferson, late of Carroby House, in the County of Roscommon, Esq., deceased.

John Francis Taylor, Esq., third son of John Taylor, late of Clevery, in the County of Sligo, gentleman, deceased.

Clason Porter, Esq., B.A., University of Dublin, third son of the Rev. Clason Porter, of Larne, in the County of Antrim.

Redmond Francis Carroll, Esq., youngest son of Redmond Carroll, late of Summer-hill, in the City of Dublin, Esq., solicitor, deceased.

Garrett William Walker, Esq., ex-Scholar, T.C.D., and B.A., University of Dublin, eldest son of John Francis Walker, of Gardiner's-place, in the City of Dublin, Esq., Q.C.

John MacGillycuddy, Esq., second son of Richard, The MacGillycuddy of the Reeks, in the County of Kerry.

The island of Anticosti is to be sold by auction to settle a lawsuit.

## REVIEWS.

*Readings from the Works of Charles Dickens.* Condensed and Adapted by JOHN A. JENNINGS, B.A., Author of "Wayside Restings," and Editor of "The Modern Elocutionist." Dublin: Carson Brothers, 7 Grafton-street.

DICKENS has been, and, we venture to predict, will always be, a great favourite with lawyers. In the busy whirl of life it is seldom one can command the time to read again the books which enchanted us in the days of our youth, and it is with pleasure therefore that we welcome Mr. Jennings' volume. He has condensed, without mutilating or unduly curtailing, the masterpieces of the great novelist, and the mind of the reader is once more absorbed in the history of David Copperfield; in the excitement of the Estanswill Election; in the squabbles of the Editors of the *Estanswill Gazette* and of the *Estanswill Independent*; in the *cause célèbre* of *Bardell v. Pickwick*; in the tragedy of Poor Jo, &c. The work is evidently edited with very great care, and will rank with the author's "Modern Elocutionist"—a work which has now attained a world-wide reputation.

## BOOKS RECEIVED.

*The Nineteenth Century.* A Monthly Review, Edited by JAMES KNOWLES, No. 69. November, 1882. London: C. Kegan Paul & Co.

*Contemporary Review.* November, 1882. London: Strahan and Co., Limited, Paternoster-row.

*Milton's Paradise Lost.* Illustrated by Gustave Doré. Edited, with Notes and a Life of Milton, by the late ROBERT VAUGHAN, D.D. London: Cassell, Petter, Galpin, & Co.

*Cassell's History of England from the earliest period to the present time.* With about 2,000 Illustrations. Part 86. London, Paris, and New York: Cassell, Petter, and Galpin.

## APPOINTMENTS AND PROMOTIONS.

NOTE BENE.—Information intended for publication under the above heading should reach us not later than Friday morning in each week, as publication is otherwise delayed.

Mr. George M'Dermot, A.B., Barrister-at-Law, has been appointed an Investigator under the Arrears of Rent Act, 1882.

Mr. George H. Gartlan, A.B., Barrister-at-Law, has been appointed an Assistant Land Commissioner, in the place of Mr. Gerald Fitzgerald, A.B., Barrister-at-Law, resigned.

Mr. Thomas J. O'Dempsey, Solicitor, has been unanimously elected Solicitor to the Board of Guardians of the Enniscorthy Union.

CONVICT LABOUR.—In the last financial year £18,404 19s. 10d., of which £16,111 8s. 2d. from "manufacturing departments" was received from convict labour in England.

*Holloway's Pills* are the medicine most in repute for curing the multifarious maladies which attack humanity, when wet and cold weather gives place to more genial temperatures. In short, these Pills afford relief, if they fail of being an absolute remedy in all the disturbances of circulation, digestion, and nervous energy, which at times oppress a vast portion of the population. Under the wholesome, purifying and strengthening powers exerted by these excellent Pills, the tongue becomes clean, the appetite improves, digestion is quickened, and assimilation rendered perfect. *Holloway's* medicine possesses the highly estimable property of cleansing the whole mass of blood, which, in its renovated condition, carries purity, strength, and vigour to every tissue of the body.

## LAW STUDENTS' JOURNAL.

## KING'S INNS.

## HONOR EXAMINATION.—OCTOBER, 1882.

## HISTORY OF LAW, CONSTITUTIONAL LAW, AND CRIMINAL LAW.

Examiner—Lord Justice FITZGIBBON.

1. "Four subjects of great importance occupied the Convention Parliament from the time of the King's return till their dissolution."—(Hallam.) What were these subjects, and how was each ultimately disposed of?
2. When, and under what circumstances, did the House of Commons establish the principles of Appropriation of Supplies and Inspection of the Public Accounts? Mention the earlier precedents for each practice.
3. What questions of Constitutional Law arose upon the impeachment of the Earl of Danby? How has the law been settled upon each of them?
4. Write a short historical account of the civil jurisdiction of the House of Lords, original and appellate.
5. Give the substance of:—
  - a. The Irish Acts of Settlement and Explanation.
  - β. The Bill of Rights.
  - γ. The Constitutional provisions of the Act of Settlement taking effect on the accession of the House of Hanover.
6. The *Habeas Corpus* Act was "subject to three defects."—(Tanvill-Langmead.) What were these defects, and how was each subsequently remedied?
7. Give an account of the Parliamentary controversy occasioned by the proceedings in the action of *Ashby v. White and others*.
8. Define an indictable conspiracy. How does Tindal, C.J., describe "the gist of the offence"?

## THE INCORPORATED LAW SOCIETY OF IRELAND.

## PRELIMINARY EXAMINATION FOR APPRENTICES TO SOLICITORS.

Pursuant to the Attorneys and Solicitors Act (Ireland), 1866.

## DUBLIN, MICHAELMAS SITTINGS, 1882.

## HISTORY.

1. What was the Heptarchy? When and how established, and how long did it continue?
2. What claim did Stephen put forward to the throne? Mention some of the principal events in his reign.
3. Who was heir to the throne on the death of Richard I.? What was his fate?
4. State briefly the events of the war with France in the reign of Henry V., the terms of the treaty which concluded it, and the results to England.
5. Explain the respective titles of Richard Duke of York and Henry VI. to the throne. What was the fate of Richard?
6. How was the succession to the throne settled by the will of Henry VIII.? How by the will of Edward VI.?
7. Give some account of the origin of the Wars of the Roses.
8. What was the object, and what were the effects of the declaration of indulgence?
9. How were Gibraltar and Malta acquired by England?
10. What was the character of Cromwell's dictatorship? Give an account of his latter days and the date of his death.
11. What are the most remarkable events of the reign of George II., and who were some of his principal statesmen and generals?

12. For what events in English History are the following places remarkable :—Fontenoy, Pinkie, Lewes, Marston Moor ?

GEOGRAPHY.

1. What is meant by the words Isthmus, Strait, Estuary? Give instances of each.
2. How many Zones are there? Name them, giving the boundaries and extent of each.
3. Give a description of the largest desert in the world. What is the distinguishing feature of the great desert in Persia?
4. What are the principal branches of the Atlantic Ocean on its western side?
5. How is Asia bounded, and what are its political divisions?
6. What are the names of the straits between Sicily and Italy? Corsica and Sardinia?
7. Mention, and briefly describe, some of the island groups of the Pacific.
8. Name the chief rivers which rise in the Alps and Pyrenees, and the countries through which they flow?
9. Where are situated Campeachy Bay, Flamborough Head, Torbay, Carnsore Point, Lough Corrib, Valentia Island?
10. In what counties are the following situated :—Ipswich, Reading, Penrith, Exeter, St. Albans?

ARITHMETIC.

1. Express the result of—  

$$\frac{3\frac{2}{3} \times \frac{4}{5}}{6\frac{2}{3} \div 1\frac{1}{2}}$$
2. Express 12s. 6d. as the decimal of £1.

3. Find the value of 5 cwt. 3 qrs. 21 lbs. at £1 5s. 8d. per cwt.
4. What is the dividend on £721 18s. 6d. at 14s. 2d. in the pound?
5. If 24 men can mow 18 acres in 15 hours, how many men will mow 27 acres in 20 hours?
6. What is the interest on £106 18s. 4d. for 15 months at  $4\frac{1}{2}$  per cent. per annum.

BOOK-KEEPING.

1. When you open an account for stock in the ledger, on which side would you enter the cash in hand?
2. Enumerate the several classes of accounts used in Book-keeping by double entry.
3. How would you journalise the following :—  
 (a.) When you pay money to another by order of your creditor?  
 (b.) When you sell goods to a creditor for a debt due to him, their value amounting to more than the debt, and the overplus is paid to you in cash?
4. Define "Invoice"—"Bill of Lading."
5. Open a cash account; enter the following transactions, and balance the account :—

		£	s.	d.
January 1st.	Cash in hand,	348	0	0
"	Paid William Browne,	86	4	0
"	Sales for cash this day,	8	10	0
" 2nd.	Paid cash for goods,	10	15	0
"	Received for John Smith	5	13	6
"	Sales for cash this day,	4	10	0
" 3rd.	Paid house rent,	33	8	4
"	Paid taxes,	3	0	8
"	Paid William Jones,	84	10	5
"	Sales for cash,	9	5	0

COURT PAPERS.

HIGH COURT OF JUSTICE.

CHANCERY DIVISION.—LAND JUDGES.

List of Petitions presented to the Land Judges in the month of September, 1882.

DATE	TITLE OF MATTER	OBJECT OF PETITION	COUNTY	PROFIT RENT	SOLICITOR
Sept. 1	Daniel M'Sweeney, owner; <i>John M'Sweeney, petitioner</i>	Receiver and sale	Co. Cork	£ s. d. 388 15 6	<i>H. R. O'Kearney</i>
" 5	Michael Cleary, owner; <i>Margaret E. Pope, petitioner</i>	Sale	Tipperary	100 0 0 Estimated	<i>A. Robinson and Son</i>
" 7	Owen Lynch and another, owners; <i>Irish Civil Service Building Society, petitioners</i>	Sale and partition	Galway	Not stated	<i>H. T. Dix</i>
" 9	Annie Gallagher and others, owners; <i>James Watt and others, petitioners</i>	Sale	Tyrone	Not stated	<i>Patrick Gallagher</i>
" "	Turlough B. O'Brien, owner; <i>W. D. Griffith and another, petitioners</i>	Receiver and sale	Clare	201 17 2	<i>Chomley and St. George</i>
" 14	Katherine R. Briscoe and another, owners; <i>Bridget Walsh and another, petitioners</i>	Sale and receiver	Westmeath	Not stated	<i>Meldon and Co.</i>
" 16	William Wolfe, owner; <i>Jeremiah O'Donovan, petitioner</i>	Sale and receiver	Cork	187 10 0 Valuation	<i>Daniel O'Donovan</i>
" "	John T. Dillon, owner; <i>The Scottish Provident Institution, petitioners</i>	Sale and receiver	Roscommon	Not stated	<i>Webb, Scott, and Seymour</i>
" 21	Richard Evans, owner; <i>National Bank, petitioners</i>	Sale and receiver	Cork	Not stated	<i>Reuben T. Harvey</i>
" 25	James A. M'Farland, owner; <i>Matilda J. Clements, petitioner</i>	Sale	Tyrone	101 10 0	<i>King Houston</i>
" 29	William Stevenson, owner; <i>John Corry, petitioner</i>	Sale	Tyrone	40 10 0 Valuation	<i>A. Elliott</i>

LAND JUDGES.

Sittings for next Week so far as same are appointed.

Before the Rt. Hon. JUDGE FLANAGAN.

MONDAY.

IN COURT.—R. Mecreedy, to make order absolute.—A. Bredin, re-entry notice.—J. Power, payment by receiver.—Munster Bank, objections.—W. P. Garnett, to appoint receiver.—P. Lawless, final schedule.

Before EXAMINER (Mr. Kennedy).

M. Campbell, rental.—H. E. Anderson, do.—P. M'Nulty, do.—P. Hanley, vouch.—W. Ledwich, rental.

TUESDAY.

IN COURT.—J. Elliott, final schedule.—H. FitzGerald, do.—A. W. Travers, do.—G. H. Mayes, do.—M. Watson, do.—Trustee G. Webb, do.—J. Kenny, do.—T. Howett, as to receiver.—A. Costello, to stay proceeding.

Before EXAMINER (Mr. Kennedy).

J. M. Cochrane, reference.—J. B. Scott, vouch.

WEDNESDAY.

Before EXAMINER (Mr. Kennedy).

G. B. C. Simpson, rental.

FRIDAY.

SALES IN COURT.

F. BLAKE,	-	-	-	-	1 lot.
S. KELLER,	-	-	-	-	1 "
S. LICHFIELD,	-	-	-	-	1 "
M. DUFF,	-	-	-	-	2 lots.
R. L. WATSON,	-	-	-	-	8 "

Before the Rt. Hon. JUDGE ORMSBY.

MONDAY.

IN CHAMBER.—G. Roe, proposal.—M. R. Dalway, from 2nd.

IN COURT.—T. Barklie, from 27th June.—M. J. M'Kee, final schedule.—W. Jones, payment.

Before EXAMINER (Mr. M'Donnell).

J. J. Bodkin, rental.

TUESDAY.

SALES IN COURT.

EXECUTORS C. HARRISON,	-	-	-	-	2 lots.
N. MAYNE,	-	-	-	-	2 "
G. V. STEWART,	-	-	-	-	5 "
M. O'KELLY,	-	-	-	-	5 "
J. FENTON,	-	-	-	-	8 "

Before EXAMINER (Mr. M'Donnell).

A. H. Irwin, rental from 3rd.—P. Regan, do.—J. Forde, ditto.

WEDNESDAY.

Before EXAMINER (Mr. M'Donnell).

Scanlan v. Bunton, adjudication.—J. E. Nugent, rental.—W. Goggin, do.—J. Aiken, do.—Trustee L. A. Tottenham, do.—J. Emerson, for deeds.—N. Woods, reference.

THURSDAY.

IN COURT.—C. A. Keogh, for carriage and cross motion.

FRIDAY.

Before EXAMINER (Mr. M'Donnell).

J. Abernethy, rental.—J. Grant, do.—W. Miller, do.—W. Petrie, do.

COURT OF BANKRUPTCY.

ADJUDICATIONS IN BANKRUPTCY.

The dates of Adjudications are first given, the Sittings follow in *Italics*.

Coffey, John, of Blacktrench, Naas, in the county of Kildara, farmer. October 17; *Friday, November 17, and Tuesday, December 5. Molloy & Molloy, solrs.*  
 Henehan, James, of Claremorris, in the county of Mayo, shop-keeper. October 13; *Friday, November 17, and Tuesday, December 5. Molloy & Molloy, solrs.*  
 M'Ardle, James, of Kilkerry, in the county of Louth, farmer. October 17; *Friday, November 17, and Tuesday, December 5. C. J. Fay & Co., solrs.*  
 M'Loughlin, Peter, of Market-street, Clifden, in the county Galway, draper. October 17; *Tuesday, November 7, and Friday, November 24. Wm. Findlater & Co., solrs.*  
 Scott, William, of Dromore, in the county of Tyrone, publican. October 10; *Tuesday, November 14, and Friday, December 1. Bennett Thompson, solr.*

DUBLIN STOCK AND SHARE LIST.

DESCRIPTION OF STOCK	OCTOBER			NOVEMBER		
	Sat. 28	Mon. 30	Tues. 31	Wed. 1	Thur. 2	Fri. 3
*Paid Government.						
- 3 p c Consols ..	101½	-	101½	-	-	101½
- 3 p c Reduced ..	-	-	-	-	-	-
- New 3 p c Stock ..	100½	100½	100½	-	100½	100½
INDIA STOCK.						
4 p c Oct. 1882 } Traffic at ..	103½	103½	103½	-	103½	-
3½ p c Jan. 1881 } Bk. of Irel. ..	-	-	-	-	100½	-
BANKS.						
100 Bank of Ireland ..	319	319	-	-	319	319
25 Hibernian Banking Co ..	35	-	-	-	-	-
20 London and County (Ld'g) ..	-	79	-	-	-	-
15 London Joint Stock ..	-	-	-	-	-	-
20 London and W'minster, N'd ..	-	70½	71	-	71½	-
10 Do. New ..	-	-	-	-	-	-
34 Munster Bank (Limited) ..	-	7	-	-	7	-
- Nat. Prov. of England, lim. ..	-	-	-	-	-	-
10 National Bank (Limited) ..	24	-	24½	-	24	23½
10 National of Liverpool (Lid'd) ..	-	-	-	-	14	-
10 Royal Bank ..	29½	29	29	-	29	-
25 Standard of B. S. A., N'd ..	-	-	-	-	-	-
Steam.						
100 City of Dublin ..	-	-	-	-	-	-
50 Dublin & Liverpool Steam Ship Building Co. ..	59	-	-	-	-	-
50 British & Irish ..	-	49½	-	-	-	-
MINES.						
7 Mining Co. of Ireland (N'd ..	-	2	-	-	-	-
MISCELLANEOUS.						
10 Alliance & Dub. Com. G. A. ..	-	-	16	-	-	-
8 Do. New ..	-	-	-	-	-	-
4 Arnott & Co., Limited ..	-	-	-	-	-	6
7½ Dub. Drapery Whouse, Ltd. ..	-	-	5½	-	-	-
25 Ir. C. S. Building Society ..	-	-	-	-	-	39½
TRAMWAYS.						
10 Dublin United Tramways ..	-	-	-	-	-	10
RAILWAYS.						
100 Gt. Southern and Western ..	116½	116½	-	-	-	116½
100 Midland Gt. Western ..	-	-	-	-	89½	-
50 Waterford and Limerick ..	-	-	-	-	-	27½
RAILWAY PREFERENCE.						
100 Belfast & Nth'n Cos. 4 p c ..	-	101½	-	-	-	-
100 Cork & Bandon, 4 p c ..	-	-	-	-	96	-
100 D., W., & W., 5 p c (1880) ..	-	-	-	-	-	-
100 Do. do. (1884) ..	-	114½	-	-	-	-
100 Gt. Nth'n (Irlnd) gt'd 4 p c ..	-	-	-	-	-	-
100 Do., guaranteed 4½ p c ..	-	-	-	-	-	-
100 Mid. Great Western, 4 p c ..	-	-	-	-	-	103½
100 Do., 5 p c ..	-	103½	-	-	-	-
LEASED AT FIXED RENTALS.						
100 Gt. Northern and Western ..	-	-	-	-	124½	-
DEBENTURE STOCKS.						
- Belfast & Nth'n Cos. 4 p c ..	-	-	-	-	-	-
- Cork and Bandon, 4 p c ..	-	-	-	-	-	-
- Do., 4½ p c ..	-	-	-	-	109	-
- Dublin & Wicklow 4 p c ..	-	-	-	-	105½	105½
- Gt. Northern (Ireland) 4 p c ..	109	-	-	-	-	-
- Do., 4½ p c ..	-	-	-	-	-	114½
- Gt. North'n & West'n 4½ p c ..	-	-	-	-	-	-
- Gt. South'n & West'n, 4 p c ..	-	-	-	-	109½	-
- L'derry & Enniskillen 5 p c ..	-	-	-	-	-	-
- Do., 4½ p c ..	110½	-	-	-	-	-
- Midland Gt. West'n, 4 p c ..	106	106	-	-	-	106
- Do., 4½ p c ..	109½	-	-	-	-	109½

\* Shares not fully paid up are given in *Italics*. † x d

Bank Rate—Discount—4 per cent., 17th August, 1882  
 Of Deposit—1 per cent., 23rd March, 1882

Name Days—November 14th and 29th, 1882.

Account Days—November 15th and 30th, 1882.

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BIRTHS, MARRIAGES. AND DEATHS.

BIRTHS.

CURRAN—October 4, at Abbey Court, Jamaica, the wife of the Hon. Mr. Justice Curran, of a son.

DEATHS.

BROOKE—October 25, at Taney Hill House, Dundrum, County Dublin, Catherine Anne Daschkaw, widow of the late Right Hon. W. Brooke, aged 68 years.

DUNN—October 31, at Belvidere-place, Kathleen, the infant daughter of M. J. Dunn, Esq., barrister-at-law, aged four and a half months.

HENDERSON—October 31, at Pembroke-road, George Carlisle Henderson, Esq., youngest son of the late William C. Henderson, Esq., Q.C., aged 36 years.

MACDONNELL—October 25, at Clona Castle, Westport, James MacDonnell, for many years Sub-sheriff of Mayo.

MALONE—October 28, at her residence, Leinster-road, Rathmines, of bronchitis, Wilhelmina Henrietta, the dearly beloved wife of Isaac Malone, and daughter of the late William Manifold, Esq., solicitor.

MINCHIN—October 30, at the residence of Mr. James Caldwell, Roalin Park, Sandymount-road, Eliza Ann Minchin, relict of the late Oliver Humphrey Minchin, Esq., of this city, and daughter of the late George Grant, Esq., barrister-at-law.

WARD—October 10, at Fairmount-avenue, Philadelphia, John J. Ward, Esq., attorney-at-law, nephew of Mr. Denis O'Loughlin, Ballybofey, aged 27 years.

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3-7

NOTICE OF REMOVAL:

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## PUBLIC NOTICES:

**A**RRERS of RENT (IRELAND) ACT, 1882.  
NOTICE.

The Land Commissioners desire to call the most serious attention of Tenants to the terms of Section 1, Sub-Sec. 1 (a), of the Arrears Act, by which it is enacted that the payment or satisfaction of a year's rent, if it has not already been sufficiently paid or satisfied, must be made **ON OR BEFORE THE 30TH NOVEMBER, 1882**. If, through a misconception of the meaning of the Act, a Tenant has not made a sufficient payment, and if his application is not inquired into by the Land Commission until after the 30th of November, 1882, it is impossible that he could by an additional payment after that date obtain the benefits of the Arrears Act. The Land Commissioners wish to point out that this danger does not arise in the case of joint applications in Form B or C. Where joint applications are not made, Tenants and Landlords who intend to apply in Form E and F respectively ought not to lose a single day in serving the notices in Form A, and in lodging, ten days after the service of the notices, the applications in Forms E or F.

- If a Tenant has not sufficiently paid or satisfied a year's rent, as required by the Act, it will be possible for him, PROVIDED AN INQUIRY INTO HIS APPLICATION IS HELD BEFORE THE END OF THIS MONTH, to make a sufficient payment before the 30th instant; but UNLESS APPLICATIONS ARE LODGED IN TIME TO ENABLE AN INVESTIGATOR TO BE MADE BEFORE THE END OF THE MONTH, it may not be possible for the Commissioners to hold an inquiry before the 30th instant, so as to afford an opportunity to the Tenant of making a sufficient or supplemental payment.

(By Order), WM. L. MICKS, Comptroller.

76 Merrion-square, South,  
1st November, 1882.

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# THE IRISH LAW TIMES AND SOLICITORS' JOURNAL.

VOL. XVI.

SATURDAY, NOVEMBER 11, 1882.

No. 824

## OUR WIVES—III.

BESIDES conferring upon a wife, whether married before or after the "Married Women's Property Act, 1882," will come into operation (Jan. 1, 1883), power to avail herself of all the civil remedies "for the protection and security of her own separate property, as if such property belonged to her as a *feme sole*" (s. 12), the Act, by the second clause of section 1, further expressly provides that "a married woman shall be capable of entering into and rendering herself liable in respect of and to the extent of her separate property on any contract, and of suing and being sued, either in contract, or in tort, or otherwise, in all respects as if she were a *feme sole*, and her husband need not be joined with her as plaintiff or defendant, or be a party to any action or other legal proceeding brought by or taken against her; and any damages or costs recovered by her in any such action or proceeding shall be her separate property . . ." It is to the new power of suing that we at present wish, in the first place, to direct attention. Under the Act of 1870 she can, alone, maintain actions for the recovery of any property included in the class of statutory separate property thereby created; she can also avail herself, as if she were a *feme sole*, of all the ordinary legal remedies for the protection and security of her said statutory property,—including, for instance, the right to maintain an action against a bank (1) for not presenting for payment a bill of exchange deposited by her with them for that purpose; (2) for not giving notice to the plaintiff of the dishonour of a bill of exchange entrusted to them; or (3) for dishonouring a cheque drawn by her on the defendants, the defendants having at the time funds of hers sufficient to meet it: *Summers v. The City Bank*, L. R. 9 C. P. 580. But the above quoted clause of section 1 of the new Act, as we read it, not only sets at rest, after this year, all doubts which existed as to the wife's right to retain, as her separate property, all damages recovered by her in those actions which the Act of 1870 enabled her to bring alone, but confers on her the right to sue alone, not only in cases affecting her separate property, but also in actions of tort, for instance to recover damages for any species of injury to her person or to her reputation, &c., and,—at least, whenever such action is brought by her alone,—enable her to keep for her separate use the damages recovered in any case where, as the law at present stands, both the wife herself and her husband *suing in her right*, must be joined as co-plaintiffs in the action,—such presence of the husband as a co-plaintiff being now attended with this important consequence, that the husband may appropriate to himself alone the sum which is awarded to redress *her*, as distinguished from *his*, grievances. Any losses which may have been incurred by the husband himself, by reason of the same circumstances which have given rise to the wife's right of action, will, of course, be for the future, as they have hitherto been, recoverable by him in an action brought in his own right by him alone.

The hardships inflicted by this state of the law on wives who are not maintained and cared for by their husbands, though its mischiefs are too often concealed from the public eye, have long been a crying evil. We are glad to think that the publicity given to this particular aspect of the matter by our note of the case

of *Lynch and wife v. Cork and Macroom Railway Co.* (see 13 Ir. L. T. & S. J. 260), has been in some degree instrumental in bringing about the present change of the law as regards such matters. In that case the action was brought by Eugene and Ellen Lynch, husband and wife, to recover damages for injuries sustained by the latter when travelling on the Cork and Macroom Railway. The defendants had paid into court the sum of £75 in satisfaction of the claim, and notice accepting this amount had been served upon the defendants' solicitor on behalf of Ellen Lynch. It is true that the statement of claim included a claim by the husband in his own right, in respect of the loss of the service of the wife occasioned by the injury; but, if the wife was to be believed, his losses, as regards such service, amounted to nil, because they were not on amicable terms, and lived separately—she being, in fact, according to her account, deserted by him, and supporting herself by letting lodgings, and by working as a dressmaker; and it is to be observed that the court considered this matter immaterial as regarded the question before them, and declined to allow the case to stand over to have the wife's statement on this subject contradicted. Admittedly, no "protection order" under 28 Vict., c. 43, had been obtained; and the application was that the £75 lodged by the defendants in court should be paid out to the female plaintiff. This, in the existing state of the law, the Court of Exchequer was, of course, obliged to refuse; but Baron Dowse, in so refusing, observed that this was a strong case for those who wish to have women legislating for women. We may observe, in passing, that the report of this case, extracted from our columns, was subsequently printed and circulated, along with some other cases involving somewhat similar hardship, by the promoters of the Married Women's Property Act recently passed. A still harder case,—*Marshall v. Lancashire and Yorkshire Railway Co.*, tried at the Manchester Assizes, Feb., 1880, before Chief Justice Coleridge,—is there also recorded by them. It seems that the action purported to be brought by a husband and wife to recover damages for injuries sustained by the wife in an accident at the Victoria Station,—a collision, which occurred about a year before. Evidence was given in support of the action, to the effect that the male plaintiff was a green-grocer and fish dealer, of Heywood, and that his said business, before the accident in question, was carried on by his wife, the plaintiff himself being a stone mason. The female plaintiff was, at the time of the trial, still suffering from the effects of the collision. The defence set up was, that the plaintiff, John Marshall, was not the female plaintiff's real husband, her first husband being alive at the time of her second marriage. She had, it appeared, many years ago married a man named Lightfoot, by whom she had a family; but he deserted her, and after an interval of 17 years, during which she neither saw nor heard of the man, she married Marshall, the co-plaintiff. She now heard for the first time that her former husband was still living. Nevertheless, in accordance with the law, the Lord Chief Justice was obliged to direct a nonsuit, thus leaving the poor woman without any remedy for the injuries she had sustained; because, no action could be maintained unless Lightfoot was made a co-plaintiff with her; and, whatever damages she, nominally, recovered, he could walk off

with—an appropriation, apparently, highly likely to occur, inasmuch as husbands who so absent themselves are rarely actuated in so doing by the motives of an Enoch Arden. It is satisfactory to think that in less than two months more we shall be relieved from the recurrence of such another parody of justice.

We have not overlooked the fact that it may be plausibly suggested that the comprehensive language of section 1, sub-section 2, purporting to confer upon every wife the substantive right of suing (together with the capacity of being sued) "either in contract or in tort or otherwise in all respects as if she were a *feme sole*," in addition to the privilege of suing, if she think fit, without joining her husband with her as a co-plaintiff in the now regular way (note the words, "and her husband *need not* be joined with her as a plaintiff or defendant"), ought to be read as controlled and limited in its operation by the introductory clause of the sub-section, which renders her "capable of entering into and rendering herself liable *in respect of and to the extent of her separate property* on any contract," a construction which would confine the right to sue so conferred, to actions in some way relating to her existing separate property. But, a careful examination of the whole clause has led us to the conclusion that this limiting clause, commencing with the words "in respect to," &c., refers only to the capacity to contract, and that these words are rather to be contrasted with the words "in all respects," &c., which terminate the clause conferring the right to sue, &c.; (see the quotation at the commencement of this article); while there are other portions of the statute which tend to negative any such restricted construction. Thus, it is clear that section 12 contemplates the possibility of *some* actions of tort other than those authorised by its own provisions, being brought by a wife suing alone; because it will be seen on reference to this section that, after enacting that every wife shall have in her own name and against all persons whatsoever the same civil remedies for the protection and security of her own separate property as if she were a *feme sole*, it expressly provides as follows, "but *except as aforesaid*, no husband or wife shall be entitled to sue the other for a tort." If torts unconnected with her separate property can be sued for by a wife alone, it can only be by virtue of section 1, sub-section 2, and it is only by the adoption of the wide construction thereof, for which we have been contending, that legislative warrant can be found for such a proceeding; and it is furthermore to be observed that such wide construction will apply not only to torts but make sub-section 2 embrace *all* actions.

We have already directed attention to the fact that the wife is not prohibited by section 1, sub-section 2, from joining her husband with her as a co-plaintiff in any action which she is thereby qualified for the first time to bring alone; similarly, on the other hand, the correlative right thereby conferred on third parties of proceeding against the wife alone does not prevent the third party from suing both husband and wife in the old-fashioned way, and thus making the husband responsible in every case where the action against both jointly can be at present maintained, excepting only in cases of *devastavit* and of breaches of trust committed by the wife, where the statute (section 24) expressly exempts him from liability. The words of the concluding portion of sub-section 2, providing that "any damages or costs recovered by her *in any such action or proceeding* shall be her separate property, and any damages or costs recovered against her *in any such action or proceeding* shall be payable out of her separate estate, and not otherwise," will therefore require serious attention. If our construction of the previous part of this sub-section be the correct one,—namely, that it confers upon every wife an optional

right to sue without joining her husband as a co-plaintiff in every case where, according to the present law, the right of action would have survived to her if the husband had died before the bringing of the action,—the question will arise, what is to become of the damages recovered in such an action in case she thinks fit to proceed in the old-fashioned way as a co-plaintiff *with* her husband? We speak with diffidence upon this point; but so far as we can at present judge, an action brought in this way would not be such an action as is dealt with by the earlier part of the sub-section, and the damages so recovered in it by husband and wife would not therefore come within the terms of the clause which makes damages recovered "*by her* in any *such* action or proceeding" her separate property; and it does, accordingly, seem that the old consequences of such a proceeding will continue to follow. This is a matter well worthy of the attention of every pleader; for, if this construction of the clause in question be adopted, it is obvious that other consequences will follow from it, as regards the incidence, &c., of liability for costs, for instance, recovered in certain actions by or against husband and wife. We throw out these suggestions for the consideration of the profession, merely pointing out, in conclusion, that supposing it should be held upon the construction of the above clause, that a wife, by allowing her husband's name to be added as a co-plaintiff in an action for damages where she was competent to sue alone, loses her substantive right to hold as her separate property whatever damages may be therein recovered, it does not necessary follow that the same reasoning will be held applicable to actions for every money demand similarly recoverable by her; because, her separate property in her *chooses in action* is expressly dealt with by other provisions of the Act (see sections 2, 5, and 24), and of course "things in action" are distinguishable from the rights of action for damages dealt with by section 1, sub-section 2.

## THE SETTLED LAND ACT.—II

(Continued from page 534, ante.)

### Settlements made before the Act.

We must remind our readers of the extensive meaning of the words "settlement" (sect. 2 (1), "settled land," and "tenant for life," also that the Act applies to settlements made and in operation before the Act (sect. 2 (1), 51), notwithstanding there may be clauses which conflict with, or attempt to exclude the provisions of the Act. The settlement may give powers greater than those in the Act (sect. 56 (1), but where there is a conflict between the settlement and the Act, the Act will prevail (sect. 56 (2)). Of course, in future, the draftsman will be careful so to prepare instruments that there shall be no contradiction; but we have first to consider settlements which were drawn before the Act was passed.

In some settlements, powers of sale, &c., are given to trustees, without requiring the consent of tenant for life. It would be inconvenient to allow both the trustees and the tenant for life to possess independent powers of sale, &c. It is therefore enacted, that notwithstanding the settlement, the consent of the tenant for life shall be essential to sales by the trustees or other persons nominated by the settlement (sect. 56 (2)). We should call attention to the definition of the trustees (sect. 2 (8)). The very important result is that, in the case of settlements coming within the scope of this Act, the trustees cannot by themselves give a good title. This may be very awkward sometimes, especially in case of trusts for sale falling within sect. 68. And it will be necessary for purchasers to see that the person giving consent is really tenant for life. This will sometimes place an additional difficulty in the way of transfer. Where tenant for life is an infant the trustees may exercise the powers (sect. 60), and therefore it would

seem that they can make a good title, but it will be necessary to obtain proof that the tenant for life is an infant. In case of a married woman being tenant for life and entitled to her separate use, her consent will suffice; but if she is not so entitled, the consents of both her and her husband will be needed. In case of a lunatic tenant for life the consent of his committee will be needed, and this will require an order made on petition (sect. 62). The Act makes no provision for the case of persons who are, from infirmity or old age or lunacy (not found by any inquisition), unable to exercise the powers of tenant for life. It takes the power from the trustees, and lodges it where it cannot practically be exercised.

The Act does not take away any powers that are exercisable by the trustees with the consent, or at the request, or by the direction of the tenant for life (sect. 56 (1)). It only involves the necessity of his consent in certain cases. "Notwithstanding anything in this Act," tenant for life may not sell the principal mansion-house and demesnes, &c., without consent of the trustees or order of the court (sect. 15). But, although the Act does not empower the tenant for life of his sole authority to make the sale, yet, if the settlement does, it seems the settlement will prevail, and the tenant for life will be able to sell without consent of the trustees. There are also other provisions in the Act which it is specially stated may be varied by the settlement: see sects. 11, 21, (xi.), 22 (2), 23, 39. Sect. 11 enacts that part of mining rent shall be set aside as capital—viz., three-fourths where tenant for life is impeachable for waste as to minerals, and otherwise one-fourth: It would seem that, where tenant for life has power to work or lease mines independently of this Act, he may still do so, and then he would not be bound to set aside the portion of rent (sects. 56, 57). Opened mines may be leased under the ordinary powers to grant leases for twenty-one years, and as ore is *quasi* rent for mines, a reservation of a proportion of ore has been held good. See *David*, iii. 512; *Sug. Pow.* 735, as to mining leases. Working opened mines is not waste (*Co. Litt.* 54 b; *Daly v. Beckett*, 24 Beav. 114); it is part of the ordinary rights of a tenant for life (*Wms. R. P.* 24; *Tudor L. C. Conv.* 103). As to what is an opened mine, see *Elias v. Snowden Slate Quarries Company* (38 L. T. Rep. N. S. 371; 4 App. Cas. 454). In the same way tenant for life may, if the settlement empowers him so to do, cut timber independently of sect. 35. As to law with respect to waste and timber, see *David*, iii. 279; *Tudor L. C. Conv.* 105. Whether action will lie for permissive waste, see *Woodham v. Walker* (42 L. T. Rep. N. S. 770; 5 Q. B. Div. 407), and *Barnes v. Dowling* (44 L. T. Rep. N. S. 809); as to "timber-like trees" and local custom with reference to timber, see *Honeywood v. Honeywood* (30 L. T. Rep. N. S. 271; L. Rep. 18 Eq. 806). As to ornamental timber, *Baker v. Sebright* (41 L. T. Rep. N. S. 614; 13 Ch. Div. 179). As to right to money produced by wrongful cutting, see *Lovndes v. Norton* (6 Ch. Div. 139).

It would seem that, even where a tenant is *sans waste* by the settlement, he would be unable to cut down timber planted as an "improvement" by means of expenditure of capital moneys—except in proper thinning (sect. 23 (2)).

We conclude this part of the subject by calling attention to the provisions respecting money representing land already in court or in the hands of trustees (sects. 32, 33). They make an important addition to the Lands Clauses Consolidation Acts, and S. E. Act, 1877, and the numerous Acts incorporating the former.

We now proceed to consider settlements in general, whether made before or after the Act.

#### *Short Summary of Chief Powers given by the Act to Tenant for Life.*

The Act empowers tenant for life to sell, enfranchise, exchange, and partition (sects. 3, 4), to lease, in case of building, for ninety-nine years; for mining, sixty years, for other purposes twenty-one years (sect. 6); to accept surrender, and make new grants (sect. 13); to give

licences to copyholders to lease (sect. 14); to dedicate streets, open spaces, &c. (sect. 16); to sell surface and minerals apart (sect. 17); to concur with other persons for the exercise of powers (sect. 19); and to raise money by mortgage (sect. 18); to make conveyances (sect. 20); and to contract for the exercise of his statutory powers (sect. 31). For exception of mansion-house, &c., from powers of sale and leasing, see sect. 15.

Also he can decide whether capital moneys be paid to the trustees or into court (sect. 22 (1), can direct the trustees how to invest or apply it (sect. 22 (2)) within the limits of investment and application allowed by the Act (sect. 21), or settlement (sect. 21 (xi.)), and can prevent alterations in investments, &c. (sect. 22 (4)). He may submit to the trustees or the court, as the case may require, a scheme for expending the money on improvements (sect. 26 (1), a long list of which is given (sect. 25): A certificate of land commissioners, engineer, or surveyor, or an order of the court, is necessary (sect. 26). The tenant for life cannot, of his sole authority, insist on the money being spent on improvements, he can only initiate proceedings, and, after he has received sanction, execute them (sect. 29), or concur with others in their execution (sects. 27, 19). He also has certain powers with respect to moneys in court, or with the trustees, which are liable to be laid out in purchase of land (sects. 32, 33). His powers are confirmed by sect. 56. They may be enlarged but not restricted (sects. 56, 57), and cannot be aliened or released (sect. 50), or their exercise prohibited (sect. 51), or render him liable to forfeiture (sect. 52). The rights, however, of assignees and mortgagees of the estate of tenant for life are practically protected by sect. 50, sub-sects. (3) and (4). The following powers are given to tenant for life with consent of court.

He may sell and let mansion-house and demesnes, &c. (sect. 15), also sell settled chattels and purchase others (sect. 37 (3)), may make leases in perpetuity, or otherwise beyond the statutory limits, or with certain other variations from the statutory requirements (sect. 10), may cut timber and appropriate one-fourth of the proceeds although he is impeachable for waste (sect. 35).

The court is the Chancery Division, and applications are to be made by petition or summons (sect. 46). The Palatine Court of Lancaster (sect. 46 (3)) has concurrent jurisdiction as to land in the County Palatine, and the County Court as to property not exceeding £30 annual rateable value, or £500 capital value. See sect. 46 (10) for the exact limits and details of jurisdiction of County Courts.

With the consent of the trustees tenant for life may sell and let mansion-house, &c. (sect. 15), and cut timber, although he is impeachable for waste (sect. 35).

Consent of tenant for life is necessary to the exercise by trustees "of any power conferred by the settlement exercisable for any purpose provided for in this Act" (sect. 56 (2)).

(To be continued.)

#### RETIREMENT OF MR. BRYAN GALLWEY, SESSIONAL CROWN SOLICITOR.

At the Quarter Sessions which have just concluded at Skibbereen the following tribute was paid to an old and valued public servant, Mr. B. Gallwey, who held the office of Sessional Crown Solicitor for the West Riding, Co. Cork, for a period of nearly fifty years.

Mr. Downes, solicitor, said: Before addressing the grand jury, he had to ask his worship's permission to speak a few words upon an occurrence which had taken place there, and the reference to which had, he was glad to say, in one respect, and sorry in another, fallen to his lot; because it was reserved for this the last, and if he might not be deemed egotistical in saying it, the most important town in the circuit. He alluded to the retirement from amongst them of one who is remembered, and will long be remembered here with esteem, and he might say with affection, Mr. Bryan Gallwey, their late Crown Solicitor; and he (Mr. Downes) felt sure that while assuming only to speak for himself and the mem-

bers of his profession, he would be echoing the feelings of every magistrate, every juror, and every member of the community around him, when he stated it was with a genuine and heartfelt regret they now marked the absence of the genial and kindly face, and stood no longer in the cheery and enlivening presence of their old and long-tried friend. He had been a central figure amongst them, and in many respects a remarkable one. For a period of time—so long that it spans the greater portion of that which is generally allotted to the life of man—he had performed the responsible and onerous duties of his office with such zeal and loyalty to his Queen on the one hand, and with such even-handed impartiality to his fellow-men on the other, as to earn the esteem and regard of all creeds and classes, and so as to leave behind him nothing but the white and stainless record of an honoured and honourable life. He (Mr. Downes) felt, indeed, knowing him as he did, that it was not with him a difficult task to maintain that unsullied position; for he ever brought to the performance of his duties, and to the practice generally of a profession which he adorned, the instincts of an Irish gentleman, of the best and purest type, and all the virtues of a thorough and practical Christian. Very lately, indeed, they had witnessed, when he last stood amongst them, how much did these virtues stand by him in his need, when he was visited with domestic affliction, so sudden and so severe that they would have crushed many a younger and stronger man. He (Mr. Downes) was glad to know, as, indeed, they all were, that the authorities had recognised in a fitting and substantial manner his (Mr. Galloway's) long and faithful services; and he had only to say now, in conclusion, that it was not the interim of his profession to record merely, in his (Mr. Downes's) feeble and transitory words, the expression of their affection and regard, but to present him, in due time, with an address, which he was sure everybody would feel it a privilege and a pleasure to join in.

Mr. SOMERS PAYNE, barrister-at-law, on behalf of his branch of the profession, endorsed all that had been so well said by Mr. Downes. He knew Mr. Galloway for many years, in his public capacity, and it could be said of him that he never made an enemy in his life. Everyone that knew him regarded him with feelings of the warmest respect and esteem.

The CHAIRMAN said on his own behalf, and that of the magistrates, he fully concurred in the high opinion entertained of Mr. Bryan Galloway, as so aptly, happily, and eloquently expressed by Mr. Downes. They heard with sincere pleasure that he would not be allowed to retire from his office without receiving from his brethren and well wishers a mark of regard for his high character, which would afterwards be a source of gratification to him; and he need not add that the members of the Bench would cordially co-operate in any such demonstration. He had known Mr. Galloway for twelve years, in his private and public capacity, and without hesitation, he could say, that it was impossible to have a more zealous or efficient public officer. He always conducted the criminal business with great care, judgment, ability, and discretion. To the prisoner he was always fair—more than fair—when the circumstances of the case admitted of such leniency. To the Bench his great experience and practical knowledge afforded valuable assistance, while with his brethren in the profession, his cordial good nature and unvarying good humour, rendered him a universal favourite. His coming amongst them was hailed with pleasure, and his departure was a source of genuine regret. In the keen contests of forensic struggles, which must at times arise, he invariably threw oil on the troubled waters, and when the case was over he succeeded in preserving the friendliest relations on both sides.

A new metrical translation of the Hebrew Psalter, "commonly called the Psalms of David," by Mr. Digby Seymour, Q.C., the Recorder of Newcastle, is announced.

#### ARREARS OF RENT (IRELAND) ACT, 1882.

The following Rule respecting procedure under the Arrears Act, section 1, sub-section 5, has been made:—

"When a tenant, for the purpose of complying with the requirements of the Arrears of Rent (Ireland) Act, 1882, has tendered to his landlord or the landlord's agent, or the person to whom the rent is usually paid on account of the landlord or his agent, any amount in alleged payment or satisfaction of the year's rent required to be paid or satisfied under the said Act, and such sum had been refused, the tenant may remit by post, to W. L. Micks, the Comptroller of Arrears, such sum as he may deem necessary to discharge or satisfy such year's rent, accompanied by an affidavit, stating the time at which and the persons to and by whom such tender was made and refused respectively, and such affidavit may be in the form U."

The following Instructions for the guidance of Investigators at local inquiries have been issued:—

I. The duty of Investigators at local inquiries is to take evidence and to report whether in their judgment such applications as shall be referred to them do, or do not, comply with the preliminary and other conditions of the Act, and with the requirements of the rules.

II. Speaking generally, two classes of cases will be sent for local investigation, *contentious*, that is, applications which are not joint, but are made by a landlord or a tenant singly; and *non-contentious*, that is to say, where the application, although made by a landlord and a tenant jointly, may for some special reason be referred to an Investigator for local inquiry.

III. As contentious applications in Form E or F are unsupported by affidavits, it is necessary that proof should be given on oath of the statements put forward in the application. The parties, including the Treasury, may be represented by counsel or solicitors. The Investigator, in examining the applicant and the witnesses, will put such questions as shall seem most likely to test the truth of the statements in the application. All witnesses are subject to cross-examination.

IV. Similarly, in the non-contentious applications in Form B or O that are referred for local inquiry, evidence will be taken with a view to the explanation or confirmation of such portions of the affidavit or application as appear to the Investigator to require confirmatory evidence. It will be borne in mind that so-called contentious cases may be only *nominally* contentious, for the other party may not appear or he may not oppose the application.

V. Where the tenant is described in receipts for rent or in estate books as "*Reps. of*—," the Investigator need not require the production of letters of administration or other like evidence of the devolution of the tenancy: it will be sufficient to require proof that the applicant is the *bona fide* occupant of the farm who pays the rent and taxes.

VI. Where opposition is made by a landlord the real questions at issue, apart from objections to informalities in procedure, will probably be—(1.) Whether the Land Law Act applies to the holding; (2.) Whether the rent for "the year expiring as aforesaid" has been satisfied; (3.) Whether the tenant is unable within the meaning of the Act to discharge the antecedent arrears of rent.

VII. Where the tenant is out of the country, and his return before the end of the year is uncertain, or where the succession to the holding is unsettled, the application may, and probably will, be made by the landlord in Form F, which is suited to such cases.

VIII. In non-contentious cases, or in cases which, though nominally contentious, are really non-contentious, evidence must specially be taken as to—(1.) The application of the Land Law Act to the holding; (2.) The annual amount of the Poor Law Valuation; (3.) The possession of other holdings by the tenant; (4.) The existence of antecedent arrears; (5.) The annual rent in 1880 and 1881 respectively; (6.) The ability or inability of the tenant to pay the antecedent arrears.

IX. In the Report in Form H the Investigator has to answer certain inquiries.

X. Whether the Land Law Act applies to the holding must be decided upon the evidence, having regard to the 8rd section of the Arrears Act, applying to leaseholders, and to the 57th and 58th sections of the Land Law Act.

XI. The production of the receipt for the poor rate payable in respect of the holding may be accepted as sufficient *prima facie* proof as to the annual valuation of the holding, or the certificate of the Clerk of the union may be required. When the rent is very small the statement of the applicant as to the valuation may be sufficient.

XII. It should be ascertained whether the tenant is possessed of more than one holding, and, if he is, the total valuation of the holdings should be inquired into. The oath of the tenant, if uncontradicted, will be sufficient.

XIII. Whether the rent for the year expiring as aforesaid has been satisfied, and whether any sum is due in respect of antecedent arrears of rent are facts to be proved in evidence. The Investigator may require the production of the estate books. A receipt in writing is not essential as proof of the payment of rent.

XIV. In the case of joint applications it is generally to be assumed that the saleable value of the tenancy may be excluded from consideration, unless the value is so large as in itself to afford the means of easily raising the amount necessary for clearing off arrears of rent.

XV. In the case of contentious applications it would be impossible to set forth the circumstances under which it would be "reasonable" to take the saleable value of the tenancy into consideration. The Commissioners must in this rely very much upon the intelligence and discretion of the Investigators. The views of the Commissioners may, however, to some extent be stated generally.

XVI. It would not be "reasonable" to take the saleable value of the tenancy into consideration, if, as a result of the refusal of the application, the tenant would be obliged to encumber the value of his tenancy to an extent that might fairly be considered as a step likely to lead to the eventual loss of his holding, or to an extent that would cripple him in the proper management of his farm.

XVII. Nor would it, as a general rule, be "reasonable" to take the value of the tenancy into consideration if the value of the property and effects of the tenant appears to be utterly inadequate to the proper management of the farm.

XVIII. Again, it would not be "reasonable" to require the tenant to discharge his liability to rent by incurring a liability of a different kind to such an extent as to endanger the security of his holding, or so as to make impracticable proper cultivation.

XIX. In the case of very small holdings it would appear almost impossible that the saleable value could reasonably be taken into consideration, for it is most unlikely that any dealings could take place with respect to the tenant-right short of an absolute transfer—that is, the loss of the holding.

XX. In answering query No. 6 it is not required that you should state what, in your opinion, the saleable value of the tenancy amounts to in money, but it will be sufficient that the Investigator should state whether, in his opinion, the saleable value is such as should be taken into account in estimating the tenant's ability to pay under the special circumstances of the case.

XXI. In order to reply satisfactorily to the question as to the ability of the tenant to discharge the antecedent arrears of rent you must consider the entire facts of the case, including the amount of the tenant's liabilities other than rent up to and including the last gale day of the year 1881. Where evidence of any such liabilities is laid before you, when regarding those liabilities, it ought to be considered whether the property and effects, when they appear to be of substantial value, are nevertheless more than what may be deemed

necessary for the proper and workmanlike treatment of the farm.

XXII. It is desirable that in every case the rent of the years 1880 and 1881 respectively should be ascertained.

XXIII. As a general rule the report will be silent as to costs, but, under special circumstances, the Investigator will, if he think it just, report as to costs. In this matter Investigators will be guided by Rule 28.

XXIV. The Investigator should report that the preliminary and other conditions have or have not been complied with: he need not, except in difficult cases, where he considers it necessary, reserve questions for the determination of the Commissioners. He should report simply either for or against the application, according to his judgment, it being open to any party who objects to show cause against the Conditional Order consequent on the report.

XXV. Short notes of the evidence in each case should be taken in the book provided for the purpose.

XXVI. The Land Commissioners in conclusion desire to impress most strongly upon the Investigators that they should to the very best of their ability and intelligence endeavour to ascertain what claims come *bona fide* within the Act, and to frustrate any which they may deem fraudulent or unfounded.

The following Instructions for the guidance of Office Investigators have been issued:—

I. The duty imposed upon Office Investigators is to examine and certify whether in their judgment joint applications in Form B or C comply with the requirements of the Rules and with the preliminary and other conditions of the Act; or whether, on the other hand, sufficient grounds exist to make it necessary that a local investigation should take place for inquiries as to the ability or inability of the tenant to pay his arrears of rent without loss of his holding or deprivation of the means necessary for the cultivation thereof.

II. The several statements in the application, being sworn to by both parties, may be accepted by the Investigators as proved, except so far as they regard the ability of the tenant to pay the antecedent arrear. The ability to pay, being a conclusion to be drawn from all the facts of the case, is to be considered by the Investigator when he has satisfied himself of the existence of the other conditions required by the Act. The amount of liability resting on the tenant for rent or otherwise, up to the date of the investigation is to be borne in mind.

III. If it appears from the sworn application that the preliminary and other conditions exist, and that there are not any reasons to be inferred from the facts, as stated, for concluding that the tenant is able to discharge his antecedent arrear, the Office Investigator will report accordingly that an Order for payment of the proper proportion of the arrear should be made to or for the benefit of the landlord.

IV. On the other hand, if the facts of the case lead the Investigator to believe that the tenant is able to pay his arrear without loss of his holding or deprivation of the means necessary for the cultivation thereof, he will report accordingly, so that the application may be referred for judicial investigation.

V. In making his report, whether approving of the application, or recommending a local inquiry, an Investigator will be guided in the *first place* by the existence or non-existence of the requisite conditions of *fact*, and *secondly*, as an *inference* therefrom, by the ability or inability of the tenant to discharge the arrear.

VI. The Land Commissioners feel, owing to the impossibility of issuing instructions comprehensive enough to embrace the complex cases which are certain to arise, that they must leave largely to the discretion of Investigators the duty of reporting upon questions arising out of applications.

VII. When, however, a case comes up for investigation, about which any doubt is felt, it will be the duty of the Investigator to bring it under the notice of the

Comptroller, who will, if he thinks it necessary, obtain the directions of the Commissioners.

VIII. The conditions above referred to, the existence, non-existence, or co-existence of which will determine the Office Investigator in making his report are:

1. The application of the Land Act to the holding.

NOTE.—*This may generally be assumed unless something exists in the documents to show that the holding is not within the Act.*

2. The valuation of the holding being not over £30 a year.
3. The valuation of the holding in conjunction with any other holding that may be in the occupation of the tenant, being not more than £30 a year.
4. The valuation of the holding, if not valued separately, being, in proportion to the amount of the rent, valued at not more than £30 a year.
5. The existence of antecedent arrears of rent.
6. The inability of the tenant to discharge such antecedent arrears without the loss of his holding, or without deprivation of the means necessary for the cultivation of his holding.
7. The saleable value of the tenant's interest.

NOTE.—*It would not be "reasonable," in the case of joint applications, to take the saleable value of the tenant's holding into consideration, unless the property and effects of the tenant are, after allowing for liabilities, sufficient to provide for the cultivation of the holding. In the case of joint applications it is generally to be assumed that the saleable value of the tenancy may be excluded from consideration unless the value is so large as in itself to afford the means of easily raising the amount necessary for clearing off all arrears of rent.*

8. The value of his property and effects.
9. The amount of his liabilities other than rent up to and including the last gale day of the year 1881.

NOTE.—*Nos. 8 and 9 should be considered carefully in order that an opinion may be formed whether the property and effects, when they appear to be of substantial value, are more than what ought to be considered necessary for the proper and workmanlike treatment of the farm.*

IX. Office Investigators will, if they find that the preliminary and other conditions of the Act exist, ascertain what amount is payable to or for the benefit of the landlord in respect of each holding.

X. In the case of applications in Form B, one Office Investigator will certify as to the existence or non-existence of the necessary conditions. If he approves of the application he will proceed to ascertain and state the amount which is payable to or for the benefit of the landlord. Another Office Investigator will, with a view to securing accuracy in the calculations, verify the report of the first Investigator as regards the amount payable. The reports are to be written in red ink on the face of the application—*Ex. gr.*:

(1.) *Application approved.*

A. B. (Initials of Investigator.)  
27/9/82. (Date.)

(2.) £ : payable.  
A. B. (Initials of Investigator.)  
27/9/82. (Date.)

C. D. (Initials of Investigator.)  
28/9/82. (Date.)

XI. The instructions in the foregoing paragraph apply to applications in Form B. In the case of applications in Form C, a similar course will be adopted, except that the report as to the existence or non-existence of the necessary conditions will be written opposite to the signature of each tenant at the foot of the tenant's affidavit. The amount payable is to be entered in the last column of the schedule within Form C, headed "*Amount Ordered to be Paid*," and such amount is to be ascertained, examined, and initialled by two Office Investigators as in the case of applications in Form B.

XII. The Land Commissioners in conclusion desire to impress most strongly upon the Investigators that they should, to the very best of their ability and intelli-

gence, endeavour to ascertain what claims come *bona fide* within the Act, and to frustrate any which they may deem fraudulent or unfounded.

### THE VALUE OF CHILDREN.

We are not going to consider the value of babies as alarm clocks for arousing the male parent; nor as teachers of patience—the virtue, not the opera; nor as gainers of prizes at country fairs. Nor are we going to quote their market value south of Mason and Dixie's line in the days before the war; nor will we dilate upon the bounties offered by that paternal monarch, Louis XIV., for the production of children in New France, although he, in council, passed a decree, saying, "that in future all the inhabitants of the country of Canada who shall have living children to the number of ten, born in lawful wedlock, . . . shall each be paid out of the money sent by his majesty to the said country a pension of 300 livres a year, and those who have twelve children, a pension of 400 livres." Rich and poor were alike within the purview of this ordinance, whereas before Colbert's reward of 1,200 livres for those who had fifteen children, and 800 to those who had ten, was intended specially for the better class.

But we are about to refer to some of those cases where juries and judges have been called upon to estimate the sums that will compensate for injuries arising from the negligence of others to life or limb of infants, and the value of the services of which the parents of these injured innocents have been deprived by such hurts. This is a subject which must be replete with interest to every *pater familias* in humble circumstances and how many a solicitor of the High Court of Justice is so situated!

First, let us look at the value of children piece-meal, or rather what persons injuring portions of their little human forms divine have had to pay for their negligences and ignorances. A boy, seven years old was kicked by a horse, and had his eye, skull, and brain so badly hurt that the witnesses at the trial considered he would never be able to earn his own living; and they were right, for the poor little chap died nine days after the trial. The jury gave him £150 as a slight compensation; the owner of the horse not liking to pay that sum applied for a new trial, but the Court did not consider the damages excessive, and would not interfere: *Kramer v. Waymark*, L. R., 1 Ex. 241.

A child of two years was wandering about a railway track when it was struck by an iron horse, and was so injured that a leg and a hand were lost. The jury, when asked to assess the damages, gave \$1,800 as a recompense: "*Redfield on Railways*," vol. 2, p. 248, n. Surely this little trot could not have brought more gain to its parents if it had been actually born with the legendary silver spoon in its mouth. This valuable child dwelt in Connecticut.

Out in Missouri a boy lost his hand through a defect in a moulding machine, and upon suing the owner, who was also his employer, he recovered \$1,000. The Court sustained the verdict: *M'Millan v. Union Press-Buck Works*, 6 Mo. App. 434. Little Mangan, an English boy, had nothing like the same good fortune, although his misfortune was very similar. He was a small school-boy of four summers, and when passing homewards one day was induced, by a brother of the more mature age of seven, to put his fingers into a machine for crushing oil-cake that was standing unguarded beside the road. Another mischievous little wretch turned the handle and round went the wheels; the chubby fingers were seized and badly crushed, so that three of them had to be amputated. The owner of the machine was sued for negligence in allowing it to stand so exposed, and at the trial the sight of the fingerless and maimed little hand could only induce the twelve honest-hearted jurors to give a verdict of £10 in favour of the boy. Even this pittance Mangan was not able to get because the Court held that the defendant was not liable for the injury, as it was caused by the act of the plaintiff and

the boy who turned the handle: *Mangan v. Atherton*, 4 H. & C. 388; L. R. 1 Ex. 289.

Another little boy in England, aged five years, was equally unfortunate. Being too young to take care of himself his granny went with him to Velvet Hall Station, to take the train to Berwick-upon-Tweed. After getting their tickets, on crossing a track they were struck by a freight train, the old lady was killed and the child severely injured. An action was brought for these injuries to the lad, and the jury awarded £20. The Court, however, set aside the verdict as the jury had found that the grandmother had been guilty of negligence, without which the accident could not have happened; and the Court considered that the infant was so identified with the grandmother that the action could not be maintained, her carelessness being a sufficient answer to the claim: *Waite v. N. E. Ry.*, El. Bl. & El. 719.

In Mississippi a man had to pay \$100 for merely whipping a child of five, who had, however, assaulted in a violent and brutal manner (so saith the reporter) the whipper's only child an infant of eighteen months: *Lovell v. M'Donald*, 58 Miss. 251. In Massachusetts a Miss of thirteen winters recovered damages to the extent of \$5,000 against a railway company for an injury to an arm; and then when she was of age her father sued the company for the loss occasioned by the selfsame accident, of her services during minority, and he obtained \$500 to compensate himself wherewith: *Wilton v. Middlesex Ry.*, 125 Mass. 180. The gentler sex is highly prized in New England, judging by this and the Connecticut case. Boys, however, at least in the West, are deemed mere money-making machines. Old Miller's boy of nineteen, lost his arm through the negligence of a railway company, and the father recovered \$2,000 for the value of the son's services until he came of age, and for the expense of medical attendance and nursing in consequence of the injury: *Houston, &c., Railway v. Miller*, 49 Tex. 322.

And now let us consider some of the amounts that have had to be paid where the wrong has caused the death of the child. In such case the rule is that damages of a pecuniary nature must be shown; the damages are not to be given merely for the loss of a legal right, but should be calculated with reference to a reasonable expectation of a pecuniary benefit, as of right or otherwise, from the continuance of the life of the lost one: *Franklin v. S. E. Railway*, 8 H. & N. 211; *Walton v. S. E. Railway*, 4 C. B., N. S. 296. In fact, what is laid down by the decisions is, that there must have been a reasonable expectation of pecuniary advantage to the parent from the life of the deceased: *Field, J., Heatherington v. N. E. Railway*, L. R. 11 Q. B. D. 160. Still it was held, in a case where a healthy boy of six years old was killed, that absence of proof of any special money damage flowing from the death of the child will not justify a non-suit, nor a direction on the part of the judge to the jury to find nominal damages only: *Gorham v. N. Y. C.*, 28 Hun. (N. Y.) 449. The "necessary injury" to a parent by the negligent killing of a child, and for which he is to be compensated, comprises the loss of the service of the child during minority, the costs of nursing, medical attendance and the funeral expenses: *Rain v. St Louis: &c., Railway*, 71 Mo. 164. In England doubts have been suggested as to whether damages are obtainable to compensate for the loss of the services of a child so young as to be unable to earn anything: *Bramhill v. Lee*, 29 L. T. 11. But in the United States the doctrine has been well settled. In *Hill v. Forth second Street Railway*, 47 N. Y. 817, where a boy of three years and two months had been killed, and the jury had given a verdict for \$1,000, the Court of Appeal sustained it, saying, "It was within the province of the jury, who had before them the parents, their position in life, the occupation of the father, and the age and sex of the child, to form an estimate of the damages with reference to the pecuniary injury, present and prospective, resulting to the next of kin. Except in very rare instances it would be impracticable to furnish direct evidence of

any specific loss occasioned by the death of a child of such tender years, and to hold that without such proof the plaintiff could not recover, would in effect render the statute nugatory in most cases of this description. It cannot be said, as a matter of law, that there is a pecuniary damage in such a case, or that the expense of maintaining and educating the child would necessarily exceed any pecuniary advantage which the parents could have derived from his services had he lived. These calculations are for the jury." As *Eliza Hooghkirk*, a healthy and bright child of six, was being driven by her father, on a waggon, into Albany, the waggon was struck by a locomotive and substantially destroyed; all the inmates were injured, but the child was killed. The jury was particularly instructed that in estimating the damages they should be strictly confined to the pecuniary injuries resulting from such death to the next of kin of the deceased—that the pain and shock to the feelings of the parents, caused by the death of their daughter, could not in any way be considered, and that in fixing such damages they should be guided by what, in their honest judgment, they should deem a fair and just compensation for the pecuniary injuries resulting from such death, which compensation, however, could not, according to the statute, exceed \$5,000. After this charge the jury awarded \$6,000, and the Court was asked to set the verdict aside as excessive, but declined to interfere, saying, that as a matter of law it is impossible for any Court to say that the actual "pecuniary injuries" resulting from the death of the infant might not be \$5,000. Possibly the probabilities are against it, but the statute in this region of conjecture has committed the formation of an opinion to a jury upon whose discretion the only limitation is the maximum which is thereby allowed. The discharge of such duty, expressly confided to a jury by statute, necessarily, in a case which presents reasonable grounds of conjecture, involves a wide discretion, and unless the evidence shows a plain error the verdict cannot be disturbed.

Hetty Downie, a girl of the age of about seven years, was run over by the cars of the New York and Harlem River Company, and killed. She lived with her mother. On the trial anon—suit was asked for on the ground, amongst others, "that there was no proof of any pecuniary or special damages sustained by the plaintiff or by the next of kin." The motion was overruled, and the plaintiff had a verdict of \$1,800. The Court of Appeal said:—It is not required, to sustain the action, that there should be proof of actual pecuniary loss. The damages are to be assessed by the jury with reference to the pecuniary injuries sustained by the next of kin in consequence of such death. This is not the actual present loss which the death produces, and which could be proven, but prospective losses also. They may compensate for "pecuniary injuries," present and prospective: *Oldfield v. N. Y. & H. R. Railway*, 14 N. Y. 810. In *M'Govern v. N. Y. C. & H. R. R.*, 87 N. Y. 417, the action being for the death of a boy eight years of age and the recovery, \$2,500, the Court held that the jury could estimate the whole damages sustained by the father from the death, as well as those proceeding from the loss of services during minority as those after, and would not interfere.

On the other hand, in Arkansas, the Court considered that \$4,500 was an excessive sum for a railway company to pay to a mother for the loss of the services of a child five years old, through the negligence of the company: *Little Rock, &c., Railway v. Barker*, 88 Ark. 850. In this case it was decided that no compensation was to be given to the dead infant's parent for the loss of the companionship of the child. In Indiana, in one case, a father made no claim for the loss of his child's future services, and gave no evidence to show his loss; so, although the jury gave him \$1,800 therefor upon the death of his child, the Court considered it excessive: *Penn Railroad v. Lilly*, 73 Ind. 252. The amounts awarded in England have been by no means as great as in America. In one case where an action was brought by a father, who was a working mason, for injury resulting from the death of his son, a lad of fourteen,

who had been earning four shillings a week, but at the time of his death was out of employment, the jury found a verdict with £20 damages. A motion was made to set it aside as excessive, but the Court held that the father was entitled to retain the amount: *Duckworth v. Johnston*, 4 H. & N. 653. We quite agree with Martin, B., when he says, "If damages are to be given, I think that £20 is not too much."—*Canada Law Journal*.

#### FRAUDULENT AGENTS.

The law as to the punishment of trustees, bankers, and agents of all kinds, who fraudulently misappropriate the moneys and property of their beneficiaries, has, almost within the memory of the present generation, undergone a great change. The old doctrine was that when a trustee appropriated the fund he had in charge it was deemed little more than a mere matter of account which the Court of Chancery alone could unravel. But by degrees, and after a long experience of the ineffective control thereby secured, it became apparent that some kind of criminal punishment was required, and one much more deterrent than an interminable Chancery suit. And when the criminal laws were consolidated and revised about a quarter of a century ago, there were two distinct sections in the Larceny Act which dealt with those cases. It seems, however, that these sections are not very complete, and when the long talked-of code makes its appearance some further improvements may be expected on this subject.

The 75th section of the Act 24 & 25 Vict., c. 96, is very long. It says in effect that whosoever having been intrusted as a banker, merchant, broker, attorney, or other agent, with any money or security for the payment of money, with any direction in writing to apply, pay, or deliver such money or security or any part thereof, or the proceeds, for any purpose, shall in violation of good faith, and contrary to the direction, convert to his own use or benefit, or the use of any other person, such money: and whosoever when intrusted in the same way with any chattel or valuable security shall sell, negotiate, transfer, pledge, or convert to his own use without any authority to do any of these things, and contrary to the object or purpose of such chattel or security, or the proceeds, shall be guilty of a misdemeanour, and be liable to be kept in penal servitude for seven years. And there was a saving in favour of bankers and others from enforcing their legal rights in reference to these funds.

The 76th section is shorter, and enacts that whosoever being a banker, merchant, broker, attorney, or agent, and being intrusted with the property of any other person for safe custody, shall with intent to defraud, sell, negotiate, transfer, pledge, or in any manner convert or appropriate the same or any part thereof to or for his own use or benefit, or the use or benefit of any person other than the person by whom he was so intrusted, shall be guilty of a misdemeanour, and being convicted thereof shall be liable at the discretion of the court to any of the punishments which the court may award as hereinbefore last-mentioned.

The construction and application of these sections to the common cases of agents who act in a fraudulent manner have caused some difficulty owing to the great variety of circumstances in the mutual relations of the parties. Sometimes it has been extremely difficult to fulfil the description of the offence, owing to there being no written instructions as to some investment, though it might be clearly proved otherwise, that the instructions were in substance violated. Stockbrokers and solicitors seem to have been the classes as to whom the cases have arisen. The evidence of a fraudulent intention has been sometimes defective or ambiguous, and as might be supposed acquittals have occurred where there was very strong evidence that something approaching to the offence had actually occurred. One or two of these cases will illustrate the kind of difficulty that

is so frequently found, and the defects in the present statute.

In *R. v. Cooper*, L. R. 2 C. C. R. 123, the defendant, an attorney, was indicted under the 75th and 76th sections for misappropriating certain moneys intrusted to him. A Mr. Whitaker, before 1867, got a loan of £50 from Mr. Dewsbury, on a deposit of title deeds to some leasehold property. Whitaker wanted a further loan, and the defendant obtained for him £140 from Miss Taylor, and gave a mortgage deed for the same to her brother-in-law who acted for her. The defendant was, out of the money so received from her, to pay off Dewsbury and pay over the balance to Whitaker. But the defendant did not pay off Dewsbury, and kept the £60, paying interest thereon without Whitaker's knowledge, and he also paid to the mortgages the interest on the £140 without the knowledge of Whitaker, who did not know for some time how much had been borrowed from Miss Taylor. On a calculation afterwards it was found that the defendant had about £70, or at least £40 of Whitaker's in his possession. The judge told the jury that if the defendant had kept a substantial part of the £140 fraudulently they should find him guilty, which they did. A case was stated for the Court of Crown Cases Reserved, and it appeared that there had been no directions in writing to the defendant to apply the money or the proceeds. He was, however, intrusted with the mortgage deed to hand over on receipt of the mortgage money, and he kept a substantial part of the £140 contrary to the purpose of the deed, and converted it to his own use. The questions were whether this conduct came within either of the two sections. The court, which included Blackburn, J., and Lush, J., quashed the conviction. The indictment under section 76 was said to be out of the question, because there had been no improper dealing with any property intrusted for safe custody. And the 75th section did not hit him either. He did part of the business rightly, namely, in preparing the mortgage deed, recovering the mortgage money, and handing over the deed. Though he misappropriated part of the money, yet there was no direction in writing so as to satisfy the first part of section 75. And he did not fall within the latter part because it only applied where property was intrusted without any authority to sell or deal with it in the other ways mentioned, and where it was improperly sold or misappropriated.

In a case of *R. v. Fullager*, 14 Cox, C. C. 870, the defendant was a solicitor, and charged on an indictment under both the sections of the statute with having fraudulently converted a sum of £2,500. He was the family solicitor of Mary Mockett, and was intrusted by her with the sum mentioned, and had speculated with it and lost it. The money was part of the residuary estate of the lady's father, who bequeathed it to trustees to invest on mortgage, and after being so invested it came again into the hands of the solicitor. On receipt of the money the defendant wrote to the prosecutrix as follows: "The money was paid on Saturday last—£2,500 and interest. Let me know how you would like to have the sum invested—whether in the funds or on mortgage. I can get you four per cent. on a good security but not more. More than four per cent. is not to be obtained upon such securities as trustees would be justified in investing." The lady replied: "I will consult about the money and let you know. I do not wish it placed in the funds. I hope it will be well secured this time." She went about a fortnight afterwards and saw the defendant at his office, when he told her that he had placed the money on mortgage on a large estate at Worth, on a first mortgage, representing in answer to a question put by her that a deed then lying on the table, but which she did not further look at, was the mortgage deed. All this was wholly untrue, for the money had been then applied to the defendant's own purposes. He paid, however, what he called the interest regularly from 1872 to 1878, making, from time to time, excuses for not producing the mortgage deed, which was repeatedly asked for. At last another solicitor was employed, and an order of the court was obtained for



the delivery of the deed, when the defendant confessed the real state of things, and acknowledged that he had made away with the money.

At the trial of the case, Cockburn, C.J., said that he had no doubt of the moral guilt, and directed a verdict of guilty, and sentenced the defendant to five years' penal servitude; but he doubted whether the case came within the first enactment of the 75th section by reason of the absence of any affirmative written direction as to the application of the money, or within the 76th section by reason of the latter being applicable to securities alone and not to money. He, therefore, respited the sentence, and submitted the case for the opinion of the Court for Crown Cases Reserved. It was then contended that the defendant was not intrusted with property for safe custody, but merely intrusted with money for investment. But the court, after a little consideration, came to the conclusion that the defendant was intrusted with property for safe custody, and so came within the 76th section. The court seem to think that there was not a sufficient direction in writing for investment according to the 75th section. The defendant was, therefore, held to be rightly convicted.

The recent case of *Reg. v. Newman*, J. P., p. 612, is another illustration of the difficulties of these sections. The defendant, a solicitor, was indicted under the 76th section. He was alleged to have been intrusted by Thomas Dawkins with property, to wit, sums of money amounting to £14,144 for safe custody, and to have unlawfully and with intent to defraud converted and appropriated the same property to his own use and benefit. Another count alleged that he appropriated it to the use of some other person, other than the person by whom he was intrusted. It appeared that at various times during the lifetime of Dawkins, since deceased, the defendant had been intrusted, as his solicitor, with sums of money to invest on mortgages. The defendant always represented that he had acted according to his instructions, and that the proper mortgages had been duly effected from time to time, and that the moneys intrusted to him were outstanding upon such mortgages, and he paid over from time to time sums for interest supposed to be received from the mortgages. It was discovered after the death of Dawkins by his trustees, and it was established at the trial, that the said mortgages were wholly fictitious and non-existent, and that the defendant, instead of investing the money intrusted to him upon such mortgages, had fraudulently and improperly appropriated the money to his own use. The defendant's counsel contended that there was no evidence of any money being intrusted for safe custody, but merely to be invested. The judge, however, thought there was evidence that the money was intrusted for safe custody, and until an investment should be effected. A verdict of guilty was entered, but a case was submitted for the opinion of the Court for Crown Cases Reserved.

The court, after consideration, came to the conclusion that the facts did not amount to evidence that the defendant was intrusted with any specified money for safe custody. He was evidently in possession of money which he was to invest, but until invested the money was and apparently might be without impropriety mixed with his own in the bank, or, at least, there was no evidence to the contrary. The result was that the court was obliged very reluctantly to quash the conviction, and thereby a very clear case of wrongdoing escaped any adequate punishment.—*Justice of the Peace.*

#### SERVICE OF WRITS IN DISTURBED DISTRICTS.

An order of the Lord Lieutenant and Privy Council printed in the *Dublin Gazette* of Nov. 7th, with the concurrence of the majority of the judges, directs that from and after the 9th day of November, 1882, in all cases where any defendant named in any writ of summons issuing out of any Division of the High Court of

Justice in Ireland shall reside within any district for the time being proclaimed under sections 8, 11, 12, and 14 of "The Prevention of Crime (Ireland) Act, 1882," or any one or more of the said sections—such place of residence not being within a county of a city, or county of a town, service of such writ on such defendant by sending to him a copy of such writ, and a copy of this order by letter through the Post Office, addressed to him at his usual residence, and by posting a copy of such writ at the police station nearest to his said residence—shall be good and sufficient service of such writ, provided that the plaintiff or plaintiffs named in such writ of summons, or one of them, or his or their attorney, shall make and cause to be filed in the Division out of which such writ shall have issued, an affidavit stating the parish and barony in which the defendant resides, and that such place of residence is within a district which has been and is proclaimed as aforesaid, and that the above particulars as to service have been duly observed and performed. The time limited for the appearance of the defendant to any writ served under this rule shall be twelve days after the service thereof.

#### CALLS TO THE OUTER BAR.

On November 8th the fifteen gentlemen mentioned in our last issue were called to the Bar.

#### FRENCH HOUSES OF CORRECTION.

It rests with the Public Prosecutor and not with the judges to determine in what prison a delinquent sentenced by the Correctional Courts shall be confined. Herein favouritism comes largely into play. A prisoner of the lower orders, having no respectable connexions, will not get the option of serving his time in solitary confinement, and thereby earning a remittance. If he petitions for this favour, he will be told that there are no cells vacant, and he will be removed to *Ste. Pélegie*, or the *Santé*, where he will sleep in a dormitory and work in an associated *atelier*. If he be a shoemaker or tailor, he will work at his own trade; if not, he will be employed in making brass chains, cardboard boxes, paper bags, toys or knock-knocks for vendors of those thousand trifles which are comprised under the designation *articles de Paris*. Being paid by the piece, he will have every inducement to work hard. Of his earnings Government will retain one-third towards the expenses of his keep; one-third will be put aside and paid to him on his discharge, while the remaining third will be paid to him in money to enable him to buy little luxuries at the prison canteen. The things purchasable at the canteen are wine at the rate of a pint and a half a day, *café au lait*, chocolate, cheese, ham, sausages, eggs, butter, salad, fruit, tinned meat, biscuits, stationery, tobacco, and snuff. Prisoners are allowed to smoke in Parisian gaols, and a very sensible provision this is, for it prevents that illicit traffic in tobacco which brings so many prisoners and warders to trouble in English prisons, and it also supplies a ready means of punishing a refractory prisoner. Frenchmen decline to admit that order cannot be kept in a gaol without corporal punishment. As a rule French prisoners behave exceedingly well, because they know that they can greatly alleviate the hardships of their position by so doing. For a first offence, a man's tobacco and wine will be cut off for a week; for a second he may be forbidden to purchase anything at the canteen for a month; if he perseveres in his folly he will be prohibited from working, that is, from earning money, and will be locked up in a cell to endure the misery of utter solitude and idleness. If this severe measure fails and the man becomes obstreperous, he will be strait-waistcoated and put into a dark padded cell where he may scream and kick at the walls to his heart's content. To these rational methods of coercion the most stubborn natures generally yield. It must be confessed, however, that there are certain desperate characters who delight in giving trouble, and who, untamed by repeated punishments,

will often commit murderous assaults upon warders, chaplain, or governor out of sheer bravado. It would really be a mercy to flog these men, for a timely infliction of the lash would frighten them into good behaviour, and often save them from the worse fate of lifelong reclusion. It has not been found practicable to abolish the lash in convict establishments, and since it continues in use there no sound reason can exist for not introducing it into gaols. There are no cranks or treadwheels in French prisons. These barbarous methods for wasting the energies of men in unprofitable labour are condemned by the good sense of a people who hold that it is for the public interest as well as for the good of the prisoners themselves that men in confinement should be so employed as to make them understand the blessedness of honest labour. In their treatment of untried prisoners, too, the French are much more humane than we. What can be more cruel and foolish than to force an untried man, who may be innocent, to spend several months in complete idleness, as is done in England? A Frenchman who has a trade that can be followed in prison may work at it in his cell, pending his trial, as if he were at home. Journeymen tailors, shoemakers, watchmakers, gilders, carvers, painters on porcelain and enamel, &c., continue working for their employers (unless of course, they are desperate men whom it would be dangerous to trust with tools), and it is a touching sight enough on visiting days to see the prisoners send out little parcels of money for their wives from whom they are separated by gratings. The same sight can be witnessed in the prisons for convicted offenders. Many prisoners will deny themselves every luxury procurable at the canteen in order to give the whole of their earnings to their wives.—*Cornhill Magazine*.

#### TEXT-BOOK ADDENDA.

[From the *Law Journal*.]

*The Solicitors Act, 1843, s. 39.*

The only way in which a *cestui que trust*, or other third party, can obtain taxation of the bill of costs of the trustees' solicitor is by petition under the bill of costs of the trustees' solicitor is by petition under the 'Solicitors Act, 1843, s. 39 (*In re Spencer, Spencer v. Hart*, 51 Law J. Rep. Chanc. 271).—C. A.

*Morgan on Costs, 117.*

Costs of Administration, so far as they have been increased by the administration of real estate, are to be borne by the real estate [decision of Fry, J., 50 Law J. Rep. Chanc. 525, reversed] (*In re Middleton*, 51 Law J. Rep. Chanc. 273).—C. A.

*Levin on Trusts, 550.*

A declaration by a testator that a particular person is to act as solicitor to his trustees in the management of his estate held not to constitute a trust in favour of such solicitor (*Foster v. Blesley*, 51 Law J. Rep. Chanc. 275).

#### BOOKS RECEIVED.

*The Lawyer's Companion and Diary, and London and Provincial Law Directory for 1883, with Tables of Costs, &c.* Edited by JOHN THOMPSON, Esq., of the Inner Temple, Barrister-at-Law. Thirty-seventh Annual Issue. London: Stevens and Sons, 119 Chancery-lane; Shaw & Sons, Fetter-lane. 1883.

*Holloway's Ointment and Pills.*—Rheumatism and Gout.—These purifying and soothing remedies demand the earnest attention of all persons liable to gout, sciatica, or other painful affections of the muscles, nerves, or joints. The Ointment should be applied after the affected parts have been patiently fomented with warm water, when the unguent should be diligently rubbed upon the adjacent skin, unless the friction should cause pain. Holloway's Pills should be simultaneously taken to reduce inflammation and to purify the blood. This treatment abates the violence, and lessens the frequency of gout, rheumatism, and all spasmodic diseases, which spring from hereditary predisposition, or from any accidental weakness of constitution. This Ointment checks the local remedy. The Pills restore the vital powers.

#### REVIEWS.

*The Law relating to Building Leases and Building Contracts, the Improvement of Land by, and the Construction of, Buildings. With a full Collection of Precedents of Agreements for Building Leases, Building Leases, Contracts for Building, Building Grants, Mortgages, and other Forms with respect to matters connected with Building. Together with the Statutes relating to Building, with Notes and the latest Cases under the various Sections. And a Glossary of Architectural and Building Terms.* By ALFRED EMDEN, of the Inner Temple, Esquire, Barrister-at-Law. London: Stevens & Haynes, Law Publishers, Bell Yard, Temple Bar. 1882.

In the preface to the valuable work now before us, Mr. Emden draws attention to the wonderful increase of inhabited houses in England and Wales. He might well have added that in this country the increase is no less surprising. Nothing, indeed, is more astonishing than the apparently disproportionate development of residential buildings, urban and rural, witnessed in recent years, when compared with the not inordinate increase of the population; while it were devoutly to be wished that the multiplication of new public buildings and business premises, everywhere springing up, could be accepted as a decisive proof of the growing prosperity of the community. It may be that the spirit of enterprise has become less cautious than of yore in this direction, and that buildings are now run up less expensively and permanently. But, besides, the extended operations of modern building societies have lent a powerful and useful aid; nor has the investor in this class of speculation to encounter such risks as attach, nowadays, to investments in land. Whatever its cause, however, the fact remains that building has increased to an extraordinary extent; while, in a correlative degree, the want is now felt more than ever of an adequate treatise devoted to the law relating to building leases, contracts to build, and to the improvement of land by the construction of buildings and works of that kind generally.

Mr. Emden's pages present the result of an endeavour to supply that want—a result so truly excellent that long and painstaking his endeavours must have been. The lawyer, landowner, estate agent, architect, contractor, engineer, building society, will alike profit by the mass of information he has brought together upon this subject, and arranged with a simplicity and perspicuity that proves how fully he had himself mastered his materials. Divided into three parts, his book deals respectively with (1) the law relating to building leases, grants, contracts, and the construction of buildings; (2) precedents of contracts to build, agreements for building leases, building leases, grants, mortgages, and other forms with respect to building matters; (3) the statutes relating to building; and appended is a most useful glossary of architectural and building terms, used in the Acts, leases, contracts, &c. Certainly, to the legal profession in particular the latter feature will commend itself. The precedents, too, are apposite and well-prepared, and the provisions of the Conveyancing Act are noted in connexion with them, as well as wherever necessary throughout the book. But, the portion of Mr. Emden's 716 pages which appears to us to be mainly important, is that which is conversant with the law relating to contracts to build, building leases, &c.; and nothing, indeed, could be more able and thorough than his treatment of this subject. In a word, this is a practically useful book—a book which will obviate the necessity of research in many others, while it supplies an abundance of information not elsewhere available.

In a recent criminal trial, the prisoner, as an excuse for ill-treating his wife, pleaded "softening of the brain." Much more likely to have been "hardening of the heart."—*Punch*.

**APPOINTMENTS AND PROMOTIONS.**

Mr. Robert A. Beauchamp, solicitor, has been appointed a Notary Public for the district of Dublin.

Mr. John T. Huggard, Petty Sessions Clerk for the district of Milltown and Killorglin, has been appointed a Commissioner for taking Affidavits at Milltown, Co. Kerry.

Mr. Henry Atkinson has been elected Clerk of Petty Sessions for the Coolock, Howth, and Drumcondra districts, Co. Dublin.

**LAW STUDENTS' JOURNAL.**

**KING'S INNS.**

**HONOR EXAMINATION.—OCTOBER, 1882.**

**JURISPRUDENCE, CIVIL AND INTERNATIONAL LAW.**

*Examiner*—H. P. JELLETT, Esq., Q.C.,

1. What is the nature of the contract *Mandatum pecuniæ credendæ*, and what are the main distinctions between this contract and the contracts *Fidejussio* and *Negotiorum gestio* in Roman, and *Gestion d'Affaires* in French Law?

2. A. confers a mandate on B. to buy an estate for him for a thousand pounds, B. purchases the estate for twelve hundred and has it transferred to him. What are the relative rights of A. and B. in this state of facts according to Roman and English Law? Assign reasons for the conclusion at which you arrive.

3. Write a short essay explaining the distinctions between the contracts created by a *Mandatum* and *Depositum*, and their resulting obligations, with their analogies in English Law.

4. Explain the nature of the following actions:—

*Actio mandati directa,*  
*Actio mandati contraria,*

and the cases to which they respectively apply.

5. Write a short essay on the effect of the death of the Mandans and Mandataris in Roman Law, and compare its effect with that produced in English Law by the death of an Agent appointed generally, or by power of Attorney.

6. B. and C. separately and voluntarily promise A. to scour certain drains on his farm, specified in the proposal of each. B. omits to scour the drains specified in his proposal. C. scours the drains mentioned in his proposal but so insufficiently that the work is useless, and the result on the whole is that the farm is flooded, and the crops destroyed. Write a short essay on the several liabilities of B. and C. according to Roman and English Law in this state of facts.

7. What was the nature and effect of the forms of Mandatum denominated *Assignatio* and *Cessio*?

8. A. who is not a ship broker agrees voluntarily to enter a parcel of goods belonging to B. with a parcel of his own of the same sort, for exportation, but marks the entry under a wrong denomination, in consequence of which the goods are seized. Write an opinion on the liability of A. in this state of facts according to Roman and English Law.

9. Compare the provisions of Roman, French, and English Law, on the subject of the right of the Mandatory to appoint a procurator, substitutus or subagent, and the responsibility of such person to the Principal.

10. A. gives a mandate to B., which the latter accepts, to buy a farm for the heirs of A. after his death, and to become surety for the price. A. and B. die. Write an opinion as to the rights and obligations of the heirs of A. and B. in case,

(a.) No steps have been taken to fulfil the mandate in the lifetime of A. and B.

(b.) In case the heir of B. ab intestato has ceded the inheritance to C. (a purchaser) before aditio, and the latter has paid the purchase-money.

**THE INCORPORATED LAW SOCIETY OF IRELAND.**

**MICHAELMAS SITTINGS, 1882.**

At the Examination of Applicants seeking to become Apprentices to Solicitors, held on Thursday, the 19th, Friday, the 20th, and Saturday, the 21st of October, 1882, the under-named candidates were adjudged by the Court of Examiners to have passed said Examination, and their names were arranged in the following order, viz. :—

- |                          |                         |
|--------------------------|-------------------------|
| 1. Patrick T. Carroll    | 17. John M. Davies      |
| 2. William Dunlea        | 18. Gerald Cullen       |
| 3. Charles G. Carrothers | 19. Matthew J. Byrne    |
| 4. James Butler          | 20. Peter Paul O'Connor |
| 5. William J. Purcell    | 21. John F. Dunwoody    |
| 6. John Clune            | 22. Edward R. Foley     |
| 7. Denis Hannigan        | 23. William M'Mullin    |
| 8. Thomas J. Horgan      | 24. James M'Cullen      |
| 9. John Sheehy           | 25. Robert Cussen       |
| 10. Edward F. J. Gannon  | 26. James A. Henderson  |
| 11. Charles William Ashe | 27. John G. Lidwell     |
| 12. John Elliott         | 28. Rintoul A. M. Jones |
| 13. William H. Buckley   | 29. Thomas P. Mathews   |
| 14. Ernest R. Newland    | 30. William B. C. Kaye  |
| 15. William G. Wakeley   | 31. Richard N. Byrne    |
| 16. Robert Fulton        | 32. William C. Cooke    |

The Court of Examiners cannot permit any of the candidates on the "Admitted" List to compete for the Society's Prize.

The remaining candidates were postponed.

**COMPETITIVE EXAMINATION.**

The Council have awarded a gold medal and £10 to Mr. James Boyle; and a silver medal and £5 to Mr. John Quinn.

**THE FINDLATER SCHOLARSHIP.**

This Scholarship has been awarded by the Council to Mr. William S. Collis.

**MICHAELMAS SITTINGS, 1882.**

At the Examination of Applicants seeking admission as Solicitors, held on Monday, the 23rd, and Tuesday, the 24th of October, 1882, the Court of Examiners decided that the under-named candidates should be allowed the Examination, and their names were arranged in the following order, viz. :—

- |                      |                         |
|----------------------|-------------------------|
| 1. George T. Harley  | 9. John G. Wheatley     |
| 2. Thomas Flynn      | 10. Michael O'Reilly    |
| 3. William F. Webb   | 11. Francis P. Murphy   |
| 4. William M'Ferran  | 12. Arthur J. Davidson  |
| 5. Fred. W. Meredith | 13. Richard J. P. Meade |
| 6. James Foley       | 14. Daniel M'Callum     |
| 7. Michael M'Cartan  | 15. Andrew Devereux     |
| 8. Leonard Sheil     | 16. William P. Carey    |

John Hewson has been allowed the Special Examination for which he had liberty to present himself, pursuant to Order of the Lord Chancellor.

The Court of Examiners awarded a gold medal to Mr. George T. Harley; a silver medal to Mr. Thomas Flynn; and special certificates to Messrs. William F. Webb, William M'Ferran, and Frederick W. Meredith.

The remaining candidates were postponed.

HENRY J. P. WESS, Esq. (President), then distributed the following prizes, awarded to candidates at last Trinity Sittings Final Examination, viz. :—A gold medal to Mr. William S. Collis; silver medals to Messrs. Patrick A. Chance, and Edward J. M'Ardle; and special certificates to Messrs. Maurice Healy, William H. Hancock, and James Clarke.

THE INCORPORATED LAW SOCIETY  
OF IRELAND.

FINAL EXAMINATION FOR APPRENTICES TO SOLICITORS,  
Pursuant to the Attorneys and Solicitors Act (Ireland), 1866.

MICHAELMAS SITTINGS EXAMINATIONS, 1882.

[Every answer is to be accompanied by reasons concisely stated.]

CHANCERY DIVISION.

Mr. FRANKS, Examiner.

1. State by whom an Administration Suit may be instituted and mode of procedure?
2. In what cases is a Summons for Administration inapplicable?
3. What is the effect of a bare denial of a Contract which has been alleged in any Pleading?
4. At what period, and how can a Plaintiff discontinue or withdraw his cause of complaint, and what is the result?
5. What is a Writ of Prohibition, and what difference in procedure is there, where there is an absence of jurisdiction, and where there is a general jurisdiction by the Inferior Court?
6. State the necessary steps to be taken in the appointment of a Receiver?

CHANCERY DIVISION—LAND JUDGES.

Mr. CROZIER, Examiner.

1. What additional jurisdiction has been conferred on the Land Judges by the Judicature Act?
2. What facility now exists for binding persons by the proceedings in any cause or matter pending before the Land Judges?
3. If it should appear after Order made as to sale of an unincumbered Estate that the Estate is incumbered, how do the Land Judges ordinarily deal with it?
4. Give a short outline of the directions prescribed by the rules for the preparation of Abstracts of Title to the lands of which a sale has been sought, and the forms of such Abstracts?
5. If Title Deeds of property which is being brought to sale be lost, state how the Land Judges may be satisfied to proceed in their absence?
6. State how the Tenants of an Estate being brought to sale may become the purchasers of their respective holdings; and provide also in the reply for the eventuality of all the Tenants not being able to purchase, and the owner not being favourable to a division of the Estate?

PROBATE AND MATRIMONIAL DIVISION PRACTICE.

Mr. MAXWELL, Examiner.

1. A. having made his Will, dies, leaving several Next of Kin and a residuary Legatee, but appoints no Executor—who is entitled to prove the Will?
2. B. dies, leaving by his Will a Legacy of £100 to the Daughter of one of the witnesses to his Will, would the Executor of the Will be justified in paying this Legacy? If so, why?
3. C. dies leaving £1,000, assets, but owing £800, in simple contract debts, on what sum should Probate Duty be paid? Describe the practice to obtain a refund of Probate Duty, state within what time it should be applied for, and how often an application for this purpose can be made?
4. How can a lost Will be proved?
5. State how proceedings for Alimony are instituted?
6. What steps should be taken to prosecute a suit for a Divorce in "forma pauperis"?

COMMON LAW DIVISIONS PRACTICE.

Mr. BARLEE, Examiner.

1. When must leave to issue Writ for service out of Jurisdiction be obtained, and when must endorsement be made on Writ?

2. What steps should a Plaintiff next take after Defendant's appearance—Defendant in such appearance not stating whether or not he requires Plaintiff to file a claim?

3. If no defence, state proceedings to be taken by Plaintiff to obtain Judgment?

4. State shortly the proceedings to be taken by Plaintiff to bring a defended action to trial?

5. How is a Defendant who is entitled to contribution or indemnity from a person not a party to the action to proceed in order to render such person liable?

6. Within what time must cause be shown against Order for new Trial?

COURT PAPERS.

LAND JUDGES.

Sittings for next Week so far as same are appointed.

Before the Rt. Hon. JUDGE FLANAGAN.

MONDAY.

IN COURT.—P. Kenny, as to ejectment.—G. West, for carriage.—J. Power, payment by receiver.—K. R. Briscoe, to appoint receiver.

Before EXAMINER (Mr. Kennedy).

H. M'Kelvey, rental.—W. Ledwich, do.—A. W. Travers, vouch.

TUESDAY.

IN COURT.—T. Howett, receiver.

WEDNESDAY.

IN COURT.—R. L. Hunt, payment by receiver.—J. M Walker, ditto.

THURSDAY.

IN COURT.—H. Gillman, to appoint receiver.—G. Jackson, ditto.

FRIDAY.

Before EXAMINER (Mr. Kennedy).

R. J. S. Lloyd, rental.—J. Robinson, vouch.

Before the Rt. Hon. JUDGE ORMSBY.

MONDAY.

IN COURT.—S. A. Kelly, payment.—C. A. Keogh, at hearing.—M. Hall, payment.—M. R. Dalway, as to order.—D. Ryan, for receiver.—Administratrix Carolan, payment.—J. Eyre, do.—R. Kellett, partition.

Before EXAMINER (Mr. M'Donnell).

De Montmorency, rental.

TUESDAY.

SALES IN COURT.

T. DOWLING,	-	-	-	-	1 lot.
TRUSTEES M. REILLY,	-	-	-	-	1 "
F. R. LAMBERT,	-	-	-	-	4 lots.

Before EXAMINER (Mr. M'Donnell).

A. H. Irwin, rental.—P. Regan, ditto.

WEDNESDAY.

Before EXAMINER (Mr. M'Donnell).

J. Evans, rental.—M. O'Neill, do.—P. Lawless, vouch.—Sir J. F. Godfrey, ditto.

THURSDAY.

IN CHAMBER.—M. R. Dalway, confirm sale.

IN COURT.—J. FitzGerald, examine witness.—F. Graham, from 9th.—N. J. Montgomery, objection.—R. A. Smith, from 9th.

COURT OF BANKRUPTCY.

ADJUDICATIONS IN BANKRUPTCY.

The dates of Adjudications are first given, the Meetings follow in Italics.

Dempsey, John, formerly of Templepatrick, in the county of Antrim, carpenter, but now a prisoner in the county of Antrim Jail. October 24; *Friday, November 24, and Tuesday, December 12.* John D. Rosenthal, solr.

Hawkins, Robert J., of Newbridge, in the county of Kildare, grocer and hardware merchant. October 24; *Tuesday, November 21; and Friday, December 8.* Bouchier Eaton, solr.

Lennon, Thos., of Strokestown, county Roscommon, draper and provision merchant. October 31; *Tuesday, November 28, and Friday, December 15.* Maxwell & Weldon, solrs.

O'Sullivan, William, of Mondellehy, in the county of Limerick, farmer. October 17; *Friday, November 24, and Tuesday, December 12.* Richard Davoren, solr.

DUBLIN STOCK AND SHARE LIST.

DESCRIPTION OF STOCK	NOVEMBER						
	Sat. 4	Mon. 6	Tues. 7	Wed. 8	Thur. 9	Fri. 10	Sat. 11
*Paid Government.							
— 3 p c Consols ..	101			101½			
— 3 p c Reduced ..					100½		
— New 3 p c Stock ..	100½	100½	100½	100½	100½	100½	
INDIA STOCK.							
4 p c Oct. 1858 } Traffic, at	103½		103½	103½	103½	103½	
3½ p c Jan. 1881 } Bk. of Irel.						100½	
BANKS.							
100 Bank of Ireland ..	319			320½	321		
25 Hibernian Banking Co.				33½			
20 London and County (Lis'd.)							
15 London Joint Stock				47½			
20 London and W'minster, H'd	71	71½		71½		71½	
10 Do. New							
3½ Munster Bank (Limited)		7½	7½				
— Nat. Prov. of England, Lim.							
10 National Bank (Limited) ..	24			24	24		
10 National of Liverpool (Lis'd.)							
10 Royal Bank ..			29½				
25 Standard of B. & A., H'd							
25 Union of Australia ..						65½	
Steam.							
50 British & Irish ..					50		
100 City of Dublin ..							
50 Dublin & Liverpool Steam Ship Building Co.	102	102½					
MINES.							
1 Killaloe Slate Co. (Lit'd.)					12/-		
7 Mining Co. of Ireland (Lit'd.)							
MISCELLANEOUS.							
10 Alliance & Dub. Cons.' Gas		16½					
4 Arnott & Co., Limited ..	6						
17 Hudson's Bay, ..	37						
TRAMWAYS.							
10 Dublin United Tramways			12				
10 L'pl Un'td Tram & Bus l'bd							
RAILWAYS.							
100 Great Northern (Ireland).						119½	
100 Gt. Southern and Western	116½						
100 Midland Gt. Western ..	89½	89½			89½		
50 Waterford and Limerick ..							
RAILWAY PREFERENCE.							
100 Gt. N'th'n (Irland) gt'd 4 p c							
100 Do., guaranteed 4½ p c ..							
100 Gt. South'n & West'n 4 p c						108½	
100 Mid. Great Western, 4 p c						104	
100 Do., 5 p c ..							
DEBENTURE STOCKS.							
— Belfast & N'h'n Cos, 4 p c			105½				
— Dublin & Wicklow 4 p c ..		105½			105½	105½	
— Do., 4½ p c ..		113					
— Gt. Northern (Ireland) 4 p					108½		
— Do., 4½ p c ..	114½						
— Do., 5 p c ..					132		
— Gt. North'n & West'n 4½ p c			109			109½	
— Gt. South'n & West'n, 4 p c	109½		109½	109½		109½	
— Midland Gt. West'n, 4 p c							
— Do., 4½ p c ..	109½		109½			110	
MISCELLANEOUS DEBENT.							
Alliance & Cons. Gas, 4 p c ..						99½	
Dub. & Glas. S. F. Co. (1887) 5 p c							
Do. (1888), 6 p c ..						100½	
Pipe Water—Old, £92 6s. 3d.							
Do. New, £100, ..						99½	

\* Shares not fully paid up are given in Italics. † x d

Bank Rate—Of Discount—4 per cent., 17th August, 1882  
Of Deposit—1 per cent., 23rd March, 1882.

Name Days—November 14th and 29th, 1882.  
Account Days—November 15th and 30th, 1882.

Business commences at 1 30 p.m.

BIRTHS, MARRIAGES, AND DEATHS.

**BIRTHS.**  
JACKSON—November 5, at Inniscorrig, Dalkey, the wife of Henry Vincent Jackson, J.P., High Sheriff, King's County, Inane, Roscrea, and Mountjoy-square, of a daughter.

**MARRIAGES.**  
MOSTYN and TREMENEHERE—November 6, at Wellington, Neilgherrie Hills, India, E. A. Mostyn, Esq., Captain the Royal Fusiliers, second son of the late Thomas Mostyn, Esq., Crown and Treasury Solicitor for Ireland, to Caroline Frances, youngest daughter of Major-General G. B. Tremenehere, R.E.

**DEATHS.**  
DAVIS—November 5, at Sydenham road, Dundrum, Evelyn, daughter of James Davis, Esq., solicitor, aged four months.  
DOLPHIN—November 4, at Turco, Loughrea, County Galway, Oliver Dolphin, Esq., barrister-at-law, in his 78th year.  
LOVER—November 3, at Rathmines-road, May, the dearly-beloved and only child of Henry William Lover, Esq., barrister-at-law  
MURPHY—November 7, at Skibbereen, Edmund Murphy, of Millford House, Borrisokane, Esq., J.P., Assistant Land Commissioner.

FUNERAL REQUISITES OF EVERY DESCRIPTION.

49, WALLER, 50,  
DENZILLE-STREET.

3-7

NOTICE OF REMOVAL:

MR. JAMES WILLIAM NAGLE, Solicitor, has removed his Offices from 52 Middle Abbey-street to 33 NORTH FREDERICK-STREET, DUBLIN, to which address all Letters, Notices, &c., should in future be directed. 141

WANTS:

TO COUNTRY SOLICITORS.

A FIRM OF SOLICITORS, having large and convenient Offices, are open to an engagement with a Country Correspondent. Address—"A. B., Solicitor," care of Messrs. DUFFY & SONS, Publishers, 15 Wellington-quay, Dublin. 140

INSURANCES:

LONDON GUARANTEE AND ACCIDENT CO. LIMITED. SECURITY, &c. RECEIVERS IN CHANCERY. The Bonds of this Company are now accepted as Security for Receivers in Chancery, as provided by the Rules under the new Judicature Act. For particulars apply to the Manager—32, DAME-STREET, DUBLIN. 51

PUBLIC NOTICES:

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[SEAL OF THE IRISH  
LAND COMMISSION.]

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# THE IRISH LAW TIMES AND SOLICITORS' JOURNAL.

VOL. XVI.

SATURDAY, NOVEMBER 18, 1882.

No. 825

## OUR WIVES—IV.

SINCE the passing of the recent Act doubts have been raised as to whether or not a husband who survives his wife will be entitled to an estate for life, "by the curtesy of England," in the freehold estates of inheritance which shall have devolved upon or have been otherwise acquired by his wife after the 31st of December next, so as to become her separate property by virtue of the Act, a child of the marriage having been born capable of inheriting same. We do not, of course, refer to those estates in realty, so common in this country, created by leases for a definite or indefinite number of lives, known as "descendible freeholds," where the lands are held *pur autre vie*, and the heir who usually (but not always) succeeds, takes, not as heir, but as "special occupant;" because it is long well settled that no "curtesy" attaches to such estates even where the wife's property in them is not settled to her separate use: *Stead v. Platt*, 18 Beav. 50. Mere equitable estates, as such, were always liable to "curtesy," because here "equity followed the law;" but, for a long series of years different judges held different opinions as to whether the limitations of such an estate to the separate use of a wife, did not so far exclude the husband from all connexion with it as to deprive him of his curtesy; and, had the question still remained open, it would be a most important one as rendering it impossible for a wife alone to make a good title to the entire absolute interest in an estate of inheritance, though it be nominally held by her to her separate use. It seems to us, however, to be now settled that a wife can, by deed or by will, without the intervention of her husband, absolutely dispose of such separate property, and that it is only in the event of her failing to do so that the husband's tenancy by the curtesy, will take effect thereout.

In *Cooper v. MacDonald*, L. R. 7 Ch. Div. 288, it was, in 1877, held by the Court of Appeal (James, Baggallay, and Thesiger, L.J.J.), affirming the decision of Jessel, M.R., that where a married woman who had children by her husband, and was, under the limitations of her father's will, equitable tenant in tail to her separate use of certain freehold estates, and was thereby precluded from anticipating the rents and profits, had, in pursuance of the Fines and Recoveries Abolition Act, barred the entail and limited the fee-simple thus acquired to her own separate use, and subsequently died, having by her will devised away the property from her husband, the effect of the will was to defeat the inchoate right of the husband to the usual estate for life conferred "by the curtesy of England," but that, if she had made no disposition of her estate, the estate by curtesy would have attached for the benefit of the husband—thus setting at rest the doubts raised by a series of conflicting decisions: *Roberts v. Dixwell*, 1 Atkins, 607; *Hearle v. Greenbank*, 3 Atkins, 695; *Moore v. Webster*, L. R. 3 Eq. 267; *Appleton v. Rowley*, L. R. 8 Eq. 139.

Bearing in mind the wording of the clause of the first section of the new statute, which provides that "a married woman shall in accordance with the provisions of this Act be capable of acquiring, holding, and disposing by will or otherwise of any real or personal property as her separate property, in the same manner as if she were a feme sole, without the intervention of a

trustee," the masterly judgment of Jessel, M.R., in the court below is especially instructive, and illustrates the great analogy which exists between the ordinary incidents of separate property acquired by settlement, &c., and that separate property which the Act contemplates. He says, "A gift of a fee simple estate or a gift of a capital sum of money to the separate use of a married woman gives her the same power of alienation over it as if she were a single woman. She is entitled to dispose of it as if she were not a married woman at all, and that at once gets rid of any notion of the husband having an interest. Whatever interest he would have had in the absence of disposition is disposed of by the disposition. The separate use is a creature of equity, and equity says the estate may be so limited to the married woman as that she can get rid of every possible interest of the husband. That is the meaning of a limitation to her separate use and free from his interference and control. It is exactly the same for this purpose as if the estate had been limited to such uses as the married woman shall by will or deed appoint; it entirely destroys the notion of the husband having any interest in it as against her disposition;" and he refers to the judgment of Lord Westbury in *Taylor v. Meads*, 4 De Gex, Jon. & Sm. 607, as supporting this view.

Again, at page 295, he says:—"Now, I will first of all consider whether he had an estate by the curtesy or not, because that has been very much argued. It appears to me that *he had* and *he had not*—that is to say, as I understand the law, if the married woman had never appointed or alienated the estate but had died being tenant in tail in equity or tenant in fee in equity, the husband would have had an estate by the curtesy, whether the estate of the married woman was merely equitable without the separate use, or whether it was equitable together with the separate use; and my reason for saying so on principle is this, that with one notable exception familiar to conveyancers, that of dower, in the incidents of estates equity follows the law; and that would therefore give to the husband the same estate by the curtesy in his wife's equitable estate as he would have in her legal estate. There was no reason to the contrary. When the wife died intestate—for that is the assumption—her husband would take something and her eldest son would take something; and they would be both equitably entitled. As I have said before, there was no reason why that disposition should be altered in any degree. The wife's property would descend to her eldest son subject to the husband's estate; there equity followed the law; but then came the separate use of the wife which engrafted something on the equitable estate; it took away from the husband the right to receive the income during coverture, or, as it was called, the equitable estate during the coverture; it gave the wife the absolute ownership during the coverture, and, if the separate use attached also to the capital, it gave her the right of disposing of it either by deed or will irrespective of the husband." He accordingly in the particular case before him arrives at the conclusion that the wife's disposition of the property by will had put an end to the husband's inchoate right to curtesy, for, that "where a wife either by deed *inter vivos*, or by will, disposes of the fee simple settled to her separate use, that disposition takes effect

free from any claim of the husband or eldest son or other heir at law; but that where she dies without making any such disposition, the rights of the husband and the rights of the heir are equally unaffected, and equity ought to follow the law."

As regards the devolution of estates of inheritance held by a wife to her separate use, the law, where the wife dies intestate, and without having alienated them by conveyance *inter vivos*, is thus placed upon an intelligible footing. On the other hand, the devolution under similar circumstances of the chattel interest in lands held by a wife to her separate use at the time of her death, will, like that of her other property, remain unaffected by the new Act. These will, therefore, of course, go to her administrator, and the husband is entitled, as of right, to take out administration. The law upon this subject is solemnly declared as regards Ireland by the Irish Statute of Distributions, 7 Wm. III. (Irish), c. 6, section 6: "Provided always that neither this Act nor anything therein contained shall be construed to extend to the estates of *femes covert* that shall die intestate, but that their husbands may demand and have administration of their rights, credits, and other personal estates, and recover and enjoy the same, as they might have done before the making of this Act;" and a similar enactment as regards England is contained in the English Statute of Frauds, 29 Car. 2, c. 3, section 25.

It is in the solution of the obscure questions of fact, to which the new legislation as regards married women will give rise, that we anticipate the greatest difficulty in the administration of it, rather than from the uncertainty of the substantive law itself—especially in those cases where it becomes necessary for a creditor to distinguish sharply between what moneys or other things are the property of the husband, and what the separate property of the wife. Even with the most innocent intentions, the property of wife and that of husband are apt to be considerably confounded together, while their action as regards such property partakes so little of the character of business dealings, that the ordinary tests rarely apply; besides all this, there is always an apprehension of their resorting to the process of "thimble-rigging," as it is vulgarly called, to evade an unwelcome demand. No test applicable to all such cases of difficulty can be laid down; but it is worthy of note that the Roman jurists, from whom so many of the practical maxims of English law have been borrowed, made use of what is called the *presumptio Muciana* in their endeavour to escape from somewhat similar difficulties,—the presumption that everything held by husband and wife, which the wife could not show to have come to her from some other source, had come from the husband. Thus, in Justinian's Digest, under the heading "*De eo quod mulier acquisivit*," we read, "Quintus Mucius ait: cum in controversiam venit, unde ad mulierem quid pervenerit, & verius, & honestius est, quod non demonstratur, unde habeat, existimari a viro, aut qui in potestate ejus esset, ad eam pervenisse. Evitandi autem turpis quæstus gratiâ circa uxorem hoc videtur Quintus Mucius probasse" (Book 23, Title 1, § 51). Although generally as regards such difficulties the recent statute leaves matters very much at large, claims founded on alleged loans, &c. made to a bankrupt by his wife out of her separate estate are not likely to be, for the future, much insisted upon, because it is expressly enacted that "any money or other estate of the wife lent or entrusted by her to her husband for the purpose of any trade or business carried on by him, or otherwise, shall be treated as assets of her husband's estate in case of his bankruptcy, under reservation of the wife's claim to a dividend as a creditor for the amount or value of such money or other estate after, but not before, all

claims of the other creditors of the husband for valuable consideration in money or money's worth have been satisfied (s. 3).

#### THE ALLEGED ATTEMPT TO ASSASSINATE JUDGE LAWSON.

"A POPULAR judge is a deformed thing," said Lord Bacon; and, truly, it is difficult indeed for a judge to win "plaudites fitter for players than magistrates," without abandoning all that best becomes the ermine. Especially is this so in a troubled period, when integrity and firmness are most needed, but popular censure and misrepresentation are most rampant. "I have still observed," said Lord Hale, "that almost in all times, especially upon changes, judges have been ever exposed to the calumny and petulance of every discontented spirit." Worse than this, even the personal safety of judges in the dark days through which we are passing has to be assured by the detective. And it has come to pass that the ministers of the law who venture to pronounce its sentence on a criminal, or to enforce the mandates of a statute that meets disapproval, must possess not merely a disregard of popularity, but the courage that can brave the assassin.

It would seem, indeed, that it was only by a rare good fortune Mr. Justice Lawson escaped on Saturday last. Attended, as usual for some time past, by a guard consisting of two detectives and two army pensioners, he was walking along Leinster-street, apparently in the most complete security, when the vigilance of one of the pensioners, M'Donnell, who was walking on the opposite side of the street, was aroused by the sudden movement of a man who crossed from that side to where the learned judge was walking. Quickly rushing across also, M'Donnell caught the man as he arrived within a few paces of the judge, and, as alleged, was in the act of drawing from his breast-pocket what afterwards proved to be a fully-loaded seven-chambered revolver. He was disarmed, arrested, and identified as Patrick Delaney, a carpenter, who had already undergone a sentence of five years' penal servitude for highway robbery and presenting a pistol at several persons. "As this matter is at present the subject of legal investigation, we should be slow to do or say anything which would in the least prejudice or interfere with the course of justice," as the learned judge most properly remarked when, on a subsequent day, receiving the public congratulations of the Bar. But hardly need it be said that, in common with both branches of the profession and with every right-minded person of all politics and persuasions, we could have no feeling but one of unmitigated horror had a catastrophe happened that we shudder even to imagine.

What an awful termination to a brilliant career there might have been, but for the prompt sagacity and energetic courage of Charles M'Donnell, to whom, as was subsequently observed by the magistrate (Mr. Curran), not Mr. Justice Lawson alone, but the citizens of Dublin generally owe a debt of gratitude, for not only saving the life of an eminent judge, but the city from the stain of a terrible crime. The son of James Lawson, Esq., of Waterford, James Anthony Lawson was born in 1817. He was educated at the University of Dublin, where he took a scholarship in 1836, and in the following year won a gold medal in ethics. In 1841 he succeeded Mr. Butt as Professor of Political Economy. Called to the bar in 1840, he took silk in 1857, and was appointed a Sergeant-at-Law in 1860. In 1861 he was elected a Bencher of the King's Inns, and was appointed a Commissioner of National Education. In the same year he was appointed Solicitor-General, and Attorney-General in the year following.



He was appointed a puisne judge of the Court of Common Pleas in 1869, and in June last was transferred to the Queen's Bench Division. He was also, in 1869, appointed a Commissioner of Church Temporalities, and was a Commissioner for the Custody of the Great Seal in 1874. In 1865 he had been elected Member of Parliament for Portarlington, and was sworn of the Irish Privy Council, as of the English in 1870. But, not satisfied even with those many distinctions, the learned judge is now about to figure as an author; and we trust that he who has already escaped the bullet will yet survive the criticisms on his *Hymni Usitate Latine Reddite*, which, at all events, he will have no difficulty in doing if they prove as amiable as our own upon his able paper on "The Practicability of Codifying English Law," read before the Statistical Society in 1872. Judge Lawson is also well known in private circles as an admirable actor, and his humorous rendering of Shakespeare's (not Sheppard's) *Touchstone*, at the Presbyterian Association in April last will not soon be forgotten; nor do we doubt that the genial judge well deserved the magnificent silver salver which was presented to him on Tuesday last, as President of the Hibernian Catch Club. Able as he has proved himself in every capacity, he possesses, withal, in an eminent degree, that quality with which Dante specially accredited the judicial personage whom he encountered in purgatory—

"Nino, thou courteous judge! what joy I felt,  
When I perceived thou wer't not with the bad!"

#### DEATH OF MR. A. J. PHIPPS.

Mr. Alfred J. Phipps, Accountant to the Land Commission, died on the 10th inst. at his residence in Bray, in the 59th year of his age. A courteous and efficient officer, he is deeply regretted. He had been over forty years in the public service, and previous to his appointment under the Land Commission, in Oct., 1881, had for sometime acted as accountant to the Khedive of Egypt, and formerly filled the office of book-keeper to the Commissioners of Woods, Forests, and Land Revenues, London.

#### "LAW JOURNAL REPORTS" FOR NOVEMBER.

The *Law Journal Reports* for November contain pages 49 to 64 of the Privy Council cases; pages 785 to 856 of the Chancery Division; pages 561 to 592 of the Queen's Bench Division; pages 57 to 80 of the Probate, Divorce, and Admiralty Division; and table and index of the Statutes of the Realm. In all forty-four cases are reported, of which two are from the Privy Council; twenty-nine from the Chancery Division; three from the Queen's Bench Division; and ten from the Probate, Divorce, and Admiralty Division.

The first of the Privy Council cases is *Allen v. Pullay*, which decides that instruments, the stamps on which have, by inadvertence, not been properly cancelled, are not "duly stamped" within the meaning of an ordinance of the Straits Settlements, and may be subsequently stamped. *Rhodes v. Rhodes*, an appeal from New Zealand, contains an elaborate judgment of Lord Blackburn upon a will from which the words "from and after the decease of my said wife" were allowed to be omitted in the probate, or disregarded in construing the will.

Of the Chancery cases, in *Tempest v. Camoys* the Court of Appeal decides, in an administration action, that where two trustees disagree in the exercise of a discretionary power to invest in land, the court ought not to direct the investment. In *Wilkinson v. The Hull Railway and Dock Company* the Court of Appeal held that a railway company may, under their general powers, take land to make a road for the accommodation of a proprietor whose land they had severed. In *Johnston & Co. v. Orr-Ewing & Co.*, in the House of Lords, the liability of natives of India to mistake the defendants' for the plaintiffs' trade mark in goods intended

for the Indian market was allowed as a test, although a person reading English would not make the mistake. In *Prestney v. The Corporation of Colchester* Vice-Chancellor Hall decided that the proviso to section 2 of the Municipal Corporations Act, 1835, reserving existing rights in property applied by "custom" to the benefit of individuals, did not refer to a legal custom, but merely to the existing practice. In the case of *In re Pooley, ex parte Harper*, the Court of Appeal condemned the practice of buying proxies in order to control the appointment of a trustee in bankruptcy, and disallowed the costs of the solicitor to the trustee, who was cognisant of the practice being resorted to by the bankrupt's friends. In *Gray v. Webb* Mr. Justice Kay excluded a counterclaim on the ground that the claim was practically undefended and the action would be delayed. In *Marshall v. Gingell* Mr. Justice Kay held that a testator who devised real estate in trust for his daughter during her life, and after her death gave the premises in trust for and devised them to her children, conferred the whole legal estate on the trustees. In *Peareth v. Marriott* a testator who created an annuity of £1,500, "clear annual income," out of his property for his widow, and added, "no deduction shall be made from any of the legacies for the legacy tax or any other matter, cause, or thing whatsoever," was considered by Vice-Chancellor Bacon to authorise the trustees to pay the widow's income tax. In the case of *In re Moulson, ex parte Knightly*, it was again held that an affidavit merely verifying the signature of a bill of sale was not an "affidavit of attestation," and that a grantor described as a stone merchant and quarry owner, who carried on business at two other places besides his residence, was sufficiently described. In *Bennett v. Bowen* it was held that an account against an executor, on the footing of a wilful default, is not an "ordinary account," such as can be endorsed on the writ and taken by judgment in default of appearance. In *Gartside v. The Silketone and Dodsworth Collieries Company* it was held that where debentures were executed on the same day, but in two sets, the debentures in each set to rank *pari passu*, the set sealed first had priority. In *Re White's Trust* a bequest of £1,000 to a city company upon trust, "when a proper site can be obtained," to build eight almshouses, was held not to be void under the Mortmain Act. In the case of *In re West, ex parte Good*, the trustee was held not entitled to books delivered a year before the bankruptcy to the *bona fide* purchaser of book debts, but entitled to inspect them. In *Wolfe v. Mathews* it was decided that an action could be brought to restrain a trades union formed to "assist strikes and provide sick pay to members" from amalgamating with another, as it was not to "directly enforce any agreement to provide benefits for members" in the words of the Trades Unions Act. In *Gilroy v. Stephens* an administratrix, whose solicitor had received dividends on a fund set apart for an infant next-of-kin, was ordered to account with interest at 3 per cent. and half-yearly rests. In *Asquith v. Saville* it was held that a bequest to a class—"and, if any of them die leaving issue, their shares to go to their respective issue"—did not benefit the issue of one dead at the date of the will. In *Ricketts v. Lewis* an administrator was held not entitled to mortgage leaseholds for repairs unless under covenant to repair. In *Pratt v. Pratt* it was decided, in accordance with the long-established practice, that the right to inspect documents gives a right to copy them. In *Paul v. Paul* the Court of Appeal, overruling a decision of Vice-Chancellor Malins, refused the petition of a husband and wife to divide between them a fund settled, if the wife should die first, as she should appoint, and in default of appointment to her next-of-kin; and, if the husband should die first, for her absolutely. In *Walker v. Poole* it was held that numerous letters must be described by bundles in an affidavit of documents, otherwise the affidavit will be taken off the file as prolix. In the case of *The Scottish Petroleum Company* a compromise, striking a name off the list of shareholders concluded before the commencement of the winding up, was upheld. In *Hill v. Hart Davis* a circular con-

taining untrue statements as to a friendly society was restrained by Mr. Justice Kay although issued by one member to others for the purpose of obtaining an investigation. In *The Attorney-General v. The Vestry of Bermondsey* vestrymen who had been made parties to an action against the vestry for the purpose of paying costs, were dismissed from the action. In the case of *The Working Men's Mutual Society* Mr. Justice Kay decided that a guinea a day and first-class fare out and home is the sum to be tendered to an auctioneer summoned as a witness. In *Nottage v. Buxton* an interest given to children on attaining twenty-one, subject to the life interest of their respective mothers, was held to be vested in a child who attained twenty-one, but died before his mother. In *Taylor v. Collier* one of two members of a partnership was held entitled to put in an appearance for the firm independently of the other. In *Woolley v. Colman* it was held that the court might make an order for sale in a redemption action, under the Conveyancing Act, at any stage of the action. In the case of *Re Clarke* Consols, railway securities, and cash were left under settlement by will to a married woman's separate use without power of anticipation, and the cash was ordered to be paid to her, but only the income of the rest. In the case of *Re White's Mortgage* it was considered that an executor of a deceased mortgagee could not, under the Vendor and Purchaser Act, exercise the power of sale; and a vesting order was made.

Of the Queen's Bench cases, it was held by the majority of the Court of Appeal, in *Pitman v. The Universal Marine Insurance Company*, that where an insured ship is damaged at sea so that the cost of restoring her to her original value would be greater than that value, the shipowner who has sold the ship is entitled to recover from the insurers the difference between the amount realised and the original value, and not what would have been the cost of repairing the damage. In *The Mersey Steel and Iron Company (Limited) v. Naylor, Benson, & Co.* the Court of Appeal decide that a failure to pay for goods on the one hand, or deliver them on the other, by parties to a contract for the sale of goods from time to time, does not necessarily entitle the other party to rescind; and that a defendant to an action by a liquidator may set off a claim for damages. In *Mostyn v. Stock* Mr. Justice Lopes decided that where an execution debt is reduced to below £50 by payments to the sheriff's officer, section 87 of the Bankruptcy Act does not apply, and the execution creditor is entitled to the balance of his debt in full.

The first case in the Probate, Divorce, and Admiralty Division is the *Guy Mannering*, which has been the subject of some discussion. The Court of Appeal, affirming Sir Robert Phillimore, decide that, although a pilot in the Suez Canal is compulsory, yet, as the master under the regulations of the canal is still liable, the owners are liable for the negligence of the pilot. In *Wigney v. Wigney* the Court of Appeal upheld the decision of Sir James Hannen, depriving a guilty husband in a divorce suit of all benefit under the settlement of the wife's property. In the *Golden Sea* Sir James Hannen decided that there is no appeal from the Wreck Commissioner by the owner, although there is by the master. In the *Rona* Sir Robert Phillimore decided that, although the Admiralty Court had no jurisdiction in case of damage to goods shipped on a vessel of which the owner is domiciled in England, the County Courts have. In the *Gaetano & Maria* the Court of Appeal held that the master of a foreign ship may execute a binding bottomry bond without communication with the owners, if such is the law of the ship's flag. In the *Rory* the Court of Appeal, overruling Sir Robert Phillimore, held that in an action by cargo owners against ship-owners, based on defects in the ship, the defendants are entitled to particulars of defects as in a similar Queen's Bench case. In *Medley v. Medley* the Court of Appeal, overruling Sir James Hannen, held that where the husband has property on which provision for the wife may be secured, the court has not, under the Divorce Act, power to order weekly or monthly payments by the respondent husband to the petitioner. In

the *Ellin* Sir Robert Phillimore decided that a judgment in respect of a collision has priority, as against the ship, over judgments by seamen for wages earned before and after the collision. In *Rose v. Rose* a wife, who had by a separation deed condoned the husband's previous acts, was not held entitled to take advantage of previous, cruelty, on the assumption that it was revived by a subsequent adultery. In *Whittaker v. Whittaker* a debt was attached for the payment of costs due in a divorce suit and a receiver ordered. The rest of the number is occupied with the index to the statutes for the year.—*Law Journal*.

### THE SETTLED LAND ACT.—III

(Continued from page 547, ante.)

#### Capital Money arising under this Act.

This is defined to mean "capital money arising under this Act, and receivable for the trusts and purposes of the settlement" (sect. 2 (9)). The Bill, which afterwards became this Act, contained a provision in clause 21 (1) which explained that capital money included—

"Purchase money on sale, equality money on exchange or partition, fine on lease, grant, or licence, money raised on mortgage or charge, and mining rent set aside as capital."

This explanation is not in the Act *verbatim*, but it appears to be correct to say that capital money is usually still so inclusive. It is rather strange that, while a fine for a lease may clearly be taken—sects. 7 (2), 13 (5)—no definite provision is made that it shall be treated as capital, but we think clearly it must, except possibly in the case of a fixed certain fine (*Brigstocke v. Brigstocke*, 38 L. T. Rep. N. S. 760; 8 Ch. Div. 357). A tenant for life is entitled to heriots and casual profits, and in some cases to fines on renewal of leases, but these differ from a fine on a new lease granted by himself, where there is no custom. Sect. 11 directs that certain mining rents shall be capital, sect. 18 provides similarly for money raised by mortgage, sect. 35 as to certain money from sale of timber, sect. 37 as to produce of sale of personal chattels settled with land. Provision is made by sect. 34 for application of money produced by sale of leaseholds and reversions, &c., so that all parties interested may get the same benefit from the money as they would from the land. No express provision is made as to the "consideration" for acceptance of surrender under sect. 13 (1), or for payment for licence under sect. 14. See, however, sects. 53, 44, 45. As to consideration for rescission and variation of contracts, see sect. 31.

Capital moneys are to be settled, and represent, and are in lieu of, the settled land. They are not paid to the tenant for life, but to the trustees or into court, at the option of tenant for life (sect. 22 (1)), so that they may be applied for any special authorised object for which they are raised, or be invested (sect. 21) or spent on improvements (sect. 25). Capital money is not to be paid to a single trustee unless the settlement otherwise order (sect. 39). Where there is only one trustee left the money must be paid into court, or an additional trustee must be appointed. Money, now or hereafter in court, or in the hands of trustees, and liable to be laid out in the purchase of land to be settled, can in like manner be invested or spent in improvements. This applies to money paid in under the Lands Clauses Consolidation Acts, the S. E. Act 1877, and any other Act (sects. 32, 33).

#### Additional powers—to whom they should be given.

As the powers of tenant for life cannot be taken away (sects. 51, 52) the principal questions for the draftsman are, what additional powers and privileges shall be inserted in the settlement or will, and to whom, and subject to what restrictions or consents, shall he give them.

Speaking very generally, and subject to exceptions and modifications, it may be said that the Act gives to tenants for life and other limited owners, without the

consent of the trustees, powers of sale, exchange, enfranchisement, partition, and leasing, which were formerly given to trustees with consent of the tenant for life or to the trustee alone. Instead of consent of trustees being necessary they simply have notice given them (sect. 45), so that they may apply to the court if they think fit (sect. 44); but they are not bound to make any such application, and are indemnified if they adopt purchases, contracts, &c., of tenant for life without any inquiry (sect. 42). Practically, unless tenant for life appears to the trustees to be guilty of fraud or gross negligence, they will but seldom interfere.

It will be of no use in settlements and wills to give to the trustees any powers which conflict with those given by the Act to the tenant for life, for if this is done the powers in the settlement must give way (sect. 56). Hence the ordinary powers of sale, &c., should be omitted; but nevertheless trustees should be appointed "for the purposes of the Settled Land Act, 1882:" (see sect. 2 (8)). If desired, additional powers may be given to the tenant for life or to the trustees (sect. 57). But usually it will be best to give them to the tenant for life when they are required at all, for if given to the trustees there will often be a danger of conflict of powers. We have said that the powers should be given to the "tenant for life;" but it must be remembered that under the Act a large number of persons are either deemed tenants for life or have the powers of tenant for life (sect. 58). So that in the settlement the powers should be given accordingly. Additional powers are to operate like those given by the Act (sect. 57 (2)).

The following form will be convenient in a settlement *inter vivos*: "And it is hereby declared that every person who is, or is deemed to be, or has the powers of tenant for life under the Settled Land Act, 1882, with respect to the hereditaments and premises hereby granted, shall have the following additional powers, that is to say:" A little verbal alteration will be necessary in a will. In either case consent of trustees may be made essential, if desired. In giving additional powers regard should be had to sect. 58, which in some cases gives persons whose real interest in the family property may be small—*e.g.*, tenant by the curtesy—the powers of tenant for life.

As to trustees, see sects. 2 (8), 38. Sometimes it will be convenient to substitute their consent for the sanction of the court. But in many cases the best plan will be to give the powers to tenant for life absolutely.

#### *What additional Powers should be conferred.*

This question is the most important to the draftsman of the "settlement," whether made *inter vivos*, by will, or private Act of Parliament. It will be the most convenient course, first to consider the sufficiency of the statutory powers with especial reference to settlements *inter vivos* of land as such; and then to discuss shortly settlements by way of trust for sale under sect. 63, and wills. Practically, most of what is said about supplementing the powers with reference to the first description of settlement will apply to others, except indeed in cases where the powers themselves are unsuitable.

We propose also to consider in detail some of the most usual and important forms of settlement individually, and show what omissions may prudently be made in reliance on this Act and the Conveyancing Acts.

(To be continued.)

### THE SETTLED LAND ACT.

Writing to the *Times*, the Right Hon. J. G. Shaw Lefevre says:—

1. The Bill as it came from the House of Lords was very restrictive as to the investment of the money resulting from the sale of the settled property. Practically, it limited such investment to Government securities. Much of the operation of the Act will turn upon this, for tenants for life will not have much inducement to sell if they can invest only to pay at the rate of 3 per cent. Every additional quarter per cent.

to be obtained upon such investments will act as a great inducement to sell. The committee, by a majority of eleven to three, extended the power of investment to the bonds and debentures of railway companies in Great Britain and Ireland which for ten years have paid a dividend on their ordinary shares. By the casting vote of the chairman, it refused to extend this power to the case of debentures of railways in India, the interest of which is guaranteed by the Indian Government; and, by a majority of eight to six, it refused to extend it to the case of stocks or bonds of any municipal corporation in the United Kingdom secured by an Act of Parliament on local rates. Notwithstanding this decision, however, it would appear that, by the Local Loans Act of 1878, trustees who are authorised either by the terms of the settlement or by statute to invest in railway debentures are empowered to invest also in bonds raised under that Act by local authorities on the security of the rates. The authority, therefore, given by the Settled Land Act to invest in railway debentures seems to carry with it the right to invest in bonds or debentures secured on local rates under the Local Loans Act. It is probable that, if time had been given fully to discuss the measure in the House, there would have been further relaxation in this matter of investment.

2. The Bill as introduced permitted the expenditure of the proceeds of the sale of land in various specified improvements of the remaining entailed property, subject to the approval of the Inclosure Commissioners. This would have necessitated those constant references to the Inclosure Commissioners, and that minute superintendence on their part of every improvement, of which so much complaint has been made in the past, and which have proved to be so great an impediment to improvements of entailed property through this medium in the past. The committee insert an amendment to the effect that the certificate of an able practical surveyor, nominated by the trustees and approved by the commissioners, shall suffice for this purpose, and the question, therefore, may in future be decided locally and without reference to the commissioners except for approval of the surveyor.

3. The committee inserted an amendment extending the power of sale conferred upon a tenant for life under an entail to the case of any person interested for life under a marriage settlement, or other settlement vesting landed property in trustees. The result will be that it will be impossible to evade the intentions of the Act, or so to settle land as to deprive the person entitled for life of the power of sale; and although the trustees of a settlement may have absolute discretion as to the investment of the funds when consisting of personalty, they will never have the power of preventing a tenant for life from selling any land which may be settled under any form whatever.

Mr. Lefevre then, in the course of his letter, remarks:—Let me add a few words on the general scope of the measure. I think it is something of an exaggeration to describe it, as some speakers and writers have done, as a legal and social revolution; and that by its adoption the whole system of entail has been struck down at a blow. It is far more of a legal revolution than a social one. To give power to the tenant for life to sell the land without the consent of the trustees or the court would have frightened lawyers of the old school out of their senses. It is unquestionably a very important change, and will distinguish Lord Cairns as a great legal reformer. Among other things it will greatly facilitate the registration of title, for it will at once make it clear that the name of the tenant for life is the proper one to appear on the register, as the person having power to deal with the property. The measure also does the utmost that is possible to free properties already entailed from their economic evils; for it is scarcely to be expected that a British Legislature will ever do what was done in France in 1789—namely, annul all entails and vest the properties affected by them in the tenants for life, free from any restriction, or from any designation in favour of remain-

dermen. The measure, however, does nothing to limit the existing powers of entail, or to remove the legal distinction between land and personalty which now exists, and which enables the carving out of separate interests in property in land—it is this which so complicates and involves titles and makes the dealing with it so expensive and cumbrous; nor will it mitigate the social or family evils of entail, which result from the concentration of property in few hands, and from depriving the existing owners of settled land of the power of disposition among their children.

On these questions, however, I think a little reflection will show that the measure must have, at no distant date, a most important effect. The motive power of the measure, that which caused it to be accepted so readily by the House of Lords and by the landed interest, has been the embarrassments caused to so many landowners by the agricultural depression, the absolute necessity for many of them of selling portions of their land, and the moral which many of them have learnt that it is most unwise to have all their property invested in land. This motive power to any wider reforms will no doubt be greatly lessened, if not removed, as Mr. Arnold has pointed out in the *Times*. On the other hand, the arguments in favour of the existing system will be greatly weakened, and it is difficult to see how further changes can be resisted with any logic. When land and personalty under settlement have no longer any practical distinction and can be converted, the one into the other by the tenant for life, the legal distinction between them cannot long be defended, the great force must be given to those who claim that, for the purpose of intestacy and for all other legal purposes, no such difference should be recognised.

In the view also of an intending settlor of landed property and of the family the measure cannot fail to produce an important effect, when it comes to be thoroughly understood that, no matter how the property may be tied up, or how great the desire of the settlor or testator to keep the land in the family, or to put it beyond the danger of dispersion, his very next heir immediately on coming into possession may at once sell it and convert it into personalty; and the question will arise whether those great distinctions now drawn between eldest sons and other children can be justified and maintained. The feelings, sentiments, and traditions of many families are centred round the family estate, and the family opinion justifies and often applauds the maintenance of it in one hand; but under a system where the preservation of the family estate can no longer be secured and where it may be sold and converted into personalty by the temporary holder, it is impossible not to foresee a great change in the family view of such matters. Further, also, a great step has been taken in giving to the tenant for life a greater dominion over the property, in conceding to him the right of sale and the conversion of the land into personalty; but the dominion over the property in the direction of leaving it as he wishes among his children (secured as a rule in the ordinary marriage settlement with respect to personalty) will still be denied to the tenant for life under the ordinary entail; and when the idea is grasped that there is no longer any distinction between land and personalty, and that they are really convertible terms, it will not be long before it will be generally understood that entails, which destroy the dominion of tenants for life in respect of the distribution of their property among their children, and which consequently deprive them of parental power, are mischievous and indefensible.

For these reasons, while denying that the Act can properly be called a social revolution, it is, I think, a great and most beneficial reform; it will give a most important relief to landlords at present embarrassed by charges and settlements; it must inevitably weaken and destroy those arguments by which family entails have been permitted by law and sustained by the custom of families; and it must hasten a general assimilation of the law and practice as regards land and other personal property.

#### CONTEMPT OF COURT.

It may be asserted with perfect confidence that it would be difficult to devise any more effectual method of depriving courts of justice of all their most characteristic features than subjecting the power of committing for contempt of court to any considerable restriction. There is, in fact, hardly any branch of the law the existence of which is of greater importance to the public which is less liable to abuse, or which, if it is abused, is so sure to be noticed and so to bring about the redress of any evil which it causes. In the first place, it must never be forgotten that the proceedings of all courts of justice, and, above all, the proceedings of all criminal courts, appeal to the strongest passions of human nature, and excite the strongest partisanship which it is possible to feel. Every trial is a battle conducted, no doubt, according to rules intended to secure calmness and fair play, but still a battle between the parties for all that people hold most dear—life, liberty, character, property. The reason why people do not hiss and cheer at trials, why they do not make unseemly interruptions—and, in short, behave as they would at a play or a public meeting—is simply that a habit of respect has been formed, which is continually supported by the knowledge that the judge has both the power and the will to enforce propriety of behaviour by instant punishment. The knowledge that the power exists is in practice quite sufficient, as a rule, to supersede the necessity for its exercise. An intimation from the judge that he is prepared to use it will in almost every case secure the most absolute propriety of demeanour. The importance of maintaining decency and dignity in a court of justice is second only to the importance of maintaining substantial justice in its proceedings. Indeed, the two things are connected together in the closest way. If disorderly conduct in court were permitted, the worst of influences would be brought to bear directly upon jurors; and the only way in which it can be prevented is by lodging in the judge's hand the power of summary punishment. Apart from questions of actual misbehaviour in court by spectators, there are a great variety of other cases which can be reached only by the same summary mode of proceeding. If, for instance, a barrister, a juror, or a witness misbehaves, punishment inflicted on the instant is the only practicable remedy. If a juror, instead of discharging his duty properly, chose to amuse himself by reading a newspaper; or, having business of importance, absented himself at the beginning of the proceedings on the second day of a trial, so as to make it impossible to proceed; or if a barrister chose to persist in pressing upon the jury topics which he had clearly no right to address to them; punishment is practically not only useless but impossible unless it is inflicted at once. With a view to securing the due administration of justice, it is like the power of summary arrest with a view to securing a person committing a crime. If the refractory barrister, the negligent juror, the witness refusing to answer, could not be punished there and then, they would practically do the mischief which a power to commit for contempt would prevent; and it would not be worth while to punish them afterwards. With regard to the executive officers of courts of justice, such as the sheriff and the under-sheriff, power to punish in a peremptory way for neglect of duty or disobedience to lawful directions is essential to the maintenance of the authority of the court. Whatever may be thought of the exact amount of punishment awarded to Mr. Gray by Judge Lawson, can anyone doubt that Mr. Gray did commit an offence which rendered the immediate infliction of serious punishment—punishment which a man of Mr. Gray's position and standing in society would feel severely—absolutely indispensable? There can be no escape from the dilemma that if the jury were not to blame the sheriff ought to have been the last man to attack them falsely, and that if they were to blame he ought to have informed the court of their misconduct. Whether articles appearing after the verdict was given might not have been left to be

prosecuted, if necessary, by a criminal information or an indictment, is a special question peculiar to the particular case, on which we have no desire at present to say more than we have already said. But unless trial by newspapers is to be substituted for trial by courts of justice, and in particular for trial by jury, it is absolutely necessary that the courts should have the power of preventing and, if necessary, of punishing all interference by the press with cases actually under trial or about to be tried. It must be recollected that the power to commit for contempt is a far more extensive matter than most people suppose. It is identical with the power by which a large part of the current business of the courts of justice is conducted, and without which they would be struck with impotence. A large part of the business of judges at chambers, especially judges of the Chancery Division, consists in issuing injunctions—that is, orders not to do this or that: for instance, not to sell goods seized under a bill of sale; not to trespass upon a place the ownership of which is in dispute; not to part with property claimed by some one not in possession of it. All these orders are sanctioned by the power to commit for contempt. If a man ordered not to sell does sell in defiance of the order, he is immediately sent to gaol, and kept there till he has purged his contempt to the utmost of his ability. If a solicitor who is ordered to send in his bill giving credit for moneys which he has received refuses or delays unreasonably to do so, or if a sheriff fails to execute a writ lodged with him for execution, the remedy is an attachment, which is the same thing as a commitment for contempt. The person in default is sent to gaol till he does as he is told, and makes amends as well as he can for what he has failed to do. There are, no doubt, some few particular matters on which alterations might perhaps be advantageously made in the law as it stands: but we greatly doubt the wisdom of interfering on account of a single case which may be represented as one of over-severity.—*St. James's Gazette.*

#### THE COMMITTEE ON MR. GRAY'S CASE.

There is reason to believe that the select committee of the House of Commons appointed to inquire into the case of Mr. Gray will take a thoroughly practical view of their duties, and confine themselves to the question whether the House is called upon to take any step whatever in the matter on the ground that there has been a breach of privilege. The inquiry was directed simply to the case of Mr. Gray, not to the law as to contempt of court. There would have been no committee at all had it not been that Mr. Gray is a member of the House; and the inquiry is not into the general law, nor even as to the propriety of its application to his case; but simply whether it is necessary or expedient for the House to take any further step in the matter. That was the nature of the inquiry in the two previous cases which have arisen—that of Mr. Charlton, and that of Mr. Whalley—and these inquiries were dealt with in that way. The Attorney-General, who is the chairman of the present committee, proposed the course taken in the case of Mr. Whalley; and there is very little doubt that, for similar reasons, he will propose and carry a similar course on the present occasion. In both the previous cases the House, on the report of its committee, declined to take any further step, thus showing that it does not deem itself under any obligation in every case to assert its privileges; and will not do so if, under the circumstances of the case, it does not deem it proper to do so. It probably would never interfere in any case in which the circumstances showed that the conduct of the member was gravely reprehensible, although his punishment came very near indeed to the boundary line of privilege.

There is, probably, no doubt, according to decided cases, that a member is privileged from arrest for contempt unless it has involved a breach of the peace. So the law was laid down in the last century in the case of *Wilkes*—even in the case of an infamous libel calculated

to provoke a breach of the peace. So it was laid down in 1831, in the case of Lord Westmeath, in the case of an ordinary contempt by disobedience to the order of a court. On the other hand, in the case of Mr. Wellealey, who forcibly seized a ward of court, there was a breach of the peace, for which Lord Brougham committed the member. In the case of Charlton, who had challenged the Master sitting on his case, the offence came so near to a breach of the peace that it was considered by the House, on the report of its committee, as not a fit case in which to assert its privilege, though the report carefully set forth the authorities showing that the privilege existed. In the case of Mr. Whalley there was no breach of the peace; there was only, as in the case of Mr. Skipworth, disrespectful language towards the court. If the House had chosen to assert the privilege, there could be no doubt that it existed; but Parliament had been dissolved, and it was not thought worth while. In the present case, that of Mr. Gray, there was language calculated to incite to a breach of the peace, especially in the then state of Ireland, for there were grave imputations on the conduct of the jury while considering their verdict in a capital case; and there was this special aggravation, that Mr. Gray was the sheriff, charged with the protection and guardianship of the jury, which fact itself afforded a special ground of jurisdiction. The officers of the court have always been held specially subject to its summary control. The whole jurisdiction of attachment of the sheriff for contempt in not executing writs rests on that foundation, and there are many instances of its exercise against the sheriff—one curiously in point. It is not likely that in such a case a committee of the House of Commons will present a report recommending any further action in the matter, especially as it could only now take the form of some censure upon the judge for disregarding its privilege.

If, indeed, the committee were one for inquiry into the law as to contempt of court in general, there might be a good deal to be said; and perhaps a great deal of doubt as to the validity of the modern assertion of it by the judges, more especially in regard to utterances or publications by strangers out of court. There can be no doubt that some more recent decisions—especially in the *Tichborne* case—went far beyond any former authorities. This is shown by the simple fact that Mr. Justice Blackburn, in committing Mr. Whalley and Mr. Skipworth for mere words uttered or published out of court, reflecting on the court, could cite no cases as authorities except those of Wellealey and Charlton, which were so entirely different as really not to be in point at all. A brief review of the authorities prior to the *Tichborne* case will show that such a course had never been taken in a court of law before; and that, though similar proceedings had been taken in the Court of Chancery since the time of Lord Hardwicke, it was rested in that court on reasons arising out of its procedure which did not apply in courts of law. It was, moreover, of very doubtful legality, though, from the nature of the jurisdiction, it never could be tested in a court of law, as a committal by a superior court for contempt was deemed a good return to a *habeas corpus*. Originally, as the earlier authorities show, the process for contempt was only deemed applicable—as to strangers—in cases of insult to the court in its presence, and actual obstruction to its proceedings; and so strictly was the jurisdiction limited that mere words of disrespect towards the court, not in its presence, were never deemed a contempt, unless when uttered by a party served with its process; and acts contrary to its order were not deemed a contempt unless committed by parties to whom its writ or order had been directed. When the jurisdiction of the Court of Chancery was established, it originally followed the law in this respect, and it was only attempts to deter witnesses from giving evidence which were deemed a contempt (*Tothill's Reports*). It was not until the time of Lord Hardwicke that the doctrine of “constructive contempts” was established in the Court of Chancery, and applied to language out of court reflecting on the court or preju-

dicial to the suitors (2 Atkins's Reports). His ascendancy, especially over the judicature, was great, lasting for twenty years, and it enabled him to establish the jurisdiction too firmly to be shaken. It has been acted upon in that court ever since, down to the time when that court was merged in the "High Court," and since then it has been exercised in the same way by the judges of the Chancery Division. It was attempted, in the time of Lord Mansfield, to assert a similar jurisdiction in courts of law. The printer, Almon, made a libellous attack upon him for something he had done in his office as Chief Justice. The Chief Justice desired to punish him for it summarily as for a contempt; and Mr. Justice Wilmot supported him to the utmost, and prepared an elaborate judgment in vindication of the jurisdiction thus attempted to be asserted. But Mr. Justice Yates and Mr. Justice Aston dissented, the attempt miscarried, the proceeding was abandoned, and the judgment never was delivered. The case in the form in which it appeared in a posthumous publication, without any explanation, has often been cited as an authority; but it is really no authority at all. On the contrary, the history of the case shows that the attempt to assert the jurisdiction was novel and was unsuccessful, which further appears from the fact that, though cases from time to time arose of a similar character—that is, attempts to prejudice a pending case by publications—these were never dealt with as contempt, but by criminal information (see *Birkenshaw's case*, Loftt.; *R. v. Gray*, 8 Burrow's Reports; *R. v. Jolliffe*, 4 T. R. 285).

So continued the law down to our own time; and, accordingly, as already noticed in the cases of Whalley and Skipworth, no authorities could be cited except the cases of Wellesley and Charlton—cases essentially different. It is, however, to be borne in mind that, since the Titchborne case, the Judicature Act has come into operation, constituting one High Court, vested with all the jurisdictions belonging to all the old courts; and, as this jurisdiction of contempt had become firmly vested in Chancery, it became vested in the High Court, to the extent to which it had thus been exercised in Chancery. That jurisdiction, however, had only been exercised in Chancery while a suit was pending, and on the ground that it interfered with the proceedings of the court. But in courts of law, cases have occurred in which the jurisdiction has been exercised over counsel and over the sheriff, for utterances or publications after the case was over. These cases, which are curiously in point, have occurred more than once at the assizes; and it is to be observed that all the courts in succession held, in the case of *Ex parte Fernandez*, 30 Law J. Rep. C. P. 821, that courts of assize have in this respect all the powers of the courts at Westminster, and that a court of assize continues while its commission is undetermined. Now in the Court of Queen's Bench it was held many years ago that counsel could be fined for language in court reflecting on a juror: *Re Pater*, 33 Law J. Rep. M. C. 142; and in the case of Mr. Charley, in 1870, the late Mr. Justice Willes, at the Manchester Assizes, held him amenable to the summary jurisdiction of contempt for a publication reflecting upon the jury in a case that had been tried. The learned judge caused Mr. Charley to be summoned before him, and asserted in the strongest terms that he had been guilty of a grave contempt, and only abstained from inflicting some sentence upon him in consideration of his prompt submission and the intercession of Mr. Aspinall, as the leading counsel present. Then there was the case of Mr. Evelyn, the sheriff of Surrey, who, in 1860, was brought before the judges of assize and fined £500 for a placard posted outside the court reflecting on the judges. That course was taken by the judges of assize, the late Lord Chief Justice and Mr. Justice Blackburn, with the sanction of the Lord Chancellor, whom they consulted; and, excluding the point as to privilege, it goes the whole length of the case of Mr. Gray, except, indeed, that his case was far more serious than Mr. Evelyn's, and far worse than Mr. Charley's, as the publication by Mr. Gray imputed gross misconduct to the jury, who had just given a verdict of guilty on a capital case, and it was calculated to hold them

up to popular vengeance. The case, therefore, in its character was as bad as can possibly be conceived; and, if it did not actually amount to a breach of the peace, it was calculated to incite to something far worse. Moreover, it was the conduct of the officer of the court, whose peculiar function it was to protect the court, and uphold its proceedings, and sustain and enforce the justice of the realm. It is very unlikely that, in such a case, a committee of the House of Commons will see any reason to recommend the House to interpose and take any step that might appear to reflect upon the judge, or weaken the power of the judicature to uphold the respect due to justice from their own officers.—*Law Journal*.

#### ARREARS OF RENT (IRELAND) ACT, 1882.

The following Instructions to Investigators have been issued:—

Having regard to the danger that tenants run of being excluded from the benefits of the Act through their not making a sufficient payment pursuant to section 1, sub-section 1 (a), the Land Commissioners empower you, where a tenant's application is referred to you for investigation, to issue in any such case to a tenant who may apply to you for same, a receivable order authorising him to lodge in bank to the credit of the Land Commission the particular sum, which, upon the investigation, you may consider he is bound to pay to his landlord in order to obtain the benefits of the Act.

If therefore it appears upon investigation that a tenant has not paid or satisfied the entire of the rent for "the year expiring as aforesaid," and that a further payment is requisite for the purpose, the Investigator will inform the tenant that, if he so desires, he can have a receivable order enabling him to lodge the necessary amount in any branch bank of the district on or before, *but not after*, the 30th November.

The Investigator shall then, if requested, fill up and sign one of the forms of orders herewith sent, specifying the particular sum, and the tenant can lodge the amount in any bank with such order.

The foil of the receivable order, filled in the same way as the order itself, is to be attached by the Investigator to the tenant's application in form E.

#### THE SPECIFIC PERFORMANCE OF CONTRACTS FOR THE SALE OF SHARES IN CORPORATIONS.

The tendency of courts of equity to extend their jurisdiction to enforce the specific performance in the case of contracts for the sale of personal property has certainly been productive of some uncertainty as to what will be the result of proceedings in a given case unless an authoritative decision on a similar statement of facts has been rendered by the court in which relief is sought. The ancient practice of confining the jurisdiction, for the most part, to cases where the contract was for the sale of real estate, however much it might be criticised as setting up an arbitrary rule for which no satisfactory reason could be given, at least produced harmony and uniformity in the decisions, and furnished guidance in practice. This limitation, with exceptional jurisdiction, assumed in cases where the subject of sale was of no general value, and was valuable chiefly to the person seeking its delivery to himself, and who, unless there were delivery in specie, would be without adequate remedy, was generally recognised in the early English cases. It is stated generally in the books that the practice of decreeing specific performance of contracts for the sale of real estate, and of declining to so enforce those for the sale of personal property arose, not out of the inherent differences between real and personal estate, but because an action at law for damages for breach of the contract for the sale of real estate did not afford adequate relief, while such action did fully compensate when a bargain for the sale of personal property was

not completed. The great increase in wealth, the more intimate and involved business and commercial intercourse between individuals and communities, the new and divers forms which rights in property have taken, long since rendered this doctrine too narrow to meet the necessities produced by changed circumstances, and the extension of jurisdiction in equity to decree specific performance in a great variety of contracts of sale has followed. The extension of the power of the court to enforce contracts for the sale of stock in corporations and other securities that are bought and sold in the stock markets of the world seems to be a step in the direction of general enforcement of contracts to sell personal property of every kind. An examination of the authorities shows that specific performance of contracts of this kind is decreed by some courts, and denied by others, under almost similar circumstances. In the early case (*Cuddee v. Rutter*, 6 Vin. Ab. 538), decided in 1719, the court declines to order specific performance of a contract for the sale of £1,000 of South Sea Company stock, saying that there is no difference between this £1,000 of stock and any other £1,000, and leave the plaintiff to seek his remedy at law where it can be fully secured. In *Doloret v. Rothschild* (1 Sim. & Stuart, 590), decided in 1824, without commenting on *Cuddee v. Rutter*, and disregarding its authority, the Vice-Chancellor says, that a bill asking specific performance of a contract for the sale of Neapolitan stock will lie, because the remedy at law may not be efficient, since the defendant may be irresponsible, and unable to respond to a judgment for damages. In *Clark v. Flint* (22 Pick. 231), where a bill is brought to obtain delivery of a ship according to a contract of sale, Wilde, J., referring to the doctrine that equity will grant relief because the efficiency of the legal remedy depends on the solvency of the defendant, says, that "the doctrine ought to be laid down with some limitation," but approves it if actual insolvency be shown. It is entirely true that for this reason there might be a failure of justice between the parties; but the general application of the rule would extend the exercise of this power of the court to the enforcement of all contracts for the sale of personal property, even to those for the sale of general merchandise, which all courts agree are not so enforceable. In *Duncuft v. Albrecht* (12 Sim. 189), decided in 1841, specific performance of an agreement to sell shares in the London and Southampton Railroad is decreed; and the Vice-Chancellor says, that such stock is not analogous to Government stock, because it is limited in amount, and not always to be had in the market. This decision has been repeatedly confirmed in England: (*Cheale v. Kenward*, 3 De. G. & J. 27; *Parish v. Parish*, 82 Beav. 207.) In Connecticut, a contract for the sale of bank shares is treated like one for the sale of flour, corn, or the public funds, and specific performance refused: (*Cowles v. Whitman*, 10 Conn. 120.) In New Hampshire the same rule prevails: (*Eastman v. Plumer*, 46 N. H. 464.) In *Ross v. Union Pacific R. R. Co.* (Woolw. C. C. 26), Mr. Justice Miller says, the rule should be the same, whether railroad shares or Government bonds are the subject of the contract, and questions the propriety of making the distinction mentioned in the English case. This, however, *arguendo*, as the case turned on other considerations. In Pennsylvania (*Strasburg R. R. Co. v. Echernacht*, 21 Penn. 220), the court declines to enforce specifically a subscription agreeing to take stock in a railroad, and says the remedy at law is complete. In another case in the same State (Foll's appeal, 91 Penn. 434), a bill was brought to compel the transfer of fifteen shares of a national bank. The plaintiff had purchased a large number of the shares, and contracted for the sale to him of the fifteen shares in question, which, secured, would give him a majority of the whole number. The court declines to enforce his contract, and says that a national bank is a quasi-public institution, that the note-holders, stockholders, and depositors are to be protected, and that those would not be benefited by the concentration of the majority of the stock in the hands of one man; also, that the court is not to use its extraordinary power to assist in "miscellaneous stock-

jobbing operations," and that the end sought to be obtained by the bill is against public policy. Nothing is said about the adequacy of legal remedy. If the language of the court means that it will decline to enforce a contract for the sale of shares of stock on the ground that it is improper to enforce such contracts because "miscellaneous stock-jobbing operations" are unlawful, it is placing such contracts on a different level with other contracts relating to personal property, and announcing that they are not entitled to the consideration of courts of equity. It is difficult to see why a capitalist may not lawfully and properly buy all the shares of any corporation that are purchasable, and why, if his purchase of the first lot be enforceable in equity against his vendee, his purchase of the last fifteen shares is not equally so, though the effect of securing them be to make him the owner of a majority of the whole stock. The court, in this case, assumed that the note-holders, depositors, and stockholders would be injuriously affected by a concentration of a majority of the stock in one man's hands, and that, therefore, it would be against public policy to allow the bill. It is not clear what is the purport of the phrase "miscellaneous stock-jobbing operations." But it is evidently intended by it to condemn the transaction in some way, though the facts show that the vendee (and appellant) was the actual owner of the shares, and made a contract for their sale binding at law, which ought to relieve the transaction from the imputation of being one of stock gambling, when the vendee is not the owner of the shares at the time of sale, and the real transaction is simply a wager on the future price. The fact that the result of decreeing specific performance is to place one party in control of a majority of the shares of a corporation, alone does not appear a sufficient reason for denying the relief asked for in the bill. The other shares may be owned or controlled by an adverse interest which opposes the plaintiff's proceedings, and the direct result of the court's inaction would be to give this interest the control instead of the plaintiff, who has been more diligent, and purchased the balance of power. The court is deciding virtually who shall control, whether it allows or denies the plaintiff's bill. A petition for a writ of *mandamus* is filed after a disputed election of officers in a parish where the parties were almost evenly divided, and the case turns on the legality of a single vote cast. It could not be claimed that the court should decline to act on the ground that it is against public policy to assist one set of electors in controlling a corporation, if it be shown that their candidates were rightfully chosen. In *Baldwin v. Commonwealth* (11 Bush, Ky. 417), specific performance is enforced when the State authorities sold shares in a turnpike in accordance with authority conferred by the Legislature. In *Leach v. Fobes* (11 Gray, 506) specific performance is decreed of an agreement of compromise which provided for the transfer of shares in a corporation, and for the conveyance of real estate. The court says that it will not undertake to decide whether a suit in equity can be supported for the sole purpose of enforcing a contract for the sale of shares in a corporation; but that, as the court will give relief for that part of the agreement which relates to the conveyance of real estate, it will also entertain jurisdiction of the whole agreement. *Todd v. Taft* (7 Allen, 371) is cited in some of the text-books as following the doctrine of *Duncuft v. Albrecht*, in holding that contracts for the sale of stock are to be specifically enforced in the same manner as those for the sale of real estate. An examination of the case shows that such statement is not exact. A bill in equity was brought for specific performance of this agreement: "Received of A. B. his note for \$5,200, 40 dollars six months from date, for which I agree to transfer and deliver to said A. B. or his order fifty shares of the Providence and Worcester Railroad stock, upon the condition that said note is paid at maturity, without grace, and I am to have dividends upon said stock and deduct same from note at maturity, said A. B. to have full power to vote upon said stock. (Signed) R. T." It appeared in evidence that the parties had

met before the maturity of the note, and that the plaintiff asked the defendant if he would renew the note, and spoke of it as maturing on the first and fourth of the month, by mistake, supposing that he was entitled to days of grace; that telegrams and letters were exchanged which resulted in the plaintiff's calling on the defendant on the fourth of the month and demanding the transfer of the stock; also, that the stock was worth 1,200 dollars more than when the contract was made. The defendant declined to accept the money and transfer the stock. In the opinion the court says that the contract was an executory one by A. B. to convey the stock upon certain conditions; but that, practically, as regards the rights of the plaintiff, it created all the liability to make payment that would have attended a purchase and transfer of the stock. And further, "In the view we take of this case, it is to be dealt with in equity much like the case of a sale of stock, absolute on its face, but in fact designed to secure the payment of a certain sum of money upon a future day certain, when a bond or other proper writing is given by the vendee, undertaking to transfer the shares to the debtor upon payment at the day named of the sum stated. It is so for the reason already stated, that Farnum had become the debtor of Taft for the balance of the purchase money: (*Jones v. Robbins*, 29 Maine, 351.) It seems, therefore, to be a proper case for relief from forfeiture of a right, occasioned by want of exact performance by the party on the day stipulated in the agreement, if there exist such ground for relief as entitles the party to the aid of a court of equity." The court finds that the evidence showed a neglect on the part of the defendant to inform the plaintiff of the precise day of payment and acquiescence in the plaintiff's error as to the day, and decrees specific performance. It is to be noticed that nothing is said in the opinion of the authority of *Duncuft v. Albrecht* and the English cases following it, or of the jurisdiction of courts of equity to enforce specifically simple contracts for the sale of stock; a singular omission, certainly, if the court were passing upon a doubtful question, and one hitherto never decided in this State. The decision seems to be put fairly by the court on the ground that it was "a proper case for relief from forfeiture of a right occasioned by want of exact performance." And, as the conclusion must have been the same had the subject of sale in the agreement been ten bales of cotton or a cargo of flour, it does not seem to be correct to cite the case as a decision of the Massachusetts court, that contracts for the sale of stock are to be enforced as of course. It is not to be expected, perhaps, that the various decisions shall be found to state a uniform principle which is to be applicable in all like cases, since, although the equitable discretion which is exercised in determining each case is a sound discretion governed by precedents and authorities, the different circumstances attending each case are sufficient in many instances to explain the conclusion reached. In *Duncuft v. Albrecht* the issue was clearly defined and simple, and the decision was reached that contracts for the sale of stock in corporations were enforceable because the plaintiff had not a complete remedy at law. There was no evidence in the case that the shares could not be had in the market, or that there was any difficulty in ascertaining their exact value so that a jury could assess damages for the broken contract at law; either of which circumstances existing might be good ground for decreeing specific performance and delivery. Are the reasons given for that decision applicable in this country, where the shares bargained for are sold daily, and pass from hand to hand with as little formality as accompanies the transfer of a promissory note? The shares of most of our railways, banks, and the large manufacturing companies are the subject of daily sale at the stock exchange of New York and other cities, and their price quoted with the same frequency as that of English consols or United States bonds. One hundred or one thousand shares of the Western Union Telegraph Company or the Union Pacific Railroad, for example, are ordinarily quite as readily obtained as 100,000 dols. U. S. 4's; and any

lot of those amounts answer the requirements of a contract for their sale as well as the lot owned by the vendee. Indeed, it can hardly be said of some of our stocks, as it was by the Vice-Chancellor in the case before him, that they are limited in amount. The reasons given in *Duncuft v. Albrecht* for decreeing specific performance seem to exist in almost all conceivable cases where personal property is the subject of the contract; the kind of property is limited in amount, and may not be always obtainable in the market. And unless courts of equity are to take the ground that natural justice requires the enforcement by them of all valid contracts, the doctrine of *Duncuft v. Albrecht*, if applied here to contracts for the sale of securities which are frequently quoted and sold, seems to be anomalous and to extend jurisdiction to cases where there is full and complete remedy to be had at law.—*American Law Review*.

### APPOINTMENTS AND PROMOTIONS.

NOTE BENE.—Information intended for publication under the above heading should reach us not later than Friday morning in each week, as publication is otherwise delayed.

Mr. J. G. Swift MacNeill, A.M., Barrister-at-Law, has been appointed Professor of Constitutional, Criminal, and Crown Law at the King's Inns.

### BOOKS RECEIVED.

*A Concise Exposition of the new Conveyancing Acts, 1881 & 1882, and of the Solicitors' Remuneration Act, and the General Order thereunder: with Practical Hints, and an Appendix containing the Acts and Order.* Third Edition. By ARTHUR UNDERHILL, LL.D., of Lincoln's Inn, Barrister-at-Law, &c., assisted by HARRY LINDSAY MANBY, M.A., of Lincoln's Inn, Barrister-at-Law. London: Richard Amer, Law Publisher, Bookseller and Binder, Lincoln's Inn Gate, Carey-street, W.C. 1882.

*Cassell's Illustrated Almanac for 1883.* London, Paris, and New York: Cassell, Petter, Galpin & Co.

*Our Happy Family: Being the Little Folks Annual for 1883.* London, Paris, and New York: Cassell, Petter, Galpin, & Co.

### LAW STUDENTS' JOURNAL.

KING'S INNS.

HONOR EXAMINATION.—25TH OCTOBER, 1882.

THE LAW OF MORTGAGE OF REAL ESTATE.

Examiner—PIERS F. WHITE, Esq., Q.C.

1. Why is parol evidence admissible to prove that an absolute conveyance of land is in reality a redeemable security?
2. What is an equitable mortgage, and in what ways may it be created? What was decided by *Russell v. Russell*?
3. The trustee of a settlement deposits the title deeds of the settled lands as a security for an advance without notice of the settlement. Are the cestuis que trust affected by the lien? Why is this so?
4. In what case is it advisable to take a mortgage by way of sub-lease? State the ordinary form of such a mortgage, and what covenants and powers are now implied where the mortgagor conveys as "Beneficial Owner?"
5. What is a judgment mortgage? Explain the process of making a judgment a charge on real estate in Ireland.



6. On what footing is a mortgagee in possession bound to account? What are annual rests?

7. Give the substance of Sections 40 and 42 of the Statute of Limitations, 3 & 4 William IV., c. 27, as affecting mortgages, and state how Section 40 has been amended by the Real Property Limitation Act of 1874, and as from what date?

8. What alteration in the law of mortgage was effected by Locke King's Act, 17 & 18 Vict., c. 118? From what time did it take effect?

9. How has Locke King's Act been amended by the subsequent Acts, 30 & 31 Vict., c. 69, and 40 & 41 Vict., c. 84, respectively?

10. Can a mortgagee on being paid off be compelled to assign the debt and security to a third person? Why so?

11. What are the rights of a mortgagee in the event of his debtor's bankruptcy?

12. A. mortgages Blackacre for £1,000 to B. in 1879, and Whiteacre for £3,000 to B. in 1882, can A. redeem one of these mortgages without redeeming the other?

13. What is the order of priority between registered legal mortgages and equitable mortgages by deposit without writing? Can you cite any leading authority, in Ireland or England, on this point?

**MICHAELMAS SITTINGS, 1882.**

The following gentlemen have been admitted as Students of Law:—

1. Edward Marmaduke Sellors, Student, T.C.D., eldest son of Michael Sellors, of George's-street, in the City of Limerick, Esq., Solicitor.

2. James Benjamin Byrne, Student, T.C.D., only son of John A. Byrne, of Leeson-street, in the City of Dublin, Esq., Q.C.

3. Reginald Thomas Harris, B.A., University of Dublin, youngest son of William Wallace Harris, of Mountjoy-square, in the City of Dublin, Esq., LL.D., Barrister-at-Law.

4. Daniel James Wilson, Student, T.C.D., eldest son of the Rev. Mervyn Wilson, of Camus Rectory, Strabane, in the County of Tyrone.

5. Percival David William Campbell Gausson, Student, T.C.D., eldest son of D. Campbell Gausson, of Shanemullagh House, in the County of Londonderry, Esq., Barrister-at-Law, J.P.

6. William Charles Gardner, Student, T.C.D., eldest son of Robert Gardner, of Clyde-road, in the County of Dublin, Esq.

7. J. Barcroft Anderson, Student, T.C.D., only son of Samuel Lee Anderson, of Lower Bagot-street, in the City of Dublin, Esq., Barrister-at-Law and Crown Solicitor.

8. William Sullivan, Student, T.C.D., second surviving son of The Right Hon. Sir Edward Sullivan, Bart., of Fitzwilliam-place, in the City of Dublin, Master of the Rolls.

9. George Arthur Mahon, B.A., University of Dublin, elder son of Henry Walshe Mahon, late of Westport, in the County of Mayo, Esq., M.D., R.M., deceased.

10. Henry Thomas Hulbert Hewetson, Student, T.C.D., eldest son of Henry Alexander Hewetson, of Aghnacloy, Ballybrack, in the County of Dublin, Esq., J.P.

11. William Cotter Stubbs, Student, T.C.D., only son of the Rev. John William Stubbs, of Fort William, Finglas, in the County of Dublin, D.D., S.F.T.C.D.

12. Charles William Henry Dunne, Student, T.C.D., only son of William Dunne, late of the City of Londonderry, Esq., M.D., deceased.

13. Robert James Drake, B.A., University of Dublin, third son of John Drake, late of Banbridge, in the County of Down, Esq., deceased.

14. Andrew Breakey Hamilton, M.A., Queen's University, third son of the Rev. Samuel Hamilton, of Saintfield, in the County of Down.

15. Thomas Harrison, B.A., Queen's University, eldest son of William Harrison, late of Ballycowan in the County of Down, Farmer, deceased.

16. John Stanley, Student, T.C.D., only surviving son of Colonel Edward Stanley, of Summer-hill, in the County of Armagh.

17. Richard Keene Gamble, Student, T.C.D., second son of Richard Wilson Gamble, of Fitzwilliam-square, in the City of Dublin, Esq., Q.C., County Court Judge.

18. John Beach Sandford, Student, T.C.D., eldest son of the Rev. William Sandford, of Clonmel, in the County of Tipperary, M.A.

19. George Comerford Green, Student, T.C.D., third son of James Sullivan Green, of Leeson-street, in the City of Dublin, Esq., Q.C.

20. Daniel Martin Wilson, Student, T.C.D., fifth son of the Rev. David Wilson, of the City of Limerick, D.D.

21. Edward Francis Ennis, Student, T.C.D., second son of Edward Armstrong Ennis, of Grosvenor-road, Rathgar, in the County of Dublin Esq., Solicitor.

22. John Donaldson, M.A., Queen's University, fourth son of the Rev. Joseph Donaldson, late of the Manse, Fermoy, in the County of Cork, M.A., deceased.

23. James Moody Lowry, B.A., University of Dublin, eldest son of Thomas Kennedy Lowry, late of Ballytrim, Killyleagh, in the County of Down, Esq., Q.C., deceased.

24. Brinsley John Hamilton Fitzgerald, B.A., University of Oxford, fourth son of Sir Peter Fitzgerald, late of Valentia, in the County of Kerry, Knight of Kerry, deceased.

25. Coleman Byrne, Student, T.C.D., second son of William L. Byrne, of Loughrea, in the County of Galway, Esq.

**THE INCORPORATED LAW SOCIETY OF IRELAND.**

FINAL EXAMINATION FOR APPRENTICES TO SOLICITORS, Pursuant to the Attorneys and Solicitors Act (Ireland), 1866.

**MICHAELMAS SITTINGS EXAMINATION, 1882.**

**PRACTICE OF THE COURT OF BANKRUPTCY.**

Mr. FINDLATER, M.P., Examiner.

1. Define any three acts of Bankruptcy, other than the filing of a Declaration of Insolvency—and an Assignment in trust for the benefit of Creditors?

2. Suppose a sheriff to levy by seizure and sale the amount of an execution against the goods of a trader, what are the duties of the sheriff in respect of the money so levied, and when does the execution creditor become entitled to get the amount from the sheriff?

3. If a bankrupt or arranging debtor shall have contracted a debt payable by instalments, can the creditor prove in the bankruptcy, or arrangement matter for the instalments not due at the filing of the petition?

4. At the sitting to adjudicate a trader on the petition of a creditor, state what matters must be proved? If on the petition of a debtor, state what matters must be proved?

5. State under what circumstances the Resolution or Agreement of Creditors, confirmed by the Court at the second private sitting in an arrangement matter, can be altered or annulled: What proceedings should be taken to alter or annul same; and what will be requisite to render the altered or annulled Resolution valid?

6. If the Court commits a person to prison for not fully answering to its satisfaction, what is absolutely necessary for the Solicitor having the carriage of the proceedings to do?

THE INCORPORATED LAW SOCIETY  
OF IRELAND.

SOLICITORS' APPRENTICES.

Result of PROFESSOR HICKSON'S Special Examination in Law, held on 7th of November, 1882.

The following Apprentices have passed an Examination to the satisfaction of the Professor of Law in the subjects of the Lectures delivered in 1881-82, pursuant to the 25th of the Society's Rules of October, 1866.

The names are arranged in order of merit.

The gentlemen placed first, second, and third on the list, have answered very well:—

- No. 1. Hugh Falconer  
" 2. Robert E. M'Lean  
" 3. Edward J. M'Morrow  
" 4. Daniel Murray  
" 5. Richard S. Holland

Three other gentlemen attended the Examination, of whom two, not having answered sufficiently, cannot obtain their Certificates, pursuant to the Rules of the Incorporated Law Society.

The papers of the remaining gentleman are under consideration.

By Order,  
WILLIAM HICKSON, Professor.

Solicitors' Buildings, Four Courts, Dublin,  
16th November, 1882.

COURT PAPERS.

LAND JUDGES.

Sittings for next Week so far as same are appointed.  
Before the Rt. Hon. JUDGE FLANAGAN.

MONDAY.

John Russell and others, re-entry of notice.—William Montgomery, to sell under Partition Act.—J. Power, payment and cross notice.—G. Paine, proposals.—J. C. Anderson, as to title.—C. Kearney and others, from 2nd inst.—W. Hackett and others, payment by receiver.—H. Fitzgerald, lodgment of purchase money.

Before EXAMINER (Mr. Kennedy).

Assignees W. Butler, rental.—A. W. Travers, to vouch.—H. M'Kelvey, rental.

TUESDAY.

John Trueman, final schedule.

WEDNESDAY.

Robert C. Reid, appointment of receiver.—J. Simpson and Assignees Millar, to set aside lease and as to valuation.

THURSDAY.

H. Gillman, appointment of receiver.—Trustee J. C. Fitzgerald, to sell discharge of jointure.

Before the Rt. Hon. JUDGE OMSBY.

MONDAY.

Administratrix of Carolan, payment.—M. H. Jordan, objection.—K. A. Smith, adjourned motion.—Anne Raymond, delay.—A. W. West, as to cost.—M. Hall, from 18th.—A. J. Montgomery, objection.—T. Barklie, adjourned motion.—T. O'Neill, payment.—J. Young, to confirm sale.—F. L. Comyn, payment.—S. White, from 16th.—E. Dease, as to map.

WEDNESDAY.

Before EXAMINER (Mr. M'Donnell).

G. F. Walsh, rental.—Trustee George Webb, to vouch.

THURSDAY.

William Thorn, to make order absolute.—T. Graham, from 16th.—J. Murphy, carriage.—W. Petrie, objection.—E. M. O'Callaghan, delay.—W. Goggin, as to annuity.—S. E. Goodman, objection.

FRIDAY.

Before EXAMINER (Mr. M'Donnell).  
Mary O'Neill, rental.

LAND JUDGES' COURT.

SALES.

Nov. 3.—Before the Right Hon. Judge FLANAGAN.

COUNTIES ARMAGH AND DOWN.—Estate of John Lemon and others, owners; Administrator of James Lemon, petitioner.

Lot 1.—The Rope-walk Concerns with Workers' Houses, Nos. 83 to 131 Lemon's-row, Nos. 1 to 17 Glasshouse-place, and Nos. 4 and 6 Short Strand and Building Ground fronting Mount Pottinger-road in Ballymacarrett, Belfast, all held in fee farm; estimated annual profit rent, £656 7s. 7d. Sold to A. D. Lemon for £5,100.

Lot 2.—Shops and Stores Nos. 7, 9, 11, and 13 Corporation-square, and Nos. 86, 88, 90, 92, and 94 Tomb-street, Belfast, held in fee; annual profit rent, £424 18s. 9d. Sold to same purchaser for £3,500.

Solicitors: Messrs. Crawford & Lockhart.

Co. COX.—Estate of Henry Leader, owner; Margaret Coleman, petitioner.

Lot 2.—A fee-farm rent of £92 8s. 3d, payable out of part of the Lands of Castlewidenham, containing 173a. 3r. 35p. in the barony of Fermoy, held in fee; Griffith's valuation, £390. Sold to Mr. V. Smith for £2,125.

Lot 3. Part of the Lands of Ballygarrett, containing 79a. 3r. 30p., in the same barony, held in fee farm; annual profit rent, £88 6s. 6d. Sold to J. Preston for £1,750.

Solicitors: Messrs. Hanrahan & Co.

DUBLIN.—Estate of Sarah Oldfield, owner and petitioner.

Lot 1.—Dwelling-houses and premises, Nos. 27, 29, 31, 33, 35, and 37 Waterloo-place, Upper Leeson-street, held under lease for 150 years from 1844; annual profit rent, £33; tenement valuation, £181. Sold to Samuel Trulock and others for £810.

Lot 2.—Dwelling-house and premises, No. 39 Waterloo-place, aforesaid, held under same lease as Lot 1; annual profit rent, £8 10s.; tenement valuation, £57. Sold to John D. Milne for £160.

Solicitor: T. A. Cusack.

COURT OF BANKRUPTCY.

ADJUDICATIONS IN BANKRUPTCY.

The dates of Adjudications are first given, the Sittings follow in Italics.

Butler, Thomas, and Francis Butler, of Castleisland, in the county of Kerry, builders and contractors, trading as Thomas and Francis Butler. September 1; *Tuesday, November 21, and Tuesday, December 5.* Richard Davoren, solr.

Cairns, J. Davidson, and Samuel Freckleton, both of 22 Queen's Arcade, Donegall-place, Belfast, in the county of Antrim, tailors, trading as "J. Davidson Cairns and Freckleton." October 27; *Friday, December 1, and Tuesday, December 19.* H. and W. Seeds and B. Thompson, solrs.

Crawford, Henry, of Warrenpoint, in the county of Down, grocer and licensed publican. October 27; *Friday, December 1, and Tuesday, December 19.* Thomas O'Meara, solr.

Daly, John, of 29, 30, and 31 Fleet-street, and 6 College-street, in the city of Dublin, vintner. October 31; *Friday, December 1, and Tuesday, December 19.* Michael Carton O'Meara, solr.

Garmany, Hugh, of Portadown, in the county of Armagh, grocer. October 31; *Tuesday, November 28, and Friday, December 15.* H. C. Neilson, solr.

Neill, James, of Priory-street, New Ross, and Arthurstown, both in the county of Wexford, provision dealer, publican, coal merchant, and miller. November 7; *Friday, December 1, and Tuesday, December 19.* T. M. Govern, solr.

Woods, John, of Golree, in the county of Monaghan, farmer. November 7; *Tuesday, December 5, and Tuesday, December 19.* M'William & Henry, solrs.

DUBLIN STOCK AND SHARE LIST.

DESCRIPTION OF STOCK	NOVEMBER						
	Sat. 11	Mon. 13	Tues. 14	Wed. 15	Thur. 16	Fri. 17	
<b>Paid Government.</b>							
3 p c Consols .. ..	—	100½	100½	100½	100½	—	
3 p c Reduced .. ..	—	—	—	—	—	—	
New 3 p c Stock .. ..	100½	100½	100½	100½	100½	100½	
<b>INDIA STOCK.</b>							
4 p c Oct. 1888 } Trsble. at	103½	103½	103½	103½	—	102½	
3½ p c Jan. 1881 } Bk. of Irel.	—	—	—	—	100½	—	
<b>Banks.</b>							
100 Bank of Ireland .. ..	—	—	320½	—	—	—	
25 <i>Hibernian Banking Co.</i> ..	—	—	—	—	33½	33½	
20 <i>London and County (Ld'd.)</i> ..	—	—	—	—	—	—	
15 <i>London Joint Stock</i> .. ..	—	—	—	—	47½	—	
Do. <i>New Scrips</i> .. ..	—	—	—	21½	—	—	
10 <i>London and Westminster, H'd</i> ..	71½	71½	71½	—	—	—	
10 <i>Do. New</i> .. ..	—	—	—	63½	63½	—	
31 <i>Minister Bank (Limited)</i> .. ..	—	—	7	7	7	7	
Nat. Prov. of England, lim. ..	—	—	—	—	—	—	
10 <i>National Bank (Limited)</i> .. ..	—	—	24½	24	24	24	
10 <i>National of Liverpool (Ld'd.)</i> ..	—	—	—	—	—	—	
10 <i>Royal Bank</i> .. ..	—	—	29½	—	—	—	
25 <i>Provincial Bank</i> .. ..	—	27	—	—	—	—	
25 <i>Standard of B. S. A., H'd</i> ..	—	—	—	—	—	—	
25 <i>Union of Australia</i> .. ..	—	—	—	—	—	—	
<b>Steam.</b>							
50 British & Irish .. ..	—	—	—	—	—	—	
100 City of Dublin .. ..	—	—	—	—	100	—	
50 Dublin & Liverpool Steam Ship Building Co.	—	—	—	—	—	—	
<b>Mines.</b>							
1 Killaloe Slate Co. (H'd) .. ..	—	—	—	—	—	—	
7 <i>Mining Co. of Ireland (H'd)</i> ..	—	—	—	—	—	—	
<b>Miscellaneous.</b>							
10 Alliance & Dub. Cons.' Gas ..	—	—	16½	—	16½	—	
4 <i>Arnott &amp; Co., Limited</i> .. ..	—	—	5½	—	—	—	
17 <i>Hudson's Bay</i> .. ..	—	—	—	—	—	—	
<b>Tramways.</b>							
10 Dublin United Tramways ..	—	—	—	—	—	—	
10 Edinburgh Street Trams ..	—	—	—	12	—	—	
10 L'pl Un'd Tram & Bus l'rd ..	—	—	—	—	—	—	
<b>Railways.</b>							
10 Cork and Macroom .. ..	—	—	—	5	—	—	
100 Great Northern (Ireland) ..	—	119	—	—	—	—	
100 Gt. Southern and Western ..	—	—	—	116	116	—	
100 Midland Gt. Western .. ..	—	—	—	—	—	89½	
50 Waterford and Limerick ..	—	—	—	—	—	—	
<b>Railway Preference.</b>							
100 D. W. & W., 6 per cent. ..	—	—	—	—	145½	—	
100 Gt. Nth'n (Irid) gr'd 4 p c ..	—	—	—	—	108	—	
100 Do. guaranteed 4½ p c ..	—	—	—	—	—	—	
100 Gt. South'n & West'n 4 p c ..	—	—	108½	—	108	—	
100 Mid. Great Western, 4 p c ..	—	—	104	—	—	104½	
100 Do. 5 p c .. ..	—	—	—	—	—	—	
<b>Leased at Fixed Rentals</b>							
100 Dublin and Kingstown .. ..	—	—	235	—	—	—	
<b>Debenture Stocks.</b>							
— Belfast & Nth'n Coa. 4 p c ..	—	—	—	—	—	105½	
— Dublin & Wicklow 4 p c ..	105½	—	—	—	—	—	
— Do. 4½ p c .. ..	—	108½	—	—	—	—	
— Gt. Northern (Ireland) 4 p c ..	—	—	—	—	—	109½	
— Do. 4½ p c .. ..	—	—	—	—	—	—	
— Do. 5 p c .. ..	—	—	—	—	—	—	
— Gt. North'n & West'n 4½ p c ..	109½	—	—	—	—	109½	
— Gt. South'n & West'n 4 p c ..	—	110	110½	—	—	110½	
— Midland Gt. West'n 4 p c ..	106	—	—	—	—	105	
— Do. 4½ p c .. ..	—	—	—	—	—	110	
<b>Miscellaneous Debent.</b>							
Alliance & Cons.' Gas, 4 p c ..	—	99½	—	—	—	—	
Ballast Office Deb., 22½ 6s 2d, 4 p c	—	—	—	93½	—	—	
Dub. & Glas. S. F. Co. (1887) 4 p c	—	100	100	—	—	—	
Do. (1888), 6 p c .. ..	—	—	—	—	—	102½	
Dub. & Kingstown 4 p c .. ..	—	—	—	—	—	105	
Dublin Water Works, 6 p c ..	—	—	—	—	—	—	

\* Shares not fully paid up are given in *Italics*. † x d

Bank Rate—Of Discount—4 per cent., 17th August, 1882  
Of Deposit—1 per cent., 23rd March, 1882

Name Days—November 29th, and December 13th, 1882.  
Account Days—November 30th, and December 14th, 1882.

Business commences at 1 30 p.m.

*Holloway's Ointment and Pills.*—Sure Relief.—The weak and enervated suffer severely from nervous affections when storms or electric disturbances agitate the atmosphere. Neuralgia, gouty pangs, and flying pains, very distressing to a delicate system, may be readily removed by rubbing this Ointment upon the affected part after it has been fomented with warm water. The Pills, taken occasionally in the doses prescribed by the instructions, keep the digestion in order, excite a free flow of healthy bile, and regenerate the impoverished blood with richer materials resulting from thoroughly assimilated food—wanting which, the strongest must inevitably soon sink into feebleness, and the delicate find it difficult to maintain existence. *Holloway's Ointment and Pills* are infallible remedies.

BIRTHS, MARRIAGES, AND DEATHS.

MARRIAGES.

DAVIS and REED—November 11, at St. Michan's Church, by the Rev. Alfred Mitchell, assisted by the Rev. Charles B. Butck, Mr. John Davis, the Principal Registry, Court of Probate, Dublin, to Anne, widow of Mr. James Reed, Ballymoone, Gorey, County Wexford.

ERSKINE and HOWARD—November 2, at the Methodist Church, Clontarf, by the Rev. Pierce Martin, William James, third son of Joseph Erskine, Esq., Lower Abbey-street, to Mary Card (Polly), eldest daughter of James Howard, Esq., and granddaughter of the late Robert Howard, Esq., solicitor, formerly of Turret House, Glasnevin.

LITCHFIELD and CLARE—November 15, in St. Stephen's Church, Dublin, by the Rev. A. C. Thiselton, the Rev. George Litchfield, Curate of Stone, Staffordshire, to Emily, eldest daughter of Lewis Clara, of Warrington-place, Dublin, Esq., solicitor.

DEATHS.

BUCHANAN—November 11, at Great Charles-street, Mary Louisa, wife of Robert Buchanan, Esq., J.P., barrister-at-law, and youngest daughter of the late John Townsend Sinnott, Esq., J.P., Mountview House, Dundrum.

FITZGERALD—November 13, suddenly, in Dublin, John Alexander FitzGerald, Esq., solicitor, of Mountmellick, in the Queen's County, aged 61 years.

JOY—September 14, at Adelaide, South Australia, Conway Ludlow Holmes Joy, Esq., LL.B., third son of the late Henry Holmes Joy, Q.C., LL.D., of Belfast, and Mountjoy-square, Dublin.

LAWLESS—November 10, at his residence, Leinster Lodge, Rathmines, John Lawless, Esq., solicitor.

PHIPPS—November 9, at his residence, Bray, County Wicklow, in the 58th year of his age, Alfred John Phipps, Esq., of the Irish Land Commission.

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PUBLIC NOTICES:

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Agents—Messrs Dudgeon & Son, 118 Grafton-street, Dublin, or 64 Cornhill, London. Messrs. Stewarts & Kincaid, 6 Leinster-street, Dublin. 67

ALEX. ROSS'S NOSE MACHINE,

Applied to the Nose for an hour daily, so directs the soft cartilage of which the member consists that an ill-formed nose is quickly shaped to perfection.

10s. 6d.; Post Free, 10s. 8d., secretly packed. Pamphlet, Two Stamps. 21, LAMB'S CONDUIT-ST., HIGH HOLBORN, LONDON.

HAIR CURLING FLUID, Curls the straightest and most unmanageable Hair, 3s. 6d., sent for 54 Stamps.

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3s. 6d.; it changes Gray Hair to its original colour very quickly; sent for 54 Stamps. Every speciality for the Toilet supplied.

Beware of Imitations of Ross's articles. As Chemists keep his articles, see that you get his HAIR DYE for either light or dark colours, 3s. 6d.; his DEPILATORY for removing Hair and his CANTHARIDES for the growth of Whiskers. 7

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Apply—53 UPPER SACKVILLE-STREET, DUBLIN.

## PUBLIC NOTICES:

**A**RRERS of RENT (IRELAND) ACT, 1882.

Wednesday, 15th November, 1882.

It is this day ordered by the Irish Land Commission that service of notice in Form A and of applications in Forms E and F effected by registered letter directed to the usual place of abode of the party intended to be served shall be deemed, for the purposes of the Act, good service, provided that the person by whom such letter has been posted shall prove to the satisfaction of the Investigator, upon the investigation or hearing of such application, the registry and posting of such letter, and that such letter contained a true copy of the notice or application intended to be served, and that it shall be also proved to the satisfaction of the Investigator that the address thereon endorsed was at the time of such posting the true address or usual place of abode of the party intended to be served, and that the said registered letter was not returned undelivered by the Post Office authorities, provided, nevertheless, that if it be shown that the notice did not in fact reach the party intended to be served, the Investigator shall not hold that good service was hereby effected.

[SEAL.]

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ESTABLISHED 1851.

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Current Accounts opened according to the usual practice of other Bankers, and interest allowed on the minimum monthly balances when not drawn below £25. No commission charged for keeping Accounts, excepting under exceptional circumstances.

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FRANCIS RAVENSCROFT, Manager.

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FRANCIS RAVENSCROFT, Manager.

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Southampton Buildings, Chancery Lane.

## TO THE GENTLEMEN OF THE LEGAL PROFESSION.

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111 GRAFTON-STREET (Opposite the Provost's).  
Late of WATERHOUSE & Co.'s

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**A**N IMPORTANT CONVENIENCE TO LAW WRITERS AND SOLICITORS.

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(Rutland-square),

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**WANTED**—Waste Paper, Old Account Books, Old Lead, Zinc, Tailors' Cuttings, Printing Shavings. A quantity of Newspapers and Brown Lapping Paper always in stock, sold by the pound or cwt., at 7, Britain-lane. Address—PATRICK HARRATTY, 8, FISHER'S-LANE.

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## PUBLIC NOTICES:

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PUBLIC ACCOUNTANTS AND AUDITORS,  
LONDON AND LANCASHIRE INSURANCE CHAMBERS,  
22, WESTMORELAND-STREET,  
DUBLIN.

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PUBLIC ACCOUNTANTS AND AUDITORS.

**C R O W L E Y, H U M P H R I E S & C O.,**  
73, DAME-STREET, DUBLIN (opposite Munster Bank),  
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Partnership Accounts, &c., &c.

160

**D. W. C A R R O L L,**  
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Valuations made for Probate or other purposes on moderate terms.

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**W**ATCHES.—JEWELLERY.—Before you buy a watch or jewellery, send for the Midland Counties Watch Company's Catalogue, beautifully illustrated with over 500 copper-plate engravings, and sent gratis and post free on application. Address—A. FROST, Manager, Vyse-street, Birmingham.

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## MONEY:

## IRISH CIVIL SERVICE PERMANENT

## BUILDING SOCIETY,

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President—ALEXANDER PARKER, Esq., J.P.

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# THE IRISH LAW TIMES AND SOLICITORS' JOURNAL.

VOL. XVI.

SATURDAY, NOVEMBER 25, 1882.

No. 826

## CRIMINAL ATTEMPTS.—I

SWEET are the uses of attempted assassination, if it be the means of shedding new light on one of the obscurest departments of the criminal law; and the alleged attempt to murder a judge may cause satisfaction to lawyers, from an abstract professional point of view, should it lead to a minuter examination and exposition of this description of crime authoritatively than it has yet received. On that charge (and for conspiracy to murder Judge Lawson) Patrick Delaney was committed for trial, on Monday last. Pending the issue, we shall apply no observations to the case, directly or indirectly. We accept of it merely as suggesting the subject of a paper, and shall here touch but briefly on the general doctrine, and some of the English decisions by which it has been authoritatively declared, as well as some less familiar American cases which, though not of binding efficacy, may prove instructive in point of exemplification.

It should be remembered that as a general rule intention is an element in crimes, as contradistinguished from torts or contracts; an intentional act being punished as a crime, when the same act if accidental would be only a tort, because an intentional act is likely to be repeated or imitated, and, therefore, there would be danger to the public safety if it were permitted with impunity. But such is the difficulty, or impossibility rather, of proving a mere intention, that *per se* it is not punishable criminally (unless there be an exception as regards treason). Some overt means must be used, by way of carrying out the intention, or, in the case of a crime of omission, there must be the absence of some overt act, from which the existence of the intention is inferred; and when thus coupled with an attempt to give effect to the intent, the subject may come within the orbit of the criminal law. Thus, "an intent to do a thing is not to be confounded with an attempt to do the thing," as observed by Worden, C.J., in *Bechtelheimer v. The State* (Indiana); "the first may exist without any steps being taken for the accomplishment of the purpose, while the other implies the taking of such steps." The history of the law on this subject is condensed in a few words by Sir James Stephen (Dig. Cr. L.). Originally the maxim *Voluntas reputabitur pro facto* appears to have prevailed, at least in some cases, though it is difficult to say how far it extended. The will, however, had to be shown by some overt act. After this maxim had become obsolete, a variety of cases were decided which proceeded on the principle that, though a bare intent to commit a crime was not punishable, an intent coupled with an act was criminal. The broadest expression of this view is to be found in Lord Mansfield's language in *Scofield's case*. More recently still, the view has been adopted that an act done with intent to commit a crime, and forming part of a series of acts which would constitute its actual commission if it were not interrupted, forms a criminal attempt. But, as Sir James Stephen observes, the other view has not been entirely given up, and he would hesitate to say that no act leading up to a crime could be criminal unless it amounted to an attempt.

Now, every attempt to commit an offence, whether treason, felony, or misdemeanour, is itself an indictable misdemeanour at common law, unless it is otherwise

provided for by statute: see 1 Russ. Cr. L. 45; Burns, J., tit. "Attempt;" *R. v. Cheeseman*, 1 L. & C. 140, 9 C. C. C. 100; *R. v. Gregory*, L. R. 1 C. C. R. 77, 10 C. C. C. 459; *R. v. Collins*, *infra*; and so the American cases also hold, such as *Nicholson v. State* (Tenn., 1878). But, in some cases it is specially provided that attempts amount to felony, e.g., an attempt to murder (24 & 25 Vict., c. 100, ss. 11-15; 27 & 28 *ib.*, c. 47)—an offence frequently described by the judges as, next to actual completed murder, the most serious crime known to the law: *Harris & Toml.*, Cr. L., 2nd ed., 168. It is not easy, however, to formulate a strict definition of what constitutes an attempt, and the discussion on the subject in which, amongst others, the late Chief Justice of England and the authors of the (at that time proposed) criminal code of New York took part will be remembered. "An attempt may be said to be the doing of any of the acts which must be done in succession before the desired object can be accomplished; or rather, with the limitation that the attempt must be an act directly approximating to the commission of the offence;" *Harris & Toml.*, Cr. L., 2nd ed., 16. "An attempt to commit a crime is an act done with intent to commit that crime, and forming part of a series of acts which would constitute its actual commission if it were not interrupted;" *Steph.*, Dig. Cr. L. The point at which such a series of acts begins cannot be defined, but depends upon the circumstances of each particular case: *ib.* But an attempt can only be when there is such a beginning as, if uninterrupted, would end in the completion of the act: *R. v. Collins*, L. & C. 471, 9 C. C. C. 497, 33 L. J. M. C. 177, 10 L. T. N. S. 581, 10 Jur. N. S. 686.

In *Collins'* case, A, mistaking a log of wood for B, and intending to murder B, struck the log with an axe; and it was held that A had not attempted to murder B. But Sir James Stephen submits that A had committed an assault on B, with intent to commit a felony, within 24 & 25 Vic., c. 100, s. 38 (an offence with which Delaney does not appear to have been charged, in the case alluded to at the outset). With the highest deference, however, we doubt whether A had committed an assault. If it were so, it might be maintained, *a fortiori*, that a witch who punctures a puppet vicariously with needles in order to inflict sufferings on a living victim, thereby commits an assault on him. In a recent American case (*The People v. Bird*, 12 Reporter, 743), in which the defendant-appellant had "rushed," with a loaded pistol, towards the prosecuting witness, and gestured "menacingly," the jury were charged, upon a trial for assault with a deadly weapon, that, "if a person, having the present ability to commit a violent injury upon the person of another, and having with him a deadly weapon, rushes towards such other person with menacing gestures, and with a purpose to use such weapon, an assault is committed, though such person is prevented from striking or using the weapon before he comes near enough to do so." On appeal (Sept., 1881) from a conviction, it was objected that the charge had not said that the assailant must have reached a point near enough to inflict a wound. That, however, was implied from the words "though such person is prevented from using the weapon," according to M'Kinstry, J., who added: "The illustration of counsel, which supposes a person moving from San Francisco to assault

another in Sacramento, and who is stopped at Benicia, is hardly applicable. The instruction, while expressed in general terms, is not abstract, but is to be construed with reference to the phase of the actual evidence which the jury might adopt." But, we find the necessity of a present ability to carry out the intent still more clearly announced, by the Supreme Court of Michigan, in another recent case: *The People v. Lilley*, 1 Crim. L. Mag. 605, 10 Reporter, 172. There the respondent had been found guilty of an assault with intent to commit manslaughter. A difficulty had arisen between M'Kenzie, the person claimed to have been assaulted, and the father of respondent, as to the proper division of certain wheat, then being threshed, and which led to blows. It appeared the respondent was struck on the head by M'Kenzie, and he thereupon "retreated" or walked toward the straw-stack, some ten or twelve feet distant. After respondent reached the straw-stack he turned around, took a knife out of his pocket, made some threat, and advanced towards M'Kenzie. After he had advanced one or two steps he was caught by a bystander, and there was some question as to whether the knife at this time was open or not, and witnesses testified that he was then ten or fifteen feet distant from M'Kenzie, and that respondent then put the knife in his pocket. This practically ended the matter. On exceptions taken, Marston, J., in delivering the opinion of the Court, said: "The instruction as given would seem to lay down the general proposition, 'that any intent to commit violence, accompanied by acts which, if not interrupted, will be followed by bodily injury, is sufficient to constitute an assault, although the assailant may not be at any time within striking distance.' Now, there may be an intent to commit violence, and this accompanied by acts preparatory thereto, which, if followed up, would clearly constitute an assault; yet, owing to the distance and surrounding circumstances, no possible assault would have been committed. Thus, one with a direct intent to do grievous bodily harm may purchase a deadly weapon, or having one he may, with like intent, put it in a condition to use with deadly effect. Yet, if the act stop here, it may, as a general proposition, be said that the party could not be convicted of an assault, and this irrespective of what may have caused the party to proceed no farther in the attempt. Other facts must be added, and this, we shall see, must be a present ability to carry out the intent. The act done must have been sufficiently proximate to the thing intended. It may be so remote, although a distinct and essential act, coupled with the intent, as to fall far short of constituting an assault. The act done must not only be criminal, but it must have proceeded far enough towards a consummation thereof, and this must necessarily be a question for the jury under proper instructions: 1 Bishop, Cr. L., c. 26; also s. 323. So, clearly, where the intent is formed, and some act done in performance thereof, but the party voluntarily abandons his purpose, or is prevented from proceeding farther, and this while at a distance too great to make an actual assault, he could not be convicted of an assault. What, then, constitutes an assault in law? It might be somewhat difficult to reconcile all the authorities upon this subject, and we shall not attempt it. Some of the tests, as putting the person assaulted in fear, cannot be relied upon, as evidently an assault may be made upon a person, even although he had no knowledge of the fact at the time. An assault is defined to be an inchoate violence to the person of another, with the present means of carrying the intent into effect. Threats are not sufficient; there must be proof of violence actually offered, and this within such a distance as that harm might ensue if the party was not pre-

vented: 2 Greenleaf, Ev. s. 82; 3 *ib.* s. 59; 1 Bishop, Cr. L. s. 419; 3 Bl. Com. 120, note 3. We are of opinion, therefore, that the charge of the court as to what would constitute an assault was not sufficiently guarded, and had a tendency to mislead the jury. In cases of assault with intent to commit a felony, a specific intent must be found to exist, and it is very difficult to imagine how such a specific intent can be found to exist in the absence of reflection and deliberation. When once it appears that the assault was made with intent to take life, under circumstances where the killing would not be lawful or excusable, then, if under such circumstances death should ensue, the party would be guilty of murder. It seems like a contradiction of terms to say that a person can assault another with intent to commit manslaughter." See, also, *Wright v. People*, 33 Mich. 304. Threats, however, on which nothing appears to have turned in *The People v. Lilley*, might introduce another important element (though mere words will not amount to an assault: 1 Hawk. c. 62, s. 1; 2 Dick. J. 329; 1 Russ. C. & M. 750). But, they should be more unconditional than in *The People v. Johnson* (10 Reporter, 782), where the evidence was held insufficient to uphold a conviction for assault, the testimony showing that during an altercation the defendant took from her pocket a revolver, cocked it, and pointing it at the complainant, said, "If you come near me, I will shoot you," and thereupon the complainant went away. In *State v. Shipman* (81 N. C. 513) the defendant, after using threatening language with reference to the prosecutor, and in his hearing, advanced towards him with a knife, continuing the use of violent and menacing expressions. The evidence left it doubtful as to whether or not the knife was open; and when the defendant got within five or six feet of the prosecutor, the latter said, "I shall have to go away," and withdrew from the work upon which he was engaged. It was held that the defendant was properly convicted of an assault. In *State v. Rawles* (65 N. C. 334) it was decided that if a person be at a place where he has a right to be, and four other persons with a pitchfork, gun, &c., by following him, and using threatening and insulting language, put him in fear, and induced him to go home sooner than, or in a different way from the one he would otherwise have gone, the four were guilty of an assault, although they did not get nearer than seventy-five yards, and did not take the weapons from their shoulders. And in the recent case of *State v. Martin* (85 N. C. 508) where the defendant, being about twenty steps distant, advanced towards the prosecutor with a knife and stick, cursing and threatening to do him bodily harm—in consequence of which the prosecutor went into a store and remained until a warrant was obtained, the defendant walking in front of the store, saying he would whip the prosecutor if he came out—it was held (Oct., 1881) that the defendant was guilty of an assault; the principle being that no man by the show of violence has the right to put another in fear, and thereby force him to leave a place where he has the right to be.

#### INVESTIGATORS UNDER THE ARREARS OF RENT ACT.

It has always appeared to us that the office of Investigator under the Arrears of Rent (Ir.) Act, 1882, is one which solicitors are eminently suited to fill, and it is with regret, on public grounds, we have observed that their claims have been too apt to be overlooked. It is never too late to mend, however, and the appointment of Mr. Robert Ferguson cannot but be regarded as a step in the right direction. We feel confident not merely that he will give satisfaction, but that he will be the means of proving the propriety of promoting others from the

ranks of his branch of the legal profession. The Act itself has expressly recognised the fitness for this office of solicitors, being members of a Sub-Commission.

### VALEDICTORY ADDRESSES TO THE HON. F. A. FITZGERALD.

A special meeting of the Bar of Ireland was held on the 20th inst., at the Four Courts, for the purpose of presenting ex-BARON FITZGERALD with a valedictory address.

Amongst those present were :—

The Lord Chancellor, the Master of the Rolls, the Lord Chief Baron, Lord Justice Deasy, Lord Justice Fitzgibbon, Mr. Justice Andrews, Judge Warren, the Right Hon. Edward Gibson, Q. C., M. P.; Mr. Sergeant Sherlock, Q. C.; Mr. Sergeant Hemphill, Q. C.; Mr. De Moleyna, Q. C.; Mr. T. Parcell, Q. C.; Mr. Carton, Q. C.; Mr. Shekleton, Q. C.; Sir Samuel Ferguson, Q. C.; Master Bruce; Dr. Webb, Q. C.; Mr. Greene, Q. C.; Mr. John Gibson, Q. C.; Mr. Atkinson, Q. C.; Mr. John Monroe, Q. C.; Mr. Isaac Weir, Q. C.; The Maddermet, Q. C.; Dr. Boyd, Q. C.; Mr. Keys, Q. C.; Mr. J. A. Curran, Q. C.; Mr. J. A. Byrne, Q. C.; Mr. Hickson, Q. C.; Mr. Ryan, Q. C.; Mr. Lefroy, Q. C.; Mr. Jackson, Q. C.; Mr. Henry Fitzgibbon, Q. C.; Mr. T. P. Law, Q. C.; Mr. Ribey, Q. C.; Mr. Monahan, Q. C.; Mr. M'Laughlin, Q. C.; Mr. Jellett, Q. C.; Mr. Murphy, Q. C.; Mr. S. Walker, Q. C.; Mr. George Price, Mr. Orr, Mr. Bell, Mr. Wylie, Mr. Robertson, Mr. Cathrow, Mr. Shaw, Mr. Leech, Mr. Trench, Mr. H. Plunkett, Mr. S. N. Eirington, Mr. William Kenny, Mr. Sherlock, Mr. Newton, Mr. Alexander Holmes, Mr. Day, Mr. Brady, Mr. J. A. Rynd, &c.

Mr. SERGEANT SHERLOCK, Q. C., read the following :—

*“Address from the Bar of Ireland, to the Honourable FRANCIS ALEXANDER FITZGERALD, LL.D., on his Retirement from the Bench.*

“Sir,—On re-assembling at the close of the Summer Vacation, we, the Bar of Ireland, miss from the Bench in your person a judge who has so long presided over us with a dignity, impartiality, and gentle courtesy, our sense of which it will be difficult to embody in words. To dwell on the judicial qualities universally acknowledged which have so eminently distinguished you, would, we feel, be distasteful to one whose unobtrusiveness is well known, and whose advancement has always been unsought by himself, and due only to the public appreciation of his talents, learning, and integrity. But, whilst so refraining, we cannot suffer you to depart from us without expressing our deep sense of the loss which this country will sustain by your retirement, in the fulness of your powers, from the place which you have for over twenty years filled—to borrow words which can never be more worthily applied—‘without fear, and without reproach.’ On that Bench we can never hope to see a purer or more perfect character.—Signed on behalf of the Bar of Ireland, R. J. LANE, Father.”

The Hon. F. A. FITZGERALD, who was received with long-sustained applause, and seemed deeply affected, replied as follows :—Parting from active life and from the friends with whom I have been so long associated is to me a very serious and solemn matter. Even with your more than indulgent address before me, my thoughts will turn to the many failures and failings of a course of great responsibilities and unusually prolonged. But, be this as it may, it is natural, and I hope it is right, to take comfort and encouragement from the assurance that to the end of this long course I have retained the good opinion and the good-will of the profession to which it is and ever has been my pride to have belonged. You have given me this assurance, and I gratefully, most gratefully, thank you. I can truly say that of the honour of our common profession I have been always sensitive. You who are still bearing the burthen and heat of the day have maintained its honour as well as its reputation in all other respects, and I hope and believe that they ever will be maintained by those who follow you. Once more I thank you.

On the 22nd inst., the Council of the Incorporated Law Society of Ireland presented, on behalf of the Solicitors' profession, a valedictory address to the Hon.

F. A. FITZGERALD on the occasion of his retirement from the Bench.

The members of the Council present were :—

The President, Mr. Henry James Pelham West; the Vice-Presidents, Mr. Edward T. Stapleton and Mr. Henry L. Kelly; Messrs. William Findlater, M. P., ex-President; Henry Thomas Dix, Richard S. Reeves, Charles G. Stannell, John Henry Nunn, ex-President; Michael Larkin, Arthur Lee Barlee, John T. Hamerton, William Read, ex-President; J. Mathews, William D'Alton, Patrick Maxwell, W. Milward Jones, A. Tiedall, John Galloway, Shapland M. Tandy, Francis R. M. Crozier, Keith H. Hallows, Richard H. M. Orpen, Thomas C. Franks, Sydneyham Davis, Henry S. Mecreedy, Henry C. Nelson, Thomas R. Baillie-Gage, Robert O. Longfield, John B. Eaton, William B. Stanley, Thomas K. Roche, and John H. Goddard, the Secretary.

Among the general members of the Society present were :—

Messrs. Richard C. Walker, Samuel Walker, James O'Brien, R. Blair White, W. Grove White, Robt. Lyle, Patrick K. White, David Galbraith, Hubert C. West, Arthur H. Orpen, Henry B. Burton, E. Reginald Dix, Lewis Scallan, F. C. M'Gough, George W. Shannon, Mark C. Bentley, Ambrose Plunkett, John Read, Thomas Francis O'Connell, John D. Rosenthal, &c.

The PRESIDENT (Mr. West) said :—Sir,—The pleasant duty devolves on me, as President of the Incorporated Law Society, of reading to you the address which the council of that Society resolved should be presented to you; and I am sure, sir, it will not be unpleasing to you to learn from me that that address is the reflection of the unanimous opinion of a body, such as was composed of men having peculiar opportunities of forming that opinion, and who, while differing in politics and differing in creed are united, sir, in a sincere desire to pay a tribute of admiration and respect to one whom such a tribute is most justly due. I think, sir, it would be out of place for me to add any words of mine to the address, and with your permission I shall now read it.

“TO THE HON. BARON FITZGERALD.

“We, the Council of the Incorporated Law Society of Ireland, would but ill represent the feelings of our professional brethren if we allowed you to retire from the Bench without expressing our deep regret at the termination of your distinguished judicial career. For more than twenty years the solicitors of Ireland have had opportunities of observing your judicial life and character, and can bear testimony not only to your ability and learning as a judge, but also to your colourless impartiality and scrupulous fidelity in the administration of justice. Those who knew you at the Bar (a privilege enjoyed by some amongst us) well remember your brilliant qualities as a lawyer and an advocate, as well as the delicate sense of honour and purity of purpose which characterised your professional life. They expected a noble and spotless career upon the Bench to follow such a career at the Bar—and had the satisfaction of seeing their anticipations realised to the full in your judicial life. Although we well know that in the discharge of the high function committed to you, you have ever, in your conscious integrity, been regardless of praise or blame, we trust that you will accept this tribute of esteem which we desire to offer on behalf of our profession, and with it the most sincere assurance of our kindest wishes for your future welfare.—Signed on behalf of our profession, HENRY J. P. WEST, President; EDWARD M. STAPLETON and HENRY L. KELLY, Vice-Presidents; JOHN H. GODDARD, Secretary.”

The Hon. F. A. FITZGERALD replied as follows :—Mr. President and Gentlemen of the Council,—It would be strange indeed if I did not greatly value and gratefully receive this testimony of your regard. I know that—so as none other can—your profession truly represents the suitors and interests with which I have had to do as an advocate and judge. I know that you are gentlemen of high and unblemished honour in whom this confidence has been worthily reposed. That, in a long career, I have earned and enjoy, as you have been pleased to assure me, your esteem is to me a matter of incalculable worth, and I thank you most truly and sincerely. I also know it is true that there is an impulse of generous minds which leads them to forget that which is defective and to enhance what is good when they

approve. I can, however, be sure that there will be in my own recollection of defaults and defects throughout a long and responsible career at least sufficient to allay, without rendering me less grateful for, your generous approval.

THE HOUSE OF COMMONS SELECT COMMITTEE ON PRIVILEGE.

(MR. GRAY, 1882.)

REPORT PROPOSED BY THE CHAIRMAN (adopted).

The Select Committee on Privilege to whom was referred the letter of the 16th August, 1882, from the Right Hon. Mr. Justice Lawson to Mr. Speaker, informing the House of the commitment of Mr. Edmund Dwyer Gray, a Member of this House, for contempt of court, "for the purpose of considering and reporting whether any of the matters referred to therein demand the further attention of the House," have considered the matters to them so referred, and have agreed to the following Report:—

1. Your committee have had before them an order dated the 16th August, 1882, made by the Rt. Hon. James Anthony Lawson, one of Her Majesty's judges, and presiding judge of Commission of Oyer and Terminer and General Gaol Delivery, at a Session and Commission of Oyer and Terminer and General Gaol Delivery, held at Dublin, in and for the County of the City of Dublin, and also a further order made and dated the 30th September, 1882.

2. By the first of these orders Mr. Edmund Dwyer Gray, the proprietor of a certain newspaper called the *Freeman's Journal*, and then and now one of the Members for Carlow, was adjudged to be guilty of contempt of court in having published during the said session, in the said *Freeman's Journal* newspaper, upon the 11th, 12th, 14th, and 15th days of August, 1882, respectively, certain publications and articles in contempt of the said court then sitting; and it was also thereby adjudged that the said Mr. Edmund Dwyer Gray should, for such his contempt of court, be imprisoned in her Majesty's prison in and for the County of the City of Dublin for the space of three calendar months, and that in addition, he should pay for his contempt a fine of £500 to her Majesty the Queen, to be levied off his goods and chattels, and that at the end of such period of imprisonment he should enter into recognizances, himself in the sum of £5,000, with two sureties each in the sum of £2,500, conditioned that he (the said Mr. Edmund Dwyer Gray) should be of good behaviour and of the peace for the space of twelve calendar months, and, in default thereof, should be imprisoned for a further period of three calendar months, unless in the meantime he should enter into such recognizances.

3. By the second of these orders it was ordered that on payment of a fine of £500 imposed on Mr. Gray he should be then discharged from further custody. These orders and the affidavits and exhibits on which they were founded are printed in the appendix hereto.

4. Your committee had also before them a transcript of notes taken by a shorthand writer of proceedings in the Dublin Commission Court on the 14th and 16th of August and 30th of September, 1882, in relation to such committal of Mr. E. D. Gray.

5. Your committee, having had such orders and affidavits and transcripts placed before them, proceeded to afford Mr. E. D. Gray an opportunity of making such observations on the matters referred to them as he might desire to offer.

6. Mr. Gray made an oral statement to your committee, and in the course and in support of such statement placed before your committee certain documents, which appear in the appendix under the heading "Papers handed in by Mr. Gray." A portion of such statement and the contents of such documents appear to your committee to be irrelevant to the specific object of the present inquiry; but your committee consider that it would not be expedient to omit from the appendix to this report any portion of what was laid before them,

and therefore Mr. Gray's statement, and the documents above referred to, appear in the appendix.

7. Under all the circumstances of the case your committee are of opinion that the matters referred to them do not demand the further attention of the House.

8. And your committee also desire to express their opinion that Mr. Justice Lawson fulfilled his duty in informing the House that a Member of the House of Commons had been imprisoned by the order of the Commission Court of Oyer and Terminer before mentioned.

November, 1882.

MR. SEXTON'S REPORT (rejected).

1. Your committee have had before them an order dated the 16th of August, 1882, made by the Right Hon. James Anthony Lawson, one of her Majesty's judges, and presiding Judge and Commissioner of Oyer and Terminer and General Gaol Delivery, at a Session and Commission of Oyer and Terminer and General Gaol Delivery, held at Dublin, in and for the County of the City of Dublin, and also a further order made and dated the 30th of September, 1882.

2. By the first of these orders Mr. E. D. Gray, the proprietor of a certain newspaper called the *Freeman's Journal*, and then and now one of the Members for the County of Carlow, and High Sheriff of the County of the City of Dublin, was adjudged to be guilty of contempt of court in having published, during the said session, in the said *Freeman's Journal* newspaper, upon the 11th, 12th, 14th, and 15th days of August, 1882, respectively, certain publications and articles in contempt of the said court then sitting, and it was also thereby adjudged that the said Mr. E. D. Gray should, for such his contempt of court, be imprisoned in her Majesty's prison in and for the County of the City of Dublin for the space of three calendar months, and that in addition he pay for his contempt a fine of £500 to her Majesty the Queen, to be levied off his goods and chattels, and that at the end of such period of imprisonment he should enter into recognizances, himself in the sum of £5,000, with two sureties each in the sum of £2,500, conditioned that he, the said Mr. E. D. Gray, should be of good behaviour and of the peace for the space of twelve calendar months to her Majesty the Queen and all her subjects, and in default thereof should be imprisoned for a further period of three calendar months, unless in the meantime he should enter into such recognizances.

3. By the second of these orders it was ordered that on payment of the fine of £500 imposed on Mr. Gray he should be then discharged from further custody. These orders and the affidavits and exhibits on which they were founded are printed in the appendix hereto.

4. Your committee had also before them a transcript of notes taken by a shorthand writer of proceedings in the Dublin Commission Court on the 14th and 16th of August, and 30th of September, 1882, in relation to such committal of Mr. E. D. Gray, and your committee examined, in reference to the accuracy of such transcript, two shorthand writers whose evidence will be found in the appendix.

5. Your committee having had such orders and affidavits and transcript placed before them, proceeded to afford to Mr. E. D. Gray an opportunity of making such observations on the matters referred to them as he might desire to offer. Mr. Gray made an oral statement to your committee, which appears in the appendix, and in the course and in support of such statement placed before your committee certain documents which appear in the appendix under the heading, "Papers handed in by Mr. Gray."

6. Your committee, in considering whether any of the matters connected with the commitment of Mr. Gray demand the further attention of the House, have guided themselves by the principles laid down in the report of the select committee on Privilege appointed by the House in 1837 to consider and report upon the case of Mr. Leechmere Charlton, a member of the House, who



had been committed to prison by the Lord Chancellor for writing a letter to a Master of the High Court of Chancery, "containing matters scandalous in respect to the said master," and "attempting improperly to influence his conduct in a matter pending before him."

7. The Select Committee in the case of Mr. Charlton felt it to be their duty not only to consider (1) the character of the letter in respect of which he had been committed to prison, and the reason he had for believing certain statements made in that letter to be true, but also to investigate (2) the particulars of the contempt, in order that the House might be informed of them, and might thereby be enabled to come to a decision upon the merits. The committee observed with reference to the letter that whilst it appeared "to be expressed in an intemperate and improper manner," it had, however, "been occasioned by information derived from the solicitor in the cause, the correctness of which Mr. Charlton had no reason to doubt," and, with regard to the particulars of the contempt, the committee reported that, "although the Lord Chancellor had the power to declare what he deemed to be a contempt of the High Court of Chancery, it was necessary that the House of Commons, as the sole and exclusive judge of its own privileges should be informed of the particulars of the contempt before they could decide whether the contempt was of such character as would justify the imprisonment of a member."

8. The Select Committee on Privilege in the case of Mr. Charlton therefore clearly laid down two principles, namely, (1), that it was their duty to consider and report as to the grounds of the belief of Mr. Charlton in the truth of the statements for which he had been committed; and (2) that it was their duty to ascertain and report the particulars of the contempt, in order that the House, as the sole and exclusive judge of its own privileges, should be enabled to decide whether the character of the contempt had been such as to justify the imprisonment of one of its members.

9. Applying these principles to the case of Mr. Gray, your committee have considered, in the first place, what grounds he had for believing that the statements made in the *Freeman's Journal* newspaper in the publications and articles alleged to have been in contempt of the said court were true. Those statements charged that in certain cases tried before the said court numbers of jurors of respectable position belonging to the Roman Catholic communion had been ordered by the Crown to "stand aside," whilst juries exclusively, or almost exclusively Protestant, had been sworn; and also that certain members of a jury empanelled in a capital case had been guilty of misconduct in the hotel where they were lodged during the night which intervened between the commencement of the trial and its conclusion. Your committee having heard the statement of Mr. Gray, and having examined the papers handed in by him, and the several exhibits in the case, are of opinion that he had no reason to doubt the correctness of the statements made in the *Freeman's Journal* newspaper, and alleged to have been in contempt of said court.

10. With regard to the second principle adopted by precedent from the case of Mr. Charlton—namely, that although the judge had the power to declare what he deemed to be contempt, the House should be informed of the particulars of the contempt, in order to decide whether it was of such a character as to justify the imprisonment of a member. Your committee reiterate the expression of their opinion that Mr. Gray had no reason to doubt the correctness of the statements alleged to be in contempt, and your committee in this connexion refer to the report of the judgment delivered in the case by Mr. Justice Lawson, from which it appears that the learned judge declared that one of the legal questions for him to consider, in order to come to a decision, was whether the publications and articles in the *Freeman's Journal* newspaper were intended to interfere with the administration of justice. Your committee are of opinion that, in order to arrive at an equitable decision upon that question, it was essential to inquire whether Mr. Gray believed, and

had reason to believe, that the statements contained in the publications and articles were true. It is evident that statements made in good faith, even though held to constitute contempt, must be held to constitute contempt of a character materially different from that involved in statements made either with a knowledge of their falsehood or without a reasonable presumption of their truth. But Mr. Justice Lawson, although he declared "intention" to be a vital portion of the case, and thereby admitted to consideration the question of truth or falsehood, yet refused to hear a witness present in court who tendered his evidence on oath in support of the statements made in the *Freeman's Journal*; and, further, the learned judge declined either to allow Mr. Gray to go into the question of the truth of the statements or to grant an adjournment of the case, which was sought for by Mr. Gray on the plea that he would be able to clear himself of any charge as to the intention of the articles, and to prove that he had acted in good faith. Your committee consider that Mr. Gray, who it appears had received but a few hours' notice (from the evening of the 15th August to the morning of the 16th) of the intention to proceed against him, should have been allowed, by a reasonable adjournment, due facility for the preparation and production of his defence with regard to the intention of the publications and articles. Your committee also consider that the evidence tendered on his behalf in court should not have been rejected. The rejection of this evidence, and the refusal of an adjournment, are open the more gravely to question because, as it appears, the learned judge himself, in the course of the proceedings, repeatedly used expressions which left no doubt that he had already, by some method not indicated, brought his mind to a conclusion adverse to Mr. Gray upon the essential question of intention. Your committee consider that a member of the House charged with contempt of court should not have been denied those facilities for defence universally allowed to all who are charged with acts against the law. Your committee also consider, upon the question of the character of the contempt, that Mr. Gray, having no reason to doubt the correctness of the statements made in the *Freeman's Journal*, intended those statements not to "interfere with the administration of justice," but to secure the unimpeded admission to the jury box of persons duly qualified, without distinction of creed; and, in the particular case in which misconduct was charged against certain members of a jury, to induce the Executive to consider whether there was cause for recommending the extension of the Royal prerogative of clemency to the man who, on the verdict of the jury in question, had been condemned to death. Your committee, after careful consideration of all the facts in evidence before them, have no doubt of the accuracy of the statement of Mr. Gray, that the motive of the publications in the *Freeman's Journal* was to purify the administration of justice, so as to secure and increase respect for the law. Following the precedent laid down as hereinbefore recited by the Select Committee on Privilege, in the case of Mr. Charlton, your committee leave out of question the power of the judge to declare what he deemed to be contempt; but having ascertained and considered the particulars declared to be contempt in the present case, your committee, bearing in mind the law and usage of Parliament as to privilege of Parliament laid down in various statutes and numerous resolutions of both Houses, feel bound to report that in their opinion the character of the contempt was not such as to justify the imprisonment of Mr. Gray.

11. It appears, moreover, that Mr. Gray was adjudged to be guilty of contempt because of publications and articles referring to trials which had concluded before the publications and articles declared to be in contempt had appeared in the *Freeman's Journal*. Your committee are assured that it is the general practice of public journalists to comment freely in their journals on concluded trials, and the House may desire to consider whether a member of the House should have been

condemned to imprisonment under the law of contempt of court for having acted according to the settled usage of the public Press, and whether, in the interests of independent public criticism of the administration of justice, it is any longer judicious to allow the law of contempt in this regard to remain without definition and limitation.

12. Apart from the questions raised in respect of the publications and articles in the *Freeman's Journal*, it is apparent to your committee that another question directly affecting the privilege of a member of the House, and his right to attend in Parliament was raised in the present case by Mr. Justice Lawson, and that it materially contributed to the judgment at which he arrived, and to the sentence passed by him upon Mr. Gray. The office of High Sheriff of the City of Dublin is held by Mr. Gray for the present year, and as it is part of the customary duty of the High Sheriff to attend upon the judges at the opening of the said Commission Court, Mr. Gray on the eve of such opening wrote to Mr. Justice Lawson, stating that he expected it would be needful for him to go at once to Parliament, and expressing confidence that his absence from the court would not be attributed to any want of due respect. At that time the learned judge made no reply, but in answer to an inquiry addressed to him by Mr. Gray some days after his committal to prison, Mr. Justice Lawson acknowledged the receipt of the letter sent to him by Mr. Gray before the opening of the Commission, and declared that the excuse, as he termed it, for the absence of Mr. Gray from the court had been quite sufficient. Nevertheless, at the hearing of the charge against Mr. Gray, the learned judge, in reply to observations by the defendant as to the need of further time to prepare his defence, said—"You are the High Sheriff, and you are bound to be always in attendance in this court;" and subsequently, upon the question of the alleged misconduct of certain members of a jury in the hotel, the learned judge declared that he held the High Sheriff "responsible for everything," although the High Sheriff, after notifying the judge of his intention, had proceeded to the House of Commons before the Commission opened, and had remained continuously in attendance upon the House, and in the discharge of his Parliamentary duty, until after the jurors accused of misconduct had delivered their verdict and been discharged, and until after the trials commented upon in the *Freeman's Journal* had concluded. There can be no doubt that the jurors in question, during their absence from court, were in charge of the Sub-Sheriff and of sworn constables and bailiffs, and that the High Sheriff was obliged to be absent all the time in London on Parliamentary duty. Yet, it appears that the learned judge, because of such absence, rebuked him, imposed a serious disability on him in regard to the preparation of his defence, and even went so far as to punish him for his absence in Parliament, since, in delivering judgment, the learned judge declared, "I think the position of Mr. Gray greatly aggravates his offence. I think he owed a duty to the court, which he has most seriously neglected." Your committee deem it to be impossible to come to any other conclusion than that Mr. Justice Lawson inflicted punishment on Mr. Gray for having performed his Parliamentary duty, and your committee are of opinion that this conduct on the part of the learned judge is a breach of the privilege of the House.

13. As the matter affects the honour of a member of the House, your committee deem it proper in reference to a complaint submitted to them by Mr. Gray to declare that certain charges made against him in the public papers, imputing to him wilful misuse of his capacity of High Sheriff to defeat the ends of justice, are entirely without foundation.

14. Your committee have to report that in their opinion the singularly anomalous condition of the law of contempt, as well as the facts set forth and the conclusions stated in paragraphs 9, 10, 11, and 12 of this report, demand the further attention of the House.

November, 1882.

#### MR. DILLWYN'S REPORT (rejected).

In this report the following conclusions were reached:—

Your committee, having had the orders and affidavits and transcript placed before them, proceeded to afford to Mr. E. D. Gray an opportunity of making such observations on the matter referred to them as he might desire to offer, and having examined Mr. Gray and considered the reports and comments in the *Freeman's Journal* which led to the commitment of Mr. Gray, the proprietor of that newspaper, are of opinion that the contempt which it is alleged Mr. Gray committed was not of such a character as to justify the imprisonment of a Member of Parliament.

It appears to your committee that by the law and usage of Parliament, privilege of Parliament belongs to every member of the House of Commons in all cases, excepting those of treason-felony and breach of the peace, and in the case of such exceptions it is obvious that punishment for such offences could only be awarded after trial and conviction by a jury.

The privilege of Parliament rests not only upon resolutions of the Houses of Parliament, but is also distinctly recognised by various Acts of Parliament. The resolution of the House above referred to, asserting the law and usage of Parliament in respect of privilege, was passed on the 20th of May, 1675, and in 1831 a Committee of Privileges reported that it had been considered as established generally that privilege is not desirable for any indictable offence, assuming thereby the preferment of an indictment.

The Acts of Parliament which recognise the privilege of Parliament which may be quoted are the 17th of Geo. II., c. 6; the 45th of Geo. III., c. 4; the 57th of Geo. III., c. 8; the 57th of Geo. III., c. 55; the 3rd of Geo. IV., c. 2; the 2nd and 3rd of Wm. IV., c. 93; and the 44th of Vict., c. 4. All these recognise the exemption of members of Parliament from arbitrary arrest until the matter of which he is suspected shall be first communicated to the House of which he is a member, and the consent of such House obtained for his committal.

Various cases have been brought under the notice of Parliament, in which members have been committed for contempt of court, in which the House, not insisting on its privileges, have not deemed it necessary to interfere; but there have been cases in which the contempt has consisted in a direct defiance or interference with one of the superior courts, as in the case of Mr. Wellesley Long in 1831, who took a ward of Chancery out of the jurisdiction of the court; or as in that of Mr. Leechmere Charlton in 1837, who, in writing a letter to one of the Masters in Chancery, attempted to interfere with an officer of the court in the performance of his duty with respect to a suit then pending. This latter case was referred to a Committee of Privilege; and your committee consider it desirable to quote some extracts from their report, which set forth the law and usage of Parliament in respect of privilege of members. The warrant for Mr. Charlton's commitment set forth that he was committed by the Lord Chancellor "for writing a letter to William Brougham, Esq., one of the Masters of the High Court of Chancery, containing matters scandalous with respect to the said Master, and an attempt improperly to influence his conduct in the matter pending before him." The reports, after preliminary matter, state that the committee are deeply impressed with the difficulty and importance of the question referred to them in the absence of authorities to which they can refer as clearly in point and directly bearing on this particular case. It will be seen from the early cases that the ancient definition of privilege of Parliament is that it belongs to every member of the House, except in cases of treason-felony, or refusing to give surety of the peace.

These exceptions, by the statement of the Commission of 1641, are further extended to all indictable offences by their resolution in 1697 to forcible entries and detainers; and in 1763, in conformity with the

principle of the declaration of 1641, and of a subsequent resolution in 1675, to printing and publishing seditious libels, to which may be added the resolution of the Lords in 1757 that privilege shall not protect peers against process to enforce the *habeas corpus*. The ordinary process for contempts against persons having privilege of Parliament or of peerage has not been that of attachment of the person, but that of sequestration of the whole property, which has been found sufficient to vindicate the authority of the courts, even in cases of some aggravation.

It is stated by Blackstone that "contempts committed even by peers, when enormous and accompanied with violence, such as forcible rescues and the like, or when they import disobedience to the King's writs of prohibition, *habeas corpus* and the rest, are furnishable by attachment;" and the same doctrine has on different occasions been expressed by other writers and by judges of high authority.

The only cases, however, in which attachments have been found by the committee to have been actually issued against privileged persons are that of Earl Ferrers by the King's Bench, and that of Mr. Wellesley Long by the Court of Chancery, already referred to. The former was a case of disobedience to a writ of *habeas corpus* to which, while the discussion was pending it had been declared by the House of Lords privilege of Parliament did not extend; the other was that of the forcible removal of a ward of the Court of Chancery, and placing her out of the jurisdiction of the court, which obviously could only be checked by the most prompt and efficacious remedy.

Since the sitting of the last Committee of Privileges the Act of 2nd and 3rd William IV., c. 93, intitled "An Act for Enforcing the Process upon Contempts in the Courts Ecclesiastical of England and Ireland," was passed, by which contempts of the Ecclesiastical Courts in face of the court or the process thereof are directed to be signified to the Lord Chancellor, who is to issue a writ of *de contumace capiendo* for taking into custody persons charged with such contempt, "in case such persons shall not be a Peer, Lord of Parliament or Member of the House of Commons."

In the comments which appeared in the *Freeman's Journal* newspaper, and which led to the imprisonment of Mr. Gray, your committee do not consider that he intended to or did act in defiance of the court, or with the view of interfering with its action, as the trial to which they referred had been concluded, and the irregularities which were alleged to have occurred in reference to it, were of such a serious character as, if true, to render it desirable that public attention should be drawn to them, with the view of obtaining a full investigation; and your committee are of opinion that Mr. Gray's comments were made with this object, and not with the desire to prejudice or interfere with the administration of justice, but, on the contrary, to amend it.

On former occasions of committal of members for contempt the House has not considered it expedient to protest or take action in order to vindicate its privileges, but in no instance can it be considered to have waived them.

In the present instance, as Mr. Gray has been released from imprisonment, and under the circumstances of the case, your committee do not recommend that any further steps in the matter are necessary to be taken, although they are of opinion that there has been an infringement of the privilege of Parliament.

The order of reference desires your committee to report whether any of the matter referred to in the case of Mr. Gray demands the further attention of this House, and in compliance with this direction they express their opinion that if the present state of the law allows a judge to imprison or fine to an unlimited extent the editor of a public journal for criticising the proceedings on a criminal trial, after such trial has finished, your committee consider that it is desirable forthwith to amend the law relating to contempt of court.

## THE SETTLED LAND ACT.—IV.

(Continued from page 562, ante.)

### Powers of Sale, Enfranchisement, Exchange, and Partition (Sect. 3).

In considering the effect of this and subsequent powers the definitions of "manor," "mines and minerals," and "land" (sect. 2) must be kept in mind.

The Act gives these powers to tenant for life (sect. 3), and, during infancies, to the trustees (sect. 60). As to who are trustees, see sects. 2 (8), 38.

By sect. 15 a restriction is imposed as to sale and lease of mansion-house, &c.; we think that usually the settlement should remove this restriction. See on sect. 15 below. For old power of sale and exchange, see Davidson Settlements, 3rd edit. vol. iii. 1011; Bythewood, vii. 435; Priedaux, 11th edit. vol. ii. 816; Conoisc David. 12th edit. 333.

Power to make, vary, and rescind contracts is given by sect. 31, to make stipulations as to title, buy in at auction, &c., by sect. 4, to make conveyances by sect. 20, which also provides for priorities. Compare David. iii. 1018, and see ib. 593. The consideration for variation and rescission, if paid in money, is to be treated as capital (sect. 31 (ii)). This leaves it open to possible discussion whether tenant for life will have to account for "money's worth" which he receives. It would seem that no notice of rescission need be given to the trustees, but that notice of variation must. See sect. 45. Sale of easements, privileges, &c., is provided for by sect. 8 (i).

On sale, exchange, and partition, restrictions may be imposed (sect. 4 (6)); surface and minerals sold apart, and easements, &c., granted or reserved for mining purposes (sect. 17); proper conveyances made; easements, &c., created (sect. 20 (1)); and re-settlements made of land received on sale or exchange (sect. 24).

As to conveyances of easements, see sect. 20 (1), and C. A. s. 62; and as to re-settlement, sect. 24 (7).

As to sale of surface and minerals apart, compare David. iii. 1019, and as to re-settlements, ib. 1020.

The trusts of money received on sales, &c., are provided for by the Act (see sects. 21-25), but if it is desired that a single trustee should be able to give a receipt the settlement must so provide (sect. 39). But except in small settlements such a provision would be unwise.

Under the old power of re-purchase of lands (David. iii. 1020) the money might be spent on freeholds, or such leaseholds and copyholds as were convenient to hold with the freeholds. Under the Act this limitation is abolished (sect. 24 (3)), and any copyholds and leaseholds may be purchased as an investment and not merely as a convenience; but the leaseholds must have sixty years unexpired (sect. 21 (vi)). It will be for the personal advantage of tenant for life to purchase leaseholds, but he will be kept in check by sects. 45, 53. The Act provides that where purchase money arises from sale of lease or reversion, the court or the trustees may apply it so as to give to the tenant for life and remainderman the same benefit as they might have had from the property if unsold (sect. 34). Compare L. C. C. Act 1845 (8 & 9 Vict. c. 18), s. 74, and see *Askew v. Woodhead* (42 L. T. Rep. N. S. 567; 14 Ch. Div. 37). Apparently on sale of a short lease the trustees may give a share of the purchase money to tenant for life, but of course the purchaser must pay the whole into court or to the trustees (sect. 21).

It may be advisable to empower tenant for life to buy leaseholds with less than sixty years unexpired, convenient to be held with the settled property not exceeding in the whole a specified value.

Few settlers will desire that land in England shall be exchanged for land out of England, but, if it is desired, a power must be inserted. A comparison of sect. 4 (8) with the last words of sect. 23 gives rise to a doubt whether such a power is valid; but we are clearly of opinion that it is valid (see sects. 56, 57), "England" includes Wales: (Steph. Comm. 8th edit. vol. i. 84.)

Enfranchisement is treated by sect. 3 as a sale of the

seignory, so that frequently when a sale is mentioned it includes an enfranchisement. For old power to enfranchise see David. iii. 1010, 1011; Bythewood, vii. 482; and as to the law of enfranchisement see David. ii. 386; iii. 544. The statutory power in sect. 4 gives no power to sell or enfranchise in consideration of a rentcharge or valuable consideration other than money (sect. 4 (2)). If this is desired it should be added. It will not be safe to consider a newly created rentcharge on the land as an incorporeal hereditament, falling within the definition of "land" in sect. 2 (10) (i), and treat the sale as an exchange. Rights of common, &c., may be regranted in an enfranchisement (sect. 4 (7)).

There seems no doubt but that the statutory powers authorise enfranchisements of copyholds for lives. As to the effect of the old powers, see David. iii. 541, and compare ib. ii. 388. Exchange or partition may be made in consideration of undivided share in mines and minerals (sect. 17 (2)).

Sect. 4 (2) empowers exchange and partition in consideration of money and "land;" restrictions and reservations are also empowered by sects. 4 (6), 17; and these will also form a consideration. Apparently there is no power to substitute a rent-charge. See above.

Money for equality of partition and exchange may be raised by mortgage of the settled land (sect. 18).

A power of sale and exchange vested in trustees, and exercisable with consent of tenant for life, may be exercised by selling to tenant for life himself (*Howard v. Ducane*, Turn. & Russ. 81; Sug. Pow. 868); but it seems that tenant for life is bound to communicate what he knows as to the value of the property: (*Dicconson v. Talbot*, 24 L. T. Rep. N. S. 49; L. Rep. 6. Ch. App. 32.)

It is submitted that, as tenant for life is placed in the position of a trustee (sect. 53), he cannot safely purchase from, or exchange with himself: (*Lewin*, 422). See, however, David. iii. 582; Sug. V. P. 692; Dart, 37, as to tenant for life with power of sale in general.

He might also purchase on a sale by the court, after having obtained the court's permission (*Dart*, 1195), and no doubt this will still be allowable; and possibly he may even buy from himself with the sanction of the court, for which application may be made under sects. 81 (3), 44.

A purchase by tenant for life in the name of a third person would of course be no better than if it was made in his own name; indeed, it would be rather indicative of fraud: (*Dart* 41; *M'Pherson v. Watt*, 3 App. Cas. 254, 263.) Even a perfectly fair sale by a trustee to himself may be set aside by the *cestui que trust*: (*Lewin*, 423.)

The practical result is, that it may be well to give tenant for life power to sell to, and exchange with, himself; but the consent of the trustees should be made requisite; and the power should be so framed as to prevent trustees from selling, &c., to themselves when they have the powers of "tenant for life" under sect. 60. The power to make partition resembles that of sale and exchange (*David*. iii. 552), so that now where tenant for life is absolute owner of an undivided share he should in the same way be empowered to make partition with himself, with the consent of the trustees. The power of partition can only be exercised with the concurrence of persons interested in the other share or shares (sect. 3 (iv.)). It arises, first, when the settlement comprises an undivided share (compare *David*. iii. 333, 1152, 1213); and, secondly, when the settled land has come to be held in undivided shares—*e.g.*, among three children as tenants in common for life or in tail. Money may be taken for equality of partition (sect. 4 (2)), and minerals and undivided shares in minerals reserved (sect. 17).

Subject to the above remarks the powers in sect. 3 appear to be sufficient in ordinary settlements *inter vivos*. In many cases wider powers of investing money received on sale should be inserted.

#### *Transfer of Incumbrances* (Sect. 5).

This section empowers transfer of incumbrance with consent of the incumbrancer, but the power must not be used so as unfairly to affect the remainderman

(sects. 53, 24 (5)). The incumbrancer is protected by sects. 20 (2), 50 (3) (4).

(To be continued.)

### THE SETTLED LAND ACT.

The Settled Land Act, 1882, is only the latest and longest step in a direction in which we have for some time been proceeding. Its promoter, Lord Cairns, succinctly and correctly describes its main objects in the memorandum appended to it on the introduction, in the House of Lords, of the bill which has now become an Act. "The main object of this bill," he said, "is to enable a tenant for life (which term is used generally to include the class of limited owners) to dispose, by lease, sale, or otherwise, of any part of the settled land, or even of the whole of it; proper provision being made for securing the purchase-money on a sale, and otherwise for protecting the interests of the remainderman, and of others entitled to come in under the settlement;" and "the bill is not confined in its operation to future settlements." Every lawyer knows that for the last two generations at least, if not for more, every well-drawn settlement contained extensive powers of sale, exchange, mortgage, and leasing vested in the trustees, either with or without the direction or consent of tenants for life. But all settlements were not well drawn; a great many settlements were made by will in which these provisions were not inserted; and cases were continually occurring which were not met by the settlement. Hence arose great inconvenience, delay, and often damage to the property settled. In 1856 the Legislature came to the rescue with the Settled Estates Act. The main purport of that Act was to supplement imperfect settlements, by enabling the court, on the application of parties interested, to exercise, or give trustees power to exercise, the usual powers given in settlements. It also enabled tenants for life, without any intervention, to give leases for the usual agricultural term of twenty-one years. But, in all other cases, where the settlement did not give powers of management, application to the court had to be made. It is true they could be made, without administering the trusts of the settlement, on a simple petition. But so many consents and concurrences and notices had to be given, that there was a great deal of unnecessary delay, inconvenience, and expense caused in the management of estates. The Act of 1856 was amended by no less than four Acts, which were finally consolidated and amended in the Settled Estates Act, 1877. The present Act, except for a few slight alterations, leaves the Act of 1877 nominally untouched; but it is calculated effectually to repeal it in practice. The beneficial effect of the Settled Estates Acts did not extend far. There was but little temptation to a limited owner to incur all the worry and expense of an application to the court, when, after all, he could only, at the most, exchange  $2\frac{1}{2}$  per cent., the rental value of the land, for 3 per cent., the dividends on Consols; to which investment the proceeds of sale were, practically, limited. So with regard to the improvements on the land. Under the Improvement of Land Acts, great and beneficial improvements could be effected, at the expense partly of the inheritance in settled estates, but only after long and expensive proceedings before the Inclosure Commissioners, conducted, necessarily, on a system of red tape.

The present Act, without repealing—and, indeed, while extending—yet supersedes the Improvement of Land Act, 1864. The primary provision of the Act is that making a power of sale a necessary incident to the estate of a limited owner. This is to be an incident of which he cannot be deprived, directly or indirectly, by the instrument creating his estate, of which he cannot deprive himself by any bargain or contract, either with the settlor, with other persons interested under the settlement, or with outsiders, subject of course to the usual rights of a mortgagee or other assignee for value. Moreover, the power is cumulative—that is, it may enlarge, but it cannot curtail, powers given to the

tenant for life or to the trustees by the settlement. If given to both tenant for life and trustees it is exercised by either; but in case of conflict the Act, and not the settlement, is to prevail. It is also specially enacted that the consent of the tenant for life shall be necessary to the exercise of any power given to the trustees, which power is exercisable for any of the purposes provided for by the Act. The initiation and control, therefore, of sales is in effect transferred by the Act from the trustee to the tenant for life. The inducement to the exercise of the power of sale under the present Act is to be found in the provisions in Part IV. relating to the investment or other application of capital moneys arising under the Act, and in Part VII. relating to improvements. Instead of being confined to Government securities, or securities authorised by the settlement, the range of investment is now extended to bonds and debentures of any railway in the United Kingdom which has for ten years paid a dividend on its ordinary stock; and in the discharge of incumbrances affecting the inheritance, though not, of course, of incumbrances affecting the life estate only. The impoverished landowner can, therefore, by selling, pay off mortgages, and so get rid of interest at 4 or 4½ per cent., and invest the residue of the purchase-moneys at 4 or 4½ per cent., and so get an increased income of perhaps 2 per cent. For the improving owner the further inducement is held out of being able to sell a portion of the estate to improve the remainder. For one of the objects on which capital moneys may be spent is the payment for any improvement authorised by the Act. Part VII. of the Act gives a list of such improvements, which is considerably more extensive than that given in section 9 of the Improvement of Land Act, 1864 (for which indeed section 25 of the Act is to be substituted). The former list was concerned chiefly with agricultural improvements; the new one includes improvements for building, mining, or manufacturing purposes. Then, instead of having to go to the Land Commissioners (into whom the present inclosure, tithe, and copyhold commissioners are translated), the tenant for life, if he has paid the purchase-money, as he has power to do, to the trustees of the settlement, has only to satisfy them that his proposed improvements are beneficial. They may then apply the money in payment for works executed, either on a certificate from the commissioners, or (the alternative course most likely to be adopted) on a certificate from a surveyor approved by the commissioners, that the works have been properly done. It will no longer be necessary, if there is an infant tenant in tail, for the tenant for life to get the sanction of the Chancery Division before the commissioners may sanction or proceed in a scheme of improvements. In the case where the tenant for life has paid the money into court, he will, indeed, still have to get the sanction of the court to his scheme, and to the payment of the money when it is executed. But as power is given under the Act in cases where there are no trustees to appoint trustees for the purposes of the Act, and as under the Conveyancing Acts, 1881 and 1882, the powers of appointing trustees are widely extended, it is probable that the work of the Chancery Division will not be largely increased under this Act. In fact, an application to the court with regard to improvements is only likely to be made in cases in which money has been paid into court under the Lands Clauses or other Acts; cases which, owing to the extended powers of tenants for life, will be much fewer than at present.

With regard to leases, the tenant for life is given the same power, which he can exercise of his own mere motion, as that which under the Settled Estates Act the trustees can exercise or obtain after application to the Court. He can lease for twenty-one years for agricultural, sixty for mining, and ninety-nine for building purposes. For any special term beyond that limit, he can get a general power for himself, instead of for the trustees. But, with minor additions and improvements Part IV. of the Act is simply a re-enactment of the Settled Estates Act on the same subject, only substituting the tenant for life for the trustees as the recipient

of the powers given, and, as a rule, without the necessity of application to the court. As regards mortgages there is no great extension of the power of the tenant for life. He is given power to raise money for enfranchisement, or equality of exchange, or partition by mortgaging the fee or other whole interest settled, or by creating a term of years; but not otherwise. Power to mortgage for improvements is given under the Improvement of Land Act, 1864; but, practically, as that power entails the lengthy procedure before the Land Commissioners which is averted by a sale under the Act, it is probable it will be little resorted to.

Taken as a whole, in its practical effect on land owners, the Act, where there is an adult tenant for life, reduces the trustees to the position of mere bankers, to receive and pay money; the real management of the estate is vested in the tenant for life. He is made the practical owner of the land, or, perhaps we should rather say, the managing agent of it. For he is, as far as possible, tied down to deal with the land as the ideal "prudent owner" would deal with it, and is, indeed, expressly declared, by section 53, to be the trustee of the powers conferred on him by the Act for all parties entitled under the settlement. What the restrictions and conditions expressly imposed on him are, and the details of the Act generally, we propose to consider hereafter.—*Law Journal*.

#### MALICIOUS INJURIES.

The consolidating statute dealing with the important subject of malicious mischief (24 & 25 Vict., c. 97) contains several sections which have given rise to considerable difficulty in the matter of interpretation. In many sections of the Act an intent to injure or defraud is made an integral part of the offence, but in others this is not so, the offence consisting in doing a particular act "unlawfully and maliciously." Sect. 58 provides that "every punishment and forfeiture by this Act imposed on any person maliciously committing any offence, whether the same be punishable upon indictment or upon summary conviction, shall equally apply and be enforced, whether the offence shall be committed from malice conceived against the owner of the property in respect of which it shall be committed or otherwise." The expression owner "or otherwise" is no doubt used to cover the case of injury to property in the possession of some person not the owner, but who has a qualified right of ownership—*e.g.*, a bailee. The 60th section provides that, when an intent to injure or defraud forms an integral part of the offence, it shall not be necessary to prove an intent to injure or defraud *any particular person*, but that proof that the accused did the act charged with an intent to injure or defraud, as the case may be, is sufficient.

It is as to the proper interpretation to be applied to the term "maliciously" that difficulty most frequently arises, and this difficulty has been not a little added to from an inability to recognise the fact that *Reg. v. Pemiton* (L. R. 2 C. C. R. 119) is merely an instance of a conviction being quashed in consequence of the case having been left to the jury without a proper direction from the Recorder of Wolverhampton, who tried the case, and is not a decision in point of principle at all. The facts in this case were very simple: the prisoner had been fighting with persons in the street, and threw a stone at them, which struck a window and did damage to an amount exceeding £5. He was indicted under the 51st section of the Malicious Injury to Property Act, which makes it a misdemeanour "unlawfully and maliciously" to commit any damage to any real or personal property whatsoever to an amount exceeding £5. The jury, after hearing the evidence, found that the prisoner threw the stone which broke the window, but that he threw it at the people he had been fighting with, intending to strike one or more of them with it, but not intending to break the window. On this a verdict of "guilty" was entered, and a case reserved. In the course of the argument Blackburn, J., observed: "I should have told the jury that if the prisoner knew

there were windows behind, and that the probable consequence of his act would be to break one of them, that would be evidence for them of malice. The jury might perhaps have convicted on such a charge, but we have to consider their actual findings." Lord Coleridge in giving judgment said: "Without saying that if the case had been left to them in a different way the conviction would have been supported, if, on these facts, the jury had come to a conclusion that the prisoner was reckless of the consequences of his act, and might reasonably have expected that it would result in breaking the window, it is sufficient to say that the jury have expressly found the contrary." Lush, J., said: "On these findings we have no alternative. The jury might have found otherwise, but taking this finding I cannot say that there was an intent either actual or constructive, and 'malicious' certainly must be taken to imply an intention either actual or constructive."

The proper interpretation of the expression "unlawfully and maliciously" must be taken from the more recent case of *Reg v. Welsh* (L. Rep. 1 Q. B. Div. 23), where the prisoner was indicted under the 40th section of the Act dealing with malicious injury to property for "unlawfully and maliciously" killing a mare. The case was tried before Mr. Justice Lindley at the old Bailey on the 23rd Sept., 1875, who left two questions to the jury: (1) Did the prisoner in fact intend to kill the mare? (2) Did he know what he was doing would or might kill the mare; and did he, nevertheless, do what he did recklessly, and not caring whether the mare was injured or not? The jury negatived the first question, but answered the second in the affirmative, and a verdict of "guilty" was entered; and on the point being reserved as to whether the conviction should stand, Lord Coleridge, giving the judgment of the court said: "We are all of opinion that there was sufficient malice to sustain this conviction."

The application of this principle to the facts disclosed in a case tried at the Middlesex Sessions before the assistant-judge would have saved a good deal of time, and rendered it unnecessary for the learned assistant-judge more than once to point out that the principle involved in a particular decision required frequently to be eliminated from the facts, and that facts and principles were not identical, as some persons seemed oddly to suppose. The case was that of *Reg. v. William Bennett*, the evidence being that the prisoner went to a tavern in Fetter-lane about 11 o'clock on the evening of the 15th ult., and began to illtreat his wife who was in the bar, that subsequently he took up a pot and threw it at her, breaking a plate glass window of the value of £10. The learned counsel for the prisoner argued upon these facts with very great vigour that, on the authority of *Reg. v. Penlton*, there was no case to go to the jury, and seemed much aggrieved when the judge ruled otherwise. In consequence of the want of proper appreciation of his law the learned counsel proceeded to call witnesses to facts for the defence who swore with almost as much vigour as the learned counsel had argued that the prisoner never threw the pot at all. The jury took some time to consider, and finally returned a verdict of "not guilty," and were peremptorily requested to leave the box. Truly a "Comedy of Errors!"

The Criminal Code will, when it passes, get rid of the ambiguity attending the terms "malice" or "maliciously." The Royal Commissioners in their report (p. 15) observe: "We have avoided the use of the word 'malice' throughout the draft code, because there is considerable difference between its popular and legal meaning. For example, the expression 'malice aforethought,' in reference to murder, has received judicial interpretations which make its use positively misleading."—*Law Times*.

ACCORDING to the *Daily News*, the case of Mr. Green has been among those the consideration of which has brought the Government to the conclusion that it is necessary to define and limit the power of the judges to commit for contempt of court.

#### ARREARS OF RENT (IRELAND) ACT.

In a return just issued by the Court of the Land Commission it is stated that the total number of applications received up to and including October 31 was 5,528, the number of holdings being 8,114. The total amount of money involved in these applications was £61,058 15s. 11d., of which £55,549 8s. was expended in grants pursuant to section 1, £4,005 16s. 1d. in remission of rentcharges pursuant to section 15, and £1,503 11s. 10d. in loans pursuant to section 16. Conditional orders have been made in 1,369 holdings, absolute orders in 922; and the money absolutely ordered to be paid is £5,062 3s. 1d. Of 207 separate applications under section 1, inquired into by local investigators, 203 were granted and only four refused.

#### THE LAW OF TRADE MARKS.

In *Burton v. Stratton*, United States Circuit Court, Eastern District of Michigan, July 3, 1882, 12 Fed. Rep. 696, it was held that "Twin Brothers" is a valid trade-mark for yeast, in connexion with a label showing the figures of two men's heads. The principle declared is that mere words may become valid trade-marks, when purely arbitrary, or when indicative of the origin or original ownership. Brown, D.J., gave the following useful summary: "1. That a court of equity will enjoin unlawful competition in trade by means of a simulated label, or of the appropriation of a name; as where the defendant appropriates the name of a hotel conducted by the plaintiff, or imitates his label upon preparations. *Howard v. Henriquez*, 3 Sandf. 725 (Irving House case); *Woodward v. Lazar*, 21 Cal. 448 (What-Cheer House case); *Howe v. Searing*, 10 Abb. Pr. 264 (Howe's Bakery case); *M'Cardel v. Peck*, 28 id. 120 (M'Cardel House case); *Williams v. Johnston*, 2 Bos. 1 (Genuine Yankee Soap case); *Day v. Croft*, 2 Beav. 488 (Day & Martin Blacking case); *Davis v. Kendall*, 2 R. L. 566 (Pain-Killer case); *Meriden Britannia Co. v. Parker*, 89 Conn. 450. The ground of interference in this class of cases is fraud; that is, the attempt to palm off the goods of the defendant as the goods of the plaintiff. 2. A court of equity will not protect a person in the exclusive use of a word which expresses a falsehood; as, if the article bears the word "patented" when in fact it is not patented, or exhibits an untruth as to the place of manufacture or composition of the article. *Leather Cloth Co. v. Leather American Cloth Co.*, 11 H. of L. 531; *Brown on Trade-Marks*, s. 72; *Flavel v. Harrison*, 10 Hare 467; *Partridge v. Menck*, 2 Barb. Ch. 101; *Pidding v. How*, 8 Sim. 477 (Howqua Mixture case); *Palmer v. Harris*, 60 Penn. St. 156, wherein the trade-mark indicated that certain cigars were made in Havana, when in fact they were made in New York; *Fetridge v. Wells*, 13 How. Pr. 385 (Balm of Thousand Flowers case); *Phalon v. Wright*, 5 Phila. 464 (Night-Blooming Cereus case); *Cocks v. Chandler*, L. R. 11 Eq. 446 (Reading Sauce case); *Conwell v. Reed*, 128 Mass. 477 (East Indian Remedy case). 3. That no one can extend his monopoly of a patented trade-mark. By the expiration of the patent the public acquires the right not only to make and sell the article, but to make and sell it under the name used by the patentee. *Singer Manufacturing Co. v. Stanage*, 6 Fed. Rep. 279; *In re Richardson*, 3 O. G. 120; *Tucker Manufacturing Co. v. Boyington*, 9 id. 455. 4. A person cannot, by means of a trade-mark, monopolise the name of the place where the article is manufactured. *Canal Co. v. Clark*, 13 Wall. 311 (Lackawanna Coal case); *Brooklyn White Lead Co. v. Masury*, 25 Barb. 416. Nor the ordinary numerals or letters. *Manufacturing Co. v. Truener*, 101 U. S. 51 (A. C. A. case); *A. M. Manufacturing Co. v. Spear*, 2 Sandf. 559; *Avery v. Meikle*, 23 Alb. Law Jour. 443. This proposition, however, has been disputed. See *Gillotti v. Esterbrook*, 48 N. Y. (303 case); *Boardman v. Meriden Britannia Co.*, 35 Conn. 402. Nor can a person monopolise a name expressive of the character or composition of an article. *Conwell v. Davis*, 35 How. Pr. 76 (Ferro-Phosphorated Elixir of Calisaya Bark case). 5. So where the words used are expressive only of the

name or quality of the article, and have acquired that significance in the market. *Am. Manufacturing Co. v. Spear*, 2 Sandf. 599; *Manufacturing Co. v. Trainer*, 101 U. S. 51; *Stokes v. Landgraf*, 17 Barb. 608; *Cornwin v. Daly*, 7 Bos. 222 (Club House Gin case); *Ferguson v. Davoll Mills*, 2 Brewster, 814; *Choynski v. Cohen*, 89 Cal. 501 (Antiquarian Book Store case); *Phalon v. Wright*, 5 Phila. 464; *Singleton v. Bolton* 3 Doug. 298 (Case of Dr. Johnson's Yellow Ointment); *Thomson v. Winchester*, 19 Pick. 214 (Thomsonian Medicine case); *Banninger v. Wattles*, 24 How. Pr. 204 (Old London Dook Gin case); *Raggett Friedlater*, L. R. 17 Eq. 29 (Nourishing Stout case). 6. In order that mere words may be upheld as a trade-mark they must be merely arbitrary, or they must indicate the origin or ownership of the article or fabric to which they are affixed. *Am. Manufacturing Co. v. Spear*, 2 Sandf. 597; *Canal Co. v. Clark*, 13 Wall. 322; *Falkinburgh v. Lucy*, 85 Cal. 52; *Brown, Trade-Marks*, s. 16; *Durham Tobacco Case*, 8 Hughes 157; *Wortherspoon v. Currie*, L. R., 5 E. & L. App. 508 (Glenfield Starch case); *Ford v. Forster*, L. R., 7 Ch. App. 611 (Eureka Shirt case); *Hier v. Abrahams*, 82 N. Y. 519; S. C., 37 Am. Rep. 589 (Pride Tobacco case); *M'Andrew v. Bassett*, 10 Jur. (N. S.) 550; S. C. 12 Week. R. 777 (Anatole case); *Lee v. Haley*, L. R. 5 Ch. 155 (Grimes Coal Co. case); *Seizo v. Provezende*, L. R., 1 Ch. 192 (Seizo Wine case); *Braham v. Bustard*, 1 Hem. & M. 447 (Excelsior Soap case).—*Albany Law Journal*.

#### THE MARRIED WOMEN'S PROPERTY ACT.

"The Married Women's Property Committee," held a meeting on Saturday afternoon at Willis's Rooms to celebrate its own dissolution, the object with which it was formed having now been fully attained, and no further reasons remaining for the continuance of its labours. The Married Women's Property Act of last Session passed through both Houses of Parliament with so little opposition or criticism that, as far, so Mr. Shaw Lefevre, the Chairman of the Committee, observed, the world at large is hardly aware of its existence. But it embodies all that reformers have been struggling to obtain for more than a quarter of a century, and makes a change in our social system which will probably ere long lead to others of equal, if not greater, importance. We are disposed to take a hopeful view of the operation of the future law. At the same time, we cannot refrain from suggesting that the independence conferred upon women by the new Act will probably make it necessary to extend, in some degree, the principle of limited ownership. If it were a great wrong that the personal property of a woman should become by her marriage absolutely at the disposal of her husband, it might be unwise for some reasons to leave it entirely in her own hands. In all such cases the interests of the children are the first thing which ought to be considered; and how far women are likely to make judicious investors, or to engage in business under sound and safe conditions, is a question perhaps more easily asked than answered.—*Standard*.

#### INDORSEMENT OF CHEQUES.

Judge Jones of the Ohio Common Pleas, at Cleveland, has recently decided a novel and interesting point of law respecting negotiable instruments. The suit was by the holder against the drawer of a cheque. The cheque was payable to order, duly indorsed in blank, and transferred to the plaintiff. On presentation the bank, drawee, demanded that the holder should also indorse it. This he refused to do, and thereupon had the cheque protested, and brought this suit. Judge Jones holds that the bank had no right to make such requirement, although it was proved that such was the local custom, and holds that the cheque was properly dishonoured. A correspondent asks us if we think this good law. Our impression is that it is. The bank certainly had no right to demand the holder's indorsement as additional security, for it was bound to pay the deposit on the depositor's order. The indorsement

would not help to ascertain or guarantee the genuineness of the payee's indorsement. If the cheque had been drawn or indorsed payable to the order of the holder, the bank might reasonably have demanded, if he were a stranger, that he identify himself as the owner, and it might reasonably demand evidence of the genuineness of the payee's indorsement in blank, but nothing more. We think Judge Jones is right when he says: "A bank is ordinarily presumed to know the signatures of its own customers and depositors, but it will not be seriously doubted that when a cheque is drawn on a bank, which is a stranger to the payee and his signature, the bank is entitled to a reasonable time in which to ascertain the genuineness of the indorsement before paying a cheque payable to his order; and, indeed, some of the authorities seem to justify a bank or banker in calling on the holder of such a bill or cheque, when it is reasonable to do so, to furnish proof that the indorsement is the genuine one of the payee; but in this case neither of these things was required or asked; there was no demand by the bank for proof of the signature, nor for a reasonable delay to satisfy itself of the genuineness of the indorsement, but there was simply an absolute refusal to pay unless the person who presented the cheque would indorse it. That this refusal to pay without such indorsement is not justified by commercial law is, we think, perfectly clear; it is an attempt to limit the negotiability of such paper, and to fix terms and conditions for its payment not warranted by the law or by the drawer of the cheque, and to which neither he nor the holder is obliged to submit. The implied contract of a bank with its customers is to pay their cheques according to the law merchant." In respect to the custom, it may be said that it was merely local, contrary to the law merchant, and unavailing to protect the drawee, and therefore unreasonable. The custom of a bank is available for certain purposes, even where it is contrary to the law merchant; as, for example, where it is its custom to demand payment and give notice of nonpayment on the day next succeeding the third day of grace (*Mills v. Bank of the United States*, 11 Wheat. 431), or to give notice by mail to indorsers residing in the place where the bank is situated: (*Carolina National Bank v. Wallace*, 18 S. C. 347; s.c. 36 Am. Rep. 694.) But these customs do not tend to change the contract of the bank, as the custom in question does. We take it that no custom of a contracting party can be set up to excuse his non-fulfilment of his contract.—*Chicago Legal News*.

#### TEXT-BOOK, ADDENDA.

[From the *Law Journal*.]

##### *Statute of Limitations (3 & 4 Wm. IV. c. 27), s. 34.*

Subsequent acknowledgment or payment of rent is of no avail to re-vest a title extinguished by twenty years' adverse possession under the Statute of Limitations [decision of *Malins*, 50 Law J. Rep. Chanc. 367, reversed] (*Sanders v. Sanders*, 51 Law J. Rep. Chanc. 276)—C.A.

##### *Dart on Vendors and Purchasers, 878.*

Purchasers of small plots of land, who employed their vendors as agents to manage the business, were held affected with notice of a lien for money owing by the vendors; but purchasers, who employed the vendors only to procure the preparation of the conveyance to them, were held not so affected (*Kettlewell v. Watson*, 51 Law J. Rep. Chanc. 281).

##### *Redmond and Lyon on Bills of Sale (3rd Edition), 119.*

A bill of sale for a debt and further advances, comprising the whole of the grantor's property, is void as an act of bankruptcy, unless there is a binding agreement or covenant by the grantee to make the further advances, the fact that they were contemplated by the parties not being sufficient to take it out of the general rule (*Ex parte Dawson, in re Parker*, 51 Law J. Rep. Chanc. 291)—C. A.

### APPOINTMENTS AND PROMOTIONS.

Mr. George Greer, A.B., Barrister-at-Law, Woodville, Lurgan, has been appointed to the Commission of the Peace.

Mr. Robert Ferguson, LL.B., Solicitor, has been appointed an Investigator under the Arrears of Rent (Ireland) Act, 1882.

Mr. E. T. Bell has been appointed a Court Valuer under the Land Commission.

Mr. Rhodes, Clerk of Petty Sessions, Mountmellick, has been appointed a Commissioner of Oaths for the district.

Messrs. M. H. Harris, Accountant, F. B. Simms, Chamberlain of the Linen Hall, Belfast, and Kilmartin, Law Stationer, have been appointed Commissioners of Oaths for Belfast.

Mr. A. Crawford has been appointed a Notary Public at Belfast.

### BOOKS RECEIVED.

*The Settled Land Act, 1882; with an Introduction and Notes, and Concise Precedents of Conveyancing and Chancery Documents required under the Act.* By ARTHUR UNDERHILL, M.A., LL.D., of Lincoln's Inn, Barrister-at-Law, &c.; assisted by RALPH HAWTREY DEANE, B.A., of Lincoln's Inn, Barrister-at-Law. London: Butterworths, 7 Fleet-street, Law Publishers to the Queen's most excellent Majesty. Dublin: Hodges, Figgis & Co., Grafton-street. 1882.

*The Married Women's Property Act, 1882. With an Introduction and Critical and Explanatory Notes and Appendix, containing the Married Women's Property Acts, 1870 & 1874, &c.* By H. ARTHUR SMITH, M.A., LL.B. (Lond), of the Middle Temple, Barrister-at-Law, &c. London: Stevens and Sons, 119 Chancery-lane, Law Publishers and Booksellers. 1882.

### LAW STUDENTS' JOURNAL.

#### THE INCORPORATED LAW SOCIETY OF IRELAND.

FINAL EXAMINATION FOR APPRENTICES TO SOLICITORS, Pursuant to the Attorneys and Solicitors Act (Ireland), 1866.

DUBLIN, MICHAELMAS SITTINGS, 1882.

[Every answer is to be accompanied by reasons concisely stated.]

#### COMMON LAW.

1. On what principle is it that evidence of usage is admissible to explain, control, or annex terms to a written contract? Give instances, and state the most important restrictions of the rule.

2. A conveyance made in contravention of some particular statute may be invalidated thereby *quoad* the object contemplated by the parties and yet may remain good and effectual as against the grantor. Explain and give instances of this.

3. When will a request be implied in case of an executed consideration, and in what cases will the law imply the promise as well as the request?

4. Explain and illustrate by examples the maxim:—*Expressum facit cessare tacitum*.

5. Enumerate shortly the provisions of the "Debtors Act (Ireland), 1872."

6. Discuss and illustrate by examples the following question:—A. and B. contract together and afterwards, without default by either party, performance of the contract, with a view to effecting what the parties to it had contemplated, becomes impossible. Does this affect, and if so, how, their reciprocal rights and remedies?

7. Explain what is an acceptance for honour. What

course should be adopted when such a bill falls due? How should an agent not wishing to make himself personally liable indorse a bill of exchange?

8. The plaintiff intending to sell goods to a certain firm delivered them to a person who, in order to obtain the goods had falsely represented himself to the plaintiff as a member of the firm, and authorised to buy for them, and who, after receiving the goods pledged them with the defendant—was the plaintiff held entitled to recover the goods from defendant or not, and on what grounds?

9 "A." the owner of certain jewels places them in a bag duly sealed in the hands of "B," a jeweller, for safe custody; "B." breaks the seal, takes the jewels out of the bag and pledges them to "C." for an advance of money. Is there any and, if so, what civil remedy at suit of "A." against "C.?" Would any difficulty arise to affect "A.'s" right of action against "B." for the jewels or their value?

10. What is a "Joint Stock Company?" Mention the principal statutes which have been passed upon the subject. What is the meaning and effect of the "Memorandum of Association?"

11. Is it true, as a general proposition, that the actual injury offers, in an action *ex delicto*, the proper measure of damages to be given? Can such an action be maintainable without evidence being adduced of pecuniary loss or *damnum* to the plaintiff?

12. Explain the distinction between void and voidable contracts, and enumerate the principal classes of contracts which come under each head.

#### REAL PROPERTY, CONVEYANCING, AND EQUITY.

1. What gave rise to the passing of the "Statute of Inrolments?" What was its object, and had it the effect intended?

2. What are the principal enactments of the "Trustee Relief Act?"

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

4. How did a married woman pass her interest in freehold estate before the passing of the "Fines and Recoveries Act," and how since?

5. Give an example of an intended life estate created by will held to be an estate tail, and an intended fee-simple held to be only an estate for life. What statutory remedy was provided?

6. Explain the state of the law which rendered the passing of the following Acts desirable. Give their date and principal provisions:

"Act for the abolition of Fines and Recoveries, &c."  
"The Real Property Amendment Act."

7. Explain what are executory interests. How did they originate, and how may they be created? Explain the difference between springing and shifting uses.

8. Lands are given to "A." a bachelor for life, and after the determination of that estate, by forfeiture or otherwise in his lifetime to "B." and his heirs during the life of "A.;" and after the decease of "A." to the eldest son of "A." and the heirs male of such son. Explain fully the nature of these two remainders.

9. Explain the origin and nature of "Protector of Settlement." When there is a tenancy in tail in remainder expectant on an estate for life, does the previous estate for life in all cases confer the office of Protector upon the tenant for life?

10. Explain accurately the nature and effect of a statutory mortgage. How created?

11. Cases in which Courts of Equity interfered by way of injunction (prior to Judicature Act) were usually classed under two heads. What change has been made by the Act? Explain and illustrate.

12. In case of a patent granted for an invention—"it is not a matter of course for Courts of Equity to interfere by way of injunction"—what will be inquired into, and what different courses may be adopted?



**COURT PAPERS.**

**LAND JUDGES.**

Sittings for next Week so far as same are appointed.

Before the Rt. Hon. JUDGE FLANAGAN.

**MONDAY.**

J. Russell, compensation.—John A. Browne, payment by receiver.—T. E. Hearn, appointment of receiver.—G. S. Roper, proposal.—Edward Irwin, lodgment of deeds.—D. Bingham, payment.—H. Leader, ditto.

Before EXAMINER (Mr. Kennedy).

J. L. Hackett, rental.—R. C. Hurley, proofs.

**TUESDAY.**

Before EXAMINER (Mr. Kennedy).

A. W. Travers, to vouch.

**WEDNESDAY.**

Before EXAMINER (Mr. Kennedy).

E. M. Gannon, rental.

**THURSDAY.**

J. Trueman, proposal.—Sir J. N. M'Kenna, appointment of receiver.—G. S. Graves, proposal.—J. Chadwick, objections.

**FRIDAY.**

Before EXAMINER (Mr. Kennedy).

J. Martin, rental.

Before the Rt. Hon. JUDGE ORMSBY.

**MONDAY.**

Trustee Scanlan, as to notices.—B. M. Bloomfield, peremptorily.—J. J. Bodkin, payment.—Thomas Howett, as to possession.—George Bolton, ejectment.—Very Rev. A. W. West, as to costs.—F. L. Comyn, adjourned motion.—J. Murphy, ditto.

Before EXAMINER (Mr. M'Donnell).

Scanlon v. Bunton, from 8th.—Wood's Estate, to take account.—H. M. G. Archdall, to vouch.—Alexander Noble, do.—M. J. M'Kee, do.

**THURSDAY.**

W. Thom, adjourned motion.—Thomas Barklie, do.—G. E. Lambert, do.—F. O'Neill, do.—S. White, do.—F. Graham, do.

**COURT OF BANKRUPTCY.**

**ADJUDICATIONS IN BANKRUPTCY.**

The dates of Adjudications are first given, the Sittings follow in Italics.

Bigger, Thomas, of Mallusk, near Belfast, in the county of Antrim, farmer. November 14; *Tuesday, December 5, and Tuesday, December 19. Bouchier Eaton, solr.*

Lowry, Michael, of Ballaghaderreen, in the county of Mayo, shopkeeper. September 29; *Friday, December 1, and Tuesday, December 12. Jeremiah Perry, solr.*

"WHAT is this man charged with?" asked the judge. "With whisky, yer honour," replied the sententious policeman.

**DUBLIN STOCK AND SHARE LIST.**

DESCRIPTION OF STOCK	NOVEMBER					
	Sat. 18	Mon. 20	Tues. 21	Wed. 22	Thur. 23	Fri. 24
<b>*Paid Government.</b>						
3 p c Consols ..	100½	—	100½	—	100½	—
3 p c Reduced ..	—	—	—	—	—	—
New 3 p c Stock ..	—	100½	100½	100½	100½	100½
<b>INDIA STOCK.</b>						
4 p c Oct. 1898 } Trafal. at	103½	—	103½	103½	103½	—
3½ p c Jan. 1891 } Bk. of Irel.	—	—	—	100½	—	—
<b>Banks.</b>						
100 Bank of Ireland ..	320½	321	321½	323	—	—
25 <i>Hibernian Banking Co</i>	—	—	—	—	—	—
20 <i>London and County (Ltd.)</i>	—	—	—	—	—	—
15 <i>London Joint Stock</i>	—	—	—	—	—	—
— <i>Do. New Scrips</i>	—	—	—	—	—	—
20 <i>London and Westminster, Ltd</i>	—	—	—	—	7½	7½
10 <i>Do. New</i>	—	—	—	—	—	—
3½ <i>Monster Bank (Limited)</i>	7	—	—	—	—	—
— <i>Nat. Prov. of England, Lim.</i>	—	—	—	—	—	—
10 <i>National Bank (Limited)</i>	24½	—	24	24	—	24
10 <i>National of Liverpool (Ltd.)</i>	14½	—	—	—	—	—
10 <i>Royal Bank</i>	29½	—	—	—	—	—
25 <i>Provincial Bank</i>	—	26½	27	—	—	—
25 <i>Standard of E. &amp; A., Ltd</i>	—	—	—	—	—	—
25 <i>Union of Australia</i>	—	—	—	—	—	—
<b>Steam.</b>						
50 <i>British &amp; Irish</i>	—	50	—	—	—	—
100 <i>City of Dublin</i>	—	—	—	—	—	—
50 <i>Dublin and Glasgow</i>	—	14	14	—	—	—
<b>Mines.</b>						
1 <i>Killaloe Slate Co. (Ltd.)</i>	—	—	—	—	—	—
7 <i>Mining Co. of Ireland (Ltd.)</i>	—	—	—	—	—	—
<b>Miscellaneous.</b>						
10 <i>Alliance &amp; Dub. Cons. Gas</i>	16½	—	—	—	—	—
4 <i>Arnott &amp; Co., Limited</i>	—	—	—	—	—	—
17 <i>Hudson's Bay</i>	—	—	—	—	—	—
<b>Tramways.</b>						
10 <i>Belfast Trams</i>	—	—	—	7½	—	—
10 <i>Dublin United Tramways</i>	—	—	—	—	—	—
10 <i>Edinburgh Street Trams</i>	—	—	—	—	—	—
9 <i>Glasgow Tram &amp; Bus, Ltd</i>	—	—	—	17½	—	—
10 <i>L'pl Un'td Tram &amp; Bus Ltd</i>	—	—	—	—	—	—
<b>Railways.</b>						
10 <i>Cork and Macroom</i>	—	—	—	—	—	—
100 <i>Great Northern (Ireland)</i>	—	—	—	—	—	—
100 <i>Gt. Southern and Western</i>	116½	—	116	116	—	115½
100 <i>Midland Gt. Western</i>	—	—	—	—	—	88½
50 <i>Waterford and Limerick</i>	—	—	—	—	—	—
<b>Railway Preference.</b>						
100 <i>D. W. &amp; W., 6 per cent</i>	—	—	—	—	—	—
100 <i>Gt. N'th'n (Irish) 4½ p c</i>	—	—	—	—	—	—
100 <i>Do., guaranteed 4½ p c</i>	—	—	—	—	—	—
100 <i>Gt. South'n &amp; West'n 4 p c</i>	—	—	108	—	—	—
100 <i>Mid. Great Western, 4 p c</i>	—	—	—	—	—	—
100 <i>Do., 5 p c</i>	—	—	—	—	—	—
100 <i>Watfd. &amp; Limerick, 4 p c</i>	—	—	—	—	—	—
100 <i>Do., 4½ p c</i>	—	100½	—	—	—	—
<b>Debenture Stocks.</b>						
— <i>Belfast &amp; N'th'n Con., 4 p c</i>	—	—	—	—	—	—
— <i>Dublin &amp; Wicklow 4 p c</i>	—	—	—	—	—	—
— <i>Do., 4½ p c</i>	—	108	—	—	—	—
— <i>Gt. Northern (Ireland) 4 p c</i>	—	—	—	—	—	—
— <i>Do., 4½ p c</i>	—	—	114½	—	—	—
— <i>Do., 5 p c</i>	—	—	—	—	153	—
— <i>Gt. North'n &amp; West'n 4½ p c</i>	—	—	109½	109½	—	—
— <i>Gt. South'n &amp; West'n, 4 p c</i>	—	—	110½	—	—	—
— <i>Midland Gt. West'n, 4 p c</i>	—	—	106	—	—	—
— <i>Do., 4½ p c</i>	—	—	—	—	—	—
— <i>Do., 4½ p c</i>	—	114	—	—	—	—
<b>Miscellaneous Debent.</b>						
— <i>Alliance &amp; Cons. Gas, 4 p c</i>	—	—	—	—	—	—
— <i>Ballast Office Deb., 292 6s 2d, 4 p c</i>	—	93½	93½	—	—	—
— <i>City Deb. of 292 6s 2d, 4 p c</i>	—	—	—	91½	—	—
— <i>Dub. &amp; Glas. S. P. Co. (1887) 5 p c</i>	—	—	—	—	—	—
— <i>Do. (1888), 5 p c</i>	—	—	—	—	—	101
— <i>Dublin Water Works, 5 p c</i>	—	—	—	—	—	—

\* Shares not fully paid up are given in Italics. † x d

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FOLEY—November 17, at his residence, South Mall, Lismore, County Waterford, Denis Foley, Esq., solicitor.

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# THE IRISH LAW TIMES AND SOLICITORS' JOURNAL.

VOL. XVI.

SATURDAY, DECEMBER 2, 1882.

No. 827

## CRIMINAL ATTEMPTS.—II

We have sought to assault a learned judge, but claim acquittal of an "attempt," inasmuch as it appears that after all we were not in fact striking at him. For, since our previous remarks were published, we find that, with respect to the case of a man striking a log of wood in mistake for his intended victim, we erroneously, instead of referring to *R. v. M'Pherson* (D. & B., 201), cited the well-known case of *R. v. Collins*, where what was held was that, if a man puts his hand into an empty pocket, intending to steal whatever might be in it, he has not attempted to steal from the person; and it was in reference to that state of facts (and not to *R. v. M'Pherson*, per Bramwell, B.) that Sir James Stephen suggested that an assault with intent to commit a felony had been committed. We had been misled by thinking that his footnote numbered 8 referred to his illustration numbered 8. However, we are only the more strengthened in the view that no such assault could have been committed by merely decapitating the mooted log. But whether an "attempt" could have been so committed introduces other considerations; and here our illustration from the operations of witchcraft would not have the same bearing as it had on the question as to an "assault," for even the adherents of what is called the subjective theory as to attempts, admit, as an exception, that it is not an indictable attempt for a person, intending thereby to kill another, to resort, for instance, to incantations or invocations of supposed magicians or malevolent spirits, it being left discretionary with the supernatural beings to intervene or not. In attempts it is enough if the offender, intending to hurt, took means reasonably calculated to effectuate that end, and did some act, sufficiently proximate to the thing intended, by way of beginning which, if uninterrupted, would have eventuated in the consummation of the complete crime; whereas, an act done with intent to commit a crime, the commission of which in the manner proposed was, in fact, impossible, is not an attempt to commit that crime. One can no more pick a pocket with nothing in it, or steal an article from an empty room, than one can consummate murder by lacerating a log, or inflicting a wound on a corpse. However, we cannot here undertake to enlarge on the debatable questions whether it is necessary that the means selected should be suitable, and whether, in order to be indictable, the attempt must be on an object on which the complete crime could be consummated. Several learned treatises have been devoted by foreign jurists to that subject within the last few years; and the arguments *pro* and *con*. have been elaborately collated by Dr. Schwarze (attorney-general of Prussia)—who defends the subjective theory of attempts—and have been condensed with great clearness by Dr. F. Wharton (the well-known American text-writer) in a paper published in the *Central Law Journal*, 1879, while in his work on Criminal Law he maintained that an attempt is not indictable unless the means are *apparently* suitable, or the object *probably* existent. The proposed Criminal Code, as now settled, however, proposes (s. 74) to reverse the present law that an attempt to commit an offence under circumstances making its commission impossible is not indictable; though as originally framed (s. 32) the Bill maintained this principle. "A Habitual Criminal," dis-

cussing the matter, was heard to say:—"Many a time, standing in my place at the assizes, have I raised this contention. Always has the judge overruled it. My father died in a convict prison, having been sentenced to penal servitude for life on a charge of attempting to murder. He had fired a pistol at the head of a policeman, but uselessly, for the man, being a superintendent, had the skull of an elephant. The bullet was spoiled, but the policeman lives yet. My father, who was frankness itself, avowed his 'intent to commit,' and regretted that 'the commission of it in the manner proposed was, in fact, impossible,' owing, as he pointed out, to the abnormal and improper thickness of his adversary's skull. It was a vain contention. 'If the bone had been thinner you would now be a murderer,' said the judge. 'Do not let us argue on a hypothesis,' said my father; 'observe rather the facts. The bone was too strong for my bullet; but that is not my fault, and, therefore, you should not condemn me for it.' Said the judge, 'That is horrible impudence.' Does Sir Fitzjames Stephen mean it to be law? In the meantime I mourn the loss of the best of parents."

For our present purpose, it is sufficient to say that, not only must there be an overt act, that is, some means actually used to give effect to the intent, but those means must be reasonably calculated to effectuate it: *R. v. Empson*, Leach, 224; *R. v. Lovel*, 2 M. & Rob. 39. So, the means will not be sufficient, within this rule, if a gun be not loaded when pointed, as, for example, if it be plugged, or the flint had fallen out; *R. v. Carr*, R. & Ry. 377; *R. v. Harris*, 5 C. & P. 159; *R. v. Lewis*, 9 ib. 523; or at least when not loaded, if it were not sufficiently near to cause harm: *R. v. Küchen*, R. & Ry. 95; or if the gun be used too far off to harm: *R. v. Abraham*, 1 C. C. C. 208; but, the gun is not the less "loaded" merely because the means of firing it failed: 24 & 25 Vic., c. 100, s. 19. And it lies on the prosecution to give some evidence that the gun was loaded or the means used were sufficient: *Whitley's Case*, 1 Lew. C. C. 123; though certainly, as has been well observed, considering that the fear of the person aimed at is the same, and the matter is often involved in such doubt, this rule seems unjust, and the prisoner ought to be bound to disprove the possibility of harm: Paterson, Lib. Subj. In *R. v. Lewis*, *ubi supra*, on an indictment under 1 Vic., c. 85, for attempting to discharge loaded fire-arms at a person, it was held that some act must be shown to prove that the person did attempt to discharge the fire-arms, and that merely presenting them was not sufficient. In *R. v. St. George* (9 C. & P. 483), upon an indictment for attempting to discharge a pistol loaded with powder and ball with intent to murder, a witness testified: "The prisoner took out a small pistol and said, 'I will settle you,' or 'I will do you,' and either half or full cocked the pistol and pointed the muzzle at my brother," with his finger on the trigger. Yet, it was actually held that the charge of felony could not be supported, as it was not proved that the prisoner drew the trigger. Said Parke, B.: "Here a trigger was to be drawn, and it was not drawn. It seems to me the object of this Act was to punish proximate attempts, that is, those attempts which immediately lead to the discharge of loaded arms." We can but anxiously await the determination of Delaney's trial, in order to see how those cases (which were acted on in the

American case of *Stabler v. Commonwealth*, 1880) will be distinguished, if it proceeds on the statutable enactment, and not on the possible common law misdemeanour, punishable with imprisonment, created by an intention to commit a felony, if evidenced by an overt act; but, it should be remembered that he is, also, charged with conspiracy to murder, and of this misdemeanour, when two or more persons agree to commit it, they would be guilty whether the crime agreed upon was committed or not: *Mulcahy v. R.*, L. R. 3 H. L. 317; *R. v. Bunn*, 12 C. C. C. 316; *Roscoe*, Cr. Ev., 409-10; *Arch.*, Cr. L. 1007; *Harris & Toml.*, Cr. L., 2nd ed., 125; 24 & 25 Vic., c. 100, s. 4. "Though hand join in hand, the wicked shall not go unpunished" (*Proverbs*).

#### REFORM OF CONTEMPT OF COURT BOTH CIVIL AND ECCLESIASTICAL.

A few weeks ago we gave an account of the recent decisions on attachment of the person, and discussed chiefly those cases where a person might be attached for nonpayment of money. Stated shortly the law is, that a man cannot be imprisoned for nonpayment of money, except either (1) he can pay but will not; (2) or when the nonpayment arises from something like a crime. Even in these cases a year's imprisonment is the limit. What a contrast this is to the life-long imprisonment which may be the result of disobedience to an order of the court "requiring a person to do any act other than the payment of money or to abstain from doing anything." (Order XLII, r. 5.) Such an order may be made in a civil action, which only would result in a judgment for money. So that while the worst result that could happen to the defendant, if the action was fought to the end and he lost, would be a short imprisonment for his obstinate folly in disobeying the order of the court for payment of money, yet if he disobeys the merely ancillary order to answer interrogatories, or to do some similar act, he is liable, if he persists, to imprisonment for life: (Order XXXI, r. 20.) Now, in nineteen cases out of twenty the whole object of an action is to obtain money or money's worth. Even an action for libel or slander takes this form, though, in a sense, the plaintiff's character may be also at stake. Attachment for contempts of court, which really do not affect the court should be treated simply as misconduct in the action, and punished accordingly. And this principle is recognised by Order XXXI, rule 20, empowering the court to dismiss the action, or strike out the defence according to circumstances. This alternative process by attachment permitted by that rule should be abolished. On the other hand, let contempts, which obstruct public justice, or which consist of wilful insult to a judge or other high officer of the law, be treated as crimes. To obviate the harm which might be occasioned by an offender continuing his contempts until he can be tried, let the judge have power to commit him for a short period until trial, and as far as possible let the trial be conducted like that of ordinary crimes. We do not advise having a jury, for obvious reasons; but in other respects the usual course might be very nearly followed. The present practice is partly a survival of the old and savage criminal law, and is partly due to an idea that "contempt" is necessarily an offence against the court. It is nothing of the kind in many cases, as has been well pointed out by Sir John Nichol in *Barlee v. Barlee* (1 Addams, 304). It is merely a process by which the court endeavours to constrain one person to give another person some right. The method is clumsy, and the end can usually better be obtained otherwise.

No doubt, when the contempt is disobedience to a final order of the court, a greater difficulty may arise, but even then usually imprisonment for contempt may be avoided. Thus, if the order is to pull a wall down and the party refuses, the court should order some other person to pull it down, and if necessary give the protection of the police. There will be very few cases which cannot be dealt with in the way we suggest.

Of course, in the reform of contempt of court the very peculiar powers of the Ecclesiastical Courts will also have to undergo reform.

By 53 Geo. 3, c. 127, s. 3, imprisonment in consequence of excommunication is limited to six months, but it has been held that persons disobedient to a lawful order of the Ecclesiastical Court may be imprisoned for life unless they submit. Mr. Green's case is a recent example. Probably the only reason why this anomalous power has been left with the Church courts is, that it has been so little used for many years, and scarcely at all with regard to laymen during the present generation. In the County Court the punishment for wilful insult to a judge, &c., is limited to a week's imprisonment or a fine of £5; while it would seem that a County Court has the same power under 36 & 37 Vict., c. 65, s. 89, as the High Court to enforce obedience to an injunction by attachment: (*Ex parte Martin*, 4 Q. B. Div. 312; affirmed, W. N. 1879, p. 134.) The powers of the County Court should be modified like those of the High Court, while the whole procedure of the Ecclesiastical Court under the *significavit* should be abolished. Its decrees for costs should create a civil debt, and its orders should be enforceable on clergy and other church officers by deprivation in the proper manner and similar punishments; while its lawful orders, which declare rights as to monuments, pews, &c., should be considered declarations of right which should, when infringed, be made the ground of proceeding by way of trespass, &c., in the civil courts. If contempts, ecclesiastical and civil, are reformed as we suggest, it will be well for the dignity of the Bench as well as for the general satisfaction of the public.—*Law Times*.

#### MISCONDUCT OF JURORS IN THE USE OF INTOXICATING LIQUORS.

Probably the most extraordinary case, in the books, of the misconduct of jurors in the indulgence in intoxicating liquors, is *People v. Gray*, recently decided by the Supreme Court of California. The prosecution was for murder, and during a period of eight days occupied by the trial and their deliberations, the jury sustained the drain upon their physical and nervous systems by the consumption of seventeen and a half gallons of beer, two gallons of wine, and two flasks of whisky, besides wine and whisky drank at their meals. It appeared from the evidence that all the drinking by the jurors was without the permission of the court, or the consent of the defendant or of the counsel engaged in the cause, and in fact without the knowledge of either of them; that all the beer, wine and whisky drank were procured by such of the jurors as desired it of their own motion and at their own expense. The evidence further afforded strong reason to suspect that one of the jurors drank so much while deliberating on the verdict as to unfit him for the proper discharge of his duty.

Say the court: "The decisions as to how far drinking by a juror while in the discharge of his duties as such, at his own expense, without the permission of the court, or the consent of the party, is such misbehaviour that the verdict should be set aside and a new trial granted, are not uniform. In Iowa and Texas no drinking at all is allowed. See *State v. Baldy*, 17 Iowa, 89; *Ryan v. Harrow*, 27 id. 494; *Jones v. State*, 13 Tex. 166. It is held in these cases that if any liquor is drank while the juror is in the discharge of his duties, the verdict cannot stand. In each of the cases cited the drinking was done after the cause was submitted to the jury to deliberate on their verdict. In *State v. Baldy*, a juror in charge of a bailiff went to a grocery store to purchase some tobacco, and while there drank a glass of ale or lager beer, and then returned with the bailiff to the jury-room. In *Ryan v. Harrow*, a civil case, two of the jurors drank intoxicating liquors. In *Jones v. State*, the bailiff twice took the jury whisky, which they drank. The verdicts in these cases were set aside. These cases all hold that courts will not inquire whether the juror was affected by what he drank or not; that the only sure safeguard to the purity and correctness of the

verdict is that no drinking shall be allowed. This rule is supported by the following cases: *Davis v. State*, 35 Ind. 496; *Leighton v. Sargent*, 11 Foster, 119; *State v. Bullard*, 16 N. H. 139; *Pelham v. Page*, 1 Eng. 535; *Griggs v. M'Daniel*, 4 Harrington, 867; *People v. Douglass*, 4 Cow. 26; *Brant v. Fowler*, 7 Cow. 562. The law seems to have been settled in New York to the same effect as in Iowa and Texas, until *Wilson v. Abrahams*, 1 Hill, 207, which was a civil case, as its title imports. In that case during the trial and before the cause was submitted to the jury for their consideration, and the jurors were allowed to separate, one of the jurors during an adjournment for dinner on the second day of the trial, went into a tavern and drank about half a gill of brandy. In the opinion of the court, Bronson, J., states the conclusion arrived at: "When in the course of the trial, a juror has in any way come under the influence of the party who afterwards has the verdict, or there is reason to suspect that he has drunk so much, at his own expense, as to unfit him for the proper discharge of his duty, or where he has so grossly misbehaved himself in any other respect as to show that he had no just sense of the responsibility of his station, the verdict ought not to stand. But every irregularity which would subject the juror to censure, whether in drinking spirituous liquor, separating from his fellows, or the like, should not overturn the verdict unless there be some reason to suspect that the irregularity may have had an influence on the final result."

"It may well be doubted whether it was the intention of the court, in *Wilson v. Abrahams*, to establish a rule in capital cases different from that held in Iowa and Texas. We express ourselves in this way in consequence of the guarded language of the opinion. The opinion opens by stating the rule in civil cases—and when it comes to remark on the case of *People v. Douglass*, in the 4th Cowen, holding a rule similar to that established in Iowa and Texas, it is said that the case under consideration is distinguished from it, and the feature of distinction first mentioned is that it is a capital case. The cases cited by counsel either follow the rule in the Iowa and Texas cases, or *Wilson v. Abrahams*. If any have gone further in a direction opposed to *Ryan v. Harrow* and *Jones v. State*, above cited, we are not disposed to follow them.

"It is not necessary in this case to say which rule should be adopted as the law in this State; but following the rule of *Wilson v. Abrahams*, 'that where there is reason to suspect that a juror has drunk so much as to unfit him for the proper discharge of his duty,' the verdict ought not to stand. In our judgment, there is strong reason to suspect this of one of the jurors, and therefore a new trial should be had. It should be added here that if it is necessary that intoxicating liquors of any kind should be drunk by a juror, application for leave to do so should be made to the court, who can make such allowance as will be proper. Jurors should not be allowed to judge for themselves in this matter. A defendant in a criminal case should not be called on to consent; and in any case when the party consents, if the juror becomes intoxicated, the verdict should not stand. The purity and correctness of the verdict should be guarded in every way, that the administration of justice should not be subjected to scandal and distrust."—*Central Law Journal*.

#### THE DEATH OF MR. F. T. PORTER.

In our obituary column will be found a notice of the death of Frank Thorpe Porter, Esq., A. M., barrister-at-law, who for many years was senior police magistrate of this city. Mr. Porter lived to the patriarchal age of 81 years. In his early life as a member of the Bar he was an active politician and one of the most earnest supporters and advocates of Mr. O'Connell. Like many other public men who have been strong partisans, his political views were diametrically opposed to those of his family; so that while his brother, a very respectable citizen, was a prominent member of the old Corporation

of Dublin, Mr. Frank Thorpe Porter was a fiery agitator in the service of the multitude and of the great Tribune of the people. In acknowledgment of his services he was appointed by the Whig Government to be a police magistrate, and filled the office through many trying years. He was a sound lawyer, and also possessed a literary taste and a sense of humour which often brightened the gloom of the Police Court with a genial flash of wit and drollery. Until a recent period he retained his mental faculties with wonderful clearness, and not many years ago wrote a book giving his personal recollections, which contained some entertaining incidents of his life. As a magistrate he was generally esteemed for his impartiality and common sense.—*Daily Express*.

#### THE SETTLED LAND ACT.—V.

(Continued from page 580, ante.)

##### Leases in General (Sect. 6).

Comparing this power with the ordinary form (see Davidson (Settlements), 3rd ed. iii. 1005), we observe that the statutory power permits the taking of a fine, extends the period within which the lease must take effect in possession to twelve months instead of six, and does not absolutely require that the rent be "yearly" (see sect. 2 (10) (ii)), as is usually the case both in ordinary and building leases. The statutory form omits the clause permitting the lease to be "determinable at the option of either party or of one party only;" but this is really included in the power to lease: (David. iii. 485; Sug. Pow. 8th edit. 741; *Edwards v. Milbank*, 4 Drew. 606; *Earl of Cardigan v. Montague*, Sug. Pow. App. p. 918.) It provides that the lessee shall not only execute a counterpart, but shall deliver it to the lessor. But the execution of the lease by the tenant for life will be sufficient evidence of the execution and delivery of the counterpart (sect. 7 (4)), so that there will not be any need for a memorandum of the execution of the counterpart to be endorsed on the lease and signed by the lessor, as suggested in Sug. Pow. 826 and David. iii. 502. As to introducing reasonable conditions in power of re-entry, see David. iii. 503; Sug. Pow. 822. There appears to be no necessity for increasing the power of tenant for life with regard to ordinary leases for twenty-one years. He may even grant leases for purposes involving waste, although himself impeachable for waste (sect. 6). As to leases involving waste, see David. iii. 500-512. He is, however, subject to the checks of sect. 53. Compare David. iii. 509. Leases of easements, privileges, &c., are provided for by sects. 6, 20.

"Lease" is not defined, but "mining lease" includes "grant or licence for mining purposes" (sects. 2 (10) (iv)). Part of the consideration for a lease may be the execution of improvements (sects. 7 (2), 8 (1), 9 (2)).

Tenant for life may make a contract for lease so as to bind his successor, and may "with or without consideration" vary the terms. From a comparison of sect. 31 (iii.) with the last words of sect. 31 (ii.) it would seem that he might take the consideration for his own use. But see sects. 31 (3), 53. It is clear that tenant for life would not be allowed to manipulate this power into a mere source of personal profit.

For the purpose of comparison of these powers with those previously given in settlements we may refer the reader to Bythewood, vii. 424; *Prideaux*, 311; *Conise David*. 889; *Wolst. & T.* 143.

As a tenant for life is to be in the position of a trustee (sect. 53), and a trustee may not lease to himself, either directly or by means of a third party (*Lewin*, 423), it would therefore be well, in those exceptional cases where it is thought desirable that the "tenancy" of the limited owner and his personal representatives should continue longer than his ownership, to empower him to lease to himself with the consent of the trustees. This might be convenient where tenant for life was likely to spend money of his own on mining, manufacturing, or even high farming.

*Building Leases (Sects. 6, 8).*

We advise that power to grant building leases should be extended beyond ninety-nine years (sect. 6), say to 500 or 999 years. We think that the restriction to ninety-nine years is likely to encourage bad and defective building, which is a public evil; and in some districts, especially in the North of England, such a short term is not readily accepted by persons intending to build good houses. In districts where it is usual to grant leases at a fee-farm rent in perpetuity the power should be extended accordingly. Such leases are common in Manchester and its neighbourhood. For old form of power to grant leases on fee-farm rent, see David. iii. 1093, note, and Pridaux ii. 313.

If preferred it may, where the settled property is situate in different counties, be limited to those districts where it is likely to be useful.

Sect. 8 gives power to lease for building purposes, including repairs; see also definition of "building purposes" in sect. 2 (10) (iii.) As to distinction between building and repairing leases, see David. iii. 510. Sect. 8 also permits leases in consideration of statutory improvements (see sect. 26) in connexion with building purposes.

Rents may be apportioned where there has been a contract for lease in lots (sect. 8 (3)); or, if there has been an actual lease, there may be a surrender and apportionment (sect. 13).

The power with respect to building leases is generally sufficient except as to length of time. The simplest plan will be to give additional powers to tenant for life; but, if preferred, they may be given to him with consent of the trustees.

*Mining Leases (Sects. 6, 9, 11).*

The words "mines and minerals," "mining purposes," and "mining lease" receive very wide definitions in sect. 2 (10) (iv.) In comparing the form David. iii. 1008 with that given by the statute, the most important difference is that the latter requires that a portion of the rents or profits of the mines should be treated as capital. If the settlor does not desire this, provision must be made accordingly in the settlement. It will not be enough to declare that the tenant for life shall be without impeachment of waste; for even then one-fourth part would be set aside as capital. If he is impeachable three-fourths must be set aside.

The term of sixty years will usually be sufficient. Easements and privileges may be granted (sect. 6), and a lease may be made of surface and minerals together or in part, &c. (sect. 17).

It will be convenient to add a clause in the settlement permitting tenant for life to insert in the lease an arbitration clause and all other clauses usual in the district where the mines are situate. See David. iii. 1212.

This may save an application to the court under sect. 10 (1) (i.)

Power to authorise the lessee to make up short workings in any year is given by the statute (sect. 9 (1) (iii).)

*Special Powers as to Leases (Sect. 12).*

This authorises leases for giving effect to contracts made by predecessors (sect. 12 (i.)), see sect. 31 (2); also for giving effect to binding covenants for renewal. It also empowers leases in confirmation of certain "void or voidable" leases.

As to void and voidable leases, and relief given by statute, see David. iii. 517-523. For form giving power similar to that in sect. 12 (iii.) see David. iii. 1208.

It seems that a void lease is incapable of confirmation (Co. Litt. 295 b; Sug. Pow. 8th edit. 714) independently of statutory enactment. A void lease may be rendered good as against a remainderman where he lies by, and with notice permits the lessee to expend money in building: (David. iii. 521 n.; Woodfall, 11 edit. 6.) See for conveyance of fee-simple subject to void lease, *Smith v. Wildlake* (3 O. P. Div. 10; 47 L. J. 282 Ch.

*Surrender of Leases (Sect. 13.)*

This authorises tenant for life to accept surrenders and make new leases "either with or without consideration." For old forms see David. iii.; Prid. ii. 315. No provision is made as to whether this "consideration" is to be capital money. See, however, sect. 53, and compare David. iii. 515. The safe course for the tenant is to treat it as capital moneys, and pay it, with the sanction of the tenant for life, to the trustees or into court (sect. 22 (1)). The value of the surrendered lease may be taken into account. Compare David. iii. 1009, 1209, and see Ib. 491, 523 n. This confirms the view taken in *Re Rawlins' Estate* (13 L. T. Rep. N. S. 612; L. Rep. 1 Eq. 286.)

A portion of the land leased may be surrendered and the rent apportioned. Division of demised lands and apportionment of rent, conditions, covenants, &c., is facilitated by C. A. ss. 10-12. This section appears to empower the tenant for life to agree with the lessee as to what shall be the apportioned rent for that part of the land which the lessee retains. A legal tenant for life may accept a surrender of a lease for years independently of this Act: (Bac. Abr. tit. Leases, sects. 1, 2; Woodfall, 280.)

*Copyholds (Sect. 14).*

Manor includes lordship and reputed manor or lordship (sect. 2 (10) (v.)). The usual rule is, that if a copyholder grants a lease of more than a year, without a licence from the lord, he incurs a forfeiture. But in some manors, by special custom, a copyholder may make longer leases: (Scriven, 6th edit. 179, 193.) It seems that a lord with a limited interest cannot give a licence beyond his own interest except under a power: (Scriv. 194.) As to waiver of forfeiture see David. iii. 541; Scriven, 6th edit. 197.

It was therefore usual to insert in settlements a provision empowering the limited owner to grant licences for leases: (see David. iii. 1009, 1059, 1113.) A lease with licence is a common law interest and is assignable without licence: (Scriven, 196.)

The statutory power enables the tenant for life to fix the "annual value." This is necessary, because otherwise the remainderman could obtain fines on the improved value, and, therefore, nobody would take the copyhold land for building. The Act makes no provision as to whether tenant for life may take "a consideration" for such a licence, nor does it forbid it. In David. iii. 1009 a fine is forbidden, except the customary annual fine (if any) and usual fees: (see, however, Ib. 551.) It seems not impossible that in some cases tenant for life may keep such a consideration for his own use. If in any manor there is usually paid a fine on a licence of this description, it will be well to provide definitely that tenant for life may take the usual fine for his own use.

It would also be consistent, where the settlement gives additional leasing powers to the tenant for life, to give him power to grant licences for such additional leases (sect. 14 (1)), but this is of little consequence.

Subject to the above remarks the power is sufficient.

*Power to deal with Mansion-house, &c. (Sect. 15).*

In all settlements and wills of every description where the settlor or testator has no particular desire to keep the mansion-house unsold, a power should be given to tenant for life "to lease, sell, and otherwise deal with the principal mansion-house and the demesnes thereof and other land usually occupied therewith" without the consent of the trustees of the settlement or an order of the court, notwithstanding sect. 15 of the "Settled Land Act, 1882." The exception made in this section corresponds to that in S. E. Act, 1877, s. 46, giving power to tenant for life to lease for twenty-one years without applying to the court if the settlement was made after 1st November, 1856 (sect. 57). Sect. 15 does not prohibit exchange or partition, but it may be as well to insert the general expression "otherwise deal with." Mr. St. John Clerke thinks "mansion-house"

would only include a hall, country seat, &c., and cites *Re Spurway* (40 L. T. Rep. N. S. 877; 10 Ch. Div. 230), but it is clearly best to make provision.

Also it might be well sometimes to give an express power to trustees of infant tenant for life to lease and sell mansion-house, &c. For, although they have powers of tenant for life (sect. 60), a doubt may be raised as to whether they could "give consent" to their own transactions, and thus act in a double capacity. But many settlors will not desire to enable trustees to sell mansion-houses, &c., if they can help it.

In cases where it is not desired to facilitate the sale of the mansion, it may be convenient sometimes, in the settlement, to limit "the demesnes and other land usually occupied therewith" to the garden, &c. This may be done by giving power to sell "all the demesnes and other lands usually occupied with the mansion-house, except . . .," and then state specifically the garden, orchard, park, and any fields which it is desired to protect. But nothing can be done in this way to afford any further protection than that given by sect. 15, only that protection can be removed or diminished. One obvious advantage of such a specification is that, on a sale, it will prevent any difficulty being raised by the purchaser as to whether the land to be sold has been usually occupied with the mansion-house. The additional power must be given to the tenant for life alone; the Act gives it to him with consent of the trustees.

In the case of settlements and wills by way of trust for sale within sect. 63, either a general power of sale over the whole property should be given to the trustees with consent of the tenant for life, or the powers of tenant for life should be enlarged as above suggested.

(To be continued.)

#### THE SETTLED LAND ACT FURTHER CONSIDERED.

Last week we set forth the general effect of the Settled Land Act, and pointed out how it had altered the position of the tenant for life in the direction of freedom to manage the settled estate. We now proceed to point out certain restrictions in the exercise of the powers conferred on him. As a rule, these restrictions take the form of providing that the power to be restricted shall not be exercised without the consent of the trustees of the settlement or of the court. The most noticeable of these restrictions is contained in section 15, which provides that the principal mansion-house on any settled land, and the demesnes thereof, and other lands usually occupied therewith, shall not be sold or leased by the tenant for life without the consent of the trustees or of the court. It has been suggested that, under this section, if a suburban villa and garden of an acre in extent were settled, together with an adjoining cottage, the villa could not be let without the required consent. It may be so. The harm of the restriction would not be great if it were so, as one can hardly imagine that in such a case the trustees would refuse their consent. But it is more than doubtful whether there is not sufficient discretion allowed by the Act to the judge to construe the section in a reasonable manner as applying to the principal mansion-house of an estate of some size. The restriction is taken verbatim from section 46 of the Settled Estates Act, 1877, itself repeating section 32 of the Settled Estates Act, 1856, and it does not appear that any difficulty has arisen under either of those Acts. At the same time, there is no particular reason to be urged in favour of the restriction. In cases where the house may reasonably be sold, the tenant for life is the best judge of the desirableness of selling it. In other cases the trustees can invoke the interference of the court.

A similar exemption from the power of the tenant for life is made by section 37, sub-section 3, with regard to what are popularly called heirlooms, or chattels settled so as to go with real estate. He may sell them only if he has obtained the consent of the court, the consent of the trustees in this case not being sufficient. The purchase-moneys may either be treated as capital

moneys arising under the Act, or may be applied in the purchase of other chattels to be settled on the same trusts as the chattels sold. In regard to timber, the powers of the tenant for life, "impeachable for waste in respect of timber," are limited to cutting timber which is "ripe and fit for cutting," and that only with the consent of the trustees or of the court; but, that consent obtained, he may pocket a fourth of the proceeds, and the residue only will be capital moneys arising under the Act. It would seem that this section applies even to ornamental timber; so that, though in one way a restriction on the general power given by the Act, it is in effect a very considerable extension of the powers ever given to the tenant for life or trustees by a settlement, and, by assigning a larger share of the spoils to the tenant for life, will considerably add to the inducements to cut it—a result not, perhaps, altogether to be desired.

Besides these special restrictions in particular cases, the Act sets up some very important general safeguards against the abuse of the powers conferred by it. In the first place, the provision of section 53—that the tenant for life is a trustee for all parties under the settlement—will effectually prevent his acting either by himself or in collusion with the trustees in making away with the value of the property. As a trustee, he certainly could neither sell to himself openly, nor do so secretly, by conveying to a trustee for himself. Then, before exercising any of the powers of sale or lease, or otherwise, he must, under section 45, give a month's notice in writing to each of the trustees, and to their solicitors, and by registered letter. This section will also entail an inquiry by the purchaser or lessee whether the requisite notice has been given, and given, too, in the prescribed form, and so will add another to the requisitions necessary to be made by an intending purchaser or lessee. For, although it is provided that a person dealing in good faith with the tenant for life is not concerned to inquire respecting the giving of any such notice, yet if the question of *bona fides* arises, as in case of any complaint by the trustees of a sale or lease at an alleged undervalue, a neglect to make the inquiry would be sure to be interpreted as an element tending to show *mala fides*. It is greatly to be feared that in the cases of leases this provision will prove an unnecessary hindrance, especially as it applies not only to a lease but to a contract for a lease. It seems unnecessary, because the provision that no lease shall be made except at the best rent that can reasonably be obtained (section 6, sub-section 2), and that purchase-moneys paid for a lease are capital moneys, and must be applied accordingly (section 34), are an adequate protection against improvident or fraudulent leases. With regard to sales, the provisions to check improvidence or fraud are abundant. The sale must be made for the best price (section 4, sub-section 1), and the purchase-money must be paid to the trustees, or into court, as capital money arising under the Act. Besides this precaution, by section 44 it is provided that "if, at any time, a question arises between a tenant for life and the trustees of the settlement respecting the exercise of any of the powers of the Act, or any matter relating thereto," the court, "on the application of either party," has absolute discretion to settle the matters in difference. It is to be hoped that the court will not construe this section in the narrow way in which it construed section 30 of Lord St. Leonards' Act.

By "the Court" for the purposes of the Act is meant, generally, the Chancery Division (section 46), but the Court of Chancery of the County Palatine has concurrent jurisdiction in Lancaster; and, as regards land not exceeding £500 in value, or £30 in annual rateable value, the County Court of the district where any part of the settled land is situate, may exercise a jurisdiction. Application to the Chancery Division is to be by petition or summons in chambers, and general rules (which have not yet appeared) may be made to regulate such proceedings.

Besides the provisions already incidentally noticed affecting the trustees of settlements, Part X. of the Act

is specially devoted to them. The trustees, to whom capital moneys are to be paid, are never to be less than two in number, unless otherwise authorised by the settlement. Section 38 gives power to the court to appoint new trustees for the purposes of the Act, "where there are no trustees, or where it is expedient that new trustees should be appointed." It would seem that under these words, where there is a sole trustee, the court could not appoint a single new trustee, but only two or more—a result probably not intended by the framers of the Act. In view, however, of the Conveyancing Acts this slip is of little importance. The provision in section 40, with regard to trustees' receipts, being a good discharge, is also covered by the Conveyancing Act. But the proviso at the end of the section that a mortgagee, or other person advancing money, is not concerned to see that the money advanced is wanted for the purposes of the Act, or how much is wanted, may be useful. In section 41 the Act embodies the usual trustees' indemnity clause; but, as this was already embodied in section 81 of Lord St. Leonards' Act, it is difficult to see the use of repeating it here, except, perhaps, that the substitution of the present for the future tense may be intended to make its operation retrospective, whereas Lord St. Leonards' Act was confined to instruments subsequent to August 13, 1859. Section 42 is an extension of this indemnity clause to every act or default for which an attempt could possibly be made to hold them liable. Section 43 is the usual reimbursement clause. The re-enactment of these trustee clauses will, it is to be hoped, at least have the effect of curtailing settlements on real estate by the excision of adjuncts which have probably never been of any practical value, and the value of which, whatever it may be, is now by intendment of law contained in every such settlement in the wide sense given to that term by the definition clause of the Act, and by Part XV., which includes therein lands held upon trust upon sale.

We have now discussed all the principal features of the Act, without going into details, which a reference to the Act itself will supply. Enough has been said to show the general bearings of the change as effected by the Act in the law relating to settlements of real estate. From the conveyancer's point of view, the Act is as important as the Conveyancing Acts. For the future, it will be unnecessary for the draftsman to do more than indicate the persons who are to take successive interests in the estate and the quantity of interest to be taken, and to name the trustees. The rest of the lengthy roll of powers and provisions as to management and protection of the property and persons, now usually inserted, will henceforth go without saying. As the draftsman cannot curtail those powers, and as, in most cases, with the exception of the investment clause, there will be little reason for extending them, he cannot do better than avoid vain repetitions and much verbiage by leaving them alone.—*Law Journal*.

**STOPPING THE MILL.**—The late Judge Ball, observes a contemporary, though a charming conversationalist and socially popular, was very irritable. The Cork Courthouse, in which on one occasion he opened assizes, was backed by an ancient flourmill of large dimensions, owned by a very litigious gentleman named Bendeable. So close was the mill to the courthouse that the noise of the machinery disturbed the tympanum of Judge Ball, who was in his later years what is known as hard of hearing. "What noise is that, Mr. Sheriff?" he thundered, with fiery face. "It is a mill, my lord," meekly responded that functionary. "Let it be stopped," commanded the judge. "I cannot stop it, my lord," said the sheriff; "the owner is the only one who can do that." "Send for the owner then," said the judge. This was done, and the order given. Bendeable took it literally and unconditionally. The mill was stopped, and remained stopped long after the assizes was over. Bendeable, who was no fool, sued for damages, and the Government had to pay a large sum to compromise.

## THE INCORPORATED LAW SOCIETY OF IRELAND.

The General Half-yearly Meeting of this Society was held on the 27th ult.

Mr. HENRY JAMES PELHAM WEST, President, occupied the chair.

Amongst those present were:—

Thomas R. Baillie-Gage, Arthur Lee Barles, George H. Belas, Augustine F. Baker, Francis R. M. Crozier, Wm. D'Alton, Sydneyham Davis, William J. Dealy, Henry A. Dillon, Henry Thomas Dix, John B. Eaton, Richard B. Falkiner, William Findlater, M.F.; Thomas C. Franks, David Galbraith, John Galloway, James Goff, Samuel Gordon, Keith H. Hallows, John T. Hamerton, William Hitchcock, John A. Hogan, Samuel Hobson, John F. Harkon, W. Milward Jones, Henry L. Kelly, Alexander D. Kennedy, Valentine Kibride, Michael Larkin, Robert O. Longfield, Jehu Mathews, Patrick Maxwell, Henry S. Mecredy, Thomas Merrick, Henry C. Neilson, Edward Nugnt, John Henry Nunn, Michael P. C. O'Meara, Thomas Ormsby, Richard H. M. Orpen, William Read, Samuel P. Redington, Richard S. Reeves, George Roche, Thomas K. Roche, John Ruckley, William H. Robinson, Archibald Robinson, jun., John L. Scallan, Bindon Scott, Charles Sedley, William B. Stanley, Charles G. Stannell, Edward T. Stapleton, William Sterne, Shapland M. Tandy, John E. Tarleton, Kapine H. Tatlow, Archibald Tisdall, Henry Watson, Henry James Pelham West, Patrick K. White.

The Secretary (Mr. John H. Goddard) having read the advertisement convening the Meeting, the following Report was presented by the Council:—

### "SCHEDULE OF SOLICITORS' FEES UNDER JUDICATURE (IRELAND) ACT.

"By the Report of Council for 1881, your Society were informed that a letter, dated 5th November, 1881, had been received from Lord Justice Fitzgibbon, stating that the Committee of Judges to whom this matter had been referred would be glad to have the assistance of three members of the Profession when considering the Schedule, and suggesting that one of them should be specially selected to present the views of the country Solicitors; and intimating that the Committee would meet on the 19th November, to confer with the gentlemen who might be selected. Acting upon that letter, your Council selected your (then) President, Mr. John H. Nunn, and Mr. H. J. P. West, to represent your Society, and Mr. McClelland, the President of the Northern Law Society, Belfast, to represent the country Solicitors. The Deputation attended upon the Committee of Judges on the 19th November, and were received in the most courteous manner, when the matter was very fully discussed. The Deputation strenuously urged upon the Committee to adopt the English Schedule; and, having failed to bring the Committee to their views in this respect, they applied themselves to the consideration of the Schedule, item by item. The Committee of Judges, at the close of the interview, intimated their intention of meeting at an early day to consider their Report to the Council of Judges. Your Council, not having received any communication, wrote on the 4th of May last to Lord Justice Fitzgibbon, asking whether the Report of the Committee of Judges had been considered, as the subject would be mentioned at the General Meeting of your Society on 9th May, and received an answer from him, intimating that the Report was in print, but had yet to be submitted to the Council of Judges, and that the delay had been caused by the necessity for making inquiries from Taxing Masters in England and Ireland, &c., before the Committee could report thereon. The amended Schedule was gazetted on the 27th June, and was followed by a Supplemental Gazette of 11th July, correcting some inaccuracies to which the Council had directed the attention of the Judges. It will be seen that the Judges have declined to adopt the English Schedule, but have amended the Schedule as originally framed to a considerable extent, in accordance with the views pressed upon them by the Deputation; and while your Council remain of opinion that there is no reason why the Profession in Ireland should not, on the assimilation of the Practice, have been given a similar Schedule, they trust that the Schedule as now amended will, when applied by the Taxing Officers in a fair and liberal spirit, afford to the Profession reasonable remuneration. Your Council have on many occasions taken steps to discourage



the employment as Town Agents of persons not being qualified Solicitors; and they desire to call attention to one item in the amended Schedule—viz., the term Fee for Agency Cases, where the Town Agent is a qualified Solicitor. The objection that the country practitioner could not afford the additional expense is thus removed, and the Council trust that before long every Solicitor in Ireland will see that it is his interest to be represented in town by a qualified Solicitor.

**"SCHEDULE OF FEES UNDER SOLICITORS' REMUNERATION ACT (1881).**

"Your Council have had under their consideration the draft Schedule prepared by their predecessors, and have been in communication with the Northern Law Society, Belfast; also with the Southern Law Association, Cork; and with the Incorporated Law-Society of London; but not being in a position to submit to you the result of their labours, they confide the matter to the attention of their successors.

**"RE SOLICITOR TO INLAND REVENUE, IRELAND.**

"This Bill has been printed, and your Council communicated with the London Law Society in reference to it; but it was considered that, even if introduced during the past Session, it could not have been proceeded with in consequence of the pressure of other proposed legislation before the House.

**"BILLS BEFORE PARLIAMENT.**

"The Council during their year of office had under their consideration a number of Bills which were brought into the House, some of which were afterwards withdrawn, and in others, some of the suggestions of your Council were adopted.

**"OFFICE OF CHIEF CLERK IN BANKRUPTCY.**

"On the occasion of a vacancy recently occurring in this office by the death of Mr. Thomas Farrell, your Council unanimously passed a resolution calling the attention of the Judges of the Court of Bankruptcy to the fact that the Chief Clerks of the several Divisions of the High Court of Justice must be selected either from the Staff of the Division or from the Profession of Solicitors, and expressing their hope that in filling the vacancy the interests of this Profession would be duly considered. The Chief Registrar replied by direction of the Judges, that there was no analogy between the offices referred to in the resolution of your Council and that of Chief Clerk of the Court of Bankruptcy, the duties of the latter office involving to a large extent the performance of judicial business, whereas the former officers were by the Act creating them precluded from doing business of a judicial character. Mr. W. H. S. Monck, a Barrister, was subsequently appointed. Your Council thereupon wrote to say that, admitting that the duties to be discharged by the Chief Clerk in Bankruptcy were, to some limited extent, of a judicial nature, they were precisely similar to the duties of the present Chief Registrar, who was a Solicitor, as were his predecessors, Mr. Brady and Mr. Bate; and they also called the attention of the Judges to the fact that the late Mr. Thomas Farrell was not a Barrister at the time of his appointment in 1857, nor for several years after, and expressed their hope that the late appointment of a Barrister thereto might not be taken as affirming the principle that the office ought to be limited to members of the Bar. No further communication has been received.

**"RE LAW CLERKS' MEMORIALS, PURSUANT TO 29 & 30 VIC., CAP. 84, SEC. 19.**

"During some years past a large number of Memorials have been presented to the Judges, pursuant to the above-named Act and Section, by Law Clerks seeking to have the Latin portion of the Preliminary Examination prescribed by the Rules of the Judges under the Act dispensed with; in some instances they have even gone to the length of asking to have the Examination entirely dispensed with. These Memorials have from

time to time been opposed. Your Council felt it their duty to oppose in one remarkable case which occurred during their year of office, in which a Law Clerk, who had presented four Memorials to the Judges, between the years 1867 and 1871, praying that the Preliminary Examination might be dispensed with in his case (all of which Memorials had been refused), presented a fifth Memorial, praying their Lordships to order that all the Examinations required by the Rules of your Society might be dispensed with, and that, after the payment of all necessary stamp duty and fees, he might be admitted a Solicitor of the Supreme Court without being called upon to pass either the Preliminary or Final Examinations, or to serve any apprenticeship whatever. This application went so far beyond what had ever previously been sought for, and was so entirely without precedent and in every respect untenable, as well as so manifestly unjust to all those Law Clerk Apprentices who have duly qualified themselves and are serving their time, that your Council submitted their views in the strongest manner to the Lord Chancellor and Judges, and prayed that the applicant's Memorial might be rejected in its entirety, which was accordingly done.

**"AN ACT FOR THE PREVENTION OF CRIME IN IRELAND—45 & 46 VIC., CAP. 25.**

"Your Council having observed that, by the recent decision of one of the Legal Investigators appointed to hold an Inquiry pursuant to this Act, Solicitors were precluded from personally, and without the intervention of Counsel, advocating the claims of their clients upon applications for compensation for injury under this Act, a short Bill has been drafted to remedy what seems to have been an error, which Bill your Council recommend to their successors."

The CHAIRMAN, in moving the adoption of the report, said the first matter referred to therein was their schedule of fees under the Judicature Act. He was sorry that they had been unable to report that they were successful in inducing the Judges to yield to what they, the Council, thought a reasonable view—namely, that on the assimilation of the practice of Ireland to that of England there should be an assimilation of the fees. They strongly pressed that view on the judges on every occasion, but without inducing them to fall in with it. They had, by the schedules gasetted on the 27th June and the 11th July, got a schedule which, he thought, might be fairly satisfactory. The schedule on the lower scale, applicable to proceedings at law, even as promulgated in 1878, was, with the exception of fees for marking judgments and the fees for attending records, an improvement upon the old schedule of 1854, which was the one in operation up to the Judicature Act. Some of the fees in that Act were increased. That for scrivency was doubled, and sums theretofore only chargeable in Chancery business were introduced. By the schedules of June and July last the fees for marking judgments had been somewhat increased, and the fees for attending records had been restored. By the second section of the 7th order the judges had power, on the hearing of a record, to direct that the costs of it might be taxed on a higher scale. Some of the Judges had expressed to him their willingness, in proper cases, to act upon that rule, and they furthermore expressed their sense that it would be an unjust thing that the costs of a very serious record—such, for instance, as one on a £10,000 policy against an insurance company, or any large action with respect to water or rights of way—should be taxed on the lower scale, while the costs of perhaps some trumpery proceeding in the Chancery Division must, according to the rule, be taxed upon the higher scale. He could not say that the higher scale—the one applicable to Chancery proceedings—was to any great extent an improvement on the former schedule, which was not so bad as the one of 1854 relating to common law business. Some few items had been slightly increased, but there was this to be said—that the schedule was a very elastic one, and he thought that if it were interpreted by men of liberal

and enlightened views—such men as their three present taxing masters, who had themselves been practising members of the profession, who knew the great responsibility which devolved upon solicitors, and the enormous difficulties they had to contend with, and who were also cognisant of the numerous matters of business for which under no schedule did they receive any remuneration—he thought it reasonable to expect, and he confidently expected it would be interpreted by each gentleman in a spirit of liberality, not seeking where to reduce, but rather looking where some of these elastic rules would afford them an opportunity of giving the profession what, in the words of the report, they sought—reasonable remuneration. The report mentioned that the schedule issued on the 27th June had to be supplemented, in order to correct inaccuracies, by a further *Gazette* of the 11th July. It was a matter of great annoyance and pain to the Council that they were obliged to put the Judges to the trouble of meeting a second time in order to frame that supplemental General Order, but duty required them to have the inaccuracies rectified. If the Judges had, as he thought they might have done, permitted the Council to see a draught of the General Order before they had affixed their signatures to it, they would have been saved the annoyance and the Judges the inconvenience of having to meet again and issue a new *Gazette*. There was an item in the schedule of fees to which he would direct special attention, and it was intended to meet a matter which had been pressed on the Council during the twenty years that he had been a member of it. The Council, in 1862, commenced their endeavours to get rid of the practice, then pretty general, of country solicitors being represented in Dublin by persons who were not qualified practitioners. He was happy to say that the efforts of the Council in that respect had met with considerable success, and that now there were not very many such cases; but the Judges had now ordered that a 5s. term fee "shall" be paid in every country case where the country solicitor was represented in Dublin by a properly qualified practitioner. The report also dealt with the schedule of fees under the Solicitors' Remuneration Act (1881), and informed them that that matter had been under the most careful consideration of the Council, but added that they were not yet in a position to submit the result of their labours. He had no doubt that the incoming Council would give the same consideration to the subject that the outgoing Council had done. With respect to the Bill regulating the appointment of a Solicitor of Inland Revenue, two years ago the Council were directed to bring in a measure to make it impossible that a barrister should be appointed in future to that position, which they felt should be occupied by a solicitor. The bill had been slightly advanced. It was printed, but he thought the Council exercised a wise discretion in not attempting to have it passed during last session, which was, in fact, not possible. A number of other bills were brought in and submitted to the Council, dealing more or less with legal matters. These received careful attention from them, and from a sub-committee, and some had been withdrawn, while others, in which the views of the Council met with the approbation of the House, had been passed. In addition to these Bills, another one came under the consideration of the Council, having been sent to them by the official who had charge of it by direction of the Lord Chancellor. The report was silent on the subject because the Bill was not introduced, and he alluded to it because it would be gratifying to the profession to know that the wise course was adopted of obtaining their views on a Bill which proposed some very important legal and departmental changes before it was introduced into the Legislature. It received the careful consideration of the Council, who made some suggestions and amendments; and they had been assured that those would be attended to and the Bill altered accordingly when brought forward in the ensuing session. In reference to the Act for the Prevention of Crime in Ireland, it having been observed that one of the local investigators had declined to hear solicitors in

an inquiry under the Act of Parliament, and it having been felt how entirely opposed that was to the spirit of modern legislation, and also how opposed it was to the interests of the profession, more particularly to the interests of those solicitors with clients in a humble position, the Council prepared a Bill, which they forwarded to one of their members, with instructions to endeavour to have it carried. They would have observed, from the answer of the Chief Secretary to a question in the House, that it was not likely that such a bill would be required, because a hint had been given which would probably be followed. He only alluded to that because it would show their country brethren that the Council were alive to their wishes and interests, even in small matters. He felt that they had not received from country solicitors quite the amount of support to which they were entitled. It was not so much their money as their moral support that was wanted, and he trusted that opportunities would be taken of bringing that Society more under the notice of those parties, and that they would be shown that it was clearly their duty as well as their interest to support it. The report also dealt with educational statistics, and from these it appeared that their profession was becoming more and more popular. They had at the last two examinations within a few of one hundred young gentlemen up for apprenticeship. He hoped their expectations might be realised, and the gloomy anticipations which, he candidly confessed, he was disposed to entertain with respect to the profession, would not be realised. He concluded by formally moving the adoption of the report.

Mr. J. H. NUNN seconded the motion, which was adopted.

The report of the scrutineers was then submitted, showing that the following had been elected as the Committee for the ensuing year:—William Findlater, M.P.; Richard R. Reeves, Michael Larkin, Arthur L. Barles, Henry Thomas Dix, Henry Leland Keily, Patrick Maxwell, Edward Thomas Stapleton, William D'Alton, John T. Hamerton, Jehu Mathews, Henry J. P. West, Charles G. Stannell, W. Milward Jones, William Read, John Henry Nunn, Archibald Tisdall, Keith H. Hallows, Francis R. M. Crozier, John Galloway, Richard H. M. Orpen, Thomas C. Franks, William Burroughs Stanley, Robert O. Longfield, Sydenham Davis, George M. M'Gusty, Shaplaod M. Tandy, Henry S. Meerey, Thomas R. Baillie-Gage, Henry Charles Neilson, and Thomas Knight Roche. Supplementalists—John E. Tarleton, Samuel P. Redington, John B. Eaton, Robert W. Peebles, John O'Hagan, Thomas Gerrard, Edward M'Gauran, Edward O. Murray, William C. Hogan, and Robert Johnston.

Mr. EDWARD T. STAPLETON having been called to the second chair,

Mr. WM. FINDLATER, M.P., moved a vote of thanks to the outgoing President for his dignified conduct during his year of office. Every member of the Society felt a deep debt of gratitude to him for the great ability and knowledge that he had brought to bear on the functions of his office.

Mr. HENRY A. DILLON seconded the motion, and

The PRESIDENT having responded,

The proceedings terminated.

#### PRESUMPTIONS OF SURVIVORSHIP.

All artificial presumptions of survivorship, where several persons perish in the same calamity, based upon strength, age and sex, have been subjected to a severe criticism by the sad tale of the loss of the "Asia," in a storm on Lake Superior during the past month. The occupants of the boat which contained the two survivors had equal chances of life. But if we take into consideration the fact that the captain and mate, who were in this boat, had in their favour constitutions inured to hardship, their chances were infinitely greater than those of the passengers in the same boat. Yet

out of the whole number, two passengers, a mere boy and a mere girl, survived, the remainder of the boat's load sinking from sheer exhaustion or being killed by blows from the gunwale of the boat as it capsized. If it has happened once, so that it is capable of actual demonstration, that a woman has survived the whole number of a ship's crew and passengers, how often may it not have happened when incapable of demonstration that a woman has been the last to die in such a case. If all the passengers and crew had been lost on the vessel when she foundered, it might have been said that the chances of survivorship were in favour of the crew as against the passengers, and in favour of the male passengers as against the female. But the facts of this occurrence are such as to set at defiance all attempts to formulate any presumption which has a preponderance of reason in its favour. An arbitrary rule is all that can be arrived at; and the most reasonable one seems to be that which now appears to be the rule in our law, that where it is necessary or important to ascertain or consider which of two relatives survived, and there is no evidence respecting the circumstances of the calamity, it will be considered that both perished together.—*Canada Law Times.*

#### THE APPLICATION OF THE RULE AGAINST PERPETUITIES TO RESTRAINT ON ANTI-CIPATION.

Since the year 1833, when the leading case of *Cadell v. Palmer* was decided, and the so-called rule against perpetuities clearly ascertained and marked out by the House of Lords, there has been comparatively little room for attempts to evade that branch of our law which prohibits restrictions beyond certain limits upon the alienability of property. A point, however, has been raised in more than one recent case which calls in question the applicability of the rule against perpetuities to a clause of almost invariable occurrence in settlements—namely, the clause restraining married women from anticipating or otherwise disposing of their beneficial interests.

It will at once be seen how such a provision may contravene the law of perpetuity. Suppose, for instance, that by an ordinary marriage settlement a fund is settled for the benefit of the husband and wife, and then for their children as they shall appoint. They have daughters, and appoint the fund to them for their separate use without power of anticipation. The daughters marry, and the parents die. Now, bearing in mind that in the case of a special power the period is to be reckoned from the instrument creating, and not from the instrument executing, the power, it is evident that in the case we have supposed the interest of each daughter is tied up during her entire coverture—a period which may obviously exceed twenty-one years from the death of her parents. The question, therefore, arises whether the appointment is void, or the restraint upon anticipation alone is void and the appointment good.

To a question, so probably of frequent occurrence, it might be expected that a distinct answer would have long ago been given. Nevertheless, decisions involving the difficulty are not plentiful, and of those which are usually cited as authorities some appear to be of doubtful value upon the particular point which we are considering.

Thus, in *Thornton v. Bright* (2 Myl. & Cr. 280), where an appointment was made by a father to a married daughter for her separate use without power of anticipation, Lord Cottenham, it is true, held the appointment to be a valid exercise of the power; but the contest turned entirely upon a point other than the question of remoteness, which, as far as can be gathered from the report, was neither argued nor alluded to in the judgment. So, on the other hand, a mere dictum of Lord Romilly, unnecessary to the decision of the case, in *Armitage v. Coates* (35 Beav. 1), has been relied upon as laying down the rule that the restriction would be invalid. But, on the whole, so far as the less recent cases have considered the point, it appears to have been fairly well established

that, where the restraint may exceed the legal limits, the court will reject it, but will uphold the remainder of the appointment. The question was so determined by Lord Hatherley, when Vice-Chancellor, in *Pry v. Copper* (Kay. 163). That decision was followed by Vice-Chancellor James in *Re Teague's Settlement* (L. Rep. 10 Eq. 564), and by Vice-Chancellor Malins in *Re Cunyng-ham's Settlement* (L. Rep. 11 Eq. 324); and an order to the same effect was made by Vice-Chancellor Hall in *Re Michael's Trusts* (46 L. J. 651, Ch.)

Of the later cases upon the subject, the principal one is that of *Buckton v. Hay* (11 Ch. Div. 645). Here a fund was bequeathed by a testator in trust for his niece for life, and after her death in trust for her children living at her death, and the issue then living of any child then dead, in equal shares, the issue to take their parents' share; any legatees, being females, to take for their sole and separate use without power of anticipation. The niece survived the testator, and died, leaving two married daughters. In this case, the niece being the life in esse within the meaning of the perpetuity rule, it is clear that, as in the case we supposed above, the restriction upon anticipation, if valid, might endure beyond twenty-one years after her death. The Master of the Rolls, considering that he was bound by previous decisions, held, with evident reluctance, that the restraint must be rejected as invalid. The view for which he expressed his preference was, that the clause against anticipation ought to be regarded as an exception to the general law against perpetuities. "In the first place," he says, "the law of this country says that all property shall be alienable; but there has been one exception to that general law, for restraint on anticipation or alienation was allowed in the case of a married woman. That was purely an equity doctrine, the invention of the Chancellors. . . . That exception was justified on the ground that it was only the way, or at least the best way, of giving property to a married woman. . . . Then there was another rule, also invented by the Chancellors, in analogy to the common law. . . . That is called the rule against perpetuities. This rule was established directly in favour of alienation; it merely carried out the principle of law that property is alienable. The theory of both rules is, however, the same—namely, that property is alienable, though it may be made inalienable to a certain extent and in a peculiar way. The question is, whether the restraint on alienation should not be allowed within certain limits under the one rule as well as under the other. The first exception is a clear and manifest exception to the general law, which says that property shall be alienable. The question is, whether there should not be a similar exception to that branch of the general law which says that property shall not be inalienable beyond a life in being and twenty-one years after. But this question does not appear to me to have been well weighed or considered."

Seeing that, notwithstanding his own opinion upon the subject, the Master of the Rolls felt himself bound by previous decisions to reject the restriction, it is curious to find that in a subsequent case another judge considered himself empowered by authority to uphold a similar provision. In *Herbert v. Webster* (15 Ch. Div. 610) a fund was, by a post-nuptial settlement, settled upon certain trusts during the lives of the husband and wife, and then upon trust for their sons and daughters in equal shares, and if daughters for their separate use without power of anticipation. Two daughters were at the date of the deed married, and there were no more children. Upon these facts Vice-Chancellor Hall held the restraint valid, being apparently of opinion that the daughters were, according to a decision of Lord Hatherley in *Wilson v. Wilson* (4 Jur. N. S. 1076), lives in esse at the date of the settlement, and therefore within the limits of the perpetuity rule. This case, therefore, cannot be regarded as affecting the general application of the law of remoteness.

With regard to the general question, whether the restraint on anticipation should be exempted from the law of perpetuities, there appears to be much force in

the observations of the Master of the Rolls in the case we have referred to. If the restriction be an infringement of the rule against perpetuities, a father would be prevented from appointing to his daughters in a way most beneficial to them—namely, in such a way that the daughters, and not their husbands, who are not the objects of the settlor's bounty, should receive the benefit. But, whatever reasons there may be on the ground of expediency or otherwise for holding the restriction exempt, there is clearly at the present time no express authority for so doing; on the other hand, the cases, so far as they go, imply a contrary doctrine. The point, no doubt, is still open to the Court of Appeal, but it appears scarcely to be expected that its decision would be in opposition to the evident current of authority.—*Law Times*.

#### THE SUPPOSED PLOT AGAINST THE IRISH JUDGES.

The *Morning Post* says that it is suggested that the origin of the murder of Constable Cox on Saturday night was that a plot was in course of execution to murder several of the judges who were dining at Judge Harrison's in Mountjoy-square, and who, in fact, passed the corner of Abbey-street at a quarter-past eleven, a few minutes after the murder. The Lord Chancellor and Mr. Justice O'Brien were among them.

#### MR. JUSTICE TYRRELL.

It is pleasant to record the success of Irishmen abroad at a time when they are denied honour by their countrymen at home. Mr. William Tyrrell, the newly gazetted Judge of the Allahabad High Court, is a very distinguished Trinity College man. He was first scholar and first gold medallist in Classics, and with these University honours joined the Bengal Civil Service in 1859. Rising rapidly through the junior grades of the service, he became Under Secretary to the N. W. P. Government in the Judicial Department, then Judge of the Court of Small Causes at Allahabad, then Registrar of the High Court. From this post he was promoted in due course to a District Judgeship, first at Bareilly and then at Allahabad. He then officiated on several occasions during the temporary absence of High Court Judges, and he has now attained the highest honour open to the judicial branch of the service.—*Daily Express*.

#### ADMISSION OF SOLICITORS.

Messrs. William Irwin and F. W. Meredith, jun., have been admitted Solicitors of the Court of Judicature.

**A CHINESE WITNESS.**—In California, where there are plenty of Chinamen, the usual Western method is employed in swearing them; so, at least, one may infer from the account of a recent trial given in the *Courier de San Francisco* of the 29th of September. The judge, evidently not being quite satisfied that the witness understood the object of the form he has just gone through, asked him, as is usual in such cases, if he understood the nature of an oath. "Perfectly," replied the witness, with the utmost confidence; "I know that if I tell a lie everyone in the court will be damned." An equally amusing illustration of the ignorance of the Chinese in the matter of our judicial oath was furnished some time ago by the native usher in the Consular Court at Shanghai. He was observed to be making an anxious search for some missing object; and, on being questioned by the judge, he stated that he was looking for the little book which is given to the witness to smell! And this man had been for eighteen years usher of the court!

Law Professor: "What constitutes burglary?" Student: "There must be a breaking." Professor: "Then if a man enters your door and takes a sovereign from your vest pocket in the hall, would that be burglary?" Student: "Yes, sir; because that would break me."

#### APPOINTMENTS AND PROMOTIONS.

Sir J. Pope Hennessy, K.C.M.G., Governor of Hong Kong, has been appointed Governor of the Mauritius.

Mr. William Tyrrell, of the Bengal Civil Service, has been gazetted a Judge of the High Court of Allahabad, N. W. P., India.

Mr. James H. Monahan, Q.C., has been appointed to investigate all applications for compensation under the Prevention of Crimes Act that may come before him at the following places:—Ennistymon, on the 8th inst.; Ennis, on the 11th; and Tulla, on the 18th.

Mr. Gerald FitzGerald, Barrister-at-Law, has been appointed to investigate the several claims for compensation under the Prevention of Crimes Act that may come before him at the following places:—Castleroa, on the 4th inst.; and Boyle, on the 7th.

Mr. M. F. Puroell, Barrister-at-Law, has been appointed an Investigator under the Arrears of Rent Act.

Mr. William Gilbert has been appointed a Commissioner for Administering Affidavits for the City and County of Waterford.

#### BOOKS RECEIVED.

*The Principles of Equity, intended for the Use of Students and the Profession.* By EDMUND H. T. SNELL, of the Middle Temple, Barrister-at-Law. Sixth Edition. To which is added an *Epitome of the Equity Practice*. Third Edition. By ARCHIBALD BROWN, M.A. Ed. & Ox., and B.C.L. Ox., of the Middle Temple, Barrister-at-Law. London: Stevens & Haynes, Law Publishers, Bell Yard, Temple Bar. 1882.

*A. B. C. Guide to the Arrears Act, 1882. With the Act, Rules, and Forms annexed. Including all the New Rules and Forms. For the Use of Irish Landlords and Tenants.* By GEORGE FORTRELL, Jun., Solicitor. Fifth Edition. Corrected and Enlarged. Dublin: M. H. Gill & Son, 50 Upper Sackville-street. 1882.

*The Nineteenth Century.* A Monthly Review, Edited by JAMES KNOWLES. No. 70. December, 1882. London: C. Kegan Paul & Co.

*Contemporary Review.* December, 1882. London: Strahan and Co., Limited, Paternoster-row.

*The Life of the Right Hon. William Ewart Gladstone.* By GEORGE BARNETT SMITH. Jubilee Edition. London: Cassell, Petter, Galpin, & Co.

*Milton's Paradise Lost.* Illustrated by Gustave Doré. Edited, with Notes and a Life of Milton, by the late ROBERT VAUGHAN, D.D. London: Cassell, Petter, Galpin, & Co.

*Cassell's History of England from the earliest period to the present time.* With about 2,000 Illustrations. Part 87. London: Cassell, Petter, Galpin, & Co.

**ABYSSINIAN LAW.**—The courts of justice in Abyssinia are somewhat primitive places. The advocates plead tied together by their robes. While one is speaking no interruption is permitted, but as some concession must be made to long-suffering human nature pent up under the agony of hearing vituperations and allegations known to be false, the other advocate is allowed to grant when he considers some passage in his opponent's speech particularly objectionable. A case is often settled by *bets*. For instance, a man will wager so many cows that he is in the right, and the other will do the same. The result is that the loser must pay his bet to the chief as a fine. In this manner a dispute about a matter of five shillings will cost a wordy individual who has trusted to the "glorious uncertainty" of Abyssinian law ten or twelve pounds. We had something not very widely different once amongst ourselves, when cases could be decided by a wager of battle to an opponent in a court of law. An Abyssinian is a quarrelsome and excessively vain personage, and his litigious disposition is greatly owing to the possession of these dubiously commendable qualities.—From "*The Peoples of the World*" for December.

## LAW STUDENTS' JOURNAL.

KING'S INNS.

HONOR EXAMINATION.—25TH OCTOBER, 1882.

## BILLS OF EXCHANGE AND PROMISSORY NOTES.

*Examiner*—SAMUEL WALKER, Esq., Q.C.

1. Give the form of a negotiable Bill of Exchange drawn by A on B, and payable three months after date; and also of a Promissory Note on demand by A to B not negotiable.

2. On the 1st January, 1882, A gives three notes to B or order, each payable three months after date. In no case is there any consideration for the notes. On the 1st April, B endorses one note to C without value, and on the 2nd April B endorses for value another note to C, and on the 1st May the third note for value to C. What are the remedies of C in each case against A, and how and why are they affected?

3. A gives to B a paper with a bill stamp on it and his (A's) name written across it—ordinarily called an acceptance in blank. To what extent, and when and how can B use it?

4. A gives to B for value a note not negotiable and another negotiable. B loses both notes. What are his remedies against A, and how and with what qualifications in each case can he enforce them?

5. A, on the 1st January, 1882, gives to B three notes:  
One payable on demand;  
One payable one month after demand;  
One payable three months after date;

when does the Statute of Limitations begin to run in each case?

6. A and B give a note to C, who pays the consideration to A. B only joined as surety at C's request, and when the note becomes due C, at A's request, and without B's knowledge, renews the note to A only, for three months, and A fails to pay. Can C then recover against B? If not, why; and how could he have protected himself?

7. A, B, C, and D, give their joint and several note to E, for £100, and E makes A pay the whole: what remedies has A against each of B, C, and D?

8. What alterations can be made in a Bill without vitiating it? What are "material" alterations? As against whom will a bill be valid notwithstanding a material alteration?

9. A draws a negotiable bill on B, who accepts it, and A endorses to C, who endorses to D: as against whom must the bill be presented for payment by D: and at what place and when?

10. What is the effect of "The Summary Bills of Exchange Act?"

11. What is a "qualified" acceptance, and give examples of it?

12. A draws a cheque on a bank in favour of B or order, B loses the cheque, and a finder, without authority, endorses B's name on the cheque, and obtains the money from the bank. In what cases will the bank be liable to A, and in what not? And by what form of cheque can A guard against risk?

## TEXT-BOOK ADDENDA.

[From the *Law Journal*.]

*Licensing Act, 1872* (35 & 36 Vict. c. 94), s. 3.  
*Lely and Foulkes on Licensing* (2nd Edition), 80.

Obtaining, and paying for, liquors in a members' club is not a sale requiring a license (*Graff v. Evans*, 51 Law J. Rep. Q. B. M. C. 25).

*Buckley on the Companies Acts* (3rd Edition), 387.

A debt due from a company in liquidation prior to its commencement held not capable of being set off against a claim by the liquidator for goods ordered before, but delivered after, the liquidation (*Ince Hall Rolling Mills Company v. Douglas Forge Company*, 51 Law J. Rep. Q. B. 238).

THE INCORPORATED LAW SOCIETY  
OF IRELAND.

HILARY SITTINGS, 1883.

## NOTICE.

The PRELIMINARY EXAMINATION of Candidates for Apprenticeship will be held at the Solicitors' Hall, Four Courts, Dublin, on Thursday and Friday, the 4th and 5th days of January, 1883, at *Eleven o'clock*.

N.B.—All Papers to be lodged on or before *Tuesday, 19th of December, 1882*.

The FINAL EXAMINATION of Candidates seeking admission as Solicitors will be held at the same place, on Monday and Tuesday, the 8th and 9th days of January, 1883, at *the same hour*.

By order of the Council,

JOHN H. GODDARD, *Secretary*.

Solicitors' Hall, Four Courts, Dublin,

N.B.—The decision of the Court of Examiners will be announced on Wednesday, the 26th of January, 1883, at Three o'clock, p.m.

Candidates residing in the Country need not remain in town to hear decision, but can learn same from the Dublin Morning Papers of the day following the announcement.

## COURT PAPERS.

## LAND JUDGES.

Sittings for next Week so far as same are appointed.

Before the Rt. Hon. JUDGE FLANAGAN.

## MONDAY.

IN CHAMBER.—Executors R. C. Hurley, allocata.

IN COURT.—E. Irwin, as to deeds.

## TUESDAY.

IN CHAMBER.—J. M'Manus, proposal.

IN COURT.—A. Noble, as to costs.—J. Chadwick, objection.

## WEDNESDAY.

Before EXAMINER (Mr. Kennedy).

A. W. Travers, vouch.

## THURSDAY.

IN COURT.—S. Litchfield, final schedule.

Before EXAMINER (Mr. Kennedy).

J. M. Cochrane, reference.

## FRIDAY.

Before EXAMINER (Mr. Kennedy).

Trustees J. Hassett, rental.

Before the Rt. Hon. JUDGE ORMSBY.

## MONDAY.

IN COURT.—C. A. Keogh, to appoint receiver.—W. K. Burroughs, objection.—M. O'Kelly, receiver.—A. W. West, as to lot 7.—J. J. Bodkin, two motions.—W. Thom, adjourned.—F. L. Comyn, do.—T. Baillie, do.

## WEDNESDAY.

Before EXAMINER (Mr. M'Donnell).

Cork Harbour Docks, vouch.—N. Woods, to take account.—H. M. Archdale, from 29th.—S. E. Goodwin, vouch.

## THURSDAY.

IN COURT.—Assignees Goggin, adjourned motion.

## HIGH COURT OF JUSTICE.

## CHANCERY DIVISION.—LAND JUDGES.

List of Petitions presented to the Land Judges in the month of October, 1882.

DATE	TITLE OF MATTER	OBJECT OF PETITION	COUNTY	PROFIT RENT	SOLICITOR
Oct. 2	Randall Thomas Webb, owner; <i>Thomas Terry, petitioner</i>	Sale	County and City Cork	£ s. d. Not stated	<i>Henry G. Kelly</i>
" "	Isabella M. Newenham and another, owners; <i>Robert Mayna, petitioner</i>	Sale	Cork	137 9 8	<i>Thomas H. Jermyn</i>
" 4	John Roberta, owner; <i>David H. Owen and another, petitioners</i>	Sale	Co. Cork	Not stated	<i>A. O'B. O'Connor</i>
" "	George Beamish and others, owners; <i>Marmion Beamish, petitioner</i>	Sale	Co. Cork	Not stated	<i>Marmion Beamish</i>
" 5	Charles Lynch, owner; <i>Henry Lynch, petitioner</i>	Receiver and sale	Mayo	774 5 0 Griffith's Valuation	<i>Patrick J. Kelly</i>
" "	Anthony G. Karey, owner; <i>George W. Montgomery and another, peti- tioners</i>	Sale and receiver	Mayo	80 0 0	<i>Arthur L. Barles</i>
" 9	Thomas Forster, owner; <i>William B. Browne, petitioner</i>	Sale	Co. Cavan	128 15 0 Griffith's Valuation	<i>Thompson and Tatlow</i>
" "	James Cody, owner and petitioner	Sale	Dublin	Not stated	<i>Henry V. Colclough</i>
" "	John Bermingham, owner and petitioner	Receiver and sale	Mayo and Galway	648 4 7	<i>Whitney and Armstrong</i>
" 10	Charles C. Johnston and another, owners; <i>Rev. W. H. Oswald, petitioner</i>	Receiver and sale	Co. Down	271 11 2	<i>T. W. Hardman &amp; Son</i>
" 12	John Butler, owner and petitioner	Sale	Carlow	29 17 6	<i>J. E. Tarleton</i>
" 14	Elizabeth Connolly, owner and petitioner	Sale	Galway	98 0 0	<i>Richard Jennings</i>
" "	Adam Samuel Forster, owner; <i>Robert Thomas Forster, petitioner</i>	Sale	Antrim	5,224 15 6	<i>Thomas C. Franks</i>
" 17	David Cagney and others, owners; <i>David Carroll, petitioner</i>	Sale	Limerick	164 8 0	<i>John Ryan and Son</i>
" "	Francis C. Garvey, owner; <i>Harriett K. Cockran, petitioner</i>	Receiver and sale	Mayo	551 5 4	<i>William Roche and Son</i>
" 21	Elizabeth Keatley, owner; <i>Denis Fay, petitioner</i>	Receiver and sale	Co. Kildare	In owner's occupation	<i>James Plunkett and Son</i>
" 28	Henry King Parks, owner and petitioner	Sale	Louth and Tyrone	449 5 4 44 0 0	<i>Alexander Bell</i>
" 24	Thomas Muffeny and another, owners; <i>National Bank, petitioners</i>	Sale and receiver	Mayo	Not stated	<i>Michael Larkin</i>
" "	William J. Hunter and another, owners; <i>Ellen Taylor and others, petitioners</i>	Sale	Antrim	418 10 6	<i>Johns, Hewitt, and Johns</i>
" "	John Arnold Wallenger and others, owners and petitioners	Sale	Cork	1,281 2 0	<i>Thomas Ware Corker</i>
" "	Thomas Dowling, owner and petitioner	Sale	Co. Tipperary	231 5 6	<i>Samuel Abbott</i>
" 25	John E. Crosby and others, owners; <i>William H. Corsar and another, petitioners</i>	Receiver and sale	Dublin	Not stated	<i>White and White</i>
" "	The Hon. H. B. Bernard, owner; <i>Catherine Stanwell and others, petitioners</i>	Sale and receiver	Cork	Not stated	<i>Thomas Ware Corker</i>
" 26	George White, owner; <i>The Hibernian Bank, petitioners</i>	Sale and receiver	Tyrone	43 5 0 Valuation	<i>D. and T. Fitzgerald</i>
" "	Thomas Woodlock and others, owners; <i>The Hibernian Bank, petitioners</i>	Sale and receiver	Dublin	80 0 0 Valuation	<i>D. and T. Fitzgerald</i>
" 30	Michael Lynch, owner; <i>James Ford, petitioner</i>	Sale and receiver	Cavan	Not known	<i>Maxwell and Weldon</i>
" 31	John Theobald Dillon, owner; <i>Wm. D. Johnston and others, petitioners</i>	Sale and receiver	Roscommon	1,292 16 4	<i>Johns, Hewitt, and Johns</i>
" "	Austin John Cusack and others, owners; <i>Edward Cusack, petitioner</i>	Sale	Tipperary	Not known	<i>Thomas V. Ryan</i>

LAND JUDGES' COURT,

SALES.

Tuesday, Nov. 7.—Before the Right Hon. Judge ORMSBY

COUNTY DOWN.—Estate of James Fenton and others, owners; the Northern Banking Company, petitioners.

Lot 1.—Part of the Lands of Carricknab, containing 146a. 3r. 27p., and part of the Lands of Corbally, containing 21a. 3r. 30p., all held in fee-farm, situate in the Barony of Lecale; annual profit rent, £45 14s. 5d.; Griffith's valuation, £188 5s. Sold to Colonel Craig for £1,150.

Lot 2.—Other parts of same Lands, containing respectively 118a. 0r. 28p., and 34a. 3r. 36p., held in fee-farm; annual profit rent, £105 5s. 10d.; Griffith's valuation, £180 5s. Sold to Patrick Smith for £2,160.

Lot 5.—Part of the Lands of Ballow, in the Barony of Dufferin, containing 141a. 1r. 28p., held in fee; annual profit rent, £153 18s. 8d.; Griffith's valuation, £225. Sold to Joseph Reid, for £3,050.

Lot 8.—The Lands of Ardmillan and others, in the Barony of Castlereagh, containing 2,864a. 2r. 1p., held under lease for 21 years from 1873 from the Church Temporalities Commissioners, and customarily renewable; annual profit rent, £782 14s. 10d.; Griffith's valuation, £2,908 15s. Sold to Colonel Craig for £16,100.

Solicitors: *Hugh Wallace & Co.*

COUNTIES OF GALWAY AND MAYO.—Estate of Michael O'Kelly, owner and petitioner.

Lot 3.—The Lands of Oullaghbeg and Monterowen, in the Barony of Ross, and County of Galway, containing, 607a. 2r. 19p., held in fee; annual profit rent, £25 0s. 3d.; Griffith's valuation, £30 5s. Sold to P. Joyce for £500.

Lot 5.—An undivided moiety of part of the Lands of Partry, in the Barony of Carra, and County of Mayo, containing 853a. 1r. 87p., held in fee; annual profit rent of such moiety, £46 17s. 10d.; Griffith's valuation of the whole, £128 5s. Sold to E. P. Lynch for £700.

Solicitor: *L. G. O'Neill.*

Friday, Nov. 10.—Before the Right Hon. Judge FLANAGAN.

COUNTY CARLOW.—Estate of Robert Leekey Watson, owner; John Wakely, petitioner.

Lot 1.—Part of the Lands of Lumeloon, containing 63a. 2r. 27p., in the Barony of Idrone East, held in fee-farm; annual profit rent, £89 7s. 2d.; Griffith's valuation, £52. Sold to Francois Whelan for £1,900.

Solicitor: *Thomas Falls.*

COURT OF BANKRUPTCY.

ADJUDICATIONS IN BANKRUPTCY.

The dates of Adjudications are first given, the Sitings follow in Italics.

Delany, Felix, of Ballahane, Templeberry, in the county of Tipperary, farmer. November 14; *Friday, December 8, and Tuesday, December 19. Thomas O'Meara, solr.*

Duffy, James Joseph, of Carrickmacross, in the county of Monaghan, grocer, trading as "J. J. Duffy and Co." November 14; *Tuesday, December 5, and Tuesday, December 19. Thomas O'Meara, solr.*

"No, I didn't mind being called a mastodon and a dodo," said an Illinois judge; "but when that female said I was 'a two-legged relic of a remote barbaric period,' I was compelled to fine her for contempt of court."

HARE AND HOUNDS—AND DONKEY.—"Seen two men with bags of paper pass this way?"—"No!" "Did they tell you to say No?"—"Yes!"—*Punch.*

DUBLIN STOCK AND SHARE LIST.

DESCRIPTION OF STOCK	NOVEMBER					Dec.
	Sat. 25	Mon. 27	Tues. 28	Wed. 29	Thur. 30	Fri. 1
<b>*Paid Government.</b>						
— 3 p c Consols ..	100½	100½	100½	—	100½	—
— 3 p c Reduced ..	—	—	100½	—	—	—
— New 3 p c Stock ..	100½	100½	100½	100½	100½	100½
<b>INDIA STOCK.</b>						
4 p c Oct. 1888 } Traffic at ..	—	103	103½	103	—	103½
3½ p c Jan. 1881 } Bk. of Irel. ..	—	100½	—	—	100½	—
<b>Banks.</b>						
100 Bank of Ireland ..	—	—	337	—	326	324
35 Hibernian Banking Co. ..	—	—	—	—	32	—
20 London and County (Lit'd.) ..	—	—	—	—	—	80½
15 London Joint Stock ..	—	—	—	—	—	—
— Do. New Script ..	—	—	—	—	—	—
20 London and Westminster, Lit'd ..	—	—	—	—	71½	71½
10 Do. New ..	—	—	—	—	—	7
3½ Munster Bank (Limited) ..	—	—	—	7	—	—
— Nat. Prov. of England, Lim. ..	—	—	—	—	—	—
10 National Bank (Limited) ..	—	—	—	24½	24½	—
10 National of Liverpool (Lit'd.) ..	—	—	—	—	—	—
10 Royal Bank ..	—	29½	—	—	—	—
35 Provincial Bank ..	—	—	—	—	—	27½
<b>Steam.</b>						
50 British & Irish ..	—	—	—	—	—	—
100 City of Dublin ..	—	—	101½	—	—	—
50 Dublin and Glasgow ..	—	—	—	—	—	—
<b>Tramways.</b>						
10 Belfast Trams ..	—	—	—	7½	—	—
10 Dublin United Tramways ..	—	—	—	9½	—	—
10 Edinburgh Street Trams ..	—	—	—	—	—	—
9 Glasgow Tram & Bus, Lim. ..	—	—	—	—	—	—
10 L'pl Un'd Tram & Bus Lit'd ..	—	—	—	—	—	—
<b>Railways.</b>						
10 Cork and Macroom ..	—	—	—	5	—	—
100 Great Northern (Ireland) ..	—	—	—	119½	—	—
100 Gt. Southern and Western ..	115½	—	115½	—	116	115½
100 Midland Gt. Western ..	—	—	—	—	—	88
50 Waterford and Limerick ..	—	—	—	—	—	—
<b>Railway Preference.</b>						
100 Belfast & Co. Down, A 4½ p c ..	—	—	—	—	—	—
100 Do., 6 p c ..	—	—	—	118½	—	118½
100 Belfast & Nth'n Cos. 4 p c ..	—	—	—	101½	—	102
100 D. W., & W., 6 per cent ..	—	—	—	—	—	—
100 Do. do. (1886) ..	—	—	—	—	114	—
100 Gt. Nth'n (Ireland) gr'd 4 p c ..	—	—	106	106	—	—
100 Do. guaranteed 4½ p c ..	—	—	—	—	—	—
100 Gt. South'n & West'n 4 p c ..	108	—	—	—	—	—
100 Mid. Great Western, 4 p c ..	—	—	—	—	—	—
100 Do., 6 p c ..	—	—	—	—	—	—
100 Wat'rd. & Limerick, 4 p c ..	—	—	—	—	—	—
100 Do., 4½ p c ..	—	—	—	—	—	—
<b>Debenture Stocks.</b>						
— Belfast & Nth'n Cos. 4 p c ..	—	103½	104	—	104½	104½
— Cork and Bandon, 4 p c ..	—	—	—	—	—	—
— Cork, B. & Passage 4 p c ..	—	—	—	99	—	—
— Do., 4½ p c ..	—	—	110	—	—	—
— Dublin & Wicklow 4 p c ..	—	105½	105½	105½	105½	105½
— Do., 4½ p c ..	106	—	—	—	—	—
— Gt. Northern (Ireland) 4 p c ..	110½	—	—	110½	110½	—
— Do., 4½ p c ..	—	—	—	—	—	—
— Do. 5 p c ..	—	—	—	—	—	—
— Gt. North'n & West'n 4½ p c ..	—	109½	—	109½	—	—
— Gt. South'n & West'n. 4 p c ..	—	—	110½	110½	—	—
— Midland Gt. West'n. 4 p c ..	—	—	—	105	—	—
— Do., 4½ p c ..	—	—	—	110	—	—
— Do., 4½ p c ..	—	—	—	—	—	—
<b>Miscellaneous Debent.</b>						
Alliance & Cons. Gas, 4 p c ..	—	—	99½	—	99½	99½
Ballast Office Deb., £22 6s 2d, 4 p c ..	—	—	93½	—	—	—
City Deb. of £22 6s 2d, 4 p c ..	—	—	—	—	—	93½
Do. Defd. of £22 6s 2d 4 p c ..	—	—	—	—	—	92½
Dub. & Glas. S. P. Co. (1887) 5 p c ..	—	—	—	—	—	100½
Do. (1888), 6 p c ..	101	100½	—	100½	101	—
Dub. United Tramways, 10 yrs. ..	100	—	—	—	—	—
Dublin Water Works, 6 p c ..	—	—	—	—	—	—

\* Shares not fully paid up are given in Italics. † x d

Bank Rate—Of Discount—4 per cent., 17th August, 1882.  
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Account Days—December 14th and 29th, 1882.

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### BIRTHS, MARRIAGES, AND DEATHS.

#### BIRTHS.

**M'GUCKIN**—November 27, at Moneymore, the wife of Robert M'Guckin, Esq., solicitor, of a son.

#### MARRIAGES.

**CAREY and LOVEROCK**—November 20, at Sandford Church, Dublin, by the Rev. Joseph King, A.M., Incumbent of Munter-Connaught, County Cavan, William Percival Carey, Esq., solicitor, second son of William Carey, Esq., solicitor, Grosvenor square, to Rhoda Louisa, eldest daughter of Robert Loverock, Esq., Woodstock Villas, Terenure-road.

#### DEATHS.

**PORTER**—November 24, at his residence, Upper Merrion-street, Frank Thorpe Porter, Esq., A.M., barrister-at-law, formerly Divisional Magistrate, in his 81st year.

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# THE IRISH LAW TIMES AND SOLICITORS' JOURNAL.

VOL. XVI.

SATURDAY, DECEMBER 9, 1882.

No. 828

## CRIMINAL ATTEMPTS.—III

A, WITH the intention of shooting his mistress, Maria H., entered, armed with a loaded pistol, the house in which she lived. Not finding her alone, he waited until she left the chamber where she was. When she came out he addressed her, and, after a short conversation, pointed the pistol at her breast. His intention was to kill her; but, the firing of the pistol was not his immediate act, but was caused by the pistol being struck by her. Is he responsible for murder; can it be charged that the pistol was fired by him when it was really fired by her?—questions Dr. Bar, a very eminent German jurist, in his collection of moot cases in criminal law, published in 1875. What would seem to be a precedent for an appropriate verdict in such a case as this (of which this translation will doubtless be more acceptable than the original, in the "Strafrechtsfälle zum akademischen Gebrauch und Selbststudium,") we find in a curious and rather rare volume, called "Life in Ireland," published in 1821. A visit is paid to the Four Courts, which, quoth the author, "has always reminded me of my Lord Mansfield's handsome farmyard, near London, which opens by gothic entrances into a dozen hogsties, and verily the well designated swinish multitude are always found in abundance in and near those pavilions of public reprobation. A cause had just come on, before my Lord Dawerwit, of some notoriety if not of great interest. A gentleman was arraigned, for that he shot his friend, for love, in a duel. The fact was admitted, and the prisoner pleaded in extenuation of the offence, that he could not help hitting his antagonist, by reason they fought at a 'short arm's length.' The plea was good, and a verdict given, 'culpable suicide by compulsion,' to the satisfaction of an indifferent court." Here, however, it is not with the crime of homicide that we have to do; but, in reference to the case mooted by the learned Professor of Law in the University of Breslau, it may be questioned whether A would even be chargeable with having attempted to discharge the pistol, if, as we have seen, according to *R. v. Lewis*, merely presenting it would not have been sufficient, and if, according to *R. v. St. George*, the statutory offence would not be committed when the intending perpetrator is prevented from pulling the trigger. We doubt not that he would have been guilty of an "assault with intent to commit a felony": cf. *The People v. Bird*, and *The People v. Lilley*, previously cited; *State v. Church*, 63 N. C. 15; *Mullen v. State*, 45 Ala. 43 (et cf. *People v. Comstock*, Oct. 20, 1882, 13 N. W. R. 617). Even a threat to shoot, coupled with the act of presenting a loaded firearm, although it is only "half-cock," is an assault, there being a "present ability" of doing the act threatened, as it could be done in an instant: *Osborn v. Veitch*, 1 F. & F. 317 (and as to where the firearm is not sufficiently loaded, see *R. v. James*, 1 C. & K. 530; *R. v. Baker*, ib. 254; *State v. Swails*, 8 Ind. 524; *Hamilton v. State*, 36 ib. 280; 1 Bishop Cr. L. s. 677; 24 & 25 Vic., c. 100, s. 19; the onus lying on the prosecution to prove that it was loaded: *Whitley's case*, ubi supra; *Blake v. Bernard*, 9 C. & P. 626; contra, *Burton v. State*, 3 Tex. Ct. App. 408). But, that is not here the question, any more than whether the intending assassin would have been responsible for murder. And apart from the statutory

offence, as narrowed by the rulings in *R. v. Lewis* and *R. v. St. George*, it may be that a possible common law misdemeanour was committed, there having been clearly an overt act done with intention to commit a felony. Even where the offender voluntarily desists from the actual commission of a crime he may be guilty of the offence of attempting to commit it. So, where a man knelt down in front of a stack of corn, and lit a match, intending to set the stack on fire, but, observing that he was watched, blew out the match, it was held that he had attempted to set fire to the stack: *R. v. Taylor*, 1 F. & F. 511; cf. *The People v. Bird*, ubi supra. And on the other hand, the guilt of an attempt with intent (which may be either primary or secondary: *R. v. Gillow*, 1 Moo. 85; *R. v. Davis*, 1 C. & P. 306) to murder—merely to temporarily disable not being enough: *R. v. Boyce*, 1 Moo. 29; see *R. v. Jones*, 9 C. & P. 253—will be the same, even though the intent be not directed against the specific individual on whom it is carried into operation; as where by mistake the poison or blow reaches a third person in regular course of things, though not contemplated by the perpetrator: *R. v. Smith*, 25 L. J. M. C. 29; *R. v. Lynch*, 1 C. C. C. 361; *R. v. Lewis*, ubi supra; cf. *R. v. Stopford*, 11 C. C. C. 643; *R. v. Cox*, R. & R. Nor would it be a ground for inferring the absence of intent to murder, that the immediate object was merely to cause a miscarriage: *R. v. Wilson*, D. & B. 127; cf. *Kelly v. Commonwealth*, 1 Grant, 484; *Bechtelheimer v. The State*, ubi supra; and see com. on *R. v. Heap*, 9 Ir. L. T. 220; and a person who gives another a drug to be taken in the absence of the giver "causes it to be taken," and, it would seem, "administers" it, within 24 & 25 Vic., c. 100, s. 58, though absent when it is taken: *R. v. Wilson*, ubi supra; *R. v. Farrow*, D. & B. 164; *R. v. Harley*, 4 C. & P. 369; *R. v. Dale*, 6 C. C. C. 14.

Again, soliciting another person to commit a felony or doing any act with intent to induce another person to commit such offence, is a misdemeanour, whether the crime is or is not committed: *R. v. Gregory*, L. R. 1 C. C. R. 77; *R. v. Ransford*, 31 L. T. N. S. 488, 13 C. C. C.; and see cases cited in Steph., Dig. Cr. L., Ch. 5; and so with regard to solicitation to murder: 24 & 25 Vic., c. 100, s. 4; *R. v. Most*, see com. 15 Ir. L. T. 341; and as to accessories before the fact in manslaughter, see *R. v. Galway*, 7 C. C. C. 253, D. & B. 291; *R. v. Murphy*, Jebb. Cr. & Pr. Cas. 305; Steph., Dig. Cr. L. Although, if two persons agree to commit suicide together, and one escapes but the other dies, the survivor is guilty of murder (*R. v. Dyson*, R. & R. 523; *R. v. Russell*, Ry. & M. 356; *R. v. Alison*, 8 C. & P. 418; and see *R. v. Fretwell*, L. & C. 161; 1 Hawk. P. C. c. 27, s. 6; Keilw. 136; Moor, 754; 1 Hale, P. C. 411-419), an attempt to commit suicide is not an attempt to commit murder, within the Offences against the Person Act (24 & 25 Vic., c. 100, s. 15; *R. v. Burgess*, L. & C. 258), but still remains a common law misdemeanour. In *R. v. Leddington* (9 C. & P. 79), a man was charged with inciting another to commit suicide, and Alderson, B., directed an acquittal, saying, "This is a case which by law we cannot try;" but, as Sir James Stephen observes, the reasons for this direction are not given, and a note to the case does not make them clear. And the general principle is that an

attempt to incite to the commission of a felony is a misdemeanour; so, where A writes and sends a letter to B, inciting him to commit a felony, A is guilty of an attempt to incite, though B does not read the letter: *R. v. Ransford, ubi supra*; and as to aiding in an attempt, see *R. v. Hapgood, L. R. 1 C. C. R. 221*; *R. v. Wyatt, 39 L. J. M. C. 83*. As to whether a person can be convicted of inciting another to commit a felony, where the latter is ignorant that the act to which he was incited was a felony, see *The Queen v. Brien*, reported in our present issue, 16 Ir. L. T. Rep. 106, and note thereto, referring to the observations of Sir James Stephen on *R. v. Welham (1 C. C. C. 193)*.

#### "LAW JOURNAL REPORTS" FOR DECEMBER.

In all sixty-two cases are reported, of which eight are from the Privy Council, twenty-nine from the Chancery Division, thirteen from the Queen's Bench Division, nine from the Probate, Divorce, and Admiralty Division, and three Magistrates' Cases.

The first of the Privy Council cases is that of *The Melbourne Banking Corporation v. Brougham*, in which a release of an equity of redemption by an assignee in bankruptcy was called in question by the bankrupt. In *Muscorie v. Raynor* a bequest to a wife, "feeling confident" that she will divide the property among the children on her death, was held not a precatory trust. In *Russell v. The Queen* it was decided that the regulation of the sale of intoxicating liquors belongs to the Canadian Parliament, and not to the provincial legislatures—a decision which might not be without interest in Cornwall and elsewhere at the present moment, when local liquor Acts are advocated. In *Harris v. Perkins* it was decided that a suit under the Public Worship Regulation Act did not abate by reason of the churchwarden who instituted it going out of office. In *Martin v. Mackonochie* the Privy Council decided that the Dean of the Arohes had no power to pronounce a clerk guilty of an ecclesiastical offence, and yet to inflict no punishment but payment of costs, so that Mr. Mackonochie was remitted for punishment. In *The China Merchants Steam Navigation Company v. Bignold* one ship was to blame in respect of a collision, but the other was to blame in respect of lights, and although lights had nothing to do with the collision, the damage was divided, according to the Admiralty rule. In *Merriman v. Williams* it was decided that the Bishop of the Church of South Africa has no jurisdiction over a church conveyed to trustees for Church of England services; the South African Church being severed from the Church of England by a proviso in the articles constituting it that in matters of faith it should not be bound by the English decisions. In *Ross v. The Charity Commissioners* the Endowed Schools Act, 1869, was construed so that an old charitable endowment appropriated to educational purposes by the Court of Chancery within fifty years might be dealt with under the Act.

In *The Yorkshire Railway Waggon Company v. Maclure*—the first of the Chancery cases—the Court of Appeal upheld a transaction in which a railway company, having exhausted its borrowing powers, sold rolling stock to a waggon company, the stock to remain at hire in the possession of the railway company, which was to pay by instalments, in five years, a sum equal to the purchase money and interest and regain the stock. In *Cooper v. Vesey*, in the Court of Appeal, a deed of mortgage of land executed by a son in his father's name, which was his also, after his father's death was pronounced a forgery, and, although registered in Middlesex, was held only to pass the son's beneficial interest as against the trustees—of which he was one—of the father's will, which was not registered. In *Attorney-General v. Gaskell* the Court of Appeal overruled a remarkable objection to answering interrogatories, namely, that they related to matters in issue as to which the burden of proof was on the plaintiffs. In *The Quartz Hill Consolidated Gold Mining Company v. Beall* the Court of

Appeal laid down that an interlocutory injunction against a libel *prima facie* privileged ought hardly ever to be granted. In *Taylor v. Johnston* a gift of £500 by a girl aged twenty made a few days before her death was upheld by Vice-Chancellor Bacon. In *Lambert v. Neuchatel Asphalt Company* a shareholder was pronounced on the construction of articles of association, not able to interfere to prevent the payment of dividends out of net profits. In *Kinlock v. The Secretary of State for India* the House of Lords held that the Royal warrant by which the Banda and Kirwee booty had been granted to the Secretary of State in trust for the persons entitled, did not make the Secretary of State amenable to the Courts in respect of the matter. *Robinson v. Ommamney* is a case in which the donee of a power of appointment made an appointment which she covenanted not to revoke; whereupon she became bankrupt, and afterwards made another appointment. It was held that her estate was liable in damages, the bankruptcy being that of a non-trader under the Act of 1861. In *Ransome v. Graham* seventeen combinations of letters used for ploughs of different quality and pattern, and registered, were pronounced by Vice-Chancellor Bacon to be valid as trade marks. An Appeal against this decision was, on Saturday, November 25, dismissed with costs by arrangement. In *re Hever, ex parte Kahan*, decides some points on a bill of sale, which was held good against trustees in bankruptcy, although registered after the bankruptcy, but within the seven days. In *Watson v. Holiday* it was held, by Mr. Justice Kay, that a patentee may prove in bankruptcy against a person infringing the patent for the amount of the profits, the demand not being for unliquidated damages. In *Ex parte M'George, re Stevens*, it was held that to constitute the act of bankruptcy of a trader departing from his dwelling-house, the alleged bankrupt must be a trader at the time of the act of bankruptcy, and it is not enough that he was a trader when he contracted the debt. In *Lett v. Osborne*, a will leaving property among a family from Sophia downwards was interpreted to include Sophia herself. In the case of *In re Parnell, ex parte Ball*, resolutions for liquidation in the case of a debtor to the extent of £1,293, with assets nil, and a salary of £5 a week, were declared an abuse of the process, and registration was refused. In *Berry v. Keen* a receiver was appointed where the title was in dispute. In the case of *In re Weld*, the Court of Appeal sitting in lunacy laid down that a committee to whom arrears of allowance are due has no power to mortgage them for the benefit of the lunatic and his family. In *May v. Thomson* the Court of Appeal pronounced the sale of a doctor's practice and house to be one transaction not concluded unless the terms as to the practice were agreed upon. In the case of *Re Hutchinson's Trusts* a bequest, "after the decease of F. H. S. and R. S., to their children, share and share alike, and their heirs for ever," was held to give half to the representatives of F. H. S., who had no children, and half to the children of R. S. In *Williams v. Preston* the Court of Appeal held that there was jurisdiction to rehear a case when a solicitor fraudulently made admissions in the statement of defence upon which judgment went. In *Ex parte Luxon, in re Pidsley*, it was laid down that appeals in bankruptcy to the Court of Appeal, like appeals to the Chief Judge, ought not to be entered without a certificate from the bank of the payment of the deposit. In *Van Ghelueve v. Neringckx* an unregistered judgment debt was held to rank as a simple contract debt, bearing interest. In the case of *In re Moir, ex parte Moir*, the bankrupt, who had been a promoter of companies, and produced no accounts but his pass-book and counterfoils of cheques, was ordered to file a cash account for the two years preceding the bankruptcy. In the case of *In re Huggins, ex parte Huggins*, the pension of a retired colonial judge was held by the Court of Appeal to vest in his trustee in bankruptcy, subject to a part only being applied for the creditors' benefit. In the case of *In re the Quartz Hill Consolidated Gold Mining Company, ex parte Young*, it was held that an affidavit notice to use which had been given could not be withdrawn so as to avoid cross

examination. In *Brooks v. Edwards* it was held that where a person is committed for contempt for a year at most, no application by the sheriff to the Court for release is necessary.

Of the Queen's Bench cases, in *Cassaboglon v. Gibbs* it was held that a commission agent who is instructed to buy goods of a specific description on account of a merchant, and who buys and forwards goods of an inferior description, is liable to recoup the merchant the amount of the loss which he has actually sustained, and is not liable to pay the difference between the value of the goods sent and the market value of the goods ordered as if he were a vendor. In *Williams v. Mercer* it was held by the Court of Appeal that wedding presents were property "to which the wife or the husband in her right at any time during the intended overture should become entitled," within the meaning of a settlement which stated that such property if jewels should be the wife's separate property. In *Beckett & Co. v. Addyman* one of two joint sureties to a bank was held liable after the death of his co-surety. In *Brown v. The Manchester, &c., Railway Company* a contract to absolve the company from liability for delay, in consequence of a lower rate, was held reasonable. In *Capell v. The Great Western Railway Co.* it was held that the owner of land taken compulsorily under the Lands Clauses Act is entitled to the costs of the arbitration so soon as his title has been accepted, and his right is not postponed until the conveyance of the land. In *Maspens y Hermano v. Mildred & Co.* the owner of goods in Havana was held entitled to recover money paid under an insurance of the goods in London to the defendants, who had insured them on the instructions of the plaintiff's agents, the plaintiff being undisclosed as a principal to the defendants. In *Scarff v. Jardine* it was held, by the House of Lords, that a customer of a firm who supplies goods after a change in the firm, of which he has no notice, must elect after notice whether he will charge the old members of the firm or the new. In *Dunn v. Wyman* a composition deed expressed "to be void" if all creditors to a certain value did not execute it within six months, was held good, although they did not so execute it, as against a creditor who had executed it, and who, after notice that all had not executed it, claimed a dividend under it. In *Coltress Iron Company v. Black* the House of Lords held that in assessing mines for income tax no deduction will be allowed from gross profits for a sum representing capital expended on making bores and sinking pits which have become exhausted by the year's working. In *Babbage v. Colborne* "an amount to be settled in case of dispute by two valuers" agreed to be paid by the tenant for breakage on leaving a furnished house was held not recoverable until the amount had been so settled. In *Green v. Hunt* notice of action, under the Larceny Act, to a constable was held good, although there was a mistake as to one day in the date of the cause of action. In *Abbott v. Andrews* it was laid down that if the plaintiff was nonsuited on some issues and succeeded on others, the defendant, in the absence of a special order, is entitled to the costs of the issues as to which there was a nonsuit. In *Payne v. Lord Leconfield* an auctioneer entrusted with a horse for sale was held to have no implied authority from the vendor to warrant it.

Of the Probate, Divorce, and Admiralty cases the *Mac* decides, on the authority of the Court of Appeal, that a "mud-hopper barge" is a "ship" so as to give justices jurisdiction to award salvage. In *Wigney v. Wigney*, a case reported last month on another point, Sir James Hannen declined to direct that an order, extinguishing a husband's interest in the settlement, had the effect of determining a mortgage made by the husband. In *Bradley v. Bradley*, an application to cancel a deed giving an annuity to a petitioner who had obtained a divorce, on the ground that she was unchaste, was dismissed by reason of want of jurisdiction in that Division. In *Mason v. Mason* a petition for divorce brought by a husband three years after a judicial separation on the same delinquency was dismissed on

the ground of unreasonableness, although the husband had hoped his wife would return. In the *Douglas* the owners of a ship sunk in a collision, as to which notice had been given to the harbour-master, were held by the Court of Appeal not liable to the owners of another ship which ran against the wreck in the dark. In *Carpenter v. The Solicitor to the Treasury* the bond of a guarantee society was accepted as security for a receiver in a probate action. In *Horkley v. Wyatt* a legatee under a previous will was condemned in costs in an action of probate, although he gave notice that he only intended to cross-examine. In *Jones v. Jones* it was laid down that the assignee of the heir-at-law cannot be cited under 20 & 21 Vict., c. 77, in an action for the revocation of a will dealing only with real estate.

Of the Magistrates' Cases, *Regina v. Handley* decides that a member of a town council is not disqualified to hear a summons for non-payment of the borough rate. In *Hance v. Fairhurst* an attendance order made under the Education Act against a father was held not enforceable against the mother on his death. In the case of *Re Clew* it was held that the Licensing Act, which imposes fine "or" imprisonment for a sale without license, does not authorise a fine with imprisonment in default of payment.—*Law Journal*.

#### THE INCORPORATED LAW SOCIETY.

Mr. Henry T. Dix has been elected President, and Messrs. Galloway and Patriok Maxwell, Vice-Presidents of the Society for the ensuing year.

#### SUPREME COURT OF QUEENSLAND.

[From the *Queensland Law Journal*.]

##### O'KANE v. SELLHEIM AND OTHERS.

Sept. 5, 1882.—*34 Edward III., c. 1—11 Vic., No. 13.*

In an information laid under *34 Edward III., cap. 1*, the words complained of should be set out; and upon an objection being taken to the information on the above ground, the magistrates should make a distinct charge, which they should require the defendant to answer.

Unless some serious breach of the peace be threatened or likely to arise, sureties for good behaviour, as distinguished from sureties to keep the peace, should be seldom or never required by justices. *Haylock v. Sparke* commented upon.

The jurisdiction given to Justices under *34 Edward III.*, in respect to defamatory libel, is now in abeyance in Queensland by reason of the provisions of *11 Vic., No. 13* (*The Defamation Act*).

Held, however, that upon a conviction for defamatory libel, when the defendant has had an opportunity of using his statutory privilege, the judge may require sureties for good behaviour.

This was a motion to make absolute a rule nisi for a writ of prohibition against Philip Sellheim, and other justices, and William Pritchard Morgan, all of Charters Towers, prohibiting them from proceeding on an order made by the said justices on the 12th day of May, 1882, by which the appellant, Thaddeus O'Kane, editor and proprietor of the *Northern Miner* newspaper, was bound over, himself in £100, with two sureties of £50 each, to be of good behaviour, towards Morgan and other liege subjects of her Majesty for a period of twelve months; in default, to be imprisoned for twelve months.

The information under which the magistrates acted was laid under *34 Edward III., cap. 1*.

The information charged the defendant that he "did on the 9th day of May, 1882, at Charters Towers, and on other and divers occasions make use of, and has for a long time continued a course of conduct of unmannerly and quarrelsome words towards one William Pritchard Morgan, of Charters Towers, tending directly to a breach of the peace." The rule nisi was granted at the last sitting of the court, on the following grounds:—(1) that the information did not disclose that the defendant was "not of good fame" within the meaning of the statute *34 Edward III.*; (2) that the evidence did not support the motion; (3) that the evidence did not

disclose any facts authorising the justices to order the defendant to find sureties for his good behaviour; and (4) that the order does not show any such authority.

*Griffith, Q.C.*, now moved the rule absolute.

*Cooper, A.G.*, *contra*, cited *Haylock v. Sparke*, 1 E. & B., 471; on which authority he submitted that proof of a persistent writing of defamatory words was sufficient to give the justices jurisdiction under the Act, and that a greater aggregate of vile slanders against an individual than those which gave rise to this action could not be got together; the malice, he submitted, was perfectly evident, since there was evidence of nineteen distinct defamatory articles, and some of the publications contained a dozen different libels. He further contended that the offence complained of need not necessarily consist of spoken words, but that a continued course of writing was sufficient. As to the objection to the information he contended that no information was necessary in such a case, but that a person might make a complaint, and he quoted from *Haylock v. Sparke*, *supra*, p. 487. In conclusion, he submitted that there was sufficient evidence to support the information, that the justices had jurisdiction, and that there was a proper exercise of such jurisdiction.

*Griffith, Q.C.*, in reply, submitted that *Haylock v. Sparke* was the only modern case on the subject, and that that case was an authority that the justice did not exceed his jurisdiction although he showed a want of discretion in exercising his powers for such defamation as was shown in the case; but it was not an authority for the proposition that the jurisdiction to require sureties might be exercised by justices in the case of defamatory libels; that there was a great difference between scrawling about the streets and the publication of matter in a newspaper. He submitted that the court would find on examination that the authorities could all be traced back to a case in the Star Chamber, and he referred to the following authorities—*Hawkins' Pleas of the Crown*, Bk. 1, ch. 28, sections 3 & 4; vol. 1, p. 485; *Comyn's Digest Forcible Entry*, D. 26; *Burn's Justices*, vol. 6, 768—as to libellers, and he contended that the justices had no jurisdiction in such a matter as that complained of in this case.

*LILLEY, C.J.*, requested counsel to argue the point whether there was anything in our Defamation Act with which the jurisdiction exercised by the justices in this case was inconsistent.

*Griffith, Q.C.*, contended at length that the two tribunals could not stand together, and that the jurisdiction given to justices by the old Act of Edward III. was inconsistent with the statutory law of the colony.

*Cooper, A.G.*, submitted that our Defamation Act did not take away the right to proceed against the defendant for a public offence under the statute of Edward III. He referred to the 5th and 6th sections of the Vagrancy Act.

*LILLEY, C.J.*:—The applicant, O'Kane, was the printer and publisher of the *Northern Miner* newspaper on the 12th May last when he was brought before certain justices of the peace on an information by the respondent, Morgan, that he, O'Kane "did make use of, and had for a time continued a course of conduct of unmannerly and quarrelsome words tending directly to a breach of the peace." The justices upon this complaint ordered him to be of good behaviour for twelve months, and for that purpose to enter into a recognisance for that period, himself in the sum of £100, and to find two sureties of £50 each, and in default to be imprisoned until he complied with the order; such imprisonment not to exceed twelve months. The justices assumed to exercise jurisdiction under the statute 34 Edward III., cap. 1, which empowers justices to bind over to the good behaviour towards the sovereign and his people all them that be not of good fame, wherever they be found, to the intent that the people be not troubled or endangered, nor the peace diminished, &c., &c. At the June sitting of this court a rule nisi for a prohibition against the respondent and the justices proceeding on the order in the court below was granted on several grounds, the most important being the first and

third, which are these:—1st, that the information does not disclose that the defendant was not of good fame within the statute; and 2nd, that the evidence does not disclose any facts authorising the justices to order the defendant to find sureties for good behaviour. The statute of Edward does not require any information or complaint in writing, and a justice may, on view of any misconduct within that Act, require sureties for good behaviour. The information was, however, in writing, and is clearly bad (*Bradlaugh v. The Queen*, 3 Q. B. D., 607). The words complained of should have been set out. As it is, the information discloses no offence or misconduct amenable to the law. On this objection being urged, as it was, before the magistrates, they should have made a distinct charge, and required the defendant to answer it. This they could have done *instantly*, but they proceeded to hear the case upon an information which gave the defendant no knowledge of the offence or misconduct imputed to him. He had thus no opportunity to shape his defence, or to sift the evidence of the witnesses against him. A complaint or charge is the foundation of every summary proceeding before justices, whether it be required by statute or not. If required by the statute creating the offence complained of to be in any particular form or in writing, or on oath, &c., the procedure required by the Act must be followed. Then the result of the authorities is this:—If the defendant appears before the justices and the information is defective in substance or form, he may nevertheless be then and there properly charged, and the case may be heard unless an adjournment be granted by reason of such defect or irregularity. The defendant may, nevertheless, waive it either expressly or by conduct, as by allowing the hearing to proceed without objection, by cross-examining witnesses or calling evidence for his defence, &c. (*The Queen v. Hughes*, 4 Q. B. D., 614; *Blake v. Beech*, 1 Ex. D., 320). In effect the original information or complaint ceases to be practically material when "it has performed its twofold effect of informing the defendant of the nature of the complaint against him and procuring or enforcing his appearance" (*Reg. v. Paget*, 8 Q. B. D., per Field, J., 155). The information or charge may be made in the presence of the accused, and he may be then and there called upon to answer it; but it must be of an offence or misconduct known to the law. Now, in this case, the justices upheld the insufficient information and proceeded to hear and adjudicate on the case. The defendant not only insisted on his objection to the information, but urged that there was no charge. Mr. Marsland, his attorney, said, "I have nothing to answer." No charge was thereafter made against the defendant, he asked no questions, called no witnesses, made no defence, and did nothing to waive his right to a regular hearing, or to object to the irregularity of the proceeding in the court below. It is a principle of natural justice, as well as of law, that a man must know of what he is accused before he can be called upon to answer it. There was a failure to observe this elementary rule in this instance, and the applicant's objection must prevail. This would be sufficient to dispose of the case at this time, and to entitle the applicant O'Kane to our judgment.

But the third ground of the rule covers, although it does not pointedly state, another and important question—that is, whether the justices had jurisdiction to require sureties for good behaviour in this instance under the statute of Edward III. The complaint before them was, as the evidence shows, founded on a persistent course of alleged libels upon Morgan and others published by the defendant in the *Northern Miner*. It has been urged upon us that the statute is old and not adapted to the circumstances of our modern society. Our laws do not die of old age, but speak on from day to day, and cease only to be potent when the offences which they condemn no longer exist. When society reforms itself, a law may cease to be applicable to its then conditions, but it remains in the armoury of judicial weapons available for use should the need of it again arise. It is true that many of the instances of misconduct which were formerly visited under the

statute of Edward III., being merely breaches of morals or good manners, or regulated now by other legislation, are no longer dealt with under that ancient statute, and it may be laid down for the guidance of magistrates that unless some serious breach of the peace be threatened or likely to arise, sureties for *good behaviour*, as distinguished from sureties to *keep the peace*, should be seldom or never required. But the mere antiquity of the law can never be accepted as proof of its having ceased to exist. If this were so, all our ancient chartered liberties might be judicially repealed. We treat this argument more fully than it merits from intrinsic value, because even juries are now invited at times to disregard the law because it is old, or has never been put in force, a line of defence which judges invariably reprove, and the inherent immorality of which cannot be too strongly condemned as a solicitation to judicial perjury on the part of jurors. Nor can we yield, in this instance at least, to the argument that the statute would be inapplicable to the social conditions of our day. So lately as 1858, in the case of *Haylock v. Sparks*, 1 E. & B., 471, the court of Queen's Bench, composed of Lord Campbell, C.J., and Justices Wightman, Erls, and Coleridge, after a review of the authorities, gave this judgment:—"Upon the whole it appears to us that a justice of the peace has jurisdiction to require sureties for good behaviour in some cases of libel against private individuals," adding, "there was, in our opinion, a great want of discretion in requiring sureties on such an occasion." There is nothing in the state of society which, in our time, would render this mode of repressing libels obsolete. It will be observed, however, how cautiously the judgment in that case is limited to "some cases of libel." But a more important question was suggested from the bench during the argument of the present case before us—namely, Is the exercise of this jurisdiction under the statute of Edward consistent with certain new rights and privileges given to defendants by our modern legislation on the subject of defamatory libel? Down to the year 1843, when Lord Campbell's Act was passed "for the better protection of private character, and for more effectually securing the liberty of the press, and for preventing abuses in exercising the said liberty," the truth of the libel was no defence in any proceeding in the criminal jurisdiction, where it was indeed held, "the greater the truth the greater the libel," whether before justices or in the superior courts. By the last-mentioned Act (6 & 7 Vic., cap. 96), section 6, the defendant acquired the new right, under the conditions imposed by the statute, to plead in a criminal case the truth of the matters charged, and that it was for the public benefit that the said matters should be published. We copied that legislation by section 10 of our Act (11 Vic., No. 13), intitled "An Act to amend the law respecting defamatory words and libel." The purposes in view were the same as those contemplated by Lord Campbell's Act. Defamatory libels are criminal because of their tendency to provoke breaches of the peace. If the libel be true, and the publication of it be beneficial to the public, it ceases to be an object of animadversion to the criminal or civil law of this colony (sections 4 and 10 of 11 Vic., No. 13). Whether the proceeding be civil or criminal, then there is a clear right given to the defendant to plead and prove the truth of the libel and its public advantage. When once the defendant has established this position his immunity is complete; he is not required to suffer any public punishment or restraint, or to compensate any private injury. But justices of the peace have no jurisdiction to inquire into the truth or falsehood of the alleged libel (*Reg. v. Townsend*, 4 F. & F., 1039; *Reg. v. Sir Robert Carden*, 5 Q. B. D., 1). It follows that if proceedings be taken in any court in which the privilege cannot be asserted, that tribunal has not jurisdiction over the matter. The privilege goes to the root of the charge; it is as general as the law and cannot be taken away from the defendant by any choice of jurisdiction by the prosecutor. We think the words in our Act, giving the privilege "on the trial of any indict-

ment, or information for a defamatory libel, the defendant having pleaded such plea as hereinafter mentioned, the truth of the matter charged may be inquired into," must not be too narrowly or technically construed to limit, or deprive the defendant of, the new right. Whether the proceeding is by information *ex officio* before the Supreme Court, or written or oral before a justice of the peace, or whether the justice informed himself by his own view, the right to plead the truth, either in writing or orally, or to claim the benefit of this defence, seems to us to be indefeasible, except by the defendant himself. Any omission on the part of the defendant to assert it in the court below would be immaterial, as the justices have no jurisdiction to try the question upon which it depends. Indeed we are required to observe for ourselves any defect or excess of jurisdiction, and to keep inferior courts within their powers (*Reg. v. Barton*, *Sup. Ct.*, Q. L. J. Reports, Supp. 16, 8th Aug., 1879). In the case of *Haylock v. Sparks* no point was made as to the effect of Lord Campbell's Act on the jurisdiction of justices under the statute of Edward in cases of defamatory libel, and the learned judge whose name is associated with the Act, and who delivered the judgment of the court, did not at any time advert to it. The case is one which may possibly stand upon its own facts. We certainly do not think the case an authority in this colony under the circumstances disclosed in the present matter, and we think it is a decision likely to be very strictly limited by the English courts, not only to "some," but to few, if, indeed, it be hereafter applied to any cases of defamatory libel. It might have been well if the judges had shown what limitation they conceived the law had placed upon the jurisdiction of justices of the peace in cases of defamatory libel under the statute of Edward. Did the jurisdiction depend in their opinion upon the greater or less malignancy or frequency of the libel, or its more or less potent tendency to provoke a breach of the peace, to disturb the good order and peace of society? But the answer to this suggestion is that all libels are restrained because of their tendency to incite to breaches of the peace; this is the reason of their being treated penally, or criminally, and the gravamen of the misconduct for which sureties are required. We do not think that Fox's Act, which preceded Lord Campbell's, made any change or limitation of the justices' jurisdiction. They had to decide the question of libel or no libel before that statute was passed, and the only effect of the Act is to provide that upon the trial of an indictment or information for making or publishing any libel the jury impanelled may give their verdict upon the whole matter in issue, and shall not be required by the court or judge to find the defendant guilty, merely on the proof of the publication by such defendant of the paper charged to be a libel. The statute merely removes the responsibility of deciding the ultimate issue of "libel or no libel" from the presiding judge to the jury, who are the judges who decide questions of fact under our law, where a trial takes place before them. The statute makes a new division of responsibility, but not a change of an old jurisdiction, or the creation of a new right inconsistent with its exercise. We are aware that some text writers incline to the opinion that Fox's Act limited the jurisdiction of justices to take sureties in cases of libel. We cannot agree with them. They do not observe the effect of Lord Campbell's Act on this new question of jurisdiction. Our statute following in point of time Lord Campbell's, is essentially different from Fox's Act. It creates, as we have seen, a new right inconsistent with the old jurisdiction of the justices, and not cognizable by them. It would seem strange that the Legislature should render a defendant punishable for a publication beneficial to the public if he be charged with it in any court, or before any judge except a justice of the peace, and liable to find heavy sureties or to be imprisoned for default if brought before such justice. It seems the more reasonable interpretation of the law that, inasmuch as the truth is a defence in every case of defamatory libel, there is not any case of the kind cognizable before a tribunal which has no jurisdiction to

take evidence upon the matter which is exculpatory if true, and that it must be regarded as the law of this colony that the jurisdiction of justices on a criminal charge in respect of defamatory libel is confined to sending it for trial before the court which has judicial cognizance of it, and where it may be fully and finally heard. We attach no importance to the sentimental argument that the jurisdiction of the justices over libels seems to have been first exercised in the Star Chamber. That court was suppressed for its exercise of arbitrary authority and for its excessive punishments, but the good and salutary portion of its criminal jurisdiction reverted to, or was absorbed by, and has since been administered in, the Court of Queen's Bench, whose jurisdiction we exercise here. Upon a conviction for defamatory libel, when the defendant has had an opportunity of using his statutory privilege, the judge may require sureties for good behaviour; there is, therefore, ample power to repress persistent or dangerous defamatory libels. We assume, as we think we are bound to do, these being printed libels, that the defendant has complied with the laws relating to licensed printing; that he is, in fact, lawfully pursuing his calling, and is entitled to the privileges and advantages of our statute (section 15). Our judgment in this case is restricted to instances of defamatory libel. Upon the whole, then, we think, that so long as our Act 11 Vict., No. 18, is in force, the jurisdiction of justices of the peace under the statute of Edward, in respect of defamatory libels, must be regarded as at least in abeyance, and the rule for a prohibition in this case must be made absolute. Looking at all the circumstances, however, we give the applicant O'Kane no costs; and considering the difficult nature of the question for decision, and believing that the justices and Morgan *bona fide* thought there was jurisdiction to deal with the case, we restrain the applicant from commencing any action against the magistrates or the respondent Morgan in respect of the proceedings below (14 Vict., c. 43, section 12).

#### THE SETTLED LAND ACT.—VI.

(Continued from page 591, ante.)

##### Streets and Open Spaces (Sect. 16).

The statutory power does not enable dedication of any land for public building, church, chapel, or school (compare David, iii. 1092); also land can only be given for the general benefit of the residents of the settled land. This will doubtless be sufficient in most settlements, but sometimes in large properties it is thought desirable to enable limited owners to make gifts of land generally for certain public purposes, placing a limit on the amount to be given, either on each donation or on the total. For forms see David, iii. 1211; Prid. ii. 315.

By the Places of Worship Sites Acts, 1873, 1882 (36 & 37 Vict., c. 50; 45 & 46 Vict., c. 21), a tenant for life can with concurrence of persons next entitled in remainder, give or sell land, not exceeding an acre, for site for church or other place of Divine worship, or for minister's residence, or for a burial place. Any number of sites may be so given, but none must exceed one acre. Sect. 2 of the latter Act provides for case where the remainderman is unborn, unascertained, &c. See *Law Times*, Sept. 2, 1882, page 306; and *Re Marquis of Salisbury* (34 L. T. Rep. N. S. 5; 2 Ch. Div. 29). There are provisions for reverter in case the land is used for purposes other than those for which it is given.

By the School Sites Act, 1841 (4 & 5 Vict., c. 36), s. 2, tenant for life may give an acre of land for school or residence for master or mistress, or otherwise for education of the poor; but the person next entitled in remainder in fee or tail must join, and if the land ceases to be used for such educational purposes it reverts. Any number of such grants may be made, but only one in each parish (sect. 9, and 12 & 13 Vict., c. 49, s. 3). Parish means ecclesiastical district (14 & 15 Vic., c. 24). See Chitty's Stat. ii. 789-798.

We have not here attempted to summarise these

Acts: our purpose is only to call the attention of the draftsman to them, as they will in some cases render additional powers needless, and in others afford an easy mode of giving such additional powers. Thus a settlor may give to every person being seized or entitled for life to the property within the meaning of the Places of Worship Sites Acts, and having the beneficial interest therein, and being in possession for the time being, and of full age, power to make such conveyances by way of gift, sale, or exchange as therein mentioned, without the consent of the remainderman or any other person. In drafting clauses of this description it must be remembered that tenant for life under the S. L. Act has a very wide meaning, and that, if the phrase is used vaguely in a settlement, it may be construed as in the Act (see sect. 57), although the phrase is really intended to be used either in its natural sense, or in the more restricted sense in which it is used in some other statute. Also in giving powers of donation to "persons having powers of tenant for life," the trustees of infant tenant for life should be expressly included or excluded. Doubtless sect. 60 includes them, yet where the power to be conferred is of donation, and not of administration, a doubt might be raised. In fact, in many cases it will be well to specify the trustees. The committee of a lunatic can only act with an order of the court (sect. 62), so he is of less consequence.

##### Mortgage (Sect. 18).

Tenant for life may raise money for enfranchisement, or equality of exchange, or partition, by mortgage, &c.

The enfranchisement referred to is that of lands of which the copyhold interest belongs to the settlement. Capital money may be spent for this purpose (sect. 21 (v.)) Compare David, iii. 1022.

The conveyance is provided for by sect. 20. Notice must be given to the trustees (sect. 45). Contracts for mortgage bind successors (sect. 81). It would seem from the words "by creation of a term of years . . . or otherwise," in sect. 18, that the money may be raised by a charge, and this is confirmed by the power to create charges in sect. 20.

No provision is made for providing money for the renewal of leases; where the settled property comprises such leasehold interests provisions should be inserted. See form, David, 1181. It will seldom be worth while to insert any such provision on the mere chance that renewable leaseholds may be purchased; but see form David, iii. 1022. As to trusts for renewal, see *Keck v. Sandford* (1 L. C. Eq. 58); David, iii. 605; and as to contribution between tenant for life and remainderman, see *ib.* 610-624; Seton, 1276; Tudor L. C. Conv. 90. 23 & 24 Vict., c. 145, s. 8, which gave power to trustees to renew, and, in some cases, imposed an obligation upon them to renew, is repealed; see schedule to S. L. Act, and sect. 64, which contains a wide saving clause.

##### Undivided Share (Sect. 19).

The statutory tenant for life of an undivided share may act either alone under sect. 2 (6) with respect to his own share, or with any person having power of disposition over any other undivided share. Thus he may, if he possesses a half share, either sell his half, or join with the other person in selling the whole. The other person may be absolute owner or statutory tenant for life, &c. The partition power will be exceedingly useful.

##### Conveyance (Sect. 20).

This empowers tenant for life to convey so as to give effect to the dispositions sanctioned by the Act. The deed will pass the land free from the limitations, powers, and provisions, estates, &c., of the settlement; with specified exceptions (sect. 20 (2)); and see sect. 22). The same sub-section declares what estates and interests will have priority to such conveyance, and these should be carefully noticed: (1) Estates, &c., having priority to the settlement; (2) Estates and charges, &c., for money actually raised at the date of the deed; and (3) Leases, easements, &c., are all protected. Secondly, that powers of jointuring and giving portions, and terms

to secure them, will be overridden, but not mortgages or charges for such purposes when the money has been actually raised. This last is satisfactory. See David. iii. 598, 1018; Prid. ii. 817.

The phrase "money actually raised" occurs again in sect. 24, but there "and remaining unpaid" is added.

Easements may be created and conveyed (sect. 20 (1)). As to difficulties in connexion with easements see David. iii. 518, note, and elaborate form *ib.* 1218. And see now as to conveyance of easements by way of use, C. A. sect. 62. For an old form of conveyance of easement see David. ii. 268. For a new form see O'avanagh, 578. As to law of easement, see *Surrey v. Piggott*, Tudor L. C. Conv. 166.

#### Title Deeds.

As a general rule legal tenant for life has the custody of the title deeds, except he has been guilty of misconduct, so that the safety of the deeds is endangered, or it becomes necessary for the court to have possession so as to administer the property: (Tudor L. C. Conv., 3rd edit. 88; Seton, 1266; *Leathes v. Leathes*, 36 L. T. Rep. N. S. 646; 5 Ch. Div. 221.)

As to equitable tenant for life see *Lady Langdale v. Briggs* (2 Jur. N. S. 982; 26 L. J. 27, Ch.; 8 De G. M. & G. 391; 2 Sm. & G. 225). A dowress is not entitled to their custody: (Co. Litt. 32 *b.*) When the statutory tenant for life has not the custody of the deeds no doubt the trustees will be bound to produce them for investigation on any purchase, and to hand over those to which the purchaser is entitled (see V. & P. Act, 1874, s. 2 (5) on completion.

As to equitable mortgage by deposit of deeds see *Russel v. Russel* (1 L. C. Eq. 674, 678); and as to constructive notice of claim in consequence of non-production of deeds, see *Le Neve v. Le Neve* (2 L. C. Eq. 85, 58), and *Agra Bank v. Barry* (L. Rep. 7 H. 185). This last was a case under the Irish Registration Act. See now as to constructive notice, C. A. Am., s. 3.

(To be continued.)

#### ADULTERATION IN THE OLDEN TIME.

As early as the reign of Edward the Confessor, we find it recorded in Domesday Book that in the city of Chester a knavish brewer, "*malam cerevisiam faciens, in cathedra ponebatur stercoaria*"—in other words, the offender was taken round the town in the cart in which the refuse of the place had been collected, and to this degradation was often added corporal chastisement. In many towns in the sixteenth century, we find "ale-tasters," whose duty it was to inspect the beer. In 1529, for example, the Mayor of Guildford ordered that the brewers make a good useful ale, and that they sell none until it be tasted by the "ale-taster." The ale was not only tasted, but some of it was spilt on a wooden seat, and on the wet place the taster sat, attired in leathern breeches, then common enough. If sugar had been added to the beer, the taster became so adherent, that rising was difficult; but if sugar had not been added, it was then considered that the dried extract had no adhesive property. A less coarse, but not dissimilar, method was also applied by the earlier inspectors to test the purity of milk. The frauds of the vintners or wine sellers attracted some share of public attention in the sixteenth and seventeenth centuries, as shown by municipal records, fugitive tracts and broadsides. In August, 1558, a certain Paul Barnardo brought into the port of London some wine, and there is extant an order in council directing the Lord Mayor to find five or six vintners to rack and draw off the said pipes of wine into another vessel, and to certify what drugs or ingredients they found in the said wine or cask to sophisticate the same. At a later date the records of the Common Council contain a certificate from the Lord Mayor to the lords of the council, stating the wines of a certain "Peter Van Payne" had been drawn off in his presence, and that in eight of the pipes had been found bundles of weeds, in four others some quantities of sulphur, in another a piece of mace, and in all of them a kind of

gravel mixture sticking to the casks; that they were conceived to be unwholesome and of a nature similar to others formerly condemned and destroyed. In "The Search after Claret," by Richard Ames, a thin quarto, the last leaf is occupied by the following advertisement:—"If any vintner, wine-cooper, &c., between Whitechapel and Westminster Abbey, have some tuns or hogheads of old rich unadulterated claret; and will sell it as the law directs for sixpence per quart, this is to give notice, that he shall have more customers than half his profession, and his house be as full from morning to night as a conventicle or Westminster Hall the first day of term." Later, the vintners became more scientific in their operations. Addison (in the *Tatler*, No. 181, 1710) alluded to a certain fraternity of chemical operators who wrought underground in holes, caverns, and dark retirements to conceal their mysteries from the eyes and observations of mankind. "These subtle philosophers are daily employed in the transmutation of liquors, and by the power of magical drugs and incantations raise under the streets of London the choicest products of the hills and valleys of France; they squeeze Bordeaux out of the sloe, and draw champagne from an apple."—*County Brewer's Gazette*.

#### ADMISSION OF A SOLICITOR.

Mr. Thomas Flynn, has been admitted a Solicitor of the Court of Judicature. Mr. Flynn was for many years the Conducting Clerk of Mr. H. J. P. West, Solicitor, President of the Incorporated Law Society of Ireland, to whom he served his apprenticeship. He was awarded a silver medal at the recent Final Examination.

#### TEXT-BOOK ADDENDA.

[From the *Law Journal*.]

*Shelford on Railways* (4th Edition), 307.

Where, by reason of the misdirection of the under-sheriff, an inquiry under the Lands Clauses Act becomes abortive and is quashed, the claimant is entitled to the costs in respect of that inquiry as well as to those of the subsequent inquiry in which he obtained compensation (*Regina v. North London Railway Company*, 51 Law J. Rep. Q. B. 241).

*Benjamin on Sale* (2nd Edition), 9.

The purchaser of cows in market overt held not entitled to their keep between the purchase and the conviction of the thief which revealed the property in the true owner (*Walker v. Matthews*, 51 Law J. Rep. Q. B. 248).

#### REVIEWS.

*A. B. C. Guide to the Arrears Act, 1882. With the Act, Rules, and Forms annexed. Including all the New Rules and Forms. For the Use of Irish Landlords and Tenants.* By GEORGE FORTRELL, Jun., Solicitor. Fifth Edition. Corrected and Enlarged. Dublin: M. H. Gill & Son, 50 Upper Sackville-street. 1882.

MR. FORTRELL'S "Guide to the Arrears" of Rent "Act, 1882" is certainly as clear as "A.B.C."—the very reverse of the Act itself; and its conspicuous success—denoted by the issue of a fifth edition already—has been eminently deserved. Though so unpretentiously presented, merely "for the use of Irish landlords and tenants," their legal advisers too will find it extremely useful and suggestive. But, it is a pity that the ex-solicitor to the Land Commission has not been at the pains of referring to the various decisions upon the Act—so many of which are now reported (exclusively in this Journal). He has been contented to present merely his own views for the benefit of landlords and tenants, while their legal advisers, whether rightly or wrongly, may require some other resource. However, in the present issue he has added a chapter explaining the procedure to be adopted by landlords in order to

obtain payment of moneys put to their credit by the Land Commission, when sanctioning the advances in discharge of the arrears; and this must prove not only decidedly useful to landlords, but to solicitors. He has, also, included all the new Rules issued by the Land Commission, and has, in fact, made his little manual as complete as possible within its scope. We notice in particular, among the many Forms given, one of a Receipt to meet the difficulty which arises when the landlord and tenant cannot agree as to the amount payable in respect of the year 1881. And indeed, throughout, as now corrected and enlarged, Mr. Fottrell's Guide is most creditable to its author.

*The Solicitors' Diary, Almanac and Legal Directory, 1883, &c.* Revised by H. S. BOND, Esq., of the Solicitors' Department, Inland Revenue Office, Somerset House. Thirty-ninth Year of Publication. London: Published by the Proprietors, Waterlow and Sons, Limited, 95 and 96 London-wall.

This carefully compiled and exhaustive Diary, which has reached its thirty-ninth year of publication, contains a vast amount of useful information concerning both branches of the Legal Profession, not alone in England and Wales, but in this country. It also contains much that will be useful to the general public. On the whole, it will be found most valuable as a book of reference to those requiring information regarding Legal and Public Departments in the United Kingdom.

### BOOKS RECEIVED.

*The Law relating to the Compulsory Purchase and Sale of Lands in Ireland, under the Provisions of the Irish Railways and Lands Clauses Acts: being the Full Text of the various Acts; with an Introduction, and Copious Notes of the Practice in Ireland, and of Decided Cases; and an Appendix of Forms.* By WILLIAM SUFFERN, LL.B., Barrister-at-Law. Dublin: E. Ponsonby, 116 Grafton-street. 1882.

### LAW STUDENTS' JOURNAL.

THE INCORPORATED LAW SOCIETY  
OF IRELAND.

HILARY SITTINGS, 1883.

#### NOTICE.

The PRELIMINARY EXAMINATION of Candidates for Apprenticeship will be held at the Solicitors' Hall, Four Courts, Dublin, on Thursday and Friday, the 4th and 5th days of January, 1883, at *Eleven o'clock*.

N.B.—All Papers to be lodged on or before *Tuesday, 19th of December, 1882*.

The FINAL EXAMINATION of Candidates seeking admission as Solicitors will be held at the same place, on Monday and Tuesday, the 8th and 9th days of January, 1883, at the same hour.

By order of the Council,  
JOHN H. GODDARD, *Secretary*.

Solicitors' Hall, Four Courts, Dublin,

N.B.—The decision of the Court of Examiners will be announced on Wednesday, the 26th of January, 1883, at Three o'clock, p.m.

Candidates residing in the County need not remain in town to hear decision, but can learn same from the Dublin Morning Papers of the day following the announcement.

NECESSITY knows no law, and that's where necessity resembles a good many lawyers.

### COURT PAPERS.

#### LAND JUDGES.

Sittings for next Week so far as same are appointed.  
Before the Rt. Hon. JUDGE FLANAGAN.

#### MONDAY.

IN CHAMBER.—R. Dawson, explain delay.  
IN COURT.—Trustees Cummins, as to order of 27th June.

#### TUESDAY.

IN COURT.—M. F. O'Flaherty, receiver.—G. B. C. Simpson, objections.

#### WEDNESDAY.

Before EXAMINER (Mr. Kennedy).  
J. Trueman, vouch.—M. Linane, rental.

#### THURSDAY.

IN COURT.—Sir J. C. FitzGerald, to sell discharge of jointure.—G. Paine, final schedule.—J. Chadwick, objections.

Before EXAMINER (Mr. Kennedy).

J. Elliott, vouch.

#### FRIDAY.

SALES IN COURT.

T. BARRY, - - - - - 1 lot.

Before EXAMINER (Mr. Kennedy).

J. Hassett, rental.

Before the Rt. Hon. JUDGE ORMSBY.

#### MONDAY.

IN CHAMBER.—E. M. Callaghan, delay.—M. Ferguson, payment.

IN COURT.—B. Kellett, partition.—F. L. Comyn, adjourned motion.—Assignees Goggin, do.—W. Thom, do.—H. Leader, as to costs.—J. Forde, objection.

#### WEDNESDAY.

Before EXAMINER (Mr. M'Donnell).

Scanlan v. Brunton, adjudication.—Cork Harbour Docks, from 6th.—Rev. A. W. West, vouch.—P. H. Hora, do.—L. O. Weir, rental.

#### THURSDAY.

IN CHAMBER.—T. M'C. Collins, as to biddings.—J. Willens, explain delay.

IN COURT.—J. Fenton, final schedule.—R. Swanton, adjourned motion.—J. Bourke, receiver.

#### FRIDAY.

Before EXAMINER (Mr. M'Donnell).

P. Callan, vouch.

### COURT OF BANKRUPTCY.

#### ADJUDICATIONS IN BANKRUPTCY.

*The dates of Adjudications are first given, the Sittings follow in Italics.*

Deacon, John Gillespie, of Barrack-street, in the city of Armagh, spirit grocer. November 28; *Friday, December 22, and Tuesday, January 9, 1883.* E. Best and H. F. Leachman, solrs.

English, Laurence, of No. 18 Vincent-street, in the city of Dublin, sea captain. November 21; *Friday, December 22, and Tuesday, January 9, 1883.* James Goff, solr.

West, George, of South Anne-street, in the city of Dublin, and Vergemount, Clonskeagh, in the county of Dublin, theatre proprietor. November 27; *Friday, December 22, and Tuesday, January 9, 1883.* James Goff, solr.



DUBLIN STOCK AND SHARE LIST.

DESCRIPTION OF STOCK	NOVEMBER							
	Sat. 2	Mon. 4	Tues. 5	Wed. 6	Thur. 7	Fri. 8		
*Paid Government.								
3 p c Consols ..	101	101	101	101	101	101	101	101
3 p c Redwood ..	101	101	101	101	101	101	101	101
3 1/2 p c Stock ..	100 1/2	100 1/2	100 1/2	100 1/2	100 1/2	100 1/2	100 1/2	100 1/2
New 3 p c Stock ..	100 1/2	100 1/2	100 1/2	100 1/2	100 1/2	100 1/2	100 1/2	100 1/2
INDIA STOCK.								
4 p c Oct. 1883 Tristia, at ..	103	103 1/2	103 1/2	103	103 1/2	103 1/2	103 1/2	103 1/2
3 1/2 p c Jan. 1881 Br. of Irel. ..	103	103 1/2	103 1/2	103	103 1/2	103 1/2	103 1/2	103 1/2
BANKS.								
100 Bank of Ireland ..	324	324	324	324 1/2	324 1/2	324 1/2	324 1/2	324 1/2
25 Hibernian Banking Co ..	29 1/2	29 1/2	29 1/2	29 1/2	29 1/2	29 1/2	29 1/2	29 1/2
20 London and County (Lid.) ..	80 1/2	80 1/2	80 1/2	80 1/2	80 1/2	80 1/2	80 1/2	80 1/2
15 London Joint Stock ..	80 1/2	80 1/2	80 1/2	80 1/2	80 1/2	80 1/2	80 1/2	80 1/2
Do. New Script ..	80 1/2	80 1/2	80 1/2	80 1/2	80 1/2	80 1/2	80 1/2	80 1/2
20 London and W. Minister, Ltd ..	7 1/2	7 1/2	7 1/2	7 1/2	7 1/2	7 1/2	7 1/2	7 1/2
10 Do. New ..	7 1/2	7 1/2	7 1/2	7 1/2	7 1/2	7 1/2	7 1/2	7 1/2
3 1/2 Munster Bank (Limited) ..	7	7	7	7	7	7	7	7
Nat. Prov. of England, Hm. ..	24	24	24	24	24 1/2	24 1/2	24 1/2	24 1/2
National Bank (Limited) ..	24	24	24	24	24 1/2	24 1/2	24 1/2	24 1/2
National of Liverpool (Lid.) ..	27 1/2	27 1/2	27 1/2	27 1/2	27 1/2	27 1/2	27 1/2	27 1/2
Provincial Bank ..	29 1/2	29 1/2	29 1/2	29 1/2	29 1/2	29 1/2	29 1/2	29 1/2
10 Royal Bank ..	10 1/2	10 1/2	10 1/2	10 1/2	10 1/2	10 1/2	10 1/2	10 1/2
2 1/2 Ulster Banking Co. ..	10 1/2	10 1/2	10 1/2	10 1/2	10 1/2	10 1/2	10 1/2	10 1/2
Steam.								
50 British & Irish ..	50	50	50	50	50	50	50	50
100 City of Dublin ..	102 1/2	102 1/2	102 1/2	102 1/2	102 1/2	102 1/2	102 1/2	102 1/2
50 Dublin and Glasgow ..	102 1/2	102 1/2	102 1/2	102 1/2	102 1/2	102 1/2	102 1/2	102 1/2
50 Dublin & Liverpool Steam ..	58	58	58	58	58	58	58	58
Ship Building Co.								
Miscellaneous.								
4 Arnott & Co., Limited ..	6	6	6	6	6	6	6	6
7 1/2 Dub. Drapery Whouse, Ltd. ..	24	24	24	24	24	24	24	24
Tramways.								
10 Belfast Trams ..	8	8	8	8	8	8	8	8
10 L'pl Un'd Tram & Bus'ns ..	12	12	12	12	12	12	12	12
Railways.								
10 Cork and Macroom ..	119 1/2	119 1/2	119 1/2	119 1/2	119 1/2	119 1/2	119 1/2	119 1/2
100 Great Northern (Ireland) ..	119 1/2	119 1/2	119 1/2	119 1/2	119 1/2	119 1/2	119 1/2	119 1/2
100 St. Southern and Western ..	115 1/2	115 1/2	115 1/2	115 1/2	115 1/2	115 1/2	115 1/2	115 1/2
100 Midland Gt. Western ..	87 1/2	87 1/2	87 1/2	87 1/2	87 1/2	87 1/2	87 1/2	87 1/2
50 Waterford and Limerick ..	87 1/2	87 1/2	87 1/2	87 1/2	87 1/2	87 1/2	87 1/2	87 1/2
Railway Preference.								
10 Cork and Macroom 5 p c ..	6	6	6	6	6	6	6	6
100 Gt. N'th'n (Irid) 4 1/2 p c ..	106 1/2	106 1/2	106 1/2	106 1/2	106 1/2	106 1/2	106 1/2	106 1/2
100 Do., guaranteed 4 1/2 p c ..	106 1/2	106 1/2	106 1/2	106 1/2	106 1/2	106 1/2	106 1/2	106 1/2
100 Do., 3 1/2 p c ..	88 1/2	88 1/2	88 1/2	88 1/2	88 1/2	88 1/2	88 1/2	88 1/2
100 Gt. South'n & West'n 4 p c ..	108	108	108	108	108	108	108	108
Leased at Fixed Rentals.								
100 Dublin and Kingstown ..	99	99	99	99	99	99	99	99
100 Gt. Northern and Western ..	99	99	99	99	99	99	99	99
100 Londonderry & Keshelille ..	99	99	99	99	99	99	99	99
100 Do., Prof. B 5 p c ..	99	99	99	99	99	99	99	99
Debenture Stocks.								
Belfast & N'th'n Cos. 4 p c ..	105	105	105	105	105	105	105	105
Cork, B. & Passage 4 p c ..	99	99	99	99	99	99	99	99
Dublin & Meath 4 p c ..	104 1/2	104 1/2	104 1/2	104 1/2	104 1/2	104 1/2	104 1/2	104 1/2
Dublin & Wicklow 4 p c ..	105 1/2	105 1/2	105 1/2	105 1/2	105 1/2	105 1/2	105 1/2	105 1/2
Gt. Northern (Ireland) 4 p c ..	104 1/2	104 1/2	104 1/2	104 1/2	104 1/2	104 1/2	104 1/2	104 1/2
Do., 4 1/2 p c ..	104 1/2	104 1/2	104 1/2	104 1/2	104 1/2	104 1/2	104 1/2	104 1/2
Gt. N'th'n & West'n 4 1/2 p c ..	110	110	110	110	110	110	110	110
Gt. South'n & West'n 4 p c ..	110	110	110	110	110	110	110	110
Midland Gt. West'n 4 p c ..	110	110	110	110	110	110	110	110
Do., 4 1/2 p c ..	110	110	110	110	110	110	110	110
Waterford & Limerick 4 p c ..	108	108	108	108	108	108	108	108
Do., 4 1/2 p c ..	108	108	108	108	108	108	108	108
Miscellaneous Debent.								
Alliance & Cons. Gap, 4 p c ..	99	99	99	99	99	99	99	99
Ballast Office Deb., £22 6s 2d, 4 p c ..	93 1/2	93 1/2	93 1/2	93 1/2	93 1/2	93 1/2	93 1/2	93 1/2
City Deb. of £22 6s 2d, 4 p c ..	93 1/2	93 1/2	93 1/2	93 1/2	93 1/2	93 1/2	93 1/2	93 1/2
Dub. & Glas. S. P. Co. (1887) 5 p c ..	100 1/2	100 1/2	100 1/2	100 1/2	100 1/2	100 1/2	100 1/2	100 1/2
Do. (1888), 6 p c ..	101	101	101	101	101	101	101	101
Dub. United Tramways, 10 yrs. ..	100	100	100	100	100	100	100	100
Pipe Water Old, £22 6s, 2d ..	99 1/2	99 1/2	99 1/2	99 1/2	99 1/2	99 1/2	99 1/2	99 1/2
Do. New, £100 ..	99 1/2	99 1/2	99 1/2	99 1/2	99 1/2	99 1/2	99 1/2	99 1/2

\* Shares not fully paid up are given in Italics. † x d  
 Bank Rate—1/2 Discount—4 per cent., 17th August, 1882  
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BIRTHS, MARRIAGES, AND DEATHS.

**BIRTHS.**  
 De COURCY—17th ult., at George-street, Limerick, the wife of M. J. DeCourcy, Esq., solicitor, City Coroner, of a son.

**MARRIAGES.**  
 ANDERSON and CONGANO—December 6, at St. Mary's Cathedral, Tuam, by the Hon. and Right Rev. the Lord Bishop of Tuam, assisted by the Rev. J. C. Hill, G. Mortimer, Senior Curate St. Mary's, youngest son of the late Alexander Anderson, Woodview, Limerick, to Mary, fourth daughter of Edmund Conganon, Esq., Tuam and Waterloo.

SWIFT and ORTON—October 11, at the residence of the bride's father, Wellington-street, Ontario, Canada, by the Rev. George Ballard, Edward H. Swift, youngest son of E. B. Swift, Esq., solicitor, Dublin, to Emma Catherine, eldest daughter of John Orton, Esq., General Manager of the Portage, Westbourne and North-Western R. R.

**DEATHS.**  
 CURTIS—November 23, at North Great George's-street, John James, the dearly-beloved son of Stephen P. Curtis, Esq., barrister-at-law, aged 19 years.

LAWLESS—December 3, at Rathgar-road, Adelaide Mary, third daughter of the late Richard D. Lawless, Esq., solicitor.

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PUBLIC NOTICES:

ARREARS OF RENT (IRELAND) ACT, 1882.

THURSDAY THE 7TH DAY OF DECEMBER, 1882.

It is this day ordered by the Irish Land Commission that, from and after this date, the following Rules shall be in force and take effect in lieu of Rules 8, 9, 16, 17, and 18 of the Rules issued upon the 21st day of August, 1882, which last mentioned Rules shall, as regards all future proceedings from and after this day, be rescinded:—

*Procedure in the case of Joint Applications in Form B or C.*

1. Upon receipt of an application pursuant to Form B or C, duly verified, the same shall be transmitted to the Treasury for inspection. No order for payment to or for the benefit of the landlord of such sum as he shall be entitled to pursuant to the statute shall be made until one fortnight after the date of such transmission to the Treasury, unless the Treasury shall within such fortnight give notice to the Commissioners that the Treasury does not require the case to be investigated. Either after the lapse of such fortnight (if the Treasury do not in the meantime serve a notice, which may be in Form D, requiring the case to be investigated) or immediately after the service, within such fortnight, of a notice that the Treasury does not require the case to be investigated, the Land Commissioners may make an Absolute Order for payment of such Order as may appear just.

2. Notice of the Absolute Order for payment to or for the benefit of the landlord of the sum payable to him pursuant to the statute (which notice may be in Form J) shall be transmitted to the landlord through the post, and a certificate (which may be in Form K) shall be transmitted to the tenant through the post.

*Procedure in the case of separate Applications in Form E or F.*

3. On return of the Investigator's Report, a Conditional Order for payment to or for the benefit of the landlord, of such sum as he shall be entitled to pursuant to the statute, or such other Conditional Order as the Land Commission may deem just, shall be made, and in case no notice showing cause against such Conditional Order, shall in the meantime be given, such Order shall become absolute at the expiration of one week after the date of the transmission of a notice of the making of such Order through the post pursuant to the next succeeding rules.

4. Where the Conditional Order is for payment to or for the benefit of the landlord, of the sum payable to him pursuant to the statute, notice of same (which may be in Form J) shall be transmitted to the landlord through the post, and when the Conditional Order becomes absolute, a certificate (which may be in Form K), shall be transmitted through the post to the tenant.

5. Where the Conditional Order disallows the application of the applicant or applicants under the Act, notice of the same shall be sent to him or them through the post.

6. Notice of motion of showing cause against making the Conditional Order absolute may be in Form L, and shall in every case specify the grounds of objection, and shall be heard by the Land Commission or any member or members thereof; and such Order shall be made thereon, either allowing the cause and setting aside the Order, or disallowing the cause and making the Conditional Order absolute, or delegating the case to be heard and decided by a Leg-1 Assistant Commissioner, or remitting the same for further investigation and report, as shall be deemed just.

[SEAL OF THE  
 IRISH LAND COMMISSION.]

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# THE IRISH LAW TIMES AND SOLICITORS' JOURNAL.

VOL. XVI.

SATURDAY, DECEMBER 16, 1882.

No. 829

## CRIMINAL ATTEMPTS.—IV.

In the recent American case of *Stabler v. Commonwealth* (11 Central L. J. 404), it appeared that Stabler, having a grievance against Waring, solicited Neyer to put poison in Waring's spring, so that the latter would be poisoned, and offered Neyer a reward for so doing. Neyer refused, and handed back the poison, which Stabler had given him. While they were conversing, Neyer's coat was off; and he found the poison in the pocket, some days afterwards. He never had any intention of administering the poison, did nothing towards it, and had no other conversation with Stabler. Stabler was convicted, on the first count, for a felonious attempt to administer poison to Waring, with intent to commit murder; and, on the sixth count, for wickedly soliciting Neyer to administer poison to Waring. Error was assigned as to the conviction on the first count; but no error was alleged as to the conviction on the sixth count—the court, however, observing that the conviction thereon was right, and that the conduct of Stabler undoubtedly showed an offence for which an indictment under that count would lie, without any further act being committed. Now, the first count—for a felonious attempt to administer poison—was framed under s. 82 of an Act of 1860, which substantially corresponded with the English statute 1 Vic., c. 85, s. 3, under which *R. v. Lewis* and *R. v. St. George* (*ubi supra*) were decided; while in *R. v. Williams* (1 C. & K. 589, 1 Den. C. C. 39) it was held that the delivery of poison to an agent, with directions to him to cause it to be administered to another, was insufficient to establish an attempt to murder. "The Act," said Mercier, J., delivering the judgment of the Supreme Court of Pennsylvania (Oct. 1880), "recognises a distinction between intent and attempt. The former indicates the purpose existing in the mind, the latter, an act to be committed. Merely soliciting one to do an act is not an attempt to do that act: *R. v. Butler*, 6 C. & P. 368; *Smith v. Commonwealth*, 54 Pa. St. 209." And after referring to the English cases on 1 Vic., c. 85, s. 3, he concluded: "We think all that occurred at the interview with the witness and the legal inference deducible therefrom, followed by no other act, are not sufficient to justify a conviction for an attempt to commit the felony as charged. The act proved did not approximate sufficiently near to the commission of murder, to establish an attempt to commit it, within the meaning of the statute." In *People v. Bush* (4 Hill, 133), however, a conviction was sustained for an attempt to commit a felony, where the act proved was as remote from the crime intended to be perpetrated, as the act proved in *Stabler v. Commonwealth*; but, that ruling rested on a statute of New York, containing the additional words, "and in such attempt shall do any act toward the commission of such offence."

*Stabler v. Commonwealth*, certainly, is a strong case as exemplifying how necessary are approximate overt acts (*et cf.* the Scottish case of *Hinchy*, 4 Irvine, 561), in order to constitute an attempt; holding that the putting of the poison by Stabler in Neyer's pocket, even were it done with the expectation, belief, and intent that it was to be used to poison Waring, would not be an act sufficient to constitute an attempt to murder. Yet, it does little more than follow the

English decisions we have cited. Others might be mentioned, as illustrating how nice are the distinctions often observed on the subject. A procurer indecent prints with intent to publish them, and has attempted (*semble*) to publish indecent prints: *Dugdale v. R.*, 1 E. & B. 435, Dear. C. C. 64; but A, having in his possession indecent prints, and forming an intention to publish them, has not attempted to publish indecent prints: *per Bramwell, B., R. v. M'Pherson*, D. & B. 201. A, going to Birmingham to buy dies to make bad money, has not attempted to make bad money: *per Jervis, C.J., R. v. Roberts*, Dear. C. C. 539, 25 L. J. M. C. 17; but A, procuring dies for the purpose of coining bad money, has done an act in furtherance of the criminal purpose sufficiently proximate to the offence, and is guilty: s. c.; yet, not so is A, who buys a box of matches for setting a stack of corn on fire: *R. v. Taylor*, 1 F. & F. 511. A writes and sends to B a letter, inciting B to commit a felony, which B does not read, and A has attempted to incite B to commit a felony: *R. v. Ransford, ubi supra*; but A soliciting B to commit murder by poison, and putting poison in his pocket, unknown to him, for the purpose, has not attempted to commit murder by poison: *Stabler v. Commonwealth, R. v. Williams, ubi supra*. Yet, it is from acts of such a character that the requisite intention has to be deduced or implied—unless, indeed, when evidence happens to be admissible, besides, of something else done before the commission of the offence (as that the prisoner had previously attempted to set fire to the same building: Arch. Cr. Pl., 17th ed., 208, 217), or of something done subsequently (as flight when threatened with arrest: *People v. Lock Wing*, 10 Pacific Coast L. J. 190).

On the other hand, criminal attempts are hardly less iniquitous *in foro conscientie* than the crimes intended; and sometimes, indeed, as in *Hinchy's case* (*ubi supra*) it is a matter of difficulty to distinguish whether or not the intended crime or a mere attempt has, in fact, been perpetrated. Can it be doubted, for instance, that in a moral sense sollicitation would constitute a guilty attempt, even when not so in point of law (see *Smith v. Commonwealth*, 54 Pa. 209); or that the would-be thief who intrudes his hand into a pocket that, unknown to him, happens to be empty, or who commits an assault for the purpose of robbing what, unknown to him, was not in existence, or in the possession of the person assaulted (see *R. v. Johnson*, 34 L. J. M. C. 24; *R. v. M'Pherson, ubi sup.*; *Hamilton v. State*, 36 Ind. 28; *Mullen v. State*, 45 Ala. 43), is morally responsible quite as much as if the intended crime had been consummated? Surely, the man who, despite his own intention, happens to be prevented from pulling the trigger of his pistol, even if legally exonerated, is no less guilty under a higher law than the desperado who, without drawing his weapon, puts his hand into a back pocket and fires through it at his victim. And truly, as observed in a Pennsylvania case, last month, "We have reached a period when every one, in the courts and out of them, who is in favour of putting a check to the reckless use of firearms and deadly weapons, should emphasize his earnestness by permitting no guilty violator of the law to escape the punishment due to his crime." Even since we entered on the discussion of this subject, after the alleged attempt against the life of Judge Lawson,

another has been made in Dublin to stab a juror to death, and another to shoot a police-constable, who was fortunate enough to escape the fate that befell his comrade on duty. Yet, "as on the one hand, the evil intended is the measure of a man's desert of punishment, on the other hand, the injury done to society is the measure of its interest to punish, and punishment can only be inflicted where the two combine" (Bishop, *Crim. L.*—where the whole subject of criminal attempts is treated in a much more masterly manner than by any English writer, and far fuller than our own space would allow); and with a view to cases in which the consummate offence is more mischievous, the law, as a rule, makes a distinction, embracing even cases where the complete offence is not more mischievous, and, in order to afford the criminal a *locus penitentiae* before the consummation (though it may in fact have been prevented, not by his penitence, but by extrinsic causes), punishes attempts less severely than the corresponding consummate crimes (see Anstyn, *Jur.* 1098; Harris and Toml., 2nd ed., 17, 147). Until 1861, indeed, an attempt to commit murder was only a common law misdemeanour, punishable with two years' imprisonment and hard labour. But certainly, "it is difficult to see why certain contingencies, entirely out of the control of the accused, should affect his position in the most vital manner. For example, the same intent may result in murder, or wounding with intent to murder, according to the skilfulness of the surgeon who treats the wounded man" (Harris & Toml., *Cr. L.*, 2nd ed., 147); and indeed, a recent writer, discussing the *Fuiteau* case, goes the whole length of maintaining that there can be no reasonable distinction, in point of principle, between the punishment of the complete offence and the punishment of the attempt to commit it (see 15 *Ir. L. T.* 539); while, commenting on the same case, another writer maintained that our law should be re-altered in the direction of severity to meet cases where the victim, owing to the modern resources of medical science (see *R. v. Holland*, 2 *M. & R.* 351), might not die within a year and a day, as to which Mr. Harris, also, observes that it seems hard to explain why there should still be an arbitrary line so drawn, and why it should not be left to the jury to decide whether the death was the direct result of the wound. The Chinese code (Staunton, 328), by the way, allows the magistrates, when inquiring into such cases, to fix the number of days during which the capital responsibility of the accused should last.

However, we have perhaps said enough about the punishment of attempts, and shall assume that our readers are as familiar with that branch of our subject as the learned Mr. John Burke, who, on pleading guilty of an attempt to commit robbery, was sentenced by O'Brien J., on the 4th inst., to seven years' penal servitude, but took exception as he had not admitted actual robbery, and succeeded in getting his sentence reduced to twelve months' imprisonment. It was not the first time for a judge to make a mistake in dealing with criminal attempts. In 1879 a strange case occurred at Litowk, on the Russian frontier. Two Jews, father and son, had long lived on bad terms, and at last the son hired a peasant for twenty pieces of silver "to facilitate the departure of the old man from this vale of tears." On the day fixed for the execution of the crime the peasant repented, and, going to the intended victim, confessed all that had passed. The father made him promise to pretend to his employer that the crime had been committed, and he then went to the rabbi, Joseph Beer, before whom he laid the matter. After due deliberation the rabbi determined to see the son and to inform him that his murdered father had appeared to him in a

dream, and he asked his murderer whether he would appear before a terrestrial or celestial jury. The son, quite overwhelmed, chose the former tribunal, which was accordingly formed, and consisted of ten influential parishioners. The father was placed behind a curtain. The prisoner having been placed at the bar, the judges rose, and the rabbi solemnly invited the spirit of the dead man to bring forward his accusation. Hardly had the son recognised the voice of his father when he was seized with terror and fell down dead. The procurator of the province, on learning what had passed, at once caused the rabbi and other members of the court to be arrested. What was the ultimate result we know not; but, doubtless, the learned procurator quoted the case put by Sir James Stephen (*Dig. Cr. L.*, 142), of an impetuous heir rushing into the room of a man (who had aneurism of the heart), and roaring in his ear, "Your wife is dead," intending to kill, and thereby killing him. Why should not such an act amount to murder, queries Sir James? But, say we, had it failed, would it have amounted to an attempt? We apprehend that, at most, it would have been but a semi-existent attempt; like the Kilmainham Treaty,

"Exist it did not, tho' within  
A measurable distance  
Of that vague line where things begin  
To border on existence."

#### EXCLUDING COUNTER-CLAIMS.

One of the most important alterations introduced by the Judicature Acts was the practice as to counter-claims. It approached, perhaps, more nearly than any of the other changes introduced to an alteration in point of substance. When the procedure of a court allows one cause of action to be freely set off against another, it gives to every debtor a lien on the debt which he owes, to the extent of the debt owed to him. It is thus an alteration in substantive law. The justice of the rules as to counter-claim introduced by the Judicature Acts has not, we think, been disputed. It is, in fact, a very obvious principle of natural equity that when one man asks another for that which is his due, the other should be entitled in his turn to demand that which is due to him. The principle, moreover, is practical and business-like. No man of business would think of paying money to another when he himself had an outstanding claim of an equal or greater amount against that other. The law has now given its sanction to that practice; and men are entitled to conduct themselves accordingly. The rule stands in a very different position from ordinary rules of procedure, such as those which regulate the time for taking a step in a cause or the mode of trial. It may be the sole defence in an action. The defendant may admit the plaintiff's claim in itself, and resist only the paying of it. Such being the peculiar position of the rules of procedure as to counter-claims, it is very necessary that they should be distinct and well ascertained, and subject as little as possible to the discretion of the judge. Judicial discretion may be allowed to have considerable operation among ordinary procedure rules without any danger; but if it operates frequently on the right to resist payment of a debt by a person who is himself a creditor, there is danger of the law on the subject possessing that uncertainty which is the worst feature in a law of the kind. That there is some ground for this fear appears to us to be illustrated by the case of *Gray v. Webb*, reported in the November number of the *Law Journal Reports*.

The facts of *Gray v. Webb* are, we think, most fairly told in chronological order. In July, 1878, Gray a linen-draper, of Great Grimaby, sold the good-will and stock-in-trade of his business to Webb. The purchase-money was paid, together with £800 for the book debts; but, if the book debts brought in less than that sum, the balance, it was agreed, was to be repaid to Webb. Shortly afterwards Webb advanced some small sums of money to Gray, and sold him goods to a small amount.

In March, 1880, Webb agreed to buy the freehold of the premises, where the business was carried on, from Gray, and also some adjoining premises. The price was to be £1,400. Webb entered into possession, but did not pay the purchase-money. Gray brought the action for specific performance, being, in fact, an action for £1,400. Webb thereupon by way of counter-claim, claimed credit for £252, being in respect of the deficiency of the book debts, and the other matters already referred to. In answer to this an application was made to Mr. Justice Kay to strike out the counter-claim. The learned judge, in giving judgment, labours unnecessarily, as we think, in showing that a counter-claim need not be a defence or set-off to the claim in the action. Although in the earlier days of the Judicature Acts judges accustomed to the severe rules of pleading, now happily abolished, may have used expressions tending to show that the right to counter-claim was restricted, it now seems universally acknowledged that no restriction exists. Those who read the judgment of Mr. Justice Kay may be excused from supposing that the opinions expressed by some of his colleagues in restriction of the right to counter-claim, although they did not have sufficient weight to induce him to decide that there was no right to counter-claim in this instance, yet influenced his mind in the exercise of the discretion allowed him. Having decided that the defendant was *prima facie* entitled to counter-claim, the learned judge disallowed his counter-claim in this instance on the ground that it required investigation, and, therefore, would delay the plaintiff's claim, and that it might have been brought in the form of an action much earlier.

The latter of these two grounds can hardly have weighed much with the learned judge. A man who owes another £1,400 is not likely to bring an action against him for £252; and the question is whether he is not entitled to deduct the £252 from the larger sum. The other ground put forward is, that the investigation of the counter-claim would delay a claim which was practically undefended. Mr. Justice Kay refers to several rules regulating his discretion in the matter. Rule 3 of Order XIX. and Rule 9 of Order XXII. alone appear to have a direct bearing on the matter. Rule 3, Order XIX., gives the defendant a *prima facie* right to counter-claim subject to the proviso that "the court or judge may, on the application of the plaintiff before trial, if in the opinion of such court or judge such set-off or counter-claim cannot be conveniently disposed of in the pending action or ought not to be allowed, refuse permission to the defendant to avail himself thereof." These powers are of the widest description, and so expressed that probably it would be difficult to find a case in which the Court of Appeal would overrule the discretion exercised. Rule 9 of Order XXII. is much more restricted in its terms. It provides that, if there is a counter-claim and the plaintiff "contends that the claim thereby raised ought not to be disposed of by way of counter-claim, but in an independent action," he may apply to exclude the counter-claim. This rule apparently restricts the discretion to cases in which the trial of claim and counter-claim together would prejudice the fair trial of the claim. Mr. Justice Kay further fortifies himself with Order XXVII., Rule 1, which allows statements "which may be scandalous, or which may tend to prejudice, or embarrass, or delay the fair trial of the action," to be struck out. When there are two rules expressly giving the terms on which counter-claims may be disallowed, no great help can be obtained from a general rule which can hardly have had counter-claims within its purview. Mr. Justice Kay evidently gives a value to the word "delay;" but this word seems to show that the rule did not contemplate the case of counter-claim, because a counter-claim must necessarily delay the action. It is a grave question, which we should wish to see more fully discussed, whether the rules intended to allow a counter-claim to be struck out because the claim was practically undefended, and the counter-claim required investigation which would take time. The test given in Order XIX., Rule 3, that "the counter-claim cannot be conveniently

disposed of in the pending action," seems to exclude the case in question. The counter-claim obviously could not prejudice the fair trial of the claim because the claim was admitted. There was, therefore, no prejudice to the plaintiff except that he was kept out of his money rather longer than if there had been no counter-claim, and the matter might fairly have been adjusted by allowing the counter-claim on the terms of the defendant bringing into court the amount of the claim less the amount of counter-claim. The real fact is that in cases of this kind, in which two persons have cross claims against each other, it is a mere accident which one brings the action. If Webb had brought the action against Gray, instead of Gray against Webb, Gray would clearly have been allowed to counter-claim. The man who claims the most is naturally the one to put the law in motion; but, so far as the merits of the dispute were concerned, that fact is also accidental. The object of the law, as it seems to us, is to find out the point in dispute between the parties, and to decide it. This point cannot be discovered in many cases unless a counter-claim is employed; and the law fails in its purpose when the real gist of the dispute is shown to be an alleged counter-claim, and it declines to entertain the counter-claim.—*Law Journal*.

#### THE SETTLED LAND ACT.—VII.

(Continued from page 607, ante.)

##### Investment and other Application of Capital Money (Sect. 21).

We have already spoken of capital money, and what it comprises. The Act distinctly states that it includes part of mining rent (sect. 11); money raised by mortgage of the land (sect. 18); consideration for variation or rescission of certain contracts (sect. 31 (1)); part of timber money in certain cases (sect. 35); produce of sale of certain "heirlooms" (sect. 37). Obviously also money receivable on sale, exchange, or partition must be capital money (see sect. 53). We have stated, also, that usually this will be the case with a fine, and our view is confirmed by the mention of fine in sect. 42. We think that this will also usually be the case with licence to copyholder to lease (sect. 14). The Act is not clear as to consideration for surrender of lease (sect. 13 (1)), or for surrender of contract for lease (sect. 31 (1) (iii)), or even for variation of contract for lease (sect. 31 (1) (iii)); but this last much resembles a fine. There is no mention of consideration for variation or rescission of contract with respect to improvements (sect. 31 (1) (v)), but clearly consideration might be taken. Consideration for variation must, we think, be capital money, but it is not so clear in case of rescission. Application may be made to the court as to contracts (sect. 31 (3)). It is clear in all the above cases, that it will not be safe to take the receipt of tenant for life.

Sect. 21 (1) gives a long list of modes of investment. These include Government securities, other securities authorised for the trustees by the settlement, or "by law." As to what are authorised by law, see *David*, iii. 26; *Seton*, 86, 439. Stock of the Metropolitan Board of Works is permitted, unless forbidden by the settlement: 34 & 35 Vict., c. 47, s. 13.

The new Act authorises investments on bonds, mortgages, or debentures or debenture stock of railways in Great Britain or Ireland incorporated by special Act, and having for ten years before the investment paid a dividend on ordinary stock or shares.

These powers of investment cannot be taken away from the tenant for life, except with respect to some of those which are not expressly mentioned in the section, but which are otherwise authorised for trustees' investments. Thus it would seem that the stock of the Metropolitan Board may be forbidden, and also loans on the security of land in Ireland: 22 & 23 Vict., c. 85, s. 82. But it would appear that "Court" securities cannot be forbidden: *Wedderburn's Trusts*, 38 L. T. Rep. N. S. 904; 9 Ch. Div. 112.

The following general order was made by the Court of Chancery on the 1st Feb., 1861:—

“Cash under the control of the court may be invested in Bank Stock, East Indian Stock, Exchequer Bills, and £2 10s. per Cent. Annuities, and upon mortgage of freehold and copyhold estates respectively in England and Wales; as well as in Consolidated Three per Cent. Annuities, Reduced Three per Cent. Annuities, and New Three per Cent. Annuities.”

The S. L. Act merely forbids investment of money arising from land in England in the purchase of land in Ireland (sect. 23), and giving English in Exchange for Irish land (sect. 4 (8)); it does not forbid mortgages upon Irish land.

The statutory range will usually be sufficient in “real” settlements; but, as a rule, in settlements of land as personality, a wider power will be desired. This may be inserted (sect. 21 (xi)). We hope to discuss settlements of this description hereafter, as sect. 63 makes considerable variations as to them in connexion with investment.

For comprehensive forms of investment in personality settlement, see David. iii. 711, 740; Wolst. & T. 151.

For old power of interim investment in “real” settlement, see David. iii. 1023.

If it is desired to enable the lending of money on security of second mortgages (Lewin, 291), or mortgages of leaseholds (*ib.* 288, 289) or long terms (*Re Boyd*, 28 L. T. Rep. N. S. 799; 14 Ob. Div. 626), special power must be given. If it is desired that money may be lent to the tenant for life even on mortgage, power should be given to the trustees to lend it, and they should be declared indemnified for so doing. See Lewin, 287; and compare sect. 53.

Also by sect. 21 money may be applied for authorised improvements (see sect. 25), and in the purchase of a large variety of interests in land, and also for costs incurred in the execution of the powers of the Act (sect. 21 (x)). This last will be a very useful provision for enabling trustees to get their costs. The settlement may increase the modes of application (sect. 21 (xi)); sometimes it may be convenient to do this by increasing the number of authorised “improvements,” but generally the statutory provisions will be amply sufficient.

*Regulations respecting Investment, Devolution, &c.*  
(Sects. 22 & 23).

Capital money is, at the option of tenant for life, to be paid to the trustees or into court (sect. 22 (1)); consequently his own receipt will be insufficient. Tenant for life may direct the trustees in what manner to invest or apply the money; but if he gives no direction (and we suppose, if he is an infant) the trustees decide, but then subject to any consent or direction given by the settlement (sect. 22 (2)). In such case it would seem that sect. 21 will not prevent the settlor imposing what limits he likes upon the investments. See, however, *Wedderburn's Trusts* (*ubi sup.*) We should advise that he prohibit investment in any securities payable to bearer. Such securities are not suitable for trustees.

Sect. 23 makes full provision for devolution of income, prevents “conversion,” &c. See, however, sect. 63, in case of settlement on trust for sale. Investments may not be altered during lifetime of tenant for life without his consent (sect. 22 (4)). Probably it is intended that when tenant for life is an infant the trustees may vary them (see sect. 60); but it would be well at present to insert this power in the settlement. Land out of England may not be purchased by means of “capital money” arising from land in England (sect. 23).

*Settlement of Land purchased, taken in Exchange, &c.*  
(Sect. 24).

Freehold land is to be conveyed to the uses, &c., subsisting with respect to the settled land, or as near thereto as circumstances permit. Copyholds and leaseholds are to be conveyed on corresponding trusts as far as possible; but the vesting of the beneficial interest in leaseholds is suspended (sub-sects. 1-3). Compare David. iii. 1020, and see *ib.* 558, 598, 600. The next

three sub-sections apply to incumbrances, and sub-sect. 7 extends the provisions of the section to mines and minerals. The power to shift incumbrances must not be used unfairly (sect. 53).

The provisions do not appear to need any supplement.

(To be continued.)

**NOTICE OF ACTION.**

The law relating to notice of action is closely connected with the duties and practice of justices of the peace who have to administer remedies under so many statutes and take part in much that is done by officials, and also by private informers who seek to enforce in a summary way those remedies. It is difficult to draw a statute which is free from ambiguity, and it is still more difficult to apply it to the various emergencies of life. Mistakes of necessity attend the development of these special remedies in all their stages, and yet these mistakes are so often honestly made that it would be unfair to visit them upon their unwitting authors. It is for the protection of these honest but mistaken administrators of the law that the requirement as to notice of action comes into play. It throws round the defendant a shield, or rather it necessitates an interval for reflection on one side and on the other. The plaintiff who alleges that he has been aggrieved by the action of the defendant, must give a certain preliminary notice of his intention to bring an action, and then the defendant has time to consider whether he can defend himself successfully, and if not then whether some satisfaction might not fitly be tendered so as to get rid of the difficulty. There have been many nice occasions for the courts to settle what is no easy matter, namely, under what circumstances the defendant is entitled to this notice; and secondly, if there must be a notice, then what are the necessary contents of that notice. There are many statutes, each of which makes it necessary to give this notice of action, but they all have a family likeness and use much the same language. The Public Health Act, 1875, in the 264th section, imposes this notice in respect of all acts done under the Act, and says that the month's notice must clearly state the cause of action and the name and place of abode of the intended plaintiff, and of his attorney or agent in the cause, and on the trial no evidence is allowed of any cause of action which is not stated in the notice so served. In like manner the Larceny Act, 24 & 25 Vict., c. 96, s. 113, imposes the necessity of notice of action for anything done in pursuance of the Act, and the notice is to state the cause of action. The words constantly used in all these Acts are “things done in pursuance of the Act or under the Act.” It thus constantly becomes a question whether the particular act complained of was one which was done under the Act.

There have been important and carefully considered decisions on this matter. It was at one time considered that the defendant, in order to be entitled to the notice, must have acted not merely honestly but reasonably. This last essential, however, was questioned. In a leading case of *Herman v. Seneschal*, 26 J. P. 598, the defendant kept a cigar shop, and gave into custody a person for cheating him with a bad florin. The plaintiff was discharged, and brought an action for false imprisonment, when the jury found that the defendant honestly believed that the plaintiff tendered a bad coin, but that he had no reasonable grounds for his belief. It then became a question whether he was entitled to notice. The court came to the conclusion that the main question was, whether there was honesty of purpose, and the reasonableness of the grounds was of inferior importance, though sometimes useful, to be considered also. A later case of *Orchard v. Roberts*, 28 J. P. 54, confirmed the former case. In this case the plaintiff was a silk salesman employed by the defendant, and being one day challenged to produce the money in his possession, was given into custody for stealing a marked coin. Being discharged, and having brought an action for false imprisonment, the Court of Exchequer Chamber held that the proper

way of directing the jury is to ask them, did the defendant believe honestly in the existence of those facts which, if they existed, would have been a defence to the action and bring him under the statute? It is agreed to be enough if the defendant *bona fide* thought he was acting in accordance with the law, and that it is not necessary he should have any belief of facts specifically.

Another later case of *Leese v. Hart*, 32 J. P. 407, again laid down the rule that honest belief was all that was necessary, though in that case such honest belief was not proved. Another case of *King v. Chamberlain*, 40 L. J. C. P. 273, was one where the defendant by looking through a telescope saw the plaintiff stealing a buoy. The jury thought he could not reasonably draw the inference as to stealing, but the court said the jury had no business to draw such a conclusion, and their sole consideration should have been whether the defendant *bona fide* believed, not whether he did so reasonably or not. Again in *Judge v. Selmes*, L. R. 6 Q. B. 724, surveyors of highways blundered in a highway rate which was not properly allowed and published, but apparently all they did was that they merely mistook the form. They were sued by the party rated, and Blackburn, J., said: "In the present case there is nothing to show that the defendants were conscious they were acting illegally; what they were doing was of the essence of their employment, namely, raising money for the repair of the road. They certainly blundered excessively, but were, nevertheless, acting under the Act of Parliament, and were consequently entitled to notice of action."

These cases sufficiently illustrate the rule arrived at in most of the recent cases, which is this, that it is the honesty of the belief of the defendant, and not the reasonableness or soundness of that belief. In other words the law does not require that the defendant should always be right in his law or in his good sense, but he must have an honest intention to do what the statute authorises.

The precise particulars which the notice, when necessary, shall contain, call for still greater care, because it is not so easy to lay down the characteristics of a notice, as it is to arrive at the honesty of the defendant's intention. The notice must give reasonable information, but it is not likely that the courts, especially of the present day, should allow much to turn on mere quibbles and technical accuracy. All that is really wanted is that the plaintiff should draw the defendant's attention to the occasion when the mischief was done, but the words or particularity of detail cannot be important in any view. Nevertheless one or two illustrations of the difficulties are the easiest modes of showing how this point is to be dealt with. In the case of *Smith v. West Derby Local Board*, 47 L. J. C. P. 607, the action was brought by the plaintiff for the defendants negligently leaving a highway insufficiently repaired, whereby a valuable horse received severe injuries. One day the contractor of the defendants was laying down a sewer in the highway. The work was completed in May, 1874, and the traffic was resumed, but a subsidence took place which was soon repaired, and finally the surveyor at last said all was right. So far as the surveyor was aware there was nothing wrong, but it so happened that one day, being 13th May, the plaintiff's horse was drawing a spring cart when its fore feet suddenly sank through a coating or crust of macadam into a cavity, and was injured. Nobody could account for this sudden hole. The merits of the case and the evidence of negligence need not be described, but it is well to attend to the notice of action that was given. It stated "that you, the said board, by yourselves, your labourers, servants, and others, on or about the 13th May last, negligently, carelessly and improperly did leave a certain portion of the road or highway in an insufficient and improper state of repair, whereby a horse of the plaintiff's, while being lawfully driven, sank into the road, and was thrown therein and severely injured." The notice abounded in much more verbiage, and one would suppose that it gave ten times too much detail, and far

too many words. Yet when the objections came to be argued minutely it was contended that the notice was insufficient because it stated the cause of action to be a nonfeasance, whereas the real cause ought to have been stated as a misfeasance. Previous cases were relied upon by the defendant, especially those of *Jones v. Nicholas*, 13 M. & W. 361, and *Jones v. Bird*, 5 B. & Ald. 837, where it had long ago been said that these notices were not to be construed like a special pleading, but ought to be liberally dealt with. And if so, who could doubt that this notice gave all the necessary information.

The court, consisting of Grove, J., and Lindley, J., came to the conclusion that the notice was sufficient. Grove, J., said that the document, if reasonably read by a mind willing to understand it, was this, that the board, by their servants or labourers, negligently left a part of the highway in an insufficient state of repair—that they attempted to repair it, but did not do so properly, whereby the horse was thrown. That all pointed to some hole and not to a mere wear and tear. It therefore sufficiently indicated the cause of complaint. And Lindley, J., thought the notice, though capable of being applied to an act of omission, was also capable of being extended to an act of commission. It showed the defendants sufficiently what they have to meet, and they had an opportunity of inquiring into the matter.

The demurrer to the form of notice in the last case was thus overruled. In another very recent case a somewhat curious objection was raised, and at first was more difficult to dispose of. In *Green v. Broad*, ante, p. 599, one defendant named Broad was the trustee in a liquidation case, who had charge of co-operative stores, and he employed one Hutt, a detective, to watch some persons who were suspected of having committed a felony. One of the orders made in the business was that Hutt was to stop persons who left the premises without producing a voucher or receipt for the goods he was taking away. The plaintiff attended the sale, made purchases, and got his vouchers for payments, but threw them away. When he left the premises he was stopped and asked for the vouchers, and not having any to produce was sent back to the stores. The plaintiff again returned to the gate and proved that he had purchased goods, but the defendant would not let him depart for some time afterwards. This happened on the 12th day of April, 1881. For this arrest the action was brought. There was a notice of action duly delivered, which stated that "I, R. O. Green, &c., give you notice, &c., for that you, the said W. Hutt, did, on the 13th day of April, 1881, at the warehouse of the City of London Co-operative Association, Limited, No. 25 Newgate-street, &c., unlawfully, maliciously, and without reasonable and probable cause, assault, detain, and imprison me, and keep me so imprisoned, at the said warehouse, for the space of one hour and upwards, to the damage of me, the said R. O. Green, &c." At the trial of the action the objection was taken that the notice was insufficient, because the date of the act done was wrong: it ought to have been on the 12th day and not the 13th April. The case was argued, and the various authorities cited where notices had been challenged as insufficient. The court, consisting of three judges, Grove, J., Mathew, J., and North, J., came to the conclusion that the notice was sufficient. The judges all thought that the time and place were sufficiently identified. It was thought to be undoubted that the defendants must have had their attention called to the occasion, and could not possibly have mistaken it. All the information required was thus sufficiently given.

These decisions support the modern tendency of the court to disregard mere technicalities and look only to the substance of the matter.—*Justice of the Peace*.

#### RESIDENCE AND OCCUPATION.

"Residence and occupation" are terms of ambiguous meaning. They are constantly occurring in Acts of Parliament, and therefore constantly require interpreta-

tion. In endeavouring to ascertain their true meaning in any one particular statute, it is necessary to consider what was the purpose of the Legislature in inserting them, so that, if possible, an interpretation may be given them which is consonant with that purpose: *Blackwell v. England*, 3 Jur. N. S. 1302. We find, therefore, many different meanings given to the word "residence," depending upon the object of the particular statute in which the word occurs. For instance, "residence" was held to be equivalent to "home" when used in 3 & 4 Will. 4, c. 42, s. 8 (*Lamb v. Smyth*, 15 M. & W. 433); whereas when used in 17 & 18 Vict., c. 36, s. 1, it was held that a "place of business" was a residence within the meaning of the statute: *Attenborough v. Thompson*, 2 H. & N. 559. The Bills of Sale Act, 1878 (41 & 42 Vict., c. 31), s. 10 (2), provides that an affidavit shall be filed, together with every bill of sale which shall give, amongst other things, a description of the residence and occupation of the grantor. It has been held by Vice-Chancellor Bacon, in *Ex parte Hoaman* (L. Rep. 10 Eq. 65), that the object of this provision is to give, by means of the registration, information to the persons who had dealings with the grantor of the fact that he had given a bill of sale. Probably to this must be added the object referred to by Chief Baron Pollock in *Attenborough v. Thompson*, namely, that information should be given as to where the grantor was to be found, in order that he might answer any inquiries about the bill of sale. It is obvious, therefore, that a grantor must give a reasonably accurate description of himself in the affidavit accompanying the bill of sale. A difficult question may arise where a grantor resides in one place and carries on business in another, if he give his residence and his occupation without giving the place at which the latter is carried on. For instance, if a grantor of a bill of sale residing in the Strand, and carrying on business in Regent-street as a tailor, were to describe himself in the Strand, tailor, technically he would have complied with the requirements of the Act in having given his residence in the Strand, and his occupation a tailor, though it must be doubted whether he would have complied with the spirit of it in omitting to give the place where he carried on his business. This alone would make the description of his occupation complete. *Ex parte National Mercantile Bank, re Haynes* (15 Ch. Div. 42), is, to some extent, an authority against this contention, though, on the other hand, in *Wallis v. Smyth* (Weekly Notes, 1882, p. 77), Chief Judge Bacon appears to take a contrary view. There is much to be said in favour of the argument that a mere description of the occupation, without mention of the place where it is carried on, is an insufficient description of the occupation of the grantor of a bill of sale within the meaning of the Bills of Sale Act, 1878. The reasoning in *Ex parte Jerningham* (9 Ch. Div. 466), where it was held that, where a debtor described himself by his business address only, omitting all mention of his private address, it was a misdescription avoiding the petition, is applicable to the case of the grantor of a bill of sale, and we incline to the opinion that a full and complete description of a grantor's occupation, including the place where it is carried on, is necessary in order to comply with the provisions of the Bills of Sale Act, 1878.—*Law Times*.

In one of the English law courts the then well-known counsel, Mr. Phillimore, was pleading against *Sergt. Something*, socially his bosom friend, forensially his deadly enemy. It was the case of the theft of some donkeys, and there was a dispute as to the number and sex of the animals. The judge got bothered and testily asked: "How many asses were there in the plaintiff's stable on the night of the robbery?" "Three, my lord," answered the sergeant; "two mares and a colt." "Nay, my lud, four," put in the opposing advocate; "four donkeys in all." "Ah, yes, trae! I beg your ludship's and my learned brother's pardon. He reminds me that there were fours donkeys present—two mares, one colt, and one *filly more*,"—*London Society*.

## THE RIGHT TO COUNSEL IN A CRIMINAL CASE.

The sixth amendment to the Constitution of the United States provides, among other things, that "in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, . . . and to have the assistance of counsel for his defence."

The ninth section of the first article of the Constitution of Pennsylvania declares that "in all criminal prosecutions the accused hath a right to be heard by himself and his counsel." Provisions identical in language or in substance with one or the other of these quotations are to be found in the Constitution of every State in the Union, with the exception of Virginia.

It is our purpose to examine this right, to trace the history of its establishment, and define its boundaries. The subject is one of unusual interest, and appeals not only to the professional man but to every intelligent layman who values his rights as a citizen and seeks to fully understand them. The claim of Guiteau, recently on trial for the murder of President Garfield, though represented by counsel, to act as his own counsel, and his extraordinary behaviour in the assertion and exercise of his right, awakened a wide-spread public interest in the topic and led to many inquiries concerning it. It is not too late to discuss it.

The rule, briefly stated, is as follows:—At common law, in all cases, whether of treason, felony, or misdemeanor, and at all times, the prisoner has had and still has the right to address the jury in person in his own defence. In misdemeanours he always was and still is allowed to do this by counsel; but it is universally agreed that at common law a prisoner, whether peer or commoner, was not entitled to defend by counsel upon the general issue "not guilty" on any indictment for treason or felony: 1 Archbold's Crim. Prac. and Pl., Pomeroy's ed. 551; Weeks on Attorneys at Law, sect. 184; 1 Chitty's Crim. Law, \*407; Hawkins's P. C., b. 2, c. 39, sect. 1; Foster's Crown Law, 281; Hale's P. C. 286.

There were certain well-established exceptions. In appeals, which were private rather than public prosecutions, being the accusation of a murderer by one who had an interest in the person killed, or of a felon by one of his accomplices, full counsel were always allowed to the appellee, because although the object sought was the death of the defendant, yet the form was that of a civil proceeding, and all appeals were presumed to be carried on with greater spleen and vindictiveness than indictments: 2 Hawkins, c. 89, sect. 3; 1 Chitty Crim. Law, \*410; 17 State Trials (Howell's ed.) 480; 8 *id.* 728.

The prohibition of the assistance of counsel applied only to *matters of fact*, as the court assigned counsel to argue a doubtful point of law arising at or after trial (Hale's P. C. \*286); and upon the trial of issues which did not turn on the question of "guilty" or "not guilty," but upon collateral facts, as a plea of sanctuary or a pardon, or upon the assignment of error to reverse a sentence of outlawry, prisoners under capital charges, whether of treason or felony, were entitled to the assistance of counsel: Foster's Crown Law, pp. 42, 46, 56, 232; *Ratcliff's case*, 4 State Trials, 47.

But these exceptions were of little practical benefit to those ignorant of law, for it was held in all cases that the prisoner must propose the point, and if the court think it will bear a debate they will assign counsel to argue it: 2 Hawkins, c. 89, sect. 4; 7 State Tr. 1523; 8 *id.* 570; 11 *id.* 525. At the trial of Lord Preston in 1691, Chief Baron Atkyns said: "It is not the doubt of the prisoner but the doubt of the court that will occasion the assignment of counsel." 12 State Trials, 659, 660.

Upon the trial of Thomas Howard, Duke of Norfolk, in 1571, for treason in supporting the right of Mary Queen of Scots to the British throne, he made a vain appeal to the court for counsel even upon questions of



law: 1 State Trials, 995. "I have," he said, "had very short warning to provide answer to so great a matter. I have not had fourteen hours in all both day and night; and now I neither hear the same statute alleged, and yet I am put at once to the whole herd of laws, not knowing which particularly to answer unto. The indictment containeth sundry points and matters to touch me by circumstances, and so to draw me into the matter of treason which are not treasons themselves; therefore, with reverence and humble submission, I am led to think I may have counsel, and this I show, that you may think I move not this suit without any ground. I am hardly handled. I have had short warning and no books." Chief Justice Dyer refused the request by answering that counsel could not be allowed in point of treason.

Sir Henry Vane, on his trial for high treason, raised most important questions of law, and prayed to have counsel assigned to speak to them. The application was refused on the ground that the same points had been decided on the trials of the regicides: 6 State Trials, 183, A.D. 1662.

During the trial of Sidney application was made by him for counsel when he contended that conspiracy to levy war was not treason, and when he objected that some of the jury were not freeholders of the county in which the venue of the indictment was laid, and he was answered by Chief Justice Jeffreys "If you assign us any particular point of law, if the court think it such a point as may be worth the debating, you shall have counsel." 9 State Trials, 884. When Bamfield rose as *amicus curiæ* and suggested in arrest of judgment that there was a material defect in the indictment, Jeffreys coolly observed, "We have heard of it already, we thank you for your friendship and are satisfied." He then sentenced the illustrious prisoner to death. On the trial of Colledge, Lord Chief Justice North declared, "I must tell you a defence in case of high treason ought not to be made by artificial cavils but by plain fact." 8 State Trials, 570.

The judges in the time of the Commonwealth were no less arbitrary. Their behaviour towards John Lilburne on his trial as a traitor for publishing criticisms upon the government of Cromwell, was more decorous in tone but none the less severe than that of Foster or Scroggs. Time and again he besought the appointment of counsel, and was always refused. Then bursting out with long suppressed passion he cried: "Pray let me have fair play, and not be wound and screwed up into hazards and snares." With a courage unequalled by his bravest deeds in battle, he declared: "In so extraordinary a case for me to be denied to consult with counsel, I tell you, sir, it is most unjust and the most unrighteous thing in my apprehension that I ever heard or saw in all my life. O Lord! was there ever such a pack of unjust and unrighteous judges in the world. . . . I would rather have died in this very court before I would have pleaded one word unto you, for now you go about by my own ignorance and folly to make myself guilty of taking away my own life, and therefore unless you will permit me counsel, upon this look I am resolved to die." 4 State Trials, 1299. His appeal was fruitless.

An apology for this harsh feature of the rule was offered in the maxim that the judge was counsel for the prisoner; that it was his duty to see that the proceedings were regular, to examine witnesses for the defendant, to advise him for his benefit, to hear his defence with patience, and in general to take care that he was neither irregularly nor unjustly convicted. In prosecutions where counsel were allowed, the court did not advise the prisoner. The maxim was benevolent, but few judges ever gave the slightest heed to it in practice.

One or two instances must suffice for illustration. Upon the trial of Penn and Mead at the Old Bailey, for preaching to a seditious and tumultuous assembly the recorder put the following question:—

"What say you, Mr. Mead—were you there?"

MEAD.—"It is a maxim of law that no one is bound to accuse himself, and why dost thou offer to inure me with such a question? Doth not this show thy

malice? Is this like unto a judge that ought to be counsel for the prisoner at the bar?"

REC.—"Sir, hold your tongue, I did not go about to inure you?" 6 State Trials, 958.

Upon the trial of John Crook, and other Quakers, for refusing to take the oaths of allegiance, the following spirited dialogue is reported:—

FOSTER, C.J.—"John Crook, when did you take the oath of allegiance?"

CROOK.—"Answering this question in the negative is to accuse myself, which you ought not to put me upon. 'Nemo debet seipsum prodece.' I am an Englishman and I ought not to be taken nor imprisoned, nor called in question, nor put to answer but according to the law of the land."

FOSTER, C.J.—"You are here required to take the oath of allegiance, and when you have done that, you shall be heard."

CROOK.—"You, that are judges on the bench, ought to be my counsel, not my accusers."

FOSTER, C.J.—"We are here to do justice, and we are upon our oaths to tell you what is law, not you us. Therefore, sirrah, you are too bold."

CROOK.—"Sirrah is not a word becoming a judge. If I speak loud, it is my zeal for the truth, and for the name of the Lord. Mine innocency makes me bold."

FOSTER, C.J.—"It is an evil zeal."

The chief justice then ordered the mouth of the prisoner to be gagged with a "dirty cloth." 6 State Trials, 119.

The grossest violation of the maxim was the behaviour of Jeffreys upon the trial of Lady Alice Lisle. She was more than seventy years of age and a widow, and had given food and shelter to a dissenting clergyman named Hicks, who had been with the army of Monmouth. The indictment charged her with treason. There was no proof whatever that she knew that the man she harboured had ever been with the rebel army; and the jury declared that they were not satisfied upon this point, which was the only important one in the case. The judge usurped the functions of the counsel for the Crown and pressed a reluctant and conscientious witness so hard as to "clutter him out of his senses." Blasphemy, ribaldry, and the most horrid jests and imprecations were showered upon him in the effort to induce him to say something that would convict the prisoner. Finally, Jeffreys extorted a verdict by arbitrarily declaring "there is as full proof as proof can be." 11 State Trials, 322. He then sentenced the unhappy lady to be burned to death, but she escaped the terrible fate of Elizabeth Gaunt, by a commutation of the sentence into death by hanging. Upon the scaffold she spoke these words: "I have been told the court ought to be counsel for the prisoner; instead of which there was evidence given from thence which, though it were but hearsay, might possibly affect my jury. My defence was such as might be expected from a weak woman; but such as it was I did not hear it repeated to the jury. But I forgive all persons that have done me wrong, and I desire that God will do so likewise."

The rule and the practice under it had their admirers. Lord Coke declared that the reason of its adoption was because the evidence by which the prisoner was to be condemned ought to be so very evident, and so plain, that all the counsel in the world should not be able to answer it: 3 Inst. 137. Sir John Davys declared that our law doth abhor the defence and maintenance of bad causes more than any other law in the world: Preface to Davy's Rep. Sergeant Hawkins asserted, "If it be considered that generally every one of common understanding may as properly speak to a matter of fact as if he were the best lawyer, and that it requires no manner of skill to make a plain and honest defence, which in cases of this kind is always the best, the simplicity and innocence, artless and ingenuous behaviour of one whose conscience acquits him, having something in it more moving and convincing than the highest eloquence of persons speaking in a cause not their own." 2 Hawkins, c. 39, sect. 2.

The rule did not pass unchallenged. The seeds of its

Simulation, though slow in development, had been early worn. As far back as the reign of Edward II., the author of the *Mirror of Justice* had declared that counsel insisted in the law "were more necessary for the defence of indictments and appeals of felony than upon other venial causes." The venerable Whitelocke recalled it in debate; Sir Robert Atkyns declared it a novelty, and significantly said that he knew from experience what the maxim meant that the judge was counsel for the prisoner. Even Jeffreys declared that it was an injustice that a man should have counsel to defend a two-penny trespass, but that in defence of life he should have none. (See the very learned note to 5 *State Trials*, 460.) The Bloody Assizes aroused the sleeping sense of justice of the nation, and in ten years after, the Bill for regulating Trials in Cases of High Treason was brought forward in the House of Commons early in February of 1495. After much opposition it became a law, known as the 7th Wm. III., c. 8. The Act, among other things, gave to a prisoner charged with high treason "the assistance of counsel, not exceeding two, throughout his trial, to examine his witnesses and to conduct his whole defence as well in point of fact as upon questions of law."

Many wiseacres predicted the ruin of the State. Bishop Burnet, after stating that the bill had passed contrary to the hopes of those then at the head of affairs, said, "the design of it seemed to be to make men as safe in all unreasonable practices as possible." The judges too were the avowed enemies of the change.

The Act was to go into effect on the 25th of March, 1698. On the 24th of March, Sir William Parkyns, a wealthy knight, bred to the law, was put upon his trial for having been concerned with Charnock, Porter, Goodman, and Fenwick in a Jacobite plot to assassinate the king. He prayed that counsel might be allowed him, and cited the preamble of the statute as declaring that such a demand was reasonable and just. Lord Holt replied: "God forbid that we should anticipate the operation of an Act of Parliament even by a single day." 18 *State Trials*, 72. Parkyns then asked that the trial be postponed; but his application was refused, and the unlucky man was actually convicted and executed six hours before the bill went into effect.

It was a long time, however, before counsel were bold enough to defend their clients with spirit, and it remained for Dunning and the never to be daunted *Mackinnon* to establish the rights of the bar.

The first instance on record of the assignment of counsel under the Act is on the trial of Rookwood and others for having been concerned in the same conspiracy as Parkyns. Sir Bartholomew Shower was assigned as counsel. "My Lord," said he, addressing Chief Justice Holt, "we are assigned of counsel in pursuance of an Act of Parliament, and we hope that nothing which we shall say in defence of our clients shall be imputed to ourselves. . . . We come not here to countenance the practices for which the prisoners stand accused, nor the principles upon which such practices may be presumed to be founded; for we know of none, either religious or civil, that can warrant or excuse them." Lord Holt administered a very proper rebuke: 18 *State Trials*, 154.

In strong contrast with this abject apology is the splendid hearing of Erskine on the trial of Paine: "I will for ever—at all hazards—assert the dignity, independence and integrity of the English bar, without which impartial justice, the most valuable part of the English Constitution, can have no existence. From the moment that any advocate can be permitted to say that he will or will not stand between the Crown and the subject arraigned in the court where he daily sits to practice from that moment, the liberties of England are at an end."

Impoverishment had been expressly excepted from the Statute of William, and, therefore, counsel were denied to Lords Winton and Lovat, the latter of whom, broken by the weight of eighty years, was too feeble to struggle even for his life. It is significant that Sir William Jervis, who was the leading manager of their imprison-

ment, introduced into the House of Commons the bill that in 1747 became known as 20th Geo. II., correcting this abuse. It was not until 1826 that the last remnants of this barbarism were swept away. The 6th & 7th Wm. IV., c. 114, enacted that all persons tried for felony should be admitted to make their defence by counsel or attorney.

As the law now stands, the prisoner, for whatever crime indicted, is entitled to the full assistance of counsel upon every question of fact and law—to visit him in prison, to advise him in court, to cross-examine the opposing witnesses, to examine in chief those produced for the defence, and to address the jury. The only remaining question is, how far does the representation by counsel supplant the prisoner's ancient right to act in person?

It was early held in England that a man could be heard by himself or his counsel, but not by both. The point was raised upon the trial of Mr. Redhead Yorke, in 1796, for a misdemeanour: 25 *State Trials*, 1021. At the close of the opening by the counsel for the prosecution, Mr. Yorke applied to Justice Rooks to learn whether both himself and his counsel might address the jury. He was informed that both could not, and that he must make his election. Mr. Yorke then applied to be permitted, when his counsel examined the witnesses, to examine them himself also. This was refused. Mr. Yorke and his counsel then alternately cross-examined. Then at the close of the prosecution the court asked the prisoner whether he had elected to address the jury or to leave it to his counsel. He elected to do it in person, and his counsel and himself alternately examined the witnesses for the defence.

In 1811, Lord Ellenborough, in the case of *Ex v. White*, 3 Camp. N. P. 98, still further restricted the practice. His language is so clear and sensible as to deserve quotation: "I am afraid of the confusion and perplexity that would arise if a cause were to be conducted at the same time both by counsel and the party himself. I am extremely anxious that a person accused should have every assistance in making his defence, but I must likewise look to the decent and orderly administration of justice. I therefore cannot allow counsel to examine witnesses for the defendant if he is likewise to put questions to them himself and afterwards to address the jury. If in the course of the trial, any point of law arises which he declares himself incompetent to discuss, I will be very ready to hear it argued by his counsel, although he conducts the defence himself. I will do in this respect as was formerly done in capital cases when the assistance of counsel was not permitted to prisoners upon matters of fact. I think I cannot consistently with my duty go farther; and surely there is no hardship in the rule I lay down. If the defendant has counsel to conduct his cause, he may suggest any question to them which he considers fit to be put, or if he takes the conduct of it upon himself he may have the benefit of their private suggestions upon matters of fact; and as soon as any point of law arises they shall be readily heard upon it."

Both of these cases were cited in argument before Lord Chief Justice Abbott on the trial of one Parkins for a misdemeanour; he held that a prisoner cannot have counsel to examine and cross-examine witnesses and reserve to himself the right to address the jury: *Ex v. Parkins*, Ryan & Moody N. P. C. 168.

An examination of the later decisions shows an occasional departure, under very special circumstances, from the rulings just quoted, but the undoubted weight of authority is in favour of the rule, which very eminent judges have repeatedly enforced, that a prisoner is in the hands of his counsel for every purpose, if he see fit to employ counsel; but so tender is the law about infringements of ancient rights that on a murder trial of a foreigner who had obstinately remained mute from malice for more than a year, the court refused to allow counsel to appear for the prisoner without his express consent: *Reynolds v. Farnish*, 6 Cox C. C. 358.

In the following cases the rule was enforced:—*Ex v. Neame*, 2 Foster & F. 64; a. c. 6 Jur. N. S. 406; *Ex-*

v. Taylor, 1 Foster & F. 585; Reg. v. Boucher, 8 C. & P. 141; Reg. v. Barrows, 2 M. & Rob. 124; Reg. v. Walkley, 8 C. & P. 248; Reg. v. Rider, 8 id. 599; Reg. v. Tasts, 4 Jur. N. S. 244.

In the following cases the rule was relaxed:—Reg. v. Stephens, 11 Cox C. C. 669; Reg. v. Dyer, 1 id. 113;—Reg. v. Malings, 8 C. & P. 242; Queen v. Williams, 1 Cox C. C. 863.

We now turn to the United States, and trust go back in point of time. The materials to furnish an accurate judgment of the practice in the colonies prior to the Revolution are few and unsatisfactory. The colonial charters and patents are silent as to any change, real or proposed, of the law of the mother country, but among the laws agreed upon in England between William Penn and "divers free men of the Province" of Pennsylvania, the sixth article provided that "in all courts all persons of all persuasions may freely appear in their own way and according to their own manner, and there personally plead their own cause themselves, or, if unable, by their friend." Admonished, no doubt, by his own sufferings, the liberal and benevolent Proprietary, in the Charter of Privileges granted by him in 1701, with the approbation of the General Assembly, declared, "that all criminals shall have the same privileges of witnesses and counsel as their prosecutors." The records of the Provincial Council show that those accused of crime both defended themselves and were defended by counsel; but we can only conjecture how the practice changed in the other colonies.

In 1718, at Charleston, in South Carolina, Major Stede Bonnet and thirty-three others were tried in the Vice-Admiralty Court for piracy: 15 State Trials, 1231. The prisoners had no counsel, and the behaviour of Chief Justice Trott is a sad instance of judicial barbarity. The statements of the prisoners in one case, to which no credit was given for their exculpation, were used as hearsay evidence in another case to convict the prisoner.

In 1732 John Peter Zenger was tried in New York for libel, and was defended with great boldness by Andrew Hamilton of Philadelphia, the most eloquent and renowned lawyer of his day. The case is no guide for us, however, as libel is graded as a misdemeanour.

In 1770, Josiah Quincy, Jr., and John Adams defended, for the murder of Atucks, Gray and others, the soldiers who had fired upon the mob in the streets of Boston on the evening of the 5th of March. These and the cases of the Salem witches are the only trials of note that our meagre colonial records afford.

The example set by Penn and the sufferings of the English at home, full of instructive warning to those who sought to guard against governmental tyranny by constitutional provisions, are sufficient to account for the presence in the earliest State Constitutions of a clause extending to one accused of crime the protection of a defence by counsel.

Pennsylvania and Maryland so provided in 1776; New York in the following year; Massachusetts in 1780, and Delaware in 1792. In September, 1787, the convention called to frame the Constitution of the United States completed their work, and submitted it to the people for adoption. The original instrument contained no Bill of Rights and no reference to our subject. At the end of July, 1788, eleven States had unconditionally adopted the Constitution, but five of them proposed amendments for the consideration of the first Congress that would assemble under it, and one of the five called for a second general convention to act upon the amendments desired. North Carolina and Rhode Island did not adopt the Constitution until the administration of Washington had fairly begun, and by the 15th of December, 1791, amendments were duly proposed by Congress and ratified by the legislatures of the several States. The sixth amendment, to which alone we need refer, has been partly quoted at the head of this article. To carry it into effect Congress provided "that in all courts of the United States the parties may plead and manage their own causes personally or by the assistance of such counsel or attorneys at law as by the rules of

the said courts respectively shall be permitted to manage and conduct causes therein:" and further, at a later date, "every person . . . indicted for treason or other capital offence shall be allowed to make his full defence by counsel learned in the law:" Rev. Stat. U. S. sects. 747, 1084. This language and that of the amendment to the Constitution have never received judicial construction. The practice, we believe, has been in conformity with the English rule, until the recent trial of Guiteau. It is a singular fact that the question has never been raised in any of the States, except in a late case in Tennessee, which we shall presently notice.

In Mississippi, South Carolina and Texas, the language of the constitutional clauses is too explicit to admit of doubt; it gives the right "to be heard by himself or counsel, or both, as he may elect." In Arkansas, Colorado, Connecticut, Delaware, Illinois, Indiana, Kentucky, Missouri, New Hampshire, Ohio, Oregon, Pennsylvania, Tennessee, Vermont and Wisconsin, the language is "by himself and his counsel." In Kansas, Louisiana and Nebraska, it is "in person or by counsel." In Alabama and Maine, it is "by himself and his counsel or either, at his election." In Massachusetts he "shall be fully heard by himself or counsel, at his election." In California, Florida, Nevada and New York, he is "to appear and defend in person and with counsel as in civil actions." In Georgia he "shall have the privilege and benefit of counsel." In Iowa, Michigan, Minnesota, New Jersey, North Carolina, Rhode Island and West Virginia, "he shall have the assistance of counsel in his defence." In Maryland it is declared that "he ought to be allowed counsel." In Virginia there is no constitutional provision, but a statute of 1786 and well-settled practice establish the right.

Upon most of these clauses there is room for ingenuity of argument, but the almost total absence of judicial decisions is strong evidence of the sensible determination of criminals to commit their defences exclusively to professional hands. The only case revealed by a diligent search is that of *Wilson v. The State*, in Tennessee, 3 Heisk. 232. Counsel had fully agreed upon the evidence, and then the prisoner himself claimed the right to make a statement. This was denied. The Court of Errors and Appeals held that the right given by the Constitution, though in the words "to be heard by himself and his counsel," simply meant the right to argue the case upon the facts in evidence, and did not include a sworn or unsworn statement of facts not otherwise proved. Judge Nelson dissented on the ground that this was a denial of right. It may, therefore, be fairly said that the question is still open to debate.

The limitations put upon the rights of advocates, and, by parity of reasoning, upon those who claim to act as their own advocates, are such as grow out of the powers of a court to so superintend the proceedings as to prevent a waste of time or breach of decorum. But while insisting upon the existence of these powers, judges have universally displayed the utmost reluctance to exercise them. The right to "try men by the hour-glass" is declared dangerous in the extreme: *Hunt v. The State of Georgia*, 49 Geo. 265; *People v. Kennan*, 13 Cal. 581; *Cooley's Const. Lim.* 336; *State v. Collins*, 70 N. C. 241; *Word's Case*, 3 Leigh (Va.), 743; *Commonwealth v. Porter*, 10 Met. 268; *Lynch v. State*, 9 Ind. 541.

Other difficulties may arise, as recent experience has shown, from the rule that in cases of felony the record must show that the prisoner was personally present during every stage of the trial: *Price v. The Commonwealth*, 6 Harris, 103. This rule is not enforced in cases of misdemeanour: *United States v. Davis*, 6 Blatch. O. C. R. 464.—*American Law Register*.

#### DOCK BRIEFS.

A correspondent of the *Times*, referring to the difficulties under which prisoners labour in their defence, draws attention to a custom not now frequently followed, but still in accordance with professional etiquette. "As a matter of fact," he says, "any prisoner

may call for the services of any disengaged counsel in court (other than Queen's Counsel) on tendering the fee of one guinea, and such a request is never refused. If this right were better known, it might be more often asserted, and its exercise would surely be in harmony with that spirit of fairness which generally characterises our criminal law."

#### UNDEFENDED PRISONERS IN FRANCE.

Mr. D. Bingham, writing from Paris, gives the following account of the practice in France as to undefended prisoners:—"When a prisoner is about to be tried, he is removed from Mazas to the Conciergerie, which is termed the *maison de justice*, and which adjoins the courts of law. Here the president of the assize, accompanied by the usher of the court, pays him a visit and asks him the following questions: If he has received a copy of the indictment? If he is aware of the nature of the charges brought against him? If he persists in his declarations? If he has made choice of a counsel? In the event of replying to the last question in the negative, the president appoints a member of the bar to assist the accused during his trial. The law against a criminal being abandoned to his own resources is very explicit. Article 294 of the Code runs thus: 'L'accusé sera interpellé de déclarer le choix qu'il aura fait d'un conseil pour l'aider dans sa défense; si non le juge lui en désignera un sur-le-champ, à peine de nullité de tout ce qui suivra.' A similar system extends to civil cases, and a poor plaintiff can apply for legal assistance, which is readily granted after due inquiry. The counsel called upon by a judge to act on the part of a prisoner or plaintiff receives no fee."

#### COMMISSIONS TO TAKE EVIDENCE.

The terms of Order XXXVII., rule 4, with regard to the taking of evidence by commission, both in this country and abroad, are so wide that it is no wonder there have been several cases upon the restrictions under which such commissions will be granted. The rule in question was substituted by the Judicature Acts for the provisions of the Common Law Procedure Act, 1854, sect. 47, which had in turn superseded sect. 4 of the Act 1 Will. 4, c. 22. The last-mentioned Act was that which originally gave the courts power to issue such commissions in civil suits, the similar power which previously existed, under an Act of 1773, having been confined to criminal proceedings, and to commissions to be directed to the courts in the East Indies. The ample powers which are given to the court or a judge by the present rule are limited by the words "where it shall appear necessary for the purpose of justice." In *Warner v. Moses* (43 L. T. Rep. N. S. 401; 16 Ch. Div. 100) the Master of the Rolls, sitting in the Court of Appeal, approved the explanation of the rule contained in Wilson on the Judicature Acts, that, within the jurisdiction, depositions may be taken under it, where it is shown that a necessary witness is either going abroad, or is, from illness, age, or other infirmity, likely to be unable to attend at the trial. That is to say, the rules laid down by the common law judges, under the Procedure Act of 1854, were to be applied to the new practice in both divisions of the High Court.

Two cases which have been recently reported together (*Berdan v. Greenwood*, and *Re Boyse, Crofton v. Crofton*, 46 L. T. Rep. N. S. 522; 20 Ch. Div. 764) have materially contributed to settle the practice with regard to commissions for taking the evidence abroad, by laying down important principles on that subject. In the former of these cases, which was before the Court of Appeal in Feb., 1880, the plaintiff, General Berdan, an American, was suing to recover a commission on sales of rifles which he alleged to have been effected by the defendants to the Russian Government through his good offices. He sought to be excused from attendance at the trial, and applied that his evidence might be taken by commission in France, on the ground that it would be dangerous to his health to cross the Channel, as he was

suffering from heart disease. The Court of Appeal, consisting of Lords Justices Baggallay and Cotton, disallowed the application, on the ground that justice to the defendants required that, in a case so largely resting upon the plaintiff's own testimony, they should be able to test it by cross-examining him in open court. In *Crofton v. Crofton*, heard before Mr. Justice Fry in May last, the claim was based upon a document in the form of a bill of exchange purporting to have been drawn by the testator in the action, in favour of one Gautier, a French subject, with whom she was then living at Marseilles, and indorsed by him to the plaintiff. Gautier had refused to come over to England to be examined as to the circumstances under which the instrument had been drawn, and the plaintiff desired to have his evidence taken by a commission directed to a French court, who would examine the witness in accordance with the French procedure. Mr. Justice Fry was of opinion that the circumstances of the claim were so suspicious that, applying the principle laid down in *Berdan v. Greenwood*, justice to the defendant required that Gautier should be subjected to a rigorous cross-examination. It appeared from the evidence of a French expert who had made an affidavit on behalf of the defendant, that the French practice as to examinations is much less strict than the English, the judge putting all the questions, and the only approach to cross-examination being that the judge frequently consents to put questions suggested by the agents for either party. Under these circumstances, his lordship refused to allow the commission to issue, being of opinion that the case was one in which he would not be justified in depriving the defendants of their right to a strict cross-examination, such as English law provides for. These decisions show that the courts will not lightly allow defendants to be deprived of the protection afforded to them by the wholesome provision of our law.—*Law Times*.

#### CURIOSITIES OF EVIDENCE.

Some of the more ignorant of the Roman Catholic Church have a curious idea of the sanctity of an oath. We remember an old Irish woman being called as a witness at a recent assize at Liverpool to prove on the part of the defence an *alibi* as to the prisoners. She was duly sworn, and gave evidence utterly irreconcilable with the statements of other witnesses of undoubted veracity. It was quietly suggested by a clergyman in court that the Testament used in administering the oath had no cross upon the cover. On this representation another book was sent for which bore the sacred symbol; and being somewhat reluctantly resworn on the new volume, she did not hesitate to say, on being questioned, that all her testimony just given was false, quietly remarking, in answer to a remonstrance from the counsel, that she supposed she might say what she pleased as long as she had not "sworn on the blessed crucifix." The custom of kissing the thumb instead of the book was considered by many an evasion of the moral obligation attached to an oath, while to others, holding the Testament upside down was deemed an equally efficacious release. These and other disreputable artifices are, however, very little indulged in at the present day.

When the celebrated Sergt. Hill conducted a defence at the Bar of the House of Lords, he propounded a question to a witness which the counsel on the other side objected to. After much had been said on either side, the law lords themselves disagreed, and the bar and all strangers were ordered to withdraw. After an absence of two hours they were readmitted and the Lord Chancellor informed Mr. Hill that the House decided the question might be put. "Please you, my lords," said the Sergeant, "it is so long since I asked the question that I forget what it was, but with your lordships' permission I will put another!"

A witness was lately called on a trial at the Old Bailey to prove an *alibi*. He solemnly swore that the prisoner on the night and at the hour in question

(11 25 p.m.) was at home and in bed at a distant part of the parish. Nothing could shake his testimony, for he said he had looked at the clock just as the prisoner went up-stairs, and he had set the clock right with the church clock himself the same day, and it was certainly 11 25 p.m., &c. "Pray what do you make the time now?" blandly asked the counsel who cross-examined, pointing to a great white dial over the dock. No answer was given. "Don't be confused—take your time. I ask you again—what is the time by that clock now?" The question was repeated several times, and the witness was eventually bound to confess that he could not tell the time by a clock at all. Singularly enough, the clock in the court was standing at 11 25 when he made this avowal.

We remember a country witness being called at the assizes to prove that at a particular hour on a certain night the moon was shining and at the full. There happened to be no almanac in court, but the evidence seemed to be satisfactory, for he had obtained his information from "a regular good London stationer's almanac." The question was asked in cross-examination, "How did you obtain this London stationer's almanac? Did you buy it?" "Buy it! No; my father pasted it behind my kitchen door nine years ago—the day I was married!" It need hardly be said that information as to the moon's age during a day in the current year was of little value from an almanac nine years old.

We may remark that all evidence of a "circumstantial" character is received with great caution, and, no doubt, rightly so, on a trial. Take, as an illustration of this, the evidence offered against a prisoner, of footmarks. Nothing is more commonly found than the impression of boots or shoes near to a murdered body, or to premises which have been broken into. A policeman is called as a witness on the trial, who deposes that he took the boots off the prisoner upon his arrest, that he compared them with the footmarks near the place of the alleged crime, and that they corresponded in every particular. "You compared them, I suppose," usually asks the judge, "by placing the boots in the impressions, and found that they corresponded?" "Yes, my lord." The answer is fatal to that branch of evidence, for the placing the boot in the impression found very possibly caused that similarity relied upon; the prudent officer places the prisoner's boot beside the footprint, presses it into the earth, and then removes it, compares the impression made with the one discovered.—*Leisure Hour.*

#### TEXT-BOOK ADDENDA.

[From the *Law Journal*.]  
30 & 31 Vict. c. 143.

A County Court judge has power to stay an action remitted to him before issue joined, until the costs in another action by the same plaintiff are paid (*Regina v. Bayley*, 51 Law J. Rep. Q. B. 244).

*Corrupt Practices Prevention Act, 1854 (26 Vict. c. 29), s. 7.*

Evidence given in answer to questions by election commissioners is not admissible in a prosecution for perjury (*Regina v. Slator*, 51 Law J. Rep. Q. B. 246).

#### BOOKS RECEIVED.

*The Settled Land Act, 1882, with Notes and an Introductory Chapter, together with Precedents of Settlements, Conveyances and Petitions, and Miscellaneous Forms, adapted for use under the Act.* By AUBREY ST. JOHN CLERKE, B.A., of the Middle Temple, Barrister-at-Law. London: W. Maxwell & Son, 8 Bell-yard, Temple Bar, Law Book-sellers and Publishers. 1882.

*Common Precedents in Conveyancing, adapted to the Conveyancing Acts, 1831, 1833, and the Settled Land Act, 1882, &c.; together with the Acts, an Introduction and Notes.* Second Edition. By HUGH M. HUMPHREY, M.A., of Lincoln's Inn, Barrister-at-Law. London: Stevens and Sons, 119 Chancery-lane, Law Publishers and Book-sellers. 1882.

#### REVIEWS.

*The Lawyer's Companion and Diary, and London and Provincial Law Directory for 1883, with Tables of Costs, &c.* Edited by JOHN THOMPSON, Esq., of the Inner Temple, Barrister-at-Law. Thirty-seventh Annual Issue. London: Stevens and Sons, 119 Chancery-lane; Shaw & Sons, Fetter-lane. 1883.

Even an almanac-maker may incur the penalties of the law, if he omits in the performance of his function, as happened in 1717, when, during the minority of Louis XV. of France, the Duke of Orleans, as Regent, committed to the Bastille "Laurence d'Henry, for disrespect to King George I., in not mentioning him in his almanac as King of Great Britain." Mr. John Thompson, of the Inner Temple, is much more than your mere almanac-maker, but, though the "Lawyer's Companion and Diary" assumes to embrace very many other provinces of information, in none is it deficient, and its pains-taking compiler has as little reason to fear the lash of criticism as a *lettre de cachet*. It should be premised that the term "lawyer" is ordinarily applied in England to a solicitor also, and not limited, as by our usage, to barristers; and both branches of the legal profession have been abundantly catered for by this encyclopedic "Companion." Here we have, in addition to a Calendar for the proximate year, and a blank Daily Diary, a Table of Costs and abstract of decisions on that subject, a practical Reading of this year's Statutes and an Alphabetical Index to the Practical Statutes from the time of George IV., a full *precis* of the Stamp Duties now payable, and any number of Tables and Abstracts in reference to legal time, interest, discount, oaths in the Supreme Court, Probate, Legacy and Succession Duties, &c., &c., to say nothing of a complete legal Directory for England. This appears to be its thirty-seventh annual issue, and we are not surprised that such enduring success has rewarded a compilation so valuable, for which the profession should indeed feel grateful to the publishing houses of Stevens & Sons, and Shaw & Sons.

*The Law relating to the Compulsory Purchase and Sale of Lands in Ireland, under the Provisions of the Irish Railways and Lands Clauses Acts: being the Full Text of the various Acts; with an Introduction, and Copious Notes of the Practice in Ireland, and of Decided Cases; and an Appendix of Forms.* By WILLIAM SUFFERN, LL.B., Barrister-at-Law. Dublin: E. Ponsonby, 116 Grafton-street. 1882.

"THE great defect in the system" treated by Mr. Suffern is, as he observes (Introd. XXII.), "one which must be looked for in all legislative efforts in these countries so long as the present practice of 'tinkering' Acts of Parliament is persisted in. Instead of repealing *in toto* a statute or a number of statutes and enacting others in lieu thereof, portions only are repealed, and the repealed sections are replaced [in the sense of substituted, we presume] by new Acts; and, in this way, a complete patchwork is produced, which is as distracting to those entrusted with the duties of the administration and interpretation of the law, as it certainly must be bewildering and unsatisfactory to the public, whose rights of property are intended to be thus so seriously interfered with." This farrago of Acts in part repealed, amended and yet again amended, Mr. Suffern has endeavoured most ably to present in the form of a quasi-code, in the first part of his work, which is preceded by an introductory outline of the whole practice dealt with in his attempt at codification; while in the second part he details the result of all the most important decisions in the English and Irish courts upon the construction of the statutes in question. It was a most useful undertaking, especially as no previous treatise had been devoted to the exposition of the Irish Railways Acts; and on inquiries before arbitrators

and on the trial of traverses at Assizes the want of such a work has been acutely experienced. That inconvenience can be felt no longer. Mr. Suffern has executed a work which could hardly be surpassed in point of accuracy and completeness—the greater by reason of its very full table of contents and copious index; while the many useful and practical Forms appended, together with the reprint of the statutes themselves would suffice alone to render the work one of permanent and unique value. The decisions, too, which he has collected together and critically examined, especially as regards the English with a view to their bearing and application on the Irish Acts (thus, as to *Syers v. Met. Board of Works*, p. 168), are not elsewhere so thoroughly dealt with; but, in reference to the word “town,” we observe he has overlooked *Deards v. Goldsmith* (40 L. T. N. S. 328), following *Elliot v. South Devon Ry. Co.*, and discussing other cases to which he has referred. We have, however, failed to detect any errors or omissions of consequence, and after a painstaking examination can but record our entire satisfaction with this useful work, which, we observe, has been most appropriately dedicated to Mr. Justice Andrews.

### LAW STUDENTS' JOURNAL.

#### THE INCORPORATED LAW SOCIETY OF IRELAND.

HILARY SITTINGS, 1883.

#### NOTICE.

The PRELIMINARY EXAMINATION of Candidates for Apprenticeship will be held at the Solicitors' Hall, Four Courts, Dublin, on Thursday and Friday, the 4th and 5th days of January, 1883, at *Eleven o'clock*.

N.B.—All Papers to be lodged on or before *Tuesday, 19th of December, 1882*.

The FINAL EXAMINATION of Candidates seeking admission as Solicitors will be held at the same place, on Monday and Tuesday, the 8th and 9th days of January, 1883, at the same hour.

By order of the Council,

JOHN H. GODDARD, *Secretary*.

Solicitors' Hall, Four Courts, Dublin,

N.B.—The decision of the Court of Examiners will be announced on Wednesday, the 26th of January, 1883, at Three o'clock, p.m.

Candidates residing in the Country need not remain in town to hear decision, but can learn same from the Dublin Morning Papers of the day following the announcement.

#### THE INCORPORATED LAW SOCIETY OF IRELAND.

EASTER SITTINGS, 1883.

#### FINAL EXAMINATION.

#### NOTICE.

Candidates wishing to present themselves at the above Examination must lodge their papers, &c., on or before the first day of Hilary Sittings, 1883.

By Order,

JOHN H. GODDARD, *Secretary*.

Solicitors' Hall, Four Courts, Dublin,  
15th December, 1882.

Many years ago, a testator in England left £10,000 to a friend, but with the condition that one-half the sum should be buried with him in his coffin. The legatee took advice on the matter. “Where is the money now?” asked his friend. “In the bank,” was the reply. “All right,” said the adviser; “write a cheque for £5,000, and put it in the old man's coffin, payable to his order.”

### COURT PAPERS.

#### LAND JUDGES.

Sittings for next Week so far as same are appointed.  
Before the Rt. Hon. JUDGE FLANAGAN.

#### MONDAY.

IN COURT.—R. Bradshaw, as to ejectment.—K. Marston, payment by receiver.—H. G. Henderson, injunction.—J. Frewen, as to petition.

Before EXAMINER (Mr. Kennedy).

J. Trueman, schedule.

#### TUESDAY.

IN COURT.—S. Keller, final schedule.—R. Frith, ditto.

Before EXAMINER (Mr. Kennedy).

S. H. Kelly, rental.—J. Peterkin, ditto.

#### WEDNESDAY.

Before EXAMINER (Mr. Kennedy).

J. Bury, rental.—Administratrix E. Wyles, do.—Trustees J. Hassett, do.—J. Cunningham, for deeds.

#### THURSDAY.

IN COURT.—M. Jordan, objections.

Before the Rt. Hon. JUDGE ORMSBY.

#### MONDAY.

IN COURT.—E. H. Keogh, to appoint receiver.

Before EXAMINER (Mr. M'Donnell).

J. Russell, vouch.

#### TUESDAY.

SALE IN COURT.

LADY DE MONTMORENCY, - - 1 lot.

#### WEDNESDAY.

Before EXAMINER (Mr. M'Donnell).

H. J. Foot, rental.—Cork Harbour Docks, schedule.

#### THURSDAY.

Before EXAMINER (Mr. M'Donnell).

M. H. Moorehead, rental.

### COURT OF BANKRUPTCY.

#### ADJUDICATIONS IN BANKRUPTCY.

The dates of Adjudications are first given, the sittings follow in Italics.

Johnston, John, of Redhills, in the county of Cavan, grocer and spirit dealer, and of Newtown Butler, in the county of Fermanagh, railway station master December 1; *Friday, December 22*, and *Tuesday, January 9, 1883*. Hamilton & Craig, solrs.

Ross, David, of 172 and 174 Falls-road, Belfast, in the county of Antrim, grocer. December 1; *Tuesday, December 19*, and *Friday, January 12, 1883*. J. C. White and H. C. Neilson, solrs.

Walsh, Sarah L., of Baltracy House, Kildock, in the county of Kildare, spinster. November 24; *Friday, December 22*, and *Friday, January 12, 1883*. Richard Davoren, solr.

*Holloway's Pills*.—Teachings of Experience.—The united testimony of thousands, extending over more than forty years, most strongly recommends these Pills as the best purifier, the mildest aperient, and the safest restoratives. They never prove delusive, or give merely temporary relief, but attack all ailments of the stomach, lungs, heart, head, and bowels in the only safe and legitimate way, by depurating the blood, and so eradicating those impurities which are the source and constituent of almost every disease. Their medicinal efficacy is wonderful in renovating enfeebled constitutions. Their action embraces all that is desirable in a household medicine. They expel every noxious and effete matter; and thus the strength is nurtured and the energies stimulated.

DUBLIN STOCK AND SHARE LIST.

DESCRIPTION OF STOCK	DECEMBER					
	Sat. 9	Mon. 11	Tues. 12	Wed. 13	Thur. 14	Fri. 15
<b>*Paid Government.</b>						
3 p c Consols ..	—	—	—	—	100½	100½
3 p c Reduced ..	—	—	101	—	100½	100½
2½ p c Stock ..	86½	—	86½	86½	86½	86½
New 3 p c Stock ..	100½	100½	100½	100½	100½	100½
<b>INDIA STOCK.</b>						
4 p c Oct. 1888 } Traffic, at ..	—	103½	103	103½	—	103
3½ p c Jan. 1891 } Bk. of Irel. ..	—	—	—	—	—	100½
<b>Banks.</b>						
100 Bank of Ireland ..	324½	324½	324½	—	324½	—
25 <i>Hibernian Banking Co</i> ..	—	—	—	x d	31½	—
20 <i>London and County (Lid'd.)</i> ..	—	—	8½	—	—	8½
20 <i>London and W'minster, Lid'd</i> ..	—	7½	—	—	—	—
10 <i>Do. New</i> ..	—	—	—	—	—	—
3½ <i>Munster Bank (Limited)</i> ..	—	—	7	—	—	6½
10 <i>Nat. Prov. of England, Lim.</i> ..	—	—	12½	—	—	40½
10 <i>National Bank (Limited)</i> ..	—	—	24	24½	24½	24½
10 <i>National of Liverpool (Lid'd.)</i> ..	—	—	—	—	—	15
25 <i>Provincial Bank</i> ..	—	—	—	—	—	—
10 <i>Royal Bank</i> ..	29	—	—	—	29½	—
25 <i>Union of Australia</i> ..	—	66	—	—	—	—
<b>Mines.</b>						
1 <i>Killaloe Slate Co. (Lid'd.)</i> ..	—	—	—	11/6	—	—
<b>Miscellaneous.</b>						
10 <i>Alliance &amp; Dub. Com. Gas</i> ..	16½	—	—	—	—	—
4 <i>Arnott &amp; Co. Limited</i> ..	—	—	—	—	—	—
7½ <i>Dub. Drapery Whouse, Lid'd.</i> ..	—	—	—	4½	—	—
<b>Tramways.</b>						
10 <i>Belfast Trams</i> ..	—	—	—	9½	—	—
<b>Railways.</b>						
100 <i>Cork and Macroom</i> ..	—	—	—	—	—	—
100 <i>Great Northern (Ireland)</i> ..	118½	—	—	—	—	119
100 <i>Gt. Southern and Western</i> ..	—	115½	—	—	—	—
100 <i>Midland Gt. Western</i> ..	—	97½	—	99	99½	—
50 <i>Waterford and Limerick</i> ..	—	—	—	—	—	—
<b>Debenture Stocks.</b>						
— <i>Belfast &amp; Nth'n Cos. 4 p c</i> ..	—	—	—	—	—	105½
— <i>Cork, B. &amp; Passage 4 p c</i> ..	—	—	—	—	—	99
— <i>Do. 4½ p c</i> ..	108	—	—	—	—	—
— <i>Dublin &amp; Meath 4½ p c</i> ..	—	—	—	—	—	—
— <i>Dublin &amp; Wicklow 4 p c</i> ..	—	105½	105½	—	—	105½
— <i>Gt. Northern (Ireland) 4 p</i> ..	—	—	—	—	—	—
— <i>Do. 4½ p c</i> ..	—	—	—	—	—	114
— <i>Gt. North'n &amp; West'n 4½ p c</i> ..	—	—	—	—	—	109½
— <i>Gt. South'n &amp; West'n 4 p c</i> ..	—	—	—	—	—	109½
— <i>Midland Gt. West'n. 4 p c</i> ..	—	—	—	—	—	106
— <i>Do. 4½ p c</i> ..	—	—	—	—	—	114
— <i>Waterford &amp; Central 5 p c</i> ..	—	—	108½	108½	108½	—
<b>Miscellaneous Debent.</b>						
<i>Ballast Office Deb. £92 8s 2d, 4 p c</i> ..	93½	—	—	—	—	—
<i>City Deb. of £92 8s 2d, 4 p c</i> ..	—	—	—	—	—	92½
<i>Dub. &amp; Glas. S. P. Co. (1887) 5 p c</i> ..	—	—	100½	100½	—	—
<i>Do. (1883), 6 p c</i> ..	—	—	101	—	—	—

\* Shares not fully paid up are given in *Italics.* † x d

Bank Rate — 1/1 Discount — 4 per cent., 17th August, 1882  
Of Deposit — 1 per cent., 23rd March, 1882  
Name Days — December 28th, 1882, and January 11th, 1883.  
Account Days — December 29th, 1882, and January 12th, 1883.  
Business commences at 1 30 p.m.

BIRTHS, MARRIAGES, AND DEATHS.

BIRTHS.

BONASS — December 14, at Gardiner's place, the wife of Henry Bonass, Esq., solicitor, of a son.  
GALLAGHER — December 9, at College-street, Armagh, the wife of William Gallagher, Esq., solicitor, of a son.  
MITCHELL — December 8, at John's-place, Pa. sonstown, the wife of Thomas Mitchell, Esq., solicitor, of a son.

MARRIAGES.

METGE and BRERETON — December 7, at Powerscourt Church, Enniskerry, by the Rev. Canon Galbraith, Peter Pensonby Metge, Esq., of Rathkea, County Tipperary, second son of the late John Charles Metge, Esq., of Slon, County Meath, to Julia Brereton, daughter of the late W. W. Brereton, Esq., Q.O.  
OLPHERT and WARBURTON — December 5, by special license, in the Parish Church, Monkstown, County Dublin, by the Rev. Canon Pascocke, D.D., Robert F. Olphert, Esq., barrister-at-law (North-West Circuit), to Frances Sophia, daughter of the late Richard Warburton, of Garryhinch, Queen's County, Esq., D.L.

DEATHS.

M'NAMARA — December 7, at her residence, Eyre-street Galway, Honoria J., widow of the late Michael M'Namara, Esq., solicitor.  
NAPIER — December 9, at St. Leonard's-on-Sea, the Right Hon. Sir Joseph Napier, Bart., at the age of 78.

FUNERAL REQUISITES OF EVERY DESCRIPTION.

49, WALLER, 50,  
DENZILLE-STREET.

3-7

LEGAL POSTINGS:

In the HIGH COURT OF JUSTICE in IRELAND.  
CHANCERY DIVISION.—LAND JUDGES.

COUNTY ROSCOMMON.

SALE IN DUBLIN,  
On TUESDAY, the 6th day of FEBRUARY, 1883.

In the Matter of the Estate of  
**RAPHAEL JOHN O'SULLIVAN,**  
a person of unsound mind, by CATHERINE O'SULLIVAN,  
his Guardian *ad litem*, Owner;  
KATHLEEN O'SULLIVAN and JAMES WM. FAIR,  
Petitioners.

TO BE SOLD BY PUBLIC AUCTION,  
Before the Right Honourable Judge OSMAW,

At the Court of the Land Judges,  
Inns-quay, in the City of Dublin,  
On TUESDAY, the 9th day of FEBRUARY, 1883,  
At the hour of Twelve o'clock noon,

In Four Lots,

The Fee-simple Estate of CARRICKYNAGHTEN and GARRYNAGOWNA, situate in the Barony of Athlone, and County Roscommon.

LOT No. 1 consists of Part of the Townland of Carrickynaghten, and Carrickynaghten and Garrynagowna Bog, containing 202a 3r 32p statute measure.

LOT No. 2 consists of Part of the Townland of Carrickynaghten and Garrynagowna Bog, including part thereof known as Collogoriff, containing 277a 2r 31p statute measure.

LOT No. 3 consists of Part of the Townland of Garrynagowna and Carrickynaghten and Garrynagowna Bog, containing 508 acres statute measure. This Lot will be sold subject to an annuity of £120 a year on the life of a lady now in her 62nd year, and will be bound to indemnify the other Lots from the payment thereof.

LOT No. 4 consist of Part of the Townland of Garrynagowna, Carrickynaghten, and Garrynagowna Bog, containing 292a 0r 39p statute measure.

The title rentcharge of £3 7s 4d and the quit rent of £2 14s 1½d will be redeemed out of the purchase-money of the Lots, as also the amounts due to the Commissioners of Public Works on foot of loan.

Dated this 15th day of December, 1882.

H. C. LYNCH, for Examiner.

DESCRIPTIVE PARTICULARS.

The Property is situated between Athlone and Ballinasloe, both important Stations on the Midland Great Western Railway, and both celebrated as being first-class Fair and Market Towns. The county road from Athlone to Ballinasloe and Galway passes through a portion of the property at the south-west extremity, and there is a good road communication from Athlone on another portion of the Estate (forming Lot 1). The river Shannon adjoins a portion of the property, and affords communication by water with Athlone.

The Estate has been well managed, considerable sums of money having been expended on drainage and other improvements, and there is an ample supply of turbary. Almost all the Property, with the exception of the Demesne Lands on Lot 4 (which is in the owner's possession), is in the hands of a peaceful tenantry.

The Dwelling-house is well situated on an extensive demesne, immediate possession of which (with the exception of 59a 8p, set to tenants) will be given to the purchaser of Lot 4. The Demesne Lands are well timbered, fenced, and in good condition, and capable of yielding a large return for meadowing and grazing purposes. There is also an artificial lake of considerable extent on the demesne.

Private proposals will be received by the Solicitor having the carriage of the proceedings up to the 10th day of January, 1883, and submitted to the Court for approval.

For rentals and other particulars apply to the Registrar of the Land Judges Court, Inns-quay, in the City of Dublin; to

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# THE IRISH LAW TIMES AND SOLICITORS' JOURNAL.

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No. 830

## CONTRACTS IMPOSSIBLE OF PERFORMANCE.—I.

THE case of *Lynch v. The Midland Railway Co.*, reported in our present issue (16 Ir. L. T. Rep. 115), and already commented on (16 Ir. L. T. 275, 289, 317), is an interesting authority on the subject of contracts impossible of performance, on which we have found another Irish decision not hitherto adverted to, besides some recent Canadian and American cases further illustrative of the doctrine in question. An appeal was taken, and after elaborate arguments judgment was reserved, and has not even yet been delivered; so that, of course, we shall abstain from direct comment on the case. But, for our present purpose, it should be mentioned that on the hearing stress was laid upon two cases not much dwelt upon (and so far as we know, not cited) in the court below—namely, the leading case of *Paradine v. Jane*, Aleyn, 26, and *Hall v. Wright*, E. B. & E. 746, 29 L. J. Q. B. 43, to which in particular the learned Master of the Rolls referred.

Now, we find the former case acted on in the beginning of the present year, by the Supreme Court of Missouri, in *Harrison v. Missouri Pacific Ry. Co.*, holding that, to an action for breach of contract for shipment of cattle, at a certain time, it is no defence that the cars were prevented from arriving at the required time by an unavoidable accident and delay; inasmuch as, where a party by contract agrees to do a prescribed thing in a prescribed time he is liable for non-performance of the contract, although his non-fulfilment of the contract was occasioned by inevitable and unavoidable accident: citing *Paradine v. Jane*, *ubi supra*; *Atkinson v. Richie*, 10 East, 530 (referred to by May, C.J., in *Lynch's case*); *Spence v. Chadwick*, 71 Jur. 872; *Place v. Express Co.*, 27 Hilton, 33; *Deming v. Ry. Co.*, 43 N. H. 455; *Hadly v. Clark*, 8 T. R. 250; *Parmlee v. Wilkes*, 22 Barb. 539; *Harmony v. Fingham*, 2 Kern. 99; *Hutchinson. Carriers*, s. 317; *Angell, Carriers*, s. 249. The distinction is that, when the law creates a duty or charge, and the party is disabled to perform it, without any default in him, and hath no remedy over, then the law will excuse him; but, when the party by his own contract creates a duty or charge upon himself, he is bound to make it good if he may, notwithstanding any accident by inevitable necessity, because he might have provided against it by his contract: *Paradine v. Jane*, *ubi supra*; *Hadley v. Clarke*, 8 T. R. 259; *Carret v. Dutton*, 4 Camp. 333; *Shubrick v. Salmon*, 3 Burr. 1637; *Parker v. Hodgson*, 3 M. & S. 265; *Storer v. Gordon*, *ib.* 308; *Blight v. Page*, 3 B. & P. 295, n.; *Marcus of Buie v. Thompson*, 13 M. & W. 487; *Comyn's Dig. tit. Condition*, L. 14; *Tomkins v. Dudley*, 25 N. Y. 272; *Oakley v. Morton*, 1 Kern. 25; *Bunn v. Prather*, 21 Ill. 217; *Bacon v. Cobb*, 45 *ib.* 47; *Steele v. Buc*, 61 *ib.* 343; *Walker v. Tucker*, 70 *ib.* 527; *School District v. Dauchy*, 25 Conn. 520; *School Trustees v. Bennet*, 3 Dutch. 513; *Adams v. Nichols*, 19 Pick. 275; *Davis v. Smith*, 15 Mo. 467; and other English and American cases collected *ante*, p. 289. But, it should be remembered that, where the continued existence of a specific thing is essential to the performance of the contract, its destruction, from no default of either party, operates as a discharge: *Taylor v. Caldwell*, 3 B. & S. 826; *Williams v. Lloyd*, W. Jones, 179, Palmer, 543; *Jones v. How*, 9 C. B. 1; *Walker*

*v. Tucker*, 70 Ill. 527; *Lord v. Wheeler*, 1 Gray, 282; *Dexter v. Norton*, 47 N. Y. 62; *cf. Earl of Meath v. Cuthbert*, 10 Ir. L. T. Rep. 145; but, see *School District v. Dauchy* and *Bunn v. Prather*, *ubi supra*; and see *Knight v. Bean*, 22 Me. 536. And so, in the Canadian case of *Ellis v. The Midland Ry. Co.* (2 C. L. T. 511), decided in September last, where it appeared that the plaintiff was employed by the defendants as master of a steamer, for the season of 1877, but the vessel was burned before the season was over, it was held that, by the destruction of the vessel, the contract was at an end, and that the plaintiff could not recover the balance of the salary agreed upon for the season. *Cf. Appleby v. Myers*, L. R. 2 C. P. 651, 36 L. J. C. P. 331; *Anglo-Egyptian Nav. Co. v. Rennie*, L. R. 10 C. P. 271, 571, 44 L. J. C. P. 130; *Scully v. Kirkpatrick*, 70 Penn. 324; and as to *Hills v. Sughrue*, 15 M. & W. 353, see *Pollock Contr.*, 2nd ed., 356, n., *Anson, Contr.*, 2nd ed., 318, n. And again, he who prevents a thing being done shall not avail himself of the non-performance he has occasioned: *Fleming v. Gilbert*, 3 Johns. 528; *Hotham v. E. India Co.*, 1 T. R. 639; *Risinger v. Cheney*, 2 Gilm. 90; *Potter v. Dennison*, 5 *ib.* 590; *Rauson v. Clark*, 70 Ill. 656; *Mt. Vernon v. Patton*, 94 *ib.* 65; *Borden v. Borden*, 5 Mass. 67; *Marshall v. Craig*, 1 Bibb, 383; *Majors v. Hickman*, 2 *ib.* 217; *Shaw v. Hurd*, 3 *ib.* 372; *Jones v. Walker*, 13 B. Mon. 165; *Mayor v. Butler*, 1 Barb. 337; *Wheatley v. Covington*, 11 Bush. 18; *Smith v. Cedar Rapids*, 43 Iowa, 239; *Stewart v. Keteltas*, 36 N. Y. 388; *Roll's Abr.* 445; and other English and American cases collected *ante*, pp. 289, 290. It has been decided that injunctions obtained at the suit of third persons have not the effect of suspending or extending the period of statutes of limitations: *Wilkinson v. Fire Insurance Co.*, 72 N. Y. 499; *Barker v. Millard*, 16 Wend. 572; and a well-known American writer (J. L. High) has recently observed that no reason is perceived why the same rule should not apply in cases where performance of a contract is prevented by an injunction obtained by strangers to the contract: 15 Central L. J. 342; and see cases collected *ante*, p. 289. In *Courtenay v. Waterford and Central Ireland Railway Company* (13 Ir. L. T. Dig. 20, a case not cited, by the way, in Mr. Emden's recent work on Building Contracts), it appeared that the plaintiff, having contracted with the defendants for the erection of a bridge, to be completed by a prescribed day, subsequently entered into an agreement with them for certain additional work, consisting of alterations in the structure of the bridge, and of such a nature that, until they were finished, the bridge itself could not be completed. It was held that, the original contract having become, by the further agreement and the nature of the work to which it related, a contract to complete within a reasonable time, there was evidence that it was impossible by the exercise of all due and reasonable despatch to complete the bridge within the time originally stipulated; and that, therefore, the plaintiff was entitled to recover his demand notwithstanding the delay. *See cf. Jones v. St. John's College, Oxford*, L. R. 6 Q. B. 115, 40 L. J. Q. B. 80; *Thorn v. Mayor of London*, L. R. 1 App. Ca. 120, 45 L. J. Ex. 467; and as to contracts to build in contravention of statutes, see *Stevens v.*

*Gourley*, 7 C. B. N. S. 90, 29 L. J. C. P. 1, 1 L. T. N. S. 33, 1 F. & F. 498; *Cubitt v. Smith*, 11 L. T. N. S. 298. In 1 Roll. Abr. P. 450, pl. 10, by the way, a curious rule is laid down that, "if a man covenant to build a house before such a day, and afterwards the plague is there before the day, and continues there till after the day, this shall excuse him from the breach of the covenant for not doing thereof before the day, for the law will not compel him to venture his life for it, but he may do it after." But in *Hall v. Wright*, *ubi supra* (to which we shall subsequently refer), Campbell, C.J., citing this rule, said that, time not being of the essence of the contract, the existence of the plague might be pleaded in suspension and in excuse of performance of it on that day; but, the contract was not dissolved, and if the house had not been built in a reasonable time afterwards, the covenantor would have been liable in damages. In *Dewey v. School District* (19 Amer. L. Reg. 548), it was held that, where schools were suspended for a period on account of the prevalence of small-pox, the teacher remaining ready to perform his contract, he was not by reason of such suspension precluded from his right to compensation during such period—performance not having been rendered impossible, but merely difficult or undesirable, and there having been no destruction of the subject-matter of the contract.

#### THE LATE RIGHT HON. SIR JOSEPH NAPIER, BART.

On the 4th of May, 1802, Lord Redesdale, then the Irish Chancellor, wrote to Lord Eldon:—"I have been principally engaged in eating and drinking. To-morrow I sit for the first time. Lord Kilwarden is a sensible man, but I think not strong. Lord Norbury—as you know—the Attorney-General, I like, though he is not high as a lawyer. Mr. O'Grady is a pleasant young man. Mr. Saurin sensible, but, I think, discontented. The rest are not of much importance." Some two years after this rather uncomplimentary estimate of the Irish Bar was penned by "a strong-built Chancery pleader from Lincoln's Inn," as he was described by Mr. Justice Johnson, there was born in the north of Ireland one who was destined to add a brilliant name to the many by which the Bar of Ireland was subsequently distinguished. Sir Joseph Napier was born at Belfast on the 26th of December, 1804. He died at St. Leonard's-on-Sea, on the 9th of December, 1882.

He was the youngest son of William Napier, a descendant of the Merchiston branch of the Napier family. Educated in Belfast, and afterwards in the University of Dublin, he had even in early life the advantage of several able teachers. He was placed under the private tuition of the afterwards famous dramatist, J. Sheridan Knowles, and subsequently became his pupil in the Belfast Academical Institution. He next studied classics under Dr. O'Beirne (subsequently master of the Royal School of Enniskillen), and was prepared for Trinity College under the Rev. William Neilson; while he enjoyed the advantage of studying mathematics under the especial care of the late Dr. Thomson of Belfast, father of the celebrated Professor of Cambridge University. Thus prepared, he entered Trinity College in November, 1820, and even before the termination of his first year distinguished himself as a mathematician, publishing a demonstration of the Binomial Theorem, while his undergraduate course was remarkable for his proficiency in classics. In 1825 he graduated B.A., but the time was yet to come when he received the honorary degrees of LL.D. of Dublin and D.C.L. of Oxford. In Trinity he formed an intimate acquaintance with the late Lord

Chief Justice Whiteside; and with him and the late Dr. William Cooke Taylor, the young student engaged successfully in reviving the old Historical Society, founded in 1770, of which, many years later, in 1856, he was chosen President. At that time the Society—which was yet to number on the roll of its auditors, medallists, and prizemen such names as Isaac Butt, Edward Sullivan, Gerald Fitzgibbon, Edward Gibson, David Plunket, and so many others that have won celebrity—was in a condition of completely "suspended animation;" but, the efforts of Napier and his colleagues first succeeded in establishing, outside the walls of the College, what was called the Oratorical Society; and on May 4, 1870, the far-famed College Historical Society was found yet in being and celebrating its centenary under the presidency of the Right Hon. Sir Joseph Napier, Bart., Ex-Lord Chancellor of Ireland. His studies in oratory were undertaken with a view to the Bar, and in Easter Term, 1831, after a time spent in London qualifying himself more fully for that profession, he was called, *tempore* Plunket, and joined the North-West Circuit. The Irish Bar at that time, at all events, could not be deemed to deserve the disparaging remarks of Lord Redesdale. Bushe, the Pennefathers, and O'Connell had brought it celebrity; and Napier took his place among such lawyers and advocates as Blackburne, Brewster, Crampton, Greene, Hatchell, Henn, Holmes, Lefroy, Monahan, Moore, O'Loghlen, Pigot, Sheil, and Whiteside. He soon rose into estimation as a well-read lawyer and consummate special pleader. But, ample as were his own acquired qualifications, he had recognised how inadequate were the provisions then existing for the purpose of legal education; and the system that dispensed with lectures, examinations, or any test of qualification whatever, was put an end to by the establishment in 1839 of the Dublin Law Institute, in which, as a Professor, he took an active part, along with Whiteside and others. Sir Joseph, moreover, largely benefited the profession by his literary efforts; and his little treatise on Civil Bill Practice, re-edited in 1841 by Robert Longfield, became a standard book of reference; while he also contributed various papers to the "Legal Reporter," a useful publication of the day. In 1843 we find him appearing before the House of Lords in the celebrated appeal case of Samuel Gray, involving the accused's right of challenging a juror, when he succeeded in having the conviction of his client reversed. And later on, in 1843-4, he appeared for the Crown in the State Trial of O'Connell, having, it is said, returned a retainer from the traverser's solicitor which had reached him too late. However, he had but a minor part to take in the trial, as junior, but he was subsequently engaged on the appeal to the House of Lords, and after his return he was appointed one of her Majesty's Counsel. In 1847 Napier became a candidate for Parliamentary honours, contesting Trinity College with Sir Frederick Shaw, the then Recorder, but unsuccessfully, notwithstanding Isaac Butt's powerful support. He was returned, however, in the following year, on Sir Frederick Shaw's retirement, and was again elected at the general election of 1857, being unsuccessfully opposed by Mr. (now Judge) Lawson. In 1852 he was appointed Attorney-General, under the administration of Lord Derby, and was sworn of the Irish Privy Council, while his friend Whiteside (who in 1833 had married Miss Napier, sister of the deceased) received the appointment of Solicitor-General; but their tenure of office enured only till the 10th of December in the same year, when the Derby Cabinet resigned. In the same year he was also made an honorary Bencher of the King's Inns. In 1858, on the return of Lord Derby to power, Mr. Napier was appointed Lord Chancellor,

holding office till the year following, when there was another change in the Government. But, again Lord Derby formed an administration in 1867, and in that year Mr. Napier was created a baronet. He was, also, chosen Vice-Chancellor of the University of Dublin, which office he held till 1880, when he was succeeded by Dr. Ball. He had been elected President of the Department of Jurisprudence of the Social Science Association in 1858, and in 1861 he was again elected to that position, and delivered a very able address. It is stated that he was offered, and declined the office of Lord Justice of Appeal in 1866. And in 1868 he was made a Privy Councillor of Great Britain, and constituted a member of the Judicial Committee of the Privy Council. Sir Joseph Napier was, also, a Commissioner for the Publication of the Ancient Laws of Ireland, and became a member of many public boards, including the Board of National Education; while he was an active member of the Ritual and Clerical Subscription Commission, an energetic supporter of the Church Education Society, and, on the disestablishment of the Church of which he was a peculiarly zealous champion, assisted to frame its new constitution, various important Acts of Synod and rules of debate being shaped by his hand. Sir Joseph married, on the 20th of August, 1831, Charity, second daughter of John Grace, Esq., of Dublin, by whom he had issue two sons and three daughters. But the premature death of his much-loved eldest son, William, a promising and universally respected member of the Bar, which took place a few years ago, exercised a sad influence on the closing years of his busy life. It was a shock from which, it is believed, he never recovered, and he seemed to have become physically unable for sustained mental or bodily work.

Dying after a lingering illness at the age of 78, Sir Joseph Napier has left a reputation worthy of a high estimate even among those of his foremost public and professional contemporaries. Without pretension to rank as an orator with a Whiteside or Butt, he was an able, refined, and perspicuous speaker. But, he was still more a lawyer thoroughly erudite, of consummate soundness and skill, patient, painstaking, and ingenious. A most conscientious and careful judge, his paramount judicial capacity was marred in its exercise by the physical disqualification of defective hearing. In Parliament he failed to achieve any very great success, but he took a prominent part in discussing the more important questions of the day, always on the Conservative side. He opposed the Poor Law Extension Act, and the Ministerial measure for legalising marriage with a deceased wife's sister; but his principal legislative efforts had relation to land law reform, having unsuccessfully introduced a Land Improvement Bill, a Leasing Power Bill, a Tenants' Improvements' Compensation Bill, and a Landlord and Tenant Law Amendment Bill, which, while opposed as an attack upon property, by the party who returned him to Parliament, were moderate indeed when compared with the fruits of recent legislation. In the law, politics, and religious polemics of his day, Sir Joseph Napier, in a word, won a conspicuous renown, and in each capacity deserves to be held in remembrance among the great characters of Irish public life.

#### THE DEATH OF MR. ROBERT DONNELL.

It is with regret deeper than we can express that we have to record the sad death of Mr. Robert Donnell, who was found drowned in the Grand Canal, near Leeson-street Bridge, shortly after seven o'clock on last Monday evening. The deceased gentleman left his residence in Stephen's-green, South, about 1 o'clock

that day, and is believed to have been returning, shortly after six o'clock, from visiting some friends in the neighbourhood of Leeson Park, when, in walking along the edge of the canal, the evening being dark, he stumbled and fell in. His watch appeared to have stopped at 6.30. Besides his gold watch, money to the amount of £6 or £7 was found in his pockets, in which he had also some law papers. An inquest was held on Wednesday, when, Dr. Pratt having testified that death was caused by drowning, and that there were no marks of violence on the body, the jury returned an open verdict accordingly.

Mr. Donnell, who was a native of Tyrone, was about 40 years of age, and was called to the Bar in Michaelmas Term, 1864. He joined the North-East Circuit, for which he acted as a Reporter for the IRISH LAW TIMES. He enjoyed a considerable practice both on circuit, in the county courts, and in the superior courts, his advocacy being especially sought in cases involving questions on the land laws, with which he possessed an especial acquaintance. He was the author of an able work on the Land Act of 1870, and compiled a valuable volume of Reports of the decisions under that Act, which reached a second edition, and has frequently been judicially referred to in terms of high approval. Mr. Donnell, who had been a distinguished graduate of the Queen's University, filled the office of Professor of Jurisprudence and Political Economy in the Queen's College, Galway. He was also a Crown Prosecutor for the County of Louth, and County of the Town of Drogheda. On the appointment of the Commission under the Earl of Besborough he was appointed assistant secretary; and it is stated that but for ill-health he would have been one of the first to be appointed an Assistant Land Commissioner. His kindly and courteous disposition had endeared him to all; while his marked ability as a lawyer would certainly have lent a yet more conspicuous lustre to a career now so lamentably frustrated.

#### THE SETTLED LAND ACT—VIII.

(Continued from page 614, ante.)

##### Improvements (Sects. 25-29).

Sect. 25 contains a list of authorised improvements on which capital money may be spent. But, if the capital money is in the hands of the trustees, tenant for life must not only get their approval, but must have either a certificate of the Land Commissioners or of engineer or surveyor nominated by the trustees and approved by the commissioners that the work is properly executed, or an order of the court (sect. 26). Most settlers will approve of these precautions, but in any case where it is desired to give greater facilities for improvements, the settlement may dispense with the formal certificate of execution, or even with the approval of the trustees, and simply require a statement in writing by tenant for life that he desires to execute certain improvements, and afterwards a like statement that they have been executed.

A wider range of Improvements may be permitted if desired. Thus erecting or making permanent improvements in the mansion-house might be allowed.

The provisions in sect. 28 as to maintenance of improvements and insurance may be compared with those in sects. 72, 74 of the Improvement of Land Act, 1864. We shall treat of these sections, and also make reference to the Limited Owners' Residences Acts, in our note on sect. 30.

##### Improvement of Land Act, 1864 (Sect. 30).

Sect. 30 of the S. L. Act extends the list of improvements under s. 9 of the Act of 1864 (27 & 28 Vict., c. 114), so as to comprise those of sect. 25 of the S. L. Act. Erection of mansion-house and appurtenances,

and permanent improvements of the same, are, by virtue of the Limited Owners' Residences Acts (83 & 84 Vict., c. 86; 84 & 85 Vict., c. 84), already included in the improvements which may be effected under the Act of 1864. But they are not included in those authorised by the S. L. Act. Construction of reservoirs for supply of water to the property, &c., is also an improvement within the Act of 1864 by virtue of 40 & 41 Vict., c. 31. Compare sect. 25 (xiii.) (xviii.) of S. L. Act.

By ss. 72-74 of the Act of 1864, improvements are to be upheld, and where necessary fire insurance effected. Inclosure commissioners can compel, or give relief from maintenance of improvements, (ss. 75, 76). Charges have priority over existing incumbrances (s. 59). But as to charges under the Limited Owners' Residences Acts see 85 & 86 Vict., c. 56, s. 9. Limited Owners can, within certain limits, charge the estates with the expenses of building "mansions" as residences for themselves, and for permanent improvements in the same: 83 & 84 Vict., c. 86; 84 & 85 Vict., c. 84. See Chitty's Stat. iii. 1420-1449, and Tudor, L. C. Con. 3rd ed. 86; Seton, 1267; David, ii. 749. It would seem that this section (80) of S. L. A. affects land held by clergy in right of their benefices, and other like corporations (although their land is not "settled," either in the ordinary meaning or within the definition of sect. 2 of S. L. Act), since land so held is included in the Act of 1864 (see ss. 8, 20). The effect of this section is to add certain improvements to the list in the Act of 1864, but the procedure is under that Act. The Settled Land Bill contained (clause 29) a provision enabling tenant for life to expend his own money in improvements and subject to certain safeguards to charge the expenditure on the land. This was omitted during the passage of the Bill. It might sometimes be advisable for a settlor to insert in the settlement a provision somewhat resembling the omitted clause, so as to save the expense of the more cumbersome procedure under the earlier Acts.

#### Contracts (Sect. 31).

This empowers tenant for life to make contracts for sale, exchange, partition, mortgage, and charge, and to vary and rescind them. Any consideration for such variation or rescission is to be capital money. He may contract to make a lease, and accept surrender of contract, and may vary lease. Nothing is said as to whether the consideration for such surrender or variation is to be capital money. See above.

Contracts are to bind successors and the land. The court may give directions for enforcing, varying, or rescinding contracts. Preliminary contracts for lease shall not form part of the title. This last provision corresponds with the enactment in C. A. Am., s. 4, as to leases under powers generally, but appears to be rather wider.

By sect. 45 a tenant for life intending to make any contract for sale, &c., is to give notice to the trustees and their solicitor. Apparently the *bona fide* purchaser, without "notice," will get a valid contract, although such notice has not been given (sects. 45) (3), 54, 81, (2); and see C. A. Am., s. 3, as to "notice," and sect. 1 (ii.) of that Act for definition of "purchaser." It would seem that the provisions of sect. 45, as to notice to the trustees, do not apply to certain minor powers. See below on that section. But, although a valid contract is made, yet it would still be in the power of the court to set it aside (sect. 81) (8), and this would apparently be the case although there has been no fraud or misbehaviour on the part of the purchaser. See Seton, 1298. The application may be made by a successor or by a person interested in the contract. Possibly, in some cases, the trustees might apply (sect. 44), but usually their remedy is to object when they receive notice (sect. 45) (1). For mode of application see sect. 46.

#### Application of Money in Court under any Act (Sect. 32).

Money in court under L. C. C. Acts, the S. E. Act, 1877, or any other Act, and liable to be laid out in

purchase of land to be settled, may be invested as allowed by sect. 21, or on improvements under sect. 25, as well as in the modes permitted by the particular Act under which it has been paid in.

This applies to money already in court. This enlarges considerably the range of investment with regard to money paid in under the L. C. C. Act, 1845, ss. 69, 70. As to interim investment under that Act see Alph. Pr. 499; Seton, 1422; and as to permanent investments in land or improvements or discharge of incumbrances, &c., see Alph. Pr. 501; Seton, 1423, 1427.

As to money under Settled Estates Act, see Alph. Pr. 801; Seton, 1508.

Moreover these investments will be, if the tenant for life chooses, permanent during his life (sect. 22) (4); he can thus avoid any purchase of land (sect. 22) (5); though the money will be considered as land (sect. 22) (5). See, however, sect. 63 (2) (iii.) as to settlements by way of trust for sale. This will enable the limited owner to save himself the troubles of landowning and to get a better income. This applies to money already in court as well as to money hereafter paid in. The procedure will be in accordance with the Act under which the money is paid in.

This section will not apply to money, which is in court, representing glebe lands.

#### Application of Money in the Hands of Trustees (Sect. 33).

This enables tenant for life to require investments, &c. of money in the hands of trustees, and liable to be laid out in purchase of land to be settled as though it were capital money arising under the Act. *Seem*, trustees cannot safely invest under this section without consent of tenant for life. Compare sect. 22 (2).

#### Application of Money paid for Lease or Reversion (Sect. 34).

We have already spoken of this in our note on sect. 8. We may here add references to Alph. Pr. 506; Seton, 1426; Browne & Theobald, 191, with regard to sect. 74 of L. C. C. Act 1845.

Compare also sect. 37 of the S. E. Act, 1877, see Alph. Pr. 802. As to renewable leaseholds, see *Maddy v. Hale* (35 L. T. Rep. N. S. 134; 3 Ch. Div. 327); *Barber's Settled Estates* (18 Ch. Div. 624; 45 L. T. Rep. N. S. 433).

It would seem that the trustees have complete discretion, if exercised *bona fide*, to "lay out, invest, accumulate, and pay," in accordance with this section. If tenant for life has reason to believe they will exercise their discretion unfairly to him, he should, on the sale, &c., direct the capital money to be paid into court (sect. 22) (1). If he has not done this he can, however, apply to the court under sect. 44.

(To be continued.)

#### WESTMINSTER HALL AS A LAW COURT.

The inconvenience and heavy expense which the nomadic system entailed upon suitors was the cause of the first improvement upon the primitive method—a clause in Magna Charta stipulating that "common pleas should not follow the court, but shall be held in some certain place." The "certain place" selected was the Great Hall of Westminster. The Royal Palace of Westminster had been the habitat of the Curia previously to this enactment, but only when the king happened to be in residence there; and on the erection in 1097 of the hall its meetings had been transferred thither from the palace. The reign of Henry III. saw another step in the right direction: the Curia itself becoming stationary in all its branches, a lodging in the hall being assigned to each.

Once settled in its new abode, surrounded by the effigies of its former presidents from Edward the Confessor to Stephen, and presided over by the king in person, or in his absence by his deputy, the *Totius Angliæ Justiciarius*, the business of the Curia grew rapidly in bulk and importance. A Court of Chivalry, under the presidency of the Lord Constable and Lord

Mareschal, and a court for the regulation of the king's domestic servants, the prototype of the more modern Palace Court, were added to those already existing. The Barons of Parliament, with the Lord High Steward at their head, formed a Court of Appeal from the lower tribunals, as well as for the trial of delinquent peers; while the Courts of Chancery, Common Pleas, Exchequer, and King's Bench disposed of the remaining legal business. The last named had its domicile in the south-east angle of the hall, deriving its name from the marble bench, appropriated to the king on coronation days, which served as the seat of justice. Here were heard all the pleas of the Crown. The north-west corner was occupied by the Court of Common Pleas. "In the south-west angle," says Walcott, "sat the Lord Chancellor, the Master of the Rolls, and eleven men learned in the civil law called Masters in Chancery;" and as time went on, and even more numerous Courts became necessary to cope with the requirements of suitors, a station close to the King's Bench was assigned to the new Court of Wards and Liveries, instituted by Henry VIII., adjoining which sat an earlier sub-section known as the Equity Court of Requests or Conscience, "sometimes called the Poor Man's Court, because he could there have right without paying money." It is hardly necessary to remark that no court conducting business on these principles exists under our modern system of judicature.

The Court of Exchequer—taking its name from the parti-coloured cover of the table upon which the king's accounts were reckoned—also had its quarters in Westminster Hall, and as late as 1256 was presided over by the King (Henry III.) in person. In modern times its president, when the court sat in equity, has been the Chancellor of the Exchequer; and here the selection of fit and proper persons to serve the office of sheriffs of the counties was made, and the quaint ceremonials attendant on the presentation of the Sheriffs of London and Middlesex to the court took place—the chopping of faggots and formal counting of horse-shoes and hobnails by the senior alderman, by way of suit and service on the part of the City for certain long-defunct tenements in the county of Salop and the parish of St. Clement Danes.

As a Criminal Court, too, Westminster Hall has been the scene of most of the great State trials in English history. Here, on January 20, 1649, Charles I. met his accusers, and refused to recognise the jurisdiction of his self-constituted judges. Here in 1305, William Wallace was condemned to death on charges of treason, sacrilege, and robbery. Here proud protector Somerset, and his no less overbearing rival the Duke of Northumberland, received their sentences. And in the list of trials in Westminster Hall figure also the names of Robert Devereux, Earl of Essex; Guy Fawkes and his fellow-conspirators; Wentworth, Earl of Strafford; the Seven Bishops; the Jacobite lords; Earl Ferrers, for murder; the Duchess of Kingston, for bigamy; Warren Hastings, whose trial dragged its slow length along for seven years; and Lord Melville, whose impeachment is said to have drawn tears from the eyes of his friend and political chief, William Pitt.

The original hall having been ruinous in the reign of Richard II., was re-roofed, if not completely rebuilt, by that monarch in the form which—but for necessary repairs and slight alterations—it now presents. Two curious engravings—one of the exterior, published 1808, the other of the interior, published in 1797—are reproduced in "Old and New London." The former plate shows the north front very much as we see it at the present day, except that its lower part is obscured by a range of poor-looking buildings on each side of the doorway: while the sites of the present Law Courts and Houses of Parliament are occupied by private houses and taverns abutting upon the side-walls of the hall itself. The latter print, called "The First Day of Term," "shows the centre of the hall filled with a motley throng; while on either side are rows of banners (guidons, colours, and standards, ensigns and trophies of victory obtained by the confederates under the

command of his Grace the Duke of Marlborough); beneath which, on the east, are rows of bookstalls, and on the west sundry stalls of milliners, with ladies making purchases at the counter. At the further end of the hall, upon the steps, are two large boxes or pews, in which are seated six officials in wigs and gowns, and looking as grave as judges."

Such were the incongruous surroundings of the majesty of the law until the building of the present courts, from the design of Sir John Soane, 1820-25. However great the improvement thus effected may have been, it cannot be denied that few cities could show a less imposing or less beautiful structure than that which has sufficed for the legal wants of our metropolis for the last sixty years; and no one can regret the announcement by Mr. Shaw Lefevre of the intended demolition of the mean-looking buildings which now lean against and hide the western side of "Rufus's Hall"—*St. James's Gazette*

#### PERPETUITIES ARISING OUT OF CONTRACTS.

The case of *The London and South-Western Railway Company v. Gomm*, 51 Law J. Rep. Chanc. 580, forms an important decision on the law relating to perpetuity. The immediate question was to what (if any) period an option to purchase should be restricted; but the case also involved the discussion of the more general question of remoteness as applied to covenants as to user of land. The company, by deed, in 1865, reciting that they were seized in fee of certain land no longer required for the purposes of their railway, conveyed such surplus land for £100; and the purchaser for himself, his heirs, executors, administrators, and assigns, covenanted with the company, their successors and assigns, that he and the owners for the time being of the land, and all other persons who should be interested therein, would at any time thereafter, upon a six months' notice and receiving £100, reconvey the land to the company. In 1879 Gomm, with notice of the covenants, purchased the premises. The company, in 1880, gave notice to Gomm to reconvey; and, upon his refusal to do so, brought an action for specific performance of the covenant. They had by their special Act power in 1865 to purchase land by agreement; and that power was extended to the time when the action was brought. It was urged (1) that *Gilbertson v. Richards*, 28 Law J. Rep. Exch. 158; 4 H. & N. 277, and *The Birmingham Canal Company v. Cartwright*, 48 Law J. Rep. Chanc. 552, in which Mr. Justice Fry upheld a right of pre-emption unlimited in point of time, applied; (2) that a contract to buy or sell land, or covenants restricting the use of land, though unlimited, are not void for perpetuity. Mr. Justice Kay disapproved of the former argument, but acceded to the latter. The Court of Appeal, however, held that the covenant could not be enforced. The Master of the Rolls puts a dilemma which it is difficult to avoid. If, he says, it is a mere personal contract, it cannot be enforced against the assignee [viz., Gomm]. But if it binds the land, it creates an equitable interest in the land. "A person exercising the option has to do two things—he has to give notice of his intention to purchase, and to pay the purchase-money; but as far as the man who is liable to convey is concerned, his estate or interest is taken away from him without his consent; and the right to take it away being vested in another, the covenant giving the option must give that other an interest in the land." Whether such interest is created by devise or voluntary gift or contract can make no difference. "Is there," asks the Master of the Rolls, "any difference in substance between the case of a limitation to A. in fee—with a proviso that, whenever a notice in writing is sent and £100 paid by B. or his heirs to A. or his heirs, the estate shall vest in B. and his heirs—and a contract that, whenever such notice is given and such payment made by B. or his heirs to A. or his heirs, A. shall convey to B. and his heirs?"

The view now held by the Court of Appeal has not always prevailed. In *Keppel v. Bailey*, 2 M. & K. 527, which does not appear to have been cited in the case

under consideration, Lord Brougham seems to have taken a different view. He says: "I do not at all doubt that the enjoyment of property may be tied up and an illegal perpetuity created by annexing conditions to grants, or by executing covenants whereby whoever happens to be in possession shall be restrained from using that which is the subject of the grant or covenant in all but a certain prescribed way, provided always that the restraint so constituted is *not* reserved in favour of some other party, who may release it at his pleasure; . . . but, if the party for whom the condition is made or the party covenantee has the entire power of dealing with his interest in the subject-matter, it is an obvious mistake to treat this as an instance of perpetuity." And a little further on, he adds: "To take another view: though one of the parties interested, the owner of the property subject to the covenant or condition, may be fast, the other is loose, and so *quoad* both taken together—that is *quoad* all interested—the property is free." And he illustrates his meaning by referring to perpetual rents and easements which may be released. This view would seem to accord with that taken by Mr. Justice Fry in *The Birmingham Canal Company v. Cartwright*, 48 Law J. Rep. Chanc. 552, where he observes that "the total interest in the land, so to speak, is divided between the covenantor and the covenantee, and they can together at any time alienate the land absolutely." In the case under consideration, the Master of the Rolls observes that *The Birmingham Canal Co. v. Cartwright* must be treated as overruled. So that the court seems virtually now to adopt as its rule one which is expressed by "Lewis on Perpetuities" (Supplement, page 19), as follows: "The test ordinarily allowed for determining the presence or absence of the danger of perpetuities in respect of future limitations is not their capacity of being alienated, but of being destroyed. Extinction and not co-operation is what the law requires to be attainable in respect of remote future estates before it acknowledges their remoteness to be harmless—i.e., it is presumed the power of extinction by the person who takes subject to the limitation over, and without the co-operation of the person who takes a present right to a future interest under such limitation. Of that, the power of a tenant in tail, whose estate, if not barred, is subject to a subsequent limitation over, to bar his estate together with such limitation, is a familiar instance.

Before passing on to the question of remoteness in reference to covenants of user, two points in the argument in *The London and South-Western Railway Company v. Gomm* may be noticed. It was urged that, in Liverpool, in leases for 999 years, it is common to give an unlimited option of purchase. Now, is such an option effectual any more in a lease than in other cases? In *Lewis*, 619, it is observed that: "With respect to rights of entry, reserved upon leases for lives or years" . . . "such a right, in fact, merely confers a power to put an end to the contract, on non-performance by the lessee of the conditions on faith of which it was entered into; and, even as to the rights of re-entry, the commissioners, in the third Ry. Pr. Commissioners' Report, 43, while advocating a definition of the law against perpetuities, so as to include *inter alia* rights of entry for breach of conditions, think fit to make an express exception as to conditions contained in leases, for re-entry by the lessor for non-payment of rent, or breach of any lawful covenant, and suggest that it must be declared that, with reference to contracts between landlord and tenant, the rule against perpetuities shall not apply to any rent, covenant, or proviso, unless it shall appear by the instrument that such rent, covenant, or proviso was reserved or inserted for the purpose of evading the rule." But does not an option of purchase given to the lessee, and conferring upon him a power of acquiring, without further assent by the lessee or his representatives, an estate of a new character, stand upon a wholly different footing from the ordinary right of re-entry by the lessor; and would it not come within the principle of the dictum of Mr. Justice Ashurst, in *Roe v. Galliers*, 2 T. R. 140, that if a proviso for determining the term on assignment without leave, or on bankruptcy, "were

inserted in very long leases, it would be tying up property for a considerable length of time, and would" (if such time exceeded the permitted limits) "be open to the objection of creating a perpetuity?" It was also urged that renewable leases were not within the objection of perpetuity. In reply it was argued that covenants to renew leases are distinguishable, for they run with the land at law; and, no doubt, there was a distinction between a renewal and the principal case. Sir James Hannen observed that the covenant in the latter did not run with the land—and see *Sugden*, 597—but the observation of Jessel, M.R., that renewable leaseholds are an "exception to the general rule," may be thought the better answer to the objection. Compare *Lewis*, 682, and the observation of the commissioners (Ry. Pr. Commissioners' third report, 89, in reference to leases for lives) that, "such leases being ordinarily renewable, settlements of them are, in truth, not settlements of a limited interest." If, according to *Moore v. Clench*, 1 Chanc. Div. 452, the covenant for renewal creates an equitable estate from the time of its execution, still renewable leaseholds may be a species of property excepted by usage from the restrictions against perpetuity.

With regard to covenants as to user of land, the statement in *Davidson*, vol. 2, 570 note, 4th edition, to the effect that "covenants to build, repair, or inhere in purchase deeds in equity bind an alienee with notice, seems too wide." In fact, according to *Haywood v. The Brunswick Permanent Benefit Building Society*, 51 Law J. Rep. Q. B. 73, covenants, to have an effect in equity, must be restrictive. In that case, C. granted land to E. to the use that E. should pay C. the annual chief rent of £11, and subject thereto (it is presumed) to the use of E. in fee, and E. covenanted to pay the rent half-yearly, and to erect and keep in good repair, and, when necessary, rebuild. C. conveyed the rent to Haywood. E. conveyed the premises to M., who mortgaged the same to the society. Haywood sued the society for not keeping the premises in repair; but his action failed, it being decided (1) following *Milnes v. Branch*, 5 M. & S. 411, that the covenant did not run with the land; and (2) that the equitable doctrine as to covenants relating to user of land was binding only in the case of restrictive covenants. Lord Justice Cotton observed (p. 409): "The covenant to repair can only be enforced by making the owner put his hand into his pocket; and there is nothing which would justify us in going that length." In the case under discussion the Master of the Rolls approved of the limitation placed in the building society case of *Tulk v. Moxhay*.

In *Ex parte Ralph*, 1 De Gex, 219, the form of a power of entry is given, providing for other matters besides mere payment of rent. But the power of re-entry is there restricted to lives in being and twenty-one years from the death of the survivor; and this appears to be the safe course (see 2 *Davidson*, pp. 511, 520; *Lewis's Supplement*, 201), especially if anything like a power of re-entry is proposed, as in 1 *Prideaux*, 335, 11th edition, as distinct from a power of entry *quousque*. The form proposed in *Prideaux* authorises re-entry within certain lives or twenty-one years from the death of the survivor of them, "and such further time as may not be contrary to any rule or law for preventing perpetuities;" but the form in *Davidson* seems preferable. These questions are specially important in those localities where it is the custom to convey freeholds in fee subject to perpetual rent-charge and to perpetual covenants as to user. The ruling in *Haywood v. The Brunswick Permanent Benefit Building Society* seems a wholesome limitation as to covenants respecting user. On the other hand, it may be thought inconvenient that a condition for entry, if such condition be in itself unobjectionable, should have to be restricted to lives in being and twenty-one years. In other words, if such a condition may be usefully adopted during such a period, does it cease to be useful immediately upon the expiration of that period? Again, assume that the owner of building land desires to impose conditions as to user, in a long lease—say, for 999 years—to be adopted (with the object of securing the performance of these con-

ditions) rather than a grant in fee, when the builder would probably prefer the latter? Are conditions which may be considered harmless in the former case, hurtful in the latter? Conversely, if they ought to be prohibited beyond certain limits in dealing with the fee, ought they to be allowed in a very long lease?

One suggestion may be added. If perpetual rents, although not obnoxious to the rules against perpetuity, have any tendency to fetter dealings with property, might not some statutory machinery be devised under which they might, like quit-rents (Conveyancing and Law of Property Act, 1881, s. 45), be redeemed, and this, too, without prejudicing any legal and proper covenants as to user affecting premises out of which such rents are reserved? Might not, on the other hand, facilities be given in all cases where there is a right of perpetual renewal (for instance, in some of the city leases) for enabling the tenant to convert, for a reasonable compensation, his leasehold interest into a fee simple?—*Law Journal*.

#### WIGS AND GOWNS.

Woman, says Addison, quoting from a forgotten Greek pedant, is a creature that delights in decorating itself; and the essayist devotes a whole paper in the *Spectator* to establishing that in all ages she has taken more pains than man to adorn the outside of the head. The ceremony of yesterday tends a little to modify this exclusive belief. The Lord Chief Justice in his SS collar, the judges in their full-bottomed wigs, the sergeants in their scarlet gowns, and the Queen's Counsel in their silk attire, put in, all of them, such an appearance as showed that they valued decoration generally, and were not quite careless even about the outsides of their heads. Argument and case law lay, no doubt, in tight packed layers within, but outside it the goat-hair and the horse-hair in well-trimmed rows, made the old men look wise, and some of the young men look handsome. But in truth it would be an injustice to the law to ascribe to vanity what is chiefly the legacy of past centuries. It was said that no man ever looked so wise as Lord Thurlow when he had his wig on. But Lord Thurlow put his wig on, not in order to look wise, but because whole generations of chancellors had worn wigs before him. Law is the most conservative of all the professions; innovation and reform have been busy with it, and yet it is still padded round with mysteries, fictions and forms, which the others have long ago rejected. There is a legend yet whispered about and fondly believed in at Westminster that on the 22nd July, 1868, so great was the heat, the judge of the Divorce Court took his seat on the bench without his wig. The following day several young barristers followed this revolutionary precedent, and unless the mercury had fallen the profession would have been jeopardised. The noble independence of the law, and its proud superiority over convenience and common sense, came out in strong contrast on that occasion to the selfishness of another bench. It was Bishop Blomfield, the late Primate's predecessor, who asked the king permission for a bishop to dispense with a wig. The leave was easily given; indeed, according to one version, it was volunteered jocularly. The bishops went over one by one, voted uncovered, preached in their own hair, and have left us nothing but the sketch of Dr. Syntax and the portrait of Bishop Burnett to remind us of the days when law and divinity had goat's hair in common. But even at the bar there are signs of surrender. When the judges were banked up on their platform in the Central Hall yesterday morning their wigs were not uniform. Some were all white, and in others the white was relieved by a circular recess constructed just over their organ of benevolence. Law is the perfection of common sense, and for all legal attire there is an adequate cause. This black patch is the coil, and it shows that the judge who wears it holds the degree of sergeant-at-law. Once it was a skull-cap worn by a knight under a helmet. That was, however, many centuries ago. In more modern times—a little before 1800 A.D.—renegade clergymen

used to do barristers' work and take barristers' fees. A canon, it is true, forbade them to act as advocates in secular courts, but even then clergymen were contumacious. They pleaded for their client in the teeth of canonical prohibition, and they used the coil to hide the tonsure. One picturesque old annalist, writing about the year 1400, describes how a certain advocate, who was a sergeant, having been proved guilty of the grossest malversation, was sentenced to death. He pleaded his benefit of clergy, and, untying the threads of his coil, disclosed the tonsure. The plea, however, was no bar to the action of the executioner, and he was hurried off from the judgment-seat to the gallows. For six centuries the sergeants remained in undisturbed possession of that little black patch. They had their own rights and their own law. Queen's counsel were of mushroom growth compared to them; their first silk gown was almost of modern date. Francis Bacon (afterwards Lord Verulam) assumed it some time in the sixteenth century. The sergeants dated with the thirteenth. And for centuries the judges, before they had the honour of being made judges, had the honour of being made sergeants; and so it was they called the sergeants their brethren; and so it was they, too, had the little black patch on the summits of their wigs. But legislation has latterly been very cruel to them. The Judicature Act has extinguished the order, and the forensic wig-maker has sold off all his coils. The old judges created before the year 1873 preserve the old custom, but all subsequent judges have their white hair unspotted when they take their seats upon the bench.

Gowns are of older date than wigs. Indeed, at one time our Bar is said to have worn the toque, not very different from what French advocates carry to the present day, or what Miss Terry had on when she appeared as Balthazar before the Doge. But lawyers always wore robes, and there was formerly more variety, or at least more etiquette, in their adoption. The customs exist but they are not adhered to. The variety in a judge's robes connects his position with its origin. It was a clerical vestment, and the colour of it was prescribed by the Calendar. The red gowns were to be worn on red-letter days, the violet on such occasions as the Church directed, but during a criminal trial the judge always wore red. For the prisoner in the dock, Black Monday was always a red-letter day. Even the sergeants once used to wear scarlet in court. To the generation of young barristers it will have been a surprise to have seen the few of the old order who yet remain robed yesterday in red. But there are many men at the bar who can recollect the sergeants in the old courts attired exactly as they were attired when the Queen opened the new courts. The sergeant, robed in red, was a dignified figure in old legal history. And he had a singular privilege. He had the right to remain with his coil on in the presence of royalty, and needed not to take it off even when in conversation with his king. Old court treatises lay this down, side by side with the singular but well-known rights of Lord Kinsale, and the more singular privilege of the chief of an old Italian family, to ride into church with armour and helmet on. The gowns worn by the Bar have changed little, if at all, in the lapse of centuries. They still illustrate the close connexion between the churchmen and the lawyers, as the white tie worn in the equity courts, and the title of "Master," still preserved by the benchers, and analogous to the *Maitre* of the French tribunals, bring us back to the period when all learning was in the hands of the clerics. Indeed, the antiquity of the gown may be tested by a legal fiction that has been bound up in its trimming. The barrister had no right to his fee. He could not bargain for it or sue for it. He could scarcely even receive it. The rule was very strict, though a fiction was found to relieve him from its hardship, there hung behind his gown—and it hangs there still—a craftily-constructed pouch with a wide funnel and a narrow orifice. The funnel was wide enough to admit a suitor's hand, and the orifice was narrow enough to retain the suitor's guineas. Modern usage has dispensed

with the employment of the purse; but the counsel's clerk still is interposed as a kind of buffer to protect the man of law from direct contact with his client's money, and in a general way to secure the proprieties of the profession.—*Full Mail Gazette*.

#### JUDICIAL RENTS IN IRELAND.

A return has been issued showing, according to provinces and counties, the number of cases in which judicial rents have been fixed by Sub-Commissioners between September 18 and October 30, 1882, and also the former rents and judicial rents of the holdings. The total number of cases decided is 1,958. The old rents amounted to £41,909 1s. 3½d., and the judicial rents to £34,161 19s. 7½d. showing an average reduction of 18½ per cent. Of the provinces, Ulster heads the list with 709 cases, the former rents amounting to £14,002 13s. 7d., and the judicial rents to £11,293 10s. 11d. showing an abatement of between 19 and 20 per cent. The smallest number of decisions were given in Leinster, where, also, the reductions were much less considerable than in the other provinces. The number of cases was 323, and the aggregate reduction was from £11,392 17s. 8½d. to £9,749 10s. 7½d.; or a little over 14 per cent. In Connaught 526 rents were fixed, amounting to £4,714 18s. 6d., instead of £5,899 2s. 9d., the total of the previous rental. The reduction was something over 20 per cent. In Munster 400 applications were adjudicated upon, the former rents being £10,614 7s. 7½d., and the judicial rents £8,408 19s. 7d., and the abatement was nearly 21 per cent. The largest reductions took place in the counties of Cork and Clare, in which the judicial rents average 25 per cent lower than the former rents, and the lowest were in Dublin County, in which 42 cases were decided, and in rents amounting to £1,542 aggregate abatements of only £80 were granted.

#### DEATH OF A DUBLIN SOLICITOR.

The *Melbourne Argus* of Nov, 8th says:—Mr. Thomas Nolan, of the firm of Nolan and Jordan, of Melbourne, Solicitor, expired at his residence, Albert-park, on Tuesday last, after having being confined to his bed for five months. The deceased gentleman was born in Dublin on Christmas Day, 1806, hence his name—Thomas Christmas Nolan. He was admitted as a Solicitor at the early age of 21 years, and followed his profession in Dublin until 1858, when he came out to this colony, and entered upon a successful practice, first by himself, and afterwards as the senior partner in the firm of Nolan and Jordan. Although he was nearly 77 years old, he was a healthy, cheerful man until within the last year or two. He had a wide circle of friends and acquaintances, and in past years was on terms of close friendship with Messrs. Ireland, Dawson, Aspinall, and other well-known members of the legal profession. The deceased has left a widow, but no children. He had, however, a number of nephews and nieces in the colony, amongst the former being his Honor Judge Nolan.

#### ADMISSION OF SOLICITORS.

Mr. William B. Stuart, only son of the late William James Stuart, Solicitor, 5 St. Andrew-street, Dublin, has been admitted a Solicitor of the Court of Judicature.

Mr. Daniel M'Callum, jun., Omagh, has been admitted a Solicitor of the Court of Judicature.

We understand that the Committee of (English) Judges now sitting on the rules of procedure have agreed to rules practically abolishing the present system of pleadings, but providing that such pleadings as are allowed shall be signed by counsel, providing for payment of cash down by parties requiring discovery, and assimilating costs in the Common Law Division to costs in the Chancery Division.—*Law Times*.

#### TEXT-BOOK ADDENDA.

[From the *Law Journal*.]

##### *Cordery on Solicitors, 36.*

Law stationers transmitting documents to the Probate Registry in the name of solicitors, and receiving probates and letters of administration, are not acting as proctors, or liable to penalties (*Law Society v. Shaw*, 51 Law J. Rep. Q.B. 249)—C. A.

##### *Merchant Shipping Act, 1854, s. 388.*

A pilot taken on board by the regulations of the Suez Canal Company, is not a compulsory pilot relieving the ship from liability for damage (*Guy Mannering*, 51 Law J. Rep. P. D. & A.).

##### *Hodges on Railways (6th Edition), 233.*

A railway company having the usual powers to take land in their special Act, can purchase, compulsorily, minerals apart from the land, and can so purchase them under lands the surface of which it has already acquired. The company are the proper judges of what is necessary for the purposes of their undertaking (*Errington v. Metropolitan District Railway Company*, 51 Law J. Rep. Chanc. 805)—C. A.

##### *Hodges on Railways (6th Edition), 331.*

A sale by a railway company of land which had been compulsorily taken by them from the plaintiff to another company, for the joint purposes of the two railways, without previously offering it to the plaintiff, was held *ultra vires*; but the sale was not held proof of the land being superfluous. The plaintiff was held to be the owner of the lands from which the purchased land had been severed, although the purchased land was separated from the rest of his land by a high road (*Hobbs v. Midland Railway Company*, 51 Law J. Rep. Chanc. 328).

#### CORRESPONDENCE.

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

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

#### JUDGMENTS WITHOUT ADDRESS, &c., OF PARTIES.

TO THE EDITOR OF THE IRISH LAW TIMES.

SIR,—Would you or any member of the legal profession kindly inform me through your Journal whether a judgment is void which merely states the names of the plaintiff and defendant, but does not give the address and description of either?

Yours, &c.,

AN APPRENTICE.

18th Dec., 1882.

[Compare *Smith v. Hand and Montgomery*, 15 Ir. L. T. Rep. 38; O. XLI. a (Eng.).—Ed.]

#### STAMPING RECEIPTS FOR GRAND JURY CESS.

TO THE EDITOR OF THE IRISH LAW TIMES.

SIR,—Would you, or one of your readers, kindly inform me whether a Grand Jury Cess Collector is obliged to stamp every receipt given by him to the occupiers on payment of their cess, when £3 and upwards? It may seem a trivial point at first sight, but as a collector has to give thousands of receipts each year it becomes a matter of importance.

Yours truly,

D. J. H.



APPOINTMENTS AND PROMOTIONS.

**NOTE.**—Information intended for publication under the above heading should reach us not later than Friday morning in each week, as publication is otherwise delayed.

Mr. Thomas M'Inerney, of Kiltrush, County Clare, has been appointed Commissioner for taking Affidavits for that district.

Mr. William Leslie has been appointed a Commissioner for taking Oaths at Cahiroiveen, County Kerry.

LAW STUDENTS' JOURNAL.

THE INCORPORATED LAW SOCIETY OF IRELAND.

EASTER SITTINGS, 1883,

FINAL EXAMINATION.

NOTICE.

Candidates wishing to present themselves at the above Examination must lodge their papers, &c., on or before the first day of Hilary Sittings, 1883.

By Order,  
JOHN H. GODDARD, Secretary.

Solicitors' Hall, Four Courts, Dublin,  
15th December, 1882.

COURT PAPERS.

COURT OF BANKRUPTCY.

ADJUDICATIONS IN BANKRUPTCY.

The dates of Adjudications are first given, the Sittings follow in Italics.

O'rry, Philip, of 22 Bridge-street, Cavan, in the county of Cavan, grocer, baker, and boot and shoe manufacturer. December 1; Tuesday, December 19, and Friday, January 12, 1883. *Molloy & Molloy, solrs.*

Carland, Hugh, of Edymore, Strabane, in the county of Tyrone, farmer. December 8; Friday, January 5, and Tuesday, January 16, 1883. *D. & T. Fitzgerald, solrs.*

Doyle, John, of 58 Charlemont-street, in the city of Dublin, wine and spirit merchant. December 4; Friday, January 5, and Friday, January 19, 1883. *Jehu Mathews, solr.*

O'Brien, John, of No. 8, Winstavern-street, in the county of the city of Dublin, baker. December 8; Friday, January 5, and Tuesday, January 16, 1883. *William M'Cune, solr.*

It was Mike's third appearance in court within thirty days, and in reply to his usual appeal for clemency the magistrate impatiently observed—"Its ne use, Mike, you're good for nothing." "It is not my style to be braggin'," retorted Mike, "but if yer honour will borry a pair of shellalehs and stip outside wid me I'll make it inconvaynent for you to howld that opinion."

A CHARACTERISTIC story is told of the Borderers' exploits, and the dangers which judges encountered. The Earl of Traquair, when engaged in a lawsuit, dreaded the Lord President Durie's opposition. The earl's servant, Will Armstrong, as the judge was riding in the suburbs one afternoon, threw a trooper's cloak over him, and did not slacken his steed till Durie was safely lodged in the tower of the Graemes in Annandale. Will boasted he stole "an auld lurdane aff the bench." It was a bold trick, a bit of Border fair play in a lawsuit, and the Border-side rang with laughter against the kidnapped judge. In good time Will set down the judge at the council doors in Edinburgh—

And there fall loudly shouted he:  
"Gie me my guerdon, my sovereign like,  
An' take ye back your auld Durie."

—Fraser's Magazine.

DUBLIN STOCK AND SHARE LIST.

DESCRIPTION OF STOCK	DECEMBER					
	Sat. 16	Sun. 17	Tues. 18	Wed. 19	Thurs. 20	Fri. 21
<b>*Paid Government.</b>						
— 3 p c Consols .. .. .	100	100	100	100	100	100
— 3 p c Reduced .. .. .	100	100	100	100	100	100
— 2 1/2 p c Stock .. .. .	100	100	100	100	100	100
— New 3 p c Stock .. .. .	100	100	100	100	100	100
<b>INDIA STOCK.</b>						
4 p c Oct. 1898 } Traffic at .. .. .	100	100	100	100	100	100
3 1/2 p c Jan. 1881 } Rk. of Irel. .. .. .	100	100	100	100	100	100
<b>Banks.</b>						
100 Bank of Ireland .. .. .	318	318	318	318	318	318
25 <i>Hibernian Banking Co</i> .. .. .	32 1/2	32 1/2	32 1/2	32 1/2	32 1/2	32 1/2
20 <i>London and County (Ltd.)</i> .. .. .	8 1/2	8 1/2	8 1/2	8 1/2	8 1/2	8 1/2
20 <i>London and W'minster, Ltd.</i> .. .. .	7 1/2	7 1/2	7 1/2	7 1/2	7 1/2	7 1/2
10 <i>Do. New</i> .. .. .	—	—	—	—	—	—
15 <i>London Joint Stock</i> .. .. .	—	—	—	—	—	—
— <i>Do. New Script</i> .. .. .	—	—	—	—	—	—
3 1/2 <i>Munster Bank (Limited)</i> .. .. .	7	7	7	7	7	7
— <i>Nat. Prov. of England, Ltd.</i> .. .. .	—	—	—	—	—	—
10 <i>National Bank (Limited)</i> .. .. .	24 1/2	24 1/2	24 1/2	24 1/2	24 1/2	24 1/2
10 <i>National of Liverpool (Ltd.)</i> .. .. .	15	15	15	15	15	15
15 <i>Provincial Bank</i> .. .. .	27 1/2	27 1/2	27 1/2	27 1/2	27 1/2	27 1/2
10 <i>Do. New</i> .. .. .	23	23	23	23	23	23
10 <i>Royal Bank</i> .. .. .	29 1/2	29 1/2	29 1/2	29 1/2	29 1/2	29 1/2
25 <i>Union of Australia</i> .. .. .	—	—	—	—	—	—
<b>Steam.</b>						
100 <i>City of Dublin</i> .. .. .	10 1/2	10 1/2	10 1/2	10 1/2	10 1/2	10 1/2
<b>Mines.</b>						
1 <i>Killaloe Slate Co. (Ltd.)</i> .. .. .	—	—	—	—	—	—
<b>Miscellaneous.</b>						
10 <i>Alliance &amp; Dub. Cons. Gas</i> .. .. .	—	—	—	—	—	—
4 <i>Arnott &amp; Co., Limited</i> .. .. .	—	—	—	—	—	—
7 1/2 <i>Dub. Drapery Whouse, Ltd.</i> .. .. .	4 1/2	4 1/2	4 1/2	4 1/2	4 1/2	4 1/2
<b>Tramways.</b>						
10 <i>Belfast Trams</i> .. .. .	8 1/2	8 1/2	8 1/2	8 1/2	8 1/2	8 1/2
10 <i>L'pl Un'd'd Tram &amp; Bus Ltd</i> .. .. .	11 1/2	11 1/2	11 1/2	11 1/2	11 1/2	11 1/2
<b>Railways.</b>						
10 <i>Cork and Macroom</i> .. .. .	—	—	—	—	—	—
100 <i>Great Northern (Ireland)</i> .. .. .	119	119	119	119	119	119
100 <i>Gt. Southern and Western</i> .. .. .	115 1/2	115 1/2	115 1/2	115 1/2	115 1/2	115 1/2
100 <i>Midland Gt. Western</i> .. .. .	89 1/2	89 1/2	89 1/2	89 1/2	89 1/2	89 1/2
50 <i>Waterford and Limerick</i> .. .. .	—	—	—	—	—	—
<b>Railway Preference.</b>						
100 <i>Gt. N'rh'n (Ireland) 4 p c</i> .. .. .	—	—	—	—	—	—
100 <i>Do. guaranteed 4 1/2 p c</i> .. .. .	—	—	—	—	—	—
100 <i>Do. 5 1/2 p c</i> .. .. .	—	—	—	—	—	—
100 <i>Waterf. &amp; Limerick, 4 p c</i> .. .. .	—	—	—	—	—	—
100 <i>Do. 4 1/2 p c</i> .. .. .	99	99	99	99	99	99
<b>Leased at Fixed Rentals.</b>						
100 <i>Dublin and Kingstown</i> .. .. .	—	—	—	—	—	—
100 <i>Gt. Northern and Western</i> .. .. .	—	—	—	—	—	—
100 <i>Londonderry &amp; Enniskillen</i> .. .. .	—	—	—	—	—	—
100 <i>Do. Pref. B 5 p c</i> .. .. .	—	—	—	—	—	—
<b>Debenture Stocks.</b>						
— <i>Belfast &amp; N'rh'n Cos. 4 p c</i> .. .. .	—	—	—	—	—	—
— <i>Cork, B. &amp; Passage 4 p c</i> .. .. .	—	—	—	—	—	—
— <i>Cork and Bandon, 4 p c</i> .. .. .	—	—	—	—	—	—
— <i>Do. 4 1/2 p c</i> .. .. .	—	—	—	—	—	—
— <i>Dublin &amp; Weath 4 1/2 p c</i> .. .. .	—	—	—	—	—	—
— <i>Dublin &amp; Wicklow 4 p c</i> .. .. .	105 1/2	105 1/2	105 1/2	105 1/2	105 1/2	105 1/2
— <i>Do. 4 1/2 p c</i> .. .. .	107	107	107	107	107	107
— <i>Gt. Northern (Ireland) 4 p c</i> .. .. .	114 1/2	114 1/2	114 1/2	114 1/2	114 1/2	114 1/2
— <i>Do. 4 1/2 p c</i> .. .. .	109 1/2	109 1/2	109 1/2	109 1/2	109 1/2	109 1/2
— <i>Gt. North'n &amp; West'n 4 1/2 p c</i> .. .. .	110	110	110	110	110	110
— <i>Gt. South'n &amp; West'n. 4 p c</i> .. .. .	—	—	—	—	—	—
— <i>Midland Gt. West'n. 4 p c</i> .. .. .	—	—	—	—	—	—
— <i>Do. 4 1/2 p c</i> .. .. .	114	114	114	114	114	114
— <i>Do. 4 1/2 p c</i> .. .. .	110	110	110	110	110	110
— <i>Waterford &amp; Central 5 p c</i> .. .. .	—	—	—	—	—	—
<b>Miscellaneous Debent.</b>						
— <i>Ballast Office Deb., 2 1/2 p c</i> .. .. .	—	—	—	—	—	—
— <i>City Deb. of 1876 3 p c</i> .. .. .	93 1/2	93 1/2	93 1/2	93 1/2	93 1/2	93 1/2
— <i>Dub. &amp; Glas S. P. Co. (1887) 5 p c</i> .. .. .	—	—	—	—	—	—
— <i>Do. (1888), 6 p c</i> .. .. .	101 1/2	101 1/2	101 1/2	101 1/2	101 1/2	101 1/2
— <i>Dublin Drapery Warehouse</i> .. .. .	94	94	94	94	94	94

\* Shares not fully paid up, are given in Italics. † x d

Bank Rate—1 1/2 per cent., 17th August, 1882  
Of Deposit—1 per cent., 23rd March, 1883

Name Days—December 26th, 1882, and January 11th, 1883.

Account Days—December 29th, 1882, and January 12th, 1883.

Business commences at 1 30 p.m.

**Holloway's Ointment and Pills.**—Coughs, Influenza.—The soothing properties of these medicaments render them well worthy of trial in all diseases of the respiratory organs. In common colds and influenza, the Pills, taken internally, and the Ointment rubbed over the chest and throat, are exceedingly efficacious. When influenza is epidemic, this treatment is the earliest, safest, and surest. Holloway's Pills purify the blood, remove all obstacles to its free circulation through the lungs, relieve the over-gorged air tubes, and render respiration free, without reducing the strength, irritating the nerves, or depressing the spirits; such are the ready means of escaping from suffering when afflicted with colds, coughs, bronchitis, and other chest complaints, by which the health of so many is seriously and permanently injured in most countries.

## BIRTHS, MARRIAGES, AND DEATHS.

## BIRTHS.

**HANNIGAN**—December 17, at Middle Gardner-street, the wife of Denis F. Hannigan, Esq., barrister-at-law, of a daughter.  
**MURPHY**—December 12, at Lower Leeson street, the wife of J. Murphy, Esq., Q.C., of a son.

## MARRIAGES.

**CROSSING and KENNEDY**—December 12, at St. John's Church, Tunbridge-Wells, by the Rev. T. W. Weston, M.A., Vicar, the Rev. Henry Montague Crossing, B.A., Curate of Holy Trinity, Tulse Hill, Surrey, only son of James Crossing, Esq., J.P., of Tamar-terrace, Stoke, Devonport, to Marian Emily, only daughter of the late William Kennedy, Esq., M.D., Dublin, and granddaughter of the late Hon. Judge Hayes, of the Court of Queen's Bench, Ireland.

**EATON and MECREDDY**—December 21, at Dalkey Church, by the Rev. W. Henry Kerr, Rector of the Parish Richard Arthur Eaton, Esq., solicitor, eldest son of Richard Eaton, Esq., Resident Magistrate, Mitchelstown, County Cork, to Florence Emily, eldest daughter of Thomas Tighe McCreedy, Esq., solicitor, Westmoreland-st., Dublin.  
**JULIAN and GRAY**—December 16, at St. Nicholas' Church, by the Rev. George Webster, D.D., Arthur Julian, Esq., solicitor, Cork, to Mary Louise, eldest daughter of William Gray, Esq., Springfield, Blackrock, Cork.

**MORPHY and NEWCOMEN**—December 20, at Christ's Church, Leeson Park, by Rev. Maurice Nelligan, D.D., Edward Morphy, Esq., barrister-at-law, to Harriet Annie, only daughter of the late George Newcomen, Captain 89th Regt., of Castle Newcomen, County Wick, common.

## DEATHS.

**FORDE**—December 18, at Burlington-road, Judith, the beloved wife of William Forde, Esq., solicitor, Lower Dominick-street.  
**ODRISCOLL**—December 18, at Mitre Court Bull Inga, The Temple, William Justin O'Driscoll, Esq., barrister-at-law, of Belcourt, Bray, Ireland, aged 85 years.

## FUNERAL REQUISITES OF EVERY DESCRIPTION.

49, WALLER 50,  
DENZILLE-STREET.

3:7

## PUBLIC NOTICES:

**STOKES BROTHERS,**  
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LONDON AND LANCASHIRE INSURANCE CHAMBERS,  
22, WESTMORELAND-STREET,  
DUBLIN. 293

## PUBLIC ACCOUNTANTS AND AUDITORS.

**CROWLEY, HUMPHRIES & CO.,**  
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are engaged in all Matters of Accounts in Chancery, Bankruptcy  
Partnership Accounts, &c., &c. 160

**N. PETERSON & SON**  
PUBLIC ACCOUNTANTS AND AUDITORS.  
LIVERPOOL AND LONDON CHAMBERS,  
1, FOSTER-PLACE, COLLEGE-GREEN,  
DUBLIN. 813

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Applied to the Nose for an hour daily, so directs the soft cartilage  
of which the member consists that an ill-formed nose is quickly shaped  
to perfection.  
10s. 6d.; Post Free, 10s. 8d., secretly packed. Pamphlet, Two Stamps.  
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**HAIR CURLING FLUID,**  
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Beware of Imitations of Ross's articles.  
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Respectfully invites the attention of Solicitors, Executors, Trustees,  
Assignees, or others interested in the disposal of Libraries, Artistic  
Effects, Household Furniture, &c., to the unequalled facilities that he  
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Valuations made for Probate or other purposes on moderate terms.  
91



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CUES, and TIPS, and all other Billiard  
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brushes, Mirrors, and all other Ivory Toilet  
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## MONEY:

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The Society has already advanced over Nine Hundred Thousand  
Pounds Sterling on Mortgage.

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TO  
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IN STOCKS and SHARES often yield returns five  
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Two UNERRING RULES for success, in Explanatory  
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SECURITY, &c.

RECEIVERS IN CHANCERY.

The Bonds of this Company are now accepted as Security for  
Receivers in Chancery, as provided by the Rules under the new  
Judicature Act. For particulars apply to the Manager—

39, DAME-STREET, DUBLIN. 51

THE  
IRISH LAW TIMES REPORTS:

COMPRISING

CASES ARGUED AND DECIDED

IN

THE SUPREME COURT OF JUDICATURE,  
THE LAND COMMISSION,  
THE COURT OF BANKRUPTCY,  
AND  
THE COUNTY COURTS,  
IN IRELAND.

TO WHICH IS ADDED

A DIGESTED INDEX

OF

ALL SUCH CASES REPORTED IN THE IRISH LAW TIMES REPORTS, AND IN  
OTHER LEGAL REPORTS, DURING THE YEAR 1882.

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EDITED BY

EDWARD NETTERVILLE BLAKE,  
BARRISTER-AT-LAW.

---

VOLUME XVI.

DUBLIN:

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

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1882.



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DIGEST.





**A DIGEST**  
OF ALL THE  
**CASES DECIDED IN IRELAND AND REPORTED**  
DURING THE YEAR 1882,  
IN  
**VOLUME XVI. OF THE IRISH LAW TIMES REPORTS,**  
AND IN  
**OTHER CONTEMPORANEOUS LEGAL REPORTS.**

\* \* In the following Digest the letters *H. L.* after the name of a case indicate the House of Lords; *App.*, the Court of Appeal; *Ch.*, the Chancery Division; *L. J.*, the Land Judges; *Q. B., C. P., and Ex.*, the Queen's Bench, Common Pleas, and Exchequer Divisions, respectively; *Pro.*, Probate; *Mat.*, Matrimonial Causes; *Adm.*, Admiralty; *B.*, Bankruptcy; *P. C.*, Privy Council; *O. C. R.*, Crown Cases Reserved; *L. O.*, Land Commission; *L. S.-C.*, Land Sub-Commission; *Civ. C.*, Assises; *Civ. C. R.*, Circuit Cases Reserved; *Co. Ct.*, County Court.

The letters *Ir. L. T. Rep.*, represent the IRISH LAW TIMES REPORTS; *L. R. Ir.*, the Law Reports (Ireland); *O. C. O.*, Cox's Criminal Cases; *L. T. N. S.*, the Law Times New Series; *W. R.*, the Weekly Reporter; *R. & D.*, Roche and Dillon's Reports; and *Ir. L. T. & S. J.*, the IRISH LAW TIMES AND SOLICITORS' JOURNAL.

**EQUITY CASES.**

**A**

**ACCESSIO**—[See LITHOGRAPHIC STONES.]

**ADMINISTRATION**—[And see DEATH.]

1.—The foundation of the jurisdiction of the Court of Probate is, that there are assets of the deceased to be distributed within its jurisdiction. Therefore, the Court refused to grant administration to an officer whose domicile was Ireland, but who died in India, and whose only assets were some property in India and a sum of money in the hands of the Secretary of State for War. *In the Goods of Roche* (7 Jur. N. S. 784) observed on.—*In the Goods of Butson* (Pro.), 9 L. R. Ir. 21.

2.—A married lady, the absolute owner of property and the donee of a power to appoint a trust fund to the children of her marriage, appointed the fund, by a will of the 11th of January, 1864, in favour of five of the children, among them R. H. B., and made her husband residuary legatee and executor. On the 24th of December, 1873, she made another will disposing of her own property, not referring to her power, and appointing R. H. B. residuary legatee. She died in 1879, and administration *c. t. a.* was granted to R. H. B. by a District Registry without referring to the will of 1864. The husband died in 1880, without having proved the will of 1864, but having appointed R. H. B. executor, who obtained probate. The Court, on the application of R. H. B., revoked the administration with the will of 1873, and granted him administration with both wills annexed.—*In the Goods of Blend* (Pro.), 9 L. R. Ir. 53.

3.—The assignees in bankruptcy of an administratrix are not entitled to their costs of an action to administer the assets of the deceased when the administratrix is found indebted to the estate.—*James v. Richardson* (Ch.), 9 L. R. Ir. 383.

4.—A next-of-kin may bring an action for administration of the intestate's personal estate within a year from the intestate's death.—*Wallace v. Wallace* (Ch.), 9 L. R. Ir. 511.

5.—County Court jurisdiction; administration suit within year from intestate's death; County Courts Act, 1877, s. 41.—*Murdoch v. Murdoch* (L. J.), 16 Ir. L. T. & S. J. 97.

**ADMINISTRATION OF ASSETS**—[See COSTS—EXONERATION OF REAL ESTATE.]

**ADOPTION**—[See VOLUNTARY DEED.]

**ADVANCEMENT**—[See CHARGE ON REAL ESTATE—CONTINGENT GIFT—SATISFACTION.]

**AGENT**—[See AGREEMENT FOR LEASE.]

**AGREEMENT FOR LEASE**—The defendant's agent, with full authority, though not in writing, advertised a house and farm to be let. Several proposals were sent in—one by the plaintiff, in writing, offering £1 per acre for such term as might be agreed on. The proposals were laid before the defendants by the agent, who explained to them their nature and effect. The plaintiff's and another were selected, and the agent was authorised to accept either, if satisfied with security for the rent. The agent prepared a draft lease from the defendants to the plaintiff for thirty-one years, which he read to the plaintiff, and wrote on the draft the names of the proposed sureties, which he afterwards inserted in the draft as co-lessees with the plaintiff. The plaintiff afterwards attended at an auction of the furniture and farming-stock, and purchased some of the furniture and a large quantity of manure for the farm. In a suit for specific performance, the defendants denied the agent's authority to conclude the agreement for a letting, or to put the plaintiff in possession, and they pleaded the Statute of Frauds, and that the agent was not authorised in writing, as required by the Landlord and Tenant Act, 1860, sec. 4. The Court being of opinion that the agent had full authority:—*Held*, that the agreement between the agent and the plaintiff being preliminary to the execution of a formal lease, it was not necessary that the former should be authorised in writing to conclude it, and the Court granted specific performance on the terms contained in the draft lease.—*McCasland v. Murphy* (Ch.), 9 L. R. Ir. 2.

**ALIMONY**—[See COSTS.]

**AMENDMENT**—[And see LITHOGRAPHIC STONES.]

Order made in a winding up matter to amend the name of the Company in the petition and orders thereunder, without prejudice to the advertisements and proceedings in the matter.—*In re Cork Constitution Company* (Ch.), 9 L. R. Ir. 163.

**ANNUITY**—[See CONTINGENT GIFT—PRIORITY.]

**ANTICIPATION**—On the appeal by the defendants from the decision of the Vice-Chancellor (7 L. R. Ir. 511), the Court of Appeal being of opinion that, in the absence of the trustee of the deed of the 20th day of October, 1871, it was not competent to decide whether the clause in

the said deed contained, restraining the defendant Isabella S. Faussett from anticipation, operated to protect the property secured by the deed of the 7th day of May, 1872, varied the order of the Vice-Chancellor, so far as the same declared that "the sum secured by the deed of the 7th day of May, 1872, is not protected from liability to satisfy the plaintiff's demand by the restraint upon anticipation by the said Isabella S. Faussett, contained in the deed of the 20th day of October, 1871," by omitting the said declaration; and further, by adding, before the direction for inquiries, "together with further interest [etc.] until paid;" and subject to such variation, the order of the Vice-Chancellor was affirmed.—*Devitt v. Faussett* (App.), 9 L. R. Ir. 84.

**APPEAL**—Service of notice of appeal from an equity civil bill decree upon the respondent (not being a solicitor) through the Notice Office, and without service upon his solicitor is not a sufficient service.—*Doyls v. Keenan* (Ch.), 9 L. R. Ir. 168.

**APPOINTMENT**—[*See POWER.*]

**ARBITRATION**—[*See SOLICITOR'S LIEN.*]

**ARTICLES OF ASSOCIATION**—[*See COMPANY—CONTRIBUTORY.*]

**ASSIGNMENT**—[*See LITHOGRAPHIC STONES.*]

**AUCTION**—[*See VENDOR AND PURCHASER.*]

## B

**BANKRUPTCY**—[*And see ADMINISTRATION.*]

J. L., being indebted to the U. Bank, on the 31st of January, 1880, deposited with the bank the title-deeds of certain lands of which he was owner. J. L. was adjudicated bankrupt on the 8th of December, 1880, and on the 15th of February, 1881, the U. Bank filed a charge on foot of their security. There was due to the bank, at the date of filing their charge, the sum of £480 8s. 6d. for principal, together with interest. Subsequently to the filing of the charge, but before the same was heard, the bank filed a proof of debt, and therein valued their security at £150. On the hearing of the charge, an order was made declaring the sum of £150 well charged upon the proceeds of the sale of the lands, and also declaring the bank entitled to their costs. The lands were sold for £225. An application was now made to vary that order, so far as it declared the bank entitled to their costs.—*Held*, that the bank were entitled to be paid their costs out of the surplus proceeds of the sale remaining after the payment of the amount at which they had valued their security.—*In re Love* (B.), 6.

**BILL OF PEACE**—[*See SEA-SHORE.*]

## C

**CHANNEL**—[*See WATER RIGHTS.*]

**CHARGE ON REAL ESTATE**—1—A testator bequeathed to each of his executors £100, but directed that, if they declined to act, the same should merge in the residue. He bequeathed to his wife and A. J. annuities of £200 and £150 respectively, charged on portions of his real estate, and pecuniary legacies of £200 and £150 respectively over and above the annuities. He gave to his younger children legacies with interest thereon till paid off, and appointed C. their guardian, whom he directed to receive, and apply for their maintenance, education, and advancement, as C. should think expedient, the income of the legacies during their minority; and he empowered C. to raise by charge or mortgage of his real estate a portion of the legacies not exceeding £800 for the advancement of any younger child. He created a trust term in certain of his lands, to secure the annuities, and directed that the term should cease when the trusts thereof were satisfied; and he devised the lands subject to the term and all other his real and leasehold estate, and the residue (if any) of his personal estate to his eldest son. The testator's will also contained a clause that, in the event of any of the younger sons becoming entitled to the testator's real estate, the legacies, both original and accruing, bequeathed to him or them should be divided amongst the other younger children. By a codicil the testator bequeathed to his eldest son a pecuniary legacy over and above the bequests made to him in the will, and charged upon the whole of the testator's freehold and personal estate, in priority to the annuities bequeathed by the will.—*Held*, that the legacies to the testator's younger children were not charged on his real estate.—*James v. Jones* (Ch.), 9 L. R. Ir. 489.

2—Where a testator by his will directed the rents of his real estate till sale, and after sale the interest of the proceeds, to be applied in payment of such or so much of the legacies "hereinafter bequeathed" as his personal estate would be insufficient to pay, and by his will bequeathed a number of pecuniary legacies, and by a codicil of subsequent date gave some other legacies:—*Held*, that the word "hereinafter" confined the charge to the legacies given by the will.—*Gilluly v. Plunkett* (Ch.), 9 L. R. Ir. 324.

**CHARITABLE BEQUEST**—[*And see MONASTIC ORDER—SECRET TRUST.*]

1—A testatrix bequeathed to the Representative Church Body £1,000, £500 thereof for the parish church of L., and £500 for the B. Chapel, upon trust to invest same as they should think best, and to pay the annual income of the last-mentioned £500 to the chaplain of the B. Chapel at the time of her decease during his life, and to his successors in said chaplaincy. By a subsequent codicil the testatrix made the following bequest:—"I bequeath to my dear friend the Rev. B. G., chaplain of the B. Hospital, the sum of £300 for his own personal use, and over and above and independent of the bequest made by a former codicil in favour of the chaplain of the said Hospital." At the dates of these codicils and at the death of the testatrix, the Rev. B. G. was chaplain

to the B. Chapel, attached to the B. Hospital, but he shortly afterwards resigned his chaplaincy:—*Held*, that the £500 legacy for the B. Chapel was intended by the testatrix as an endowment for the chapel, and not as a gift for the personal benefit of the clergyman who filled the office of chaplain at her death; and that, therefore, the income of that legacy was payable to the Rev. B. G. so long only as he continued in the office of chaplain, and ceased to be payable to him upon his resignation.—*Gibson v. The Representative Church Body* (Ch.), 9 L. R. Ir. 1.

2—D., by his will made in 1876, devised—in the event, which happened, of his dying without leaving issue—his freehold lands, except a portion then in the tenancy of his brother C., and as to the excepted portion, after the death of C. without leaving issue, "to the use of the Most Rev. William Delany, Roman Catholic Bishop of Cork, or other the Roman Catholic Bishop of Cork for the time being, in trust for the Sisters of Mercy at Bantry." The testator then left the residue of his property to his executors and trustees upon trust (among other charitable bequests) to pay "to the Most Rev. William Delany, Bishop of Cork, or other the Roman Catholic Bishop of Cork for the time being, . . . £1,000, which I direct forthwith to be applied by him for the benefit of the Convent of Mercy at Bantry, in the County of Cork, the good Sisters of which are requested to apply the same in and to such charitable purposes as they deem most useful." By a codicil the testator further bequeathed "to the priest who shall be the Abbot of Mount Mallery Monastery, in the county of Waterford, at the time of my death, the sum of £50." D. died in 1879, and it was proved that at the time of his death the Sisters of Mercy at Bantry numbered about ten or twelve, and that the objects of the sisterhood were essentially charitable:—*Held*, by Ormsby, J., and by the Court of Appeal, that the trust of the lands in favour of the Sisters was valid, as one simply for the individual ladies who at the testator's death filled the character of Sisters of Mercy at Bantry. *Per Law. C.*—"The words 'for the time being' were, though perhaps inaccurately, used by the testator as pointing merely to the time of his death; but even if these words involved the creation of a perpetuity the gift could be upheld as charitable, on the authority of *Cocks v. Manners* (L. R. 12 Eq. 574), inasmuch as, though no charitable purpose was stated in connexion with the devise, it was a gift to a voluntary society existing for charitable purposes.—*In re Delany's Estate* (App.), 9 L. R. Ir. 238.

**CODICIL**—[*See CHARGE ON REAL ESTATE—REVOCATION OF WILL.*]

**COLLECTOR-GENERAL**—[*See EXECUTOR.*]

**COLLISION**—The XIVth Article of the "Sailing Regulations for Preventing Collisions at Sea" (issued in August, 1879, under the 25 & 26 Vict. c. 63, and which came into force on the 1st September, 1880), provides (*inter alia*): (a) A ship which is running free shall keep out of the way of a ship which is close-hauled. (c) When both are running free, with the wind on different sides, the ship which has the wind on the port side shall keep out of the way of the other. (e) A ship which has the wind aft shall keep out of the way of the other ship. A collision took place in January, 1881, between two sailing vessels, the P. and the S., which were crossing. The Court having come to the conclusion, upon conflicting evidence, that the S., though not strictly "close-hauled," was not "running," and that she was "free" at most two points, the wind being at farthest on her beam, while the wind was at most on the quarter of the P., almost certainly not more than three points from her course, and in all probability very nearly "aft":—*Held* (affirming the decision of the Judge of the Court of Admiralty), that the B. was "close-hauled," and that the P. had the "wind aft," both within the meaning of the Article, and that the P. was, therefore, bound to have kept out of the way of the S., and was solely to blame for the collision. If the wind be at any less angle than forty-five degrees with the line of a vessel's keel, it is a wind "aft" within the Article.—*The Privateer* (App.), 9 L. R. Ir. 105.

**COLONIAL COURT**—[*See PROBATE.*]

**COMPANY**—[*And see AMENDMENT—CONTRIBUTORY—MISREPRESENTATION—RAILWAY COMPANY.*]

A company was formed with a nominal capital of £150,000, divided into fifteen thousand shares of £10 each, of which £5 per share was, according to the articles of association, to be paid on allotment, and the balance at such time as the directors should think fit. Article 72 authorised the Board to receive from any member, willing to advance it, all or part of the money due upon the shares held by him beyond the sums called, and to pay interest on the money so paid in advance at such rate as should be agreed on. All the capital was subscribed for, and £5 per share paid thereon. Five thousand shares were allotted to M., and £5 per share duly paid by him on allotment. M. paid in advance the further sum of £5 on each of his five thousand shares, under an agreement with the board that the sum so advanced should carry interest at £5 per cent. until the whole of the capital of the Company should be called up. No further call had been made on the shareholders beyond the £5 per share paid on allotment. No profits had been made by the Company in a certain year, and a year's interest was due upon the sum advanced by M., to enforce payment of which the action was brought:—*Held*, that M. was entitled to recover from the Company the interest due, as a debt payable out of the general assets of the Company, including its available capital, and not merely out of profits. *In re National Funds Assurance Company* (10 Ch. Div. 115) commented on and distinguished.—*Date v. Maritz* (Ch.), 9 L. R. Ir. 498.

**COMPULSORY PURCHASE**—[*See COSTS.*]

**CONDITIONAL CONTRACT**—[*See VENDOR AND PURCHASER.*]

**CONDITIONS OF SALE**—[*See VENDOR AND PURCHASER.*]

**CONSIDERATION**—[*See MISREPRESENTATION—VOLUNTARY DEED.*]

**CONTINGENT GIFT**—A testator devised and bequeathed certain freehold and leasehold property upon trust *inter alia* to pay two annuities to J. A., to whom he also bequeathed a legacy of £1,000, payable out of his personal estate; and by a subsequent clause in his will, the testator directed that the bequests by annuity and legacy for J. A. should not become payable or vest in him until he should have attained the age of twenty-five years; nor then, unless he should have conducted himself to the satisfaction of the trustees of the will, who were empowered in the meantime to pay and advance such part of the provision so made for J. A., either out of the annuities or principal of the legacy, for his maintenance, education, and advancement, as they might think fit; and the testator directed that J. A. should be brought up a Protestant; and that in the event of misconduct on his part, or of his not continuing a Protestant, the annuities and legacy, or such portion thereof as should remain undisposed of and unappropriated, and save such portion thereof as should be necessary for his actual support, should go over upon certain charitable trusts therein mentioned. The testator also directed that J. A. should not have any power to dispose of or incumber said bequests or legacies until he should have attained twenty-five, and have become otherwise entitled to them as aforesaid. J. A. survived the testator, and attained twenty-one, but died under twenty-five years of age.—*Held*, upon the construction of the will, that the word "vest" must be interpreted in its primary meaning, and could not be construed as referring merely to the time of payment; and that the gifts of the legacy and of the annuities, even so far as they were payable out of personal estate, were contingent on J. A.'s attaining twenty-five.—*Creech v. Wilson* (Ch.), 9 L. R. Ir. 216.

**CONTRACT**—[*See* AGREEMENT FOR LEASE—LITHOGRAPHIC STONES—MISREPRESENTATION—SPECIFIC PERFORMANCE—VENDOR AND PURCHASER—VOLUNTARY DEED.]

**CONTRIBUTORY**—S., B., and O. signed the memorandum of association of a projected company, by which they agreed to take one share each. They also signed the articles of association, which provided that they and certain others should be the first directors of the company; that the qualification of a director should be the holding of twenty-five shares; and that the office of director should be vacated, if at any time an existing director should cease to hold twenty-five shares. They were described as directors in the published prospectus; took part in carrying on the business and trading of the concern; acted as directors; and attended the meetings of the board until the company was wound up.—*Held*, that the qualification clause was not limited to future directors, that it applied to S., B., and O., and that they were liable to be put on the list of contributories for twenty-five shares each.—*In re Billion Hotel Company; Slack, Byrne, and Owen's Case* (Ch.), 9 L. R. Ir. 338.

**CONVERSION**—1.—In a mortgagee's suit, instituted in the late Court of Equity Exchequer, for foreclosure and sale, against R. L., the owner in fee of the mortgaged lands, a decree was made that, in default of payment within the usual time, the mortgaged lands, or a competent part thereof, should be sold, and that out of the proceeds of the sale the plaintiff's mortgage, and certain other incumbrances, should be paid off, and the remainder (if any) should be paid to R. L.; and that if any part of the mortgaged lands should remain unsold, the same should be reconveyed to R. L. More than a competent part of the lands were sold, and a surplus remained after payment of the plaintiff in that suit and the other incumbrances. R. L. made two applications to the Court as to the investment of this surplus fund; and the second of these applications, which was to have the fund invested in Government Stock, was granted, and the fund so invested. No further proceeding was ever taken as to the fund until the present action, and the dividends on the Stock had been from time to time lodged by the Accountant-General to the credit of the Equity Exchequer suit. R. L. was long since dead. An action having been brought by R. L.'s administrator *de bonis non* for administration, and claiming the fund in Court as his personal estate as against the heir-at-law of R. L.—*Held*, that the capital of the fund was to be deemed a portion of the real estate of R. L., and to have descended as such to his heir-at-law.—*Scott v. Scott* (Ch.), 9 L. R. Ir. 367.

2.—By marriage settlement, a sum of money was vested in trustees upon trust to lay out the same in the purchase of real estate, to be held upon certain trusts, under which, in the events which happened, A., as only son of the marriage, became absolutely entitled. There was one son only issue of the marriage, who was found a lunatic by inquisition, and died intestate and unmarried. The money had not been laid out in the purchase of real estate, but was invested on a mortgage; and pursuant to an order in the lunacy matter, expressing that it was for the benefit of the lunatic that the mortgaged debt should be called in, the fund was transferred by the representatives of the mortgagor (who was also the surviving trustee of the settlement) into Court to the credit of the lunacy matter, together with other moneys admittedly personalty, and remained to the same credit unsegregated until the death of the lunatic.—*Held*, that the fund was to be treated as personal estate of the lunatic, and that upon his death it passed to his personal representative.—*M'Donogh v. Nolan* (Ch.), 9 L. R. Ir. 262.

**COSTS**—[*And see* ADMINISTRATION—BANKRUPTCY—SOLICITOR'S LIEN—VENDOR AND PURCHASER.]

1.—Though the Probate Division has jurisdiction to award the payment of the costs of litigation in that Division out of the personal estate of the deceased, the Chancery Division has jurisdiction in the administration of assets to regulate the order and priority in which such costs are to be paid. When a contest for priority arose between pecuniary legatees and parties who had been awarded by a judgment of the Probate Division costs of contentious proceedings to be paid out of the assets, upon the personal estate proving insufficient for the discharge of both costs and legacies.—*Held*, that the costs awarded by the Probate Division should be paid in priority to the legacies. *Semble*, the claims of creditors would not be postponed to costs of contentious litigation between legatees or next-of-kin.—*Allooly v. Plunkett* (Ch.), 9 L. R. Ir. 334; 16 Ir. L. T. & S. J. 287.

2.—Order for taxation and payment by the respondent of costs already incurred in a pending suit by a wife for divorce *a mensa et thoro*, and that the future costs of the petitioner be referred for taxation *de die in diem*, and that the taxing master do ascertain and report what is a sufficient sum to be paid into Court by the respondent, or what is a sufficient security to cover the petitioner's costs incidental to the trial.—*M'Dowell v. M'Dowell* (Mat.), 9 L. R. Ir. 347.

3.—Three distinct parts of an estate, belonging to the same person as tenant for life, were taken by three several railway companies, under their compulsory powers. The purchase-money payable by each company was paid into Court, and petitions being presented for investment, one of these became attached to the Rolls and the other two to the Vice-Chancellor's Court. Two of the companies were afterwards amalgamated. Three motions for payment in discharge of an incumbrance were served on behalf of the tenant for life in the three matters, and the matter attached to the Rolls Court having been transferred to the Vice-Chancellor.—*Held*, that only the costs of two motions should be allowed. *Held*, also, that the costs should be borne by the subsisting companies moietywise.—*In re The Midland Great Western Railway (Ireland) Company; Ex parte Lord Dillon. In re The Sigo and Ballaghaderreen Railway Company; Ex parte Same. In re The Great Northern Railway Company; Ex parte Same* (Ch.), 9 L. R. Ir. 16.

4.—Trust estate in litigation; imposing costs upon.—*Re Kealy's Trusts* (Ch.), 16 Ir. L. T. & S. J. 401. [See com., and cases collected by the present writer, *ib.* 387, 401, 415; *Re Cameron's Trusts*, 1 *ib.* 296; *Richardson v. Grubb*, *ib.* 688; *Dryden v. Dryden*, 4 Austral. L. T. 25; 9 Ir. L. T. 427.—*E. N. B.*]

**COUNTY COURT**—[*See* ADMINISTRATION—APPEAL—PARTITION.]

## D

**DAMAGES**—[*See* SPECIFIC PERFORMANCE.]

**DEATH**—[*And see* INFANT.]

Presumption of; absence for over seven years; advertisements; grant of letters of administration; evidence of death.—*Re Keary's Trusts* (Ch.), 16 Ir. L. T. & S. J. 137. [See com., by the present writer, *ib.*—*E. N. B.*]

**DECLARATION OF TRUST**—[*See* VOLUNTARY DEED.]

**DECREE**—[*See* APPEAL—CONVERSION—PARTITION.]

**DEED**—[*And see* REGISTRY ACTS—VOLUNTARY DEED—WATER.]

An unstamped deed conveying a house of the grantor upon trust to apply the profit-rent to the payment of two life annuities remained in his possession until his death. It was signed and sealed by him; and the attestation clause stated that it was signed, sealed, and delivered by him in the presence of two witnesses, one of whom said that he remembered witnessing the deed, that the grantor after signing put it into his pocket, not delivering it to anyone; but he could not recollect whether the grantor said that he signed, sealed, and delivered, or used any words on the occasion. Subsequently the grantor conveyed the same house by a deed duly executed and stamped, upon trusts inconsistent with the former deed; and by his will made the next day he devised the house, "subject to two life annuities charged thereon by me." By a codicil he made another provision for one of the annuitants.—*Held*, that there was sufficient evidence of the delivery of the first deed, and that it prevailed over the second.—*Evans v. Grey* (Ch.), 9 L. R. Ir. 539.

**DESCRIPTION**—[*See* CHARGE ON REAL ESTATE—NEW TRUSTEE—RECIPIENTS.]

**DIRECTOR**—[*See* CONTRIBUTORY—MISREPRESENTATION.]

**DIVORCE**—[*See* COSTS.]

**DOMICIL**—[*See* ADMINISTRATION—PROBATE.]

## E

**EASEMENT**—[*See* WATER.]

**ENDOWMENT**—[*See* CHARITABLE BEQUEST.]

**ENGRAVER**—[*See* LITHOGRAPHIC STONES.]

**EQUITABLE MORTGAGE**—[*See* REGISTRY ACTS.]

**ESTATE FOR LIFE**—[*See* POWER.]

**ESTOPPEL**—[*See* PARTITION.]

**EVIDENCE**—[*See* DEATH—PARTITION—PROBATE—SEA-SHORE—SECRET TRUST.]

**EXECUTION OF POWER**—[*See* POWER.]

**EXECUTION OF WILL**—A testator, in the presence of two subscribing witnesses, affixed a seal stamped with his initials to his will, which was entirely written by himself, placed his finger on the seal, and said, "This is my hand and seal"—*Held*, that the will was sufficiently signed by him.—*In the Goods of Emerson* (Pro.), 9 Ir. L. R. 443.

**EXECUTOR**—[*And see* ADMINISTRATION.]

1.—The appointment of an executor vests in him all the personal estate of the testator; and if any part (after payment of the funeral expenses and debts) remain undisposed of by the will, it vests in the executor beneficially, if there be not any next-of-kin of the deceased; but wherever it sufficiently appears on the face of the will that the testator did not intend the executors to take the surplus, they are deemed trustees for

those on whom the law would cast the surplus in case of a complete intestacy; and this is so, whether the executors are expressly called executors *in trust*, or any other expressions occur showing the office only to be intended for them and not the beneficial interest. A testator, after giving a number of pecuniary legacies, some of which involved the performance of active trusts on the part of his "executors," appointed A. B. and C. "executors and trustees of this my will." The will contained a clause providing for abatement of the legacies in case of a deficiency, and no residuary gift; but on the testator's death there was a considerable surplus.—*Held* (by Sullivan, M.R., and by the Court of Appeal, affirming his decision), that the executors were not beneficially entitled to the undisposed of residue. Observations of Malins, V.C., in *Rosse v. Chalk* (49 L. J., N. S., Ch. 625) upon *Braddon v. Farrand* (1 Rnm. 87), commented on.—*Dillon v. Reilly* (App.), 9 L. E. R. 78.

2.—The executrix of a deceased person granted to the Collector-General of Rates in Dublin a mortgage of the property of the deceased to secure a sum due for municipal rates, which had partly accrued in the lifetime of the deceased and partly after his death, in respect of property held by the executrix, and for which she was rated in her representative capacity.—*Held*, that the mortgage was properly granted by the executrix for the purposes of administration, and was therefore effective as a charge upon the assets. *Held*, also, that the Collector-General has power to take a mortgage for municipal rates, and that such security at least as against the mortgagor, is valid and enforceable.—*Douglas v. Douglas* (Ch.), 9 L. E. R. 548.

**EXONERATION OF REAL ESTATE**—A testator devised and bequeathed all his property to trustees upon trust *in the first instance*, to pay off a mortgage debt affecting certain lands which he had inherited from the mortgagor; and also all other his—the testator's—debts, funeral, and testamentary expenses, and *then* to convey certain premises, including portion of the mortgaged lands, to one J. M., in consideration of a specified sum of money and a perpetual rentcharge. He gave directions to his trustees as to the leasing of the remaining portions of the mortgaged lands. The will contained a residuary gift.—*Held*, that the testator had adopted the mortgage debt as his own, and that the will disclosed an intention that the debt should be satisfied out of the testator's personal estate, in exoneration of the mortgaged lands.—*Reynolds v. McGloughlin* (Ch.), 9 L. E. R. 406.

## F

**FRAUD**—[*See MISREPRESENTATION.*]

**FRAUDS, STATUTE OF**—[*See AGREEMENT FOR LEASE—VENDOR AND PURCHASER.*]

## G

**GIFT**—[*See CONTINGENT GIFT—VOLUNTARY DEED.*]

**GUARDIAN**—[*See CHARGE OF REAL ESTATE.*]

## H

**HUSBAND AND WIFE**—[*See ANTICIPATION—COSTR.*]

## I

**INFANT**—[*And see CHARGE ON REAL ESTATE—VOLUNTARY DEED.*]

When the next friend of an infant plaintiff dies pending the action, a new next friend may be appointed on an *ex parte* motion in Court.—*Daly v. Daly* (Ch.), 9 L. E. R. 383.

## J

**JOINT TENANCY**—A testator, who was the proprietor of three hotels, after reciting that he was part proprietor with another of the S. Hotel, owned by them in equal shares and proportions, share and share alike, directed that the entire of his interest therein "shall be vested, and become the property of my present wife, M. J., for her own benefit, and for the benefit of my two sons by her, viz., C. and E.; and my farther wish in this respect is, that said M. J. shall, in the event of my decease, continue to carry on the business of said S. Hotel until my sons C. and E. shall attain the respective ages of twenty-one years; at which periods respectively it is my wish and desire that my said wife M. J. shall make over one-third of such interest in said S. Hotel to my said sons C. and E., for their own sole and separate use and benefit." He bequeathed another hotel to two other sons, "in equal shares and proportions, share and share alike." E. died a minor. In an action by E.'s administrator, claiming his share in the S. Hotel.—*Held*, that on E.'s death under twenty-one, the testator's widow and C. became entitled to E.'s share by survivorship.—*Jury v. Jury* (Ch.), 9 L. E. R. 307.

## L

**LANDLORD AND TENANT**—[*See AGREEMENT FOR LEASE.*]

**LEGACY**—[*See CHARGE ON REAL ESTATE—CONTINGENT GIFT—PRIORITY—RESIDUE.*]

**LITHOGRAPHIC STONES**—F. commenced an action against the firm of W. & Co., to recover from them lithographic stones, which the firm claimed to be their property. Before the issue of the writ, F. had assigned his property in the stones to J.W., and the suit was subsequently by leave of the Court, amended by making J.W. a co-plaintiff.—*Held*, by Sir E. Sullivan, M.R., that F. was properly retained as a plaintiff. F. employed W. & Co., lithographers and engravers, to print and publish coloured drawing-books. Their contract (a verbal one) was that F. should pay the artist employed to prepare the drawings; that the firm should reproduce them in the drawing-

books in whatever way and by whatever process the firm might consider best or most suitable, according to the nature of the several drawings or otherwise, whether by means of copper or zinc plates, or lithographic stones, or otherwise; and that F. should pay the firm their necessary and proper charges, according to the work done, so as to cover all their outlay and expenditure for skilled labour or otherwise, in reproducing the drawings either upon metal, stone, or wood, as they might decide; and their fair and reasonable profits as engravers or lithographers, for their knowledge, skill and attention in so doing. Nothing was stated expressly, either as to payment for the lithographic stones by means of which the drawings were to be reproduced, or as to the right or property in such materials; but it was understood that the arrangement was to be on the same terms as those existing at the time with reference to writing copy-books, which F. had employed the firm to publish, under which the plates and other originals connected with the writing copy-books were admittedly F.'s property. The firm reproduced the drawing-books from drawings furnished and paid for by F., by the process of chromo-lithography, the first step in which is to transfer the drawings to "mother" stones, which of themselves, apart from the artistic work put upon them, were of little value, and from which the drawings were again transferred to working stones, which latter were used in the direct production of the chromo-lithographs in the drawing-books. The firm, in their invoices and accounts, charged and were paid by F. the cost of the materials used and skilled work in preparing the drawing-books, but not for the cost of the mother stones, apart from the artistic work. *Held* (by Sir E. Sullivan, M.R.), that the original, or "mother," lithographic stones were the property of the plaintiff, and the Court ordered the firm to deliver them up to the plaintiffs, they having offered, and consenting to pay, the actual value of the stones, apart from the artistic work upon them. *Held*, on appeal (affirming, with a variation, the judgment below), that J. W. was entitled to the substantial relief granted, but that it should be awarded to him alone, and the consequential directions modified accordingly. *Per Law, C.*:—*Scoble*, the order giving leave to amend should not, under the circumstances, have been made. *Foster v. Ward* (App.), 9 L. E. R. 468.

**LOCKE KING'S ACT**—A testator directed that, after payment of an annuity of £50 a year to his nephew, the rents of his Dublin property (which, upon the construction of the will, was held to mean the testator's chattels real in Dublin) should be applied in providing a fund for the payment of all charges affecting his Dublin property at his decease, and that if the fund so provided should be insufficient for the purpose, his said Dublin property should be charged with the payment of the balance of such charges. Two mortgages had been granted by the testator, one of which included fee-simple property and chattels real of the testator at Dublin, and personal estate, part of which was specifically bequeathed; the second affected the same property, except premises at Wood-quay (being part of the Dublin fee-simple property):—*Held*, that the Dublin chattel property was constituted by the will a primary fund for the payment of the mortgages, to that extent excluding the operation of Locke King's Act; but that after its exhaustion the deficiency should be apportioned among the remaining subjects of the mortgage.—*Corballis v. Corballis* (Ch.), 9 L. E. R. 306.

**LUNATIC**—[*See CONVERSION.*]

## M

**MAINTENANCE**—[*See CONTINGENT GIFT.*]

**MISREPRESENTATION**—J., being the owner of mills in Cork, subject to a mortgage for £3,000, and indebted to a bank in £3,000, with the view of forming a company to purchase and carry on the business of the mills, contracted with S. and another, merchants of influence and position, to allow their names to be put forward as directors in consideration of one hundred and fifty paid-up £5 shares of the company to S. and one hundred to the other. A deed was executed between trustees for the bank (who had agreed to purchase the mortgage), J., and S. and C. as trustees for the projected company, whereby the trustees for the bank agreed to sell and convey the mill premises to the company when formed, for £3,000, to be paid by debentures of the Company; and that J., on the formation of the company, should assign to it all his stock-in-trade, books, debts, &c., and all his interest in the mill premises, in consideration of two thousand five hundred paid-up shares of £5 each. The company was formed, and J. and S. were two of the directors; and the articles of association declared the above agreement binding on the company, and directed the allotment of two thousand five hundred paid-up shares to J. for the purchase of the good-will and stock-in-trade. The prospectus stated that the company had acquired "the very valuable concern"—viz., the mill premises, good-will, &c., describing them, "on exceptionally favourable terms—viz., for the small sum of £3,000, payable in debentures, &c., and one thousand paid-up shares, in addition to which the vendor will purchase fifteen hundred shares fully paid up, thus putting a cash capital of £7,500 into the concern." The company was wound up, and the plaintiff, a shareholder, sued J. and S. for damages to him for a false representation in the prospectus as to the capital of the company, and the suppression of the contract between J. and S. under which S. became a director. Upon the trial of issues of fact before a jury, they found that there was a contract between J. and S. that the one hundred and fifty shares were to be paid out of the shares of J., and that the plaintiff had no notice of the contract.—*Held* (1st), that the statement in the prospectus as to the capital of the company was false and fraudulent, and that J. and S. were answerable to the plaintiff for it; (2nd), following *SulHoss v. Micalif* (5 C. P. Div. 458), that the contract was within section 38 of the Companies Act, 1867, and the suppression of it from the prospectus fraudulent under that section; (3rd), that J. and S. should pay the plaintiff the sum paid by him for his shares. On appeal, Law, C., Deasy and FitzGibbon, L.J.J., affirmed the decree of the Master of the Rolls, on the ground of the actual misrepresentation and suppression in the prospectus, but without giving any opinion upon the construction of section 38 of the Companies Act, 1867.—*Jury v. Stoker* (App.), 9 L. E. R. 404.

**MONASTIC ORDER**—The prohibition of monastic bodies in the Roman Catholic Relief Act applies to such bodies as settled in the realm after the passing of the Act as well as to those who were then residing in it:—*Held*, therefore, that a trust for the benefit of a church belonging to the V. Order, who came to Ireland in 1838, having left it in 1890, and who are bound by religious or monastic vows, is void.—*Liston v. Keegan* (Ch.), 9 L. R. Ir. 581.

**MORTGAGE**—*See* EXECUTOR—EXONERATION OF REAL ESTATE—LOCKE KING'S ACT—REGISTRY ACTS.]

**MOTION**—[*See* COSTS.]

## N

**NEW TRUSTEE**—Order appointing trustees of a settlement, one of the trustees named in it residing permanently abroad, and the other having been wrongly described in the settlement.—*In re Irwin's Trusts* (Ch.), 9 L. R. Ir. 19.

**NEXT FRIEND**—[*See* INFANT.]

**NEXT OF KIN**—[*See* ADMINISTRATION.]

**NOTICE**—[*See* REGISTRY ACTS.]

## P

**PARTIES**—[*See* LITHOGRAPHIC STONES.]

**PARTITION**—In an equity civil bill for partition of certain lands, the plaintiff gave in evidence a civil bill decree in ejectment, obtained by him against the same defendant, which declared the plaintiff entitled to the possession of an undivided moiety of the same lands. The county court judge decided that the ejectment decree was conclusive evidence, as against the defendant, of the plaintiff's title to an undivided moiety of the lands, and refused to allow the defendant to dispute such title, and made a decree for partition:—*Held*, upon appeal, that the decision of the county court judge was right.—*Doyle v. Keenan* (Ch.), 9 L. R. Ir. 168.

**PATENT FROM THE CROWN**—[*See* SEA-SHORE.]

**POLICY OF INSURANCE**—[*See* "RESIDUE."]

**POWER**—[*And see* CHARGE ON REAL ESTATE—CONTINGENT GIFT.]

1—A testator devised a farm, with all the stock, &c., share and share alike, to his son and his daughter; and after some bequests to them, he declared that the bequests to his daughter should be for her own sole and separate use, to be held by her for her life, with a power of appointing same amongst her children:—*Held*, that the power to the daughter was coupled with a trust for her children, and that she took only a life interest in a moiety of the property.—*Healy v. Donnelly* (3 Ir. C. L. R. 218) considered and distinguished.—*Aherns v. Aherns* (Ch.), 9 L. R. Ir. 144.

2—W. and G. (two brothers) being absolutely entitled in certain events (which happened), as tenants in common, to leasehold houses, by deed, made in 1840, assigned the premises to S. upon trust for M. for life; and after the death of M. to the use of S.; and after the death of S. in trust for the children of W. and G. "respectively," in such shares and proportions as they, or either of them, should appoint; and in default of such appointment, then to and amongst the said children equally and share alike. W., by will, purported to appoint all the premises to his then only child W. F., and died in 1869, without leaving any other child surviving. G. died, leaving several children, and without making any appointment; and M. and S. having also died:—*Held* (affirming the decision of Chatterton, V.C.), that the children of both brothers, living at the date of the deed of 1840, and subsequently born, were the objects of the non-exclusive power, and also the objects to take in default of appointment; and that there having been only an exclusive exercise of the power, such children became entitled, and that they took *per capita*.—*Fletcher v. Fletcher* (App.), 9 L. R. Ir. 301.

**PRACTICE**—[*See specific headings.*]

**PRIORITY**—[*And see* COSTS—REGISTRY ACTS.]

A testatrix, bequeathing legacies and annuities, by her will directed that the first year's rent of certain lands, and, if necessary, the second half-year's rent accruing next after her decease, should be applied in payment of so much of her debts and funeral expenses and of her legacies as her personal estate should be insufficient to pay. She then gave certain annuities, but not to commence till all (i.e., debts and legacies) should be paid. By a codicil, giving certain other annuities and legacies and devising the lands subject to the annuities, the testatrix directed that all her legacies should be paid out of the rents before any of the annuities should become due, except two annuities to A. and B., which were to become payable immediately after her decease. The lands having been sold, and their proceeds proving insufficient to pay the debts, legacies, and annuities in full:—*Held*—1st. That the direction in the codicil as to the annuities to A. and B. did not alter the priority of the several annuities *inter se*, but only the time at which these two annuities were to commence; and that, upon payment of the legacies, all the annuities, including those to A. and B., became payable in equal priority, and should therefore abate rateably. 2ndly. That the annuities other than those given to A. and B., commenced from the time at which the legacies ought to have been paid, as distinguished from the time of their actual payment.—*Fagham v. Daly* (Ch.), 9 L. R. Ir. 484.

**PROBATE**—[*And see* ADMINISTRATION—EXECUTION OF WILL.]

A will made in Queensland, and attested by witnesses resident there, was proved and lodged in the Supreme Court of New South Wales, at Sydney. The executor having applied for probate in Ireland, upon the evidence of one of the attesting witnesses of its due execution (to whom a copy only of the will had been exhibited), and upon an

affidavit of a solicitor and officer of the Court at Sydney that they had inspected the will there, and had set out a true copy of it in the affidavit, and proving the handwriting of the signatures of the testator and attesting witnesses, there being no suspicious circumstances attached to the will:—*Held*, by Warren, J. and by the Court of Appeal, that probate should be granted; it being assumed, in the absence of evidence to the contrary, that Queensland was outside the jurisdiction of the Courts of New South Wales. *Held* also, that when attesting witnesses are out of the jurisdiction, a will may be proved by evidence of their handwriting, albeit the will might possibly have been sent to the witnesses.—*Wilson v. Collum* (App.), 9 L. R. Ir. 154.

**PROPERTY**—[*See* LITHOGRAPHIC STONES.]

**PROSPECTUS**—[*See* MISREPRESENTATION.]

**PURCHASER WITHOUT NOTICE**—[*See* REGISTRY ACTS.]

## R

**RAILWAY COMPANY**—[*See* COSTS—SPECIFIC PERFORMANCE—VOLUNTARY DEED, 9.]

**RATES**—[*See* EXECUTOR.]

**RECITALS**—A testator, after reciting that he was possessed of property in D. for the residue of term of years, bequeathed "his said D. property." He was entitled to freeholds as well as leaseholds in D.:—*Held*, that the leaseholds only passed under this gift. The testator, after reciting that he was entitled to a sum standing in the Court of Chancery, to the credit of a certain cause, subject to the life estate therein of E. T. C., bequeathed all his interest in the said sum upon certain trusts. He was entitled to an expectant interest in a sum of £3,000 stock, standing to the credit of the cause, and retained to answer an annuity of £105 to E. T. C. for life. The residue of the funds to the credit of the cause, including other sums to which the testator was entitled, were liable to make up any deficiency of the £3,000 stock in payment of the annuity; but E. T. C. was not otherwise interested therein:—*Held*, that the testator's interest in the £3,000 alone passed under the above bequest, and that the gift did not extend to the other moneys to the credit of the cause.—*Corballis v. Corballis* (Ch.), 9 L. R. Ir. 309.

**REGISTRATION**—[*See* REGISTRY ACTS—VOLUNTARY DEED.]

**REGISTRY ACTS**—1—An equitable mortgagee by deposit of title-deeds, unaccompanied by any memorandum in writing, takes priority over a purchaser for value claiming under a subsequent registered deed, without notice of such deposit. Decision of Flanagan, J., reversed. *Sumpter v. Cooper* (2 B. & Ad. 223) and *In re Stephens' Estate* (Ir. R. 10 Eq. 282) followed. *In re M'Kinney's Estate* (Ir. R. 6 Eq. 445) overruled.—*In re Burke's Estate; Ex parte Burke, Petitioner* (App.), 9 L. R. Ir. 164, 16 Ir. L. T. & S. J. 185, 197, 209. [See com., by the present writer, *ib.*, and by others, *ib.* 195, 271.—*E. N. B.*]

2—Priority; notice of prior charge; letter stating prior charge "useless."—*Christie v. Farr* (L. J.), 16 Ir. L. T. & S. J. 108.

**RELEASE**—[*See* SATISFACTION.]

**RESIDUARY ESTATE**—[*See* EXECUTOR.]

"RESIDUE"—The testator, after reciting that he was entitled to a policy of insurance on his life for £2,000, bequeathed £400, part thereof, to E.; £100 and £100, other parts thereof, to two other legatees; and he left "the residue" to J. H. C. At the time of the testator's death, considerable sums by way of bonus were added to the policy:—*Held*, that the gift of the "residue" of the moneys, payable on foot of the insurance, was residuary and not specific, and that J. H. C. took the entire residue of the proceeds of the policy, including the bonuses, but subject to any liabilities for the satisfaction of which the policy was liable to be resorted to, and that such liabilities were to be borne primarily by the legatees of such residue, in exoneration of the specific legatees of the insurance.—*Corballis v. Corballis* (Ch.), 9 L. R. Ir. 309.

**REVIVAL**—[*See* REVOCATION OF WILL.]

**REVOCATION OF WILL**—The testator made a will on the 13th of March, 1876, and a second will on the 29th of April, 1876, by which he revoked the former will, and made some changes in the disposition of his property; and a codicil dated the 9th of June, 1880, commencing thus:—"I make and publish this codicil to my will, dated 13th March, 1876. I cancel the gift of £400 willed to my son W. J., having paid him that amount since I made said will."—*Held*, that the codicil revived the first will, and that the three documents should be admitted to probate.—*In the Goods of Edge* (Pro.), 9 L. R. Ir. 518.

## S

**SAILING REGULATIONS, 1879**—[*See* COLLISION.]

**SALE**—[*See* CONVERSION—VENDOR AND PURCHASER.]

**SATISFACTION**—By a marriage settlement of 1832 real and personal estate of H., the intended wife, was conveyed to trustees in trust for E., the intended husband, for life, and after the death of the survivor of E. and H., in trust for the children of the marriage, as R. and H. or the survivor should appoint, and in default of appointment for the children equally. The trustees allowed R. to obtain possession of the trust fund, which he mixed with moneys of his own, and in 1861 one of the trustees commenced a suit to compel him to replace the fund. By arrangement of the trustees with R., he and H., by deed of the 25th September, 1861, irrevocably appointed the fund equally among the children, four of whom were of age, and one (the plaintiff) a minor. On the following day the four adult children, and two years afterwards the plaintiff, when of age executed a deed releasing the

trustees from the trusts of the settlement. The children executed the release by the direction of their father, without any professional advice or assistance and in ignorance of its contents or effect, and of their rights under the settlement. R. from time to time paid sums of money for the plaintiff. He purchased for the plaintiff a commission in the army, paid for his outfit, &c., made him an adequate yearly allowance, and paid a large sum for his promotion. No one of the sums so advanced was equal in amount to the plaintiff's share of the trust fund, nor was there any evidence that it was stated at the time of the advances, or understood between the plaintiff and R., that they were made out of the trust fund in R.'s hands.—*Held*, by Sullivan, M.R., and by the Court of Appeal:—1st. That the release should be set aside. 2nd. That R.'s position was that of a debtor to his five children for their respective shares of the trust fund. 3rd. That the sums advanced, being respectively less in amount than the plaintiff's share, were not a satisfaction of it *pro tanto*, and that R. was not entitled to credit for them.—*Roode v. Roode* (App.) 9 L. R. 437.

**SEA-SHORE**—A patent of King James I. granted the site and precinct of the ancient monastery or priory of H., and certain denominations of land, partly adjoining the sea-shore, and belonging to the priory, including the harbour of S., with its anchorage dues, and four adjacent islands; "and also the customs of the tenants and farmers of all the towns and villages above said, who are accustomed to pay to the lord or tenant of the priory aforesaid the divers plough days [ &c. ]; and the said tenant or farmer of the priory aforesaid was accustomed to take to his own proper use the wreck of the sea, flotsam and jetsam, wafle and strays." The patent contained general words of grant, including wastes, waters, fisheries, fishings, wreck of the sea, and hereditaments whatsoever within the priory, monastery, manors, &c., granted or appertaining or belonging thereto, but there was no express grant of the *litus maris*. The plaintiff, who derived under the patent, alleged that from its date he predecessors in title and himself had exercised exclusive dominion over the fore-shore forming the eastern boundary of the manor, and over the rocks, sand, and seaweed thereon. It was, however, proved that various persons had for many years taken seaweed, sand and gravel, and quarried stones, from the sea-shore, but that such acts were not referable to any alleged ownership of the soil, and that there had been no serious interruption to the plaintiff's right until 1869, when it appeared that, in the name of his tenant on one of the four islands he brought an action for trespass on the foreshore thereof, and trover for seaweed taken therefrom, and obtained a verdict. In 1875 the plaintiff filed a bill against the Attorney-General and a number of local defendants, praying for an injunction to restrain trespass and the taking of seaweed from the foreshore of the mainland, and that he might be quieted in his possession. No defence was filed, but the Attorney-General appeared at the hearing, and Sullivan, M.R., granted a perpetual injunction against the other defendants, and directed the Attorney-General to abide his own costs. The plaintiff filed a similar bill again in 1877 against the then Attorney-General (who did not dispute the plaintiff's title) and other defendants, the latter of whom appeared upon the hearing, and had a like perpetual injunction pronounced against them by Chatterton, V.C. Two subsequent actions at law, in which the juries had disagreed upon an issue as to the plaintiff's ownership of the foreshore, were pending, when, in January, 1880, the plaintiff instituted another Chancery suit against the Attorney-General and a number of local defendants, praying the same relief as in the former suits. In this action an appearance for the Attorney-General then in office was entered in February by the solicitors for the Board of Trade, who acted as his solicitors in suits of this nature, pursuant to a direction given in 1872 by the then Attorney-General, which remained unchanged. They obtained the advice of the Law Officers of the Crown, and in accordance therewith instructed counsel to appear at the hearing, who accordingly did so, and did not oppose the plaintiff's claim. A new Attorney-General had been appointed in May, before the hearing, but no side-bar order to proceed against him had been entered by the plaintiff. The action was, with the defendant's acquiescence, tried without a jury before Chatterton, V.C., who made a decree declaring the plaintiff entitled to the foreshore of the mainland and of the islands (to which latter foreshore the local defendants admitted the plaintiff's title), and that he should be quieted in his possession, and granted a perpetual injunction as before. The local defendants subsequently moved to set aside the appearance entered for the Attorney-General in this action, on the ground that the new Attorney-General had not been served with notice of the proceedings, nor made a party, and this motion was refused by Chatterton, V.C. The same defendants then appealed from the decree; and on the case coming before the Court of Appeal, it was ordered to stand over for the Attorney-General to be served with notice of the proceedings; and this having been done, and the proper side-bar order entered, the appeal came on for hearing, when the Attorney-General appeared, and with the other defendants disputed the plaintiff's claim to the foreshore of the mainland:—*Held* (affirming the decision of Chatterton, V.C.):—(1) That the language of the patent was capable of passing, and intended to pass, the foreshore in dispute; and that, coupled as it was with adequate evidence of exclusive ownership, and with the admitted ownership, and with the admitted right of the plaintiff in the case of the islands, it was sufficient to confer on the grantee a title to such foreshore, notwithstanding the adverse acts proved. (2) That the plaintiff, by the previous litigation, had sufficiently established his title to be quieted in his possession. (3) That the defendants having, on the summons to fix the mode of trial, acquiesced in the action being tried by the Judge without a jury, could not afterwards under G. O. XXXV., Rule 2, insist upon a trial by a jury; and that, independently of such acquiescence, the Judge had full jurisdiction, under section 42 of the Irish Judicature Act, incorporating the provisions of "The Chancery Amendment Act, 1858," and "The Chancery Regulation (Ireland) Act, 1862," as to the determination of questions of fact, himself to decide the issues raised. *Held* also, that the solicitors for the Board of Trade were warranted in continuing to act in the suit as solicitors for the Attorney-General, and in carrying out the instructions already given.—*Hamilton v. The Attorney-General* (App.), 9 L. R. 371.

**SECRET TRUST**—A testator left the residue of his property to A and B, "upon and for certain trusts and purposes which he had fully explained to them," and he named A and C executors. Enclosed in an envelope with the will was found a letter in the testator's handwriting, of the same date, addressed to A and B, directing them to apply the money left to them from time to time "for such missionary purposes in Ireland as they should, in their discretion, think fit." The will was admitted to probate, but the letter was rejected. The testator never spoke to A of any trust. After the will was made, he stated to B that he had left the property to him and A, and asked B if he thought he could work with A; and B replied, "Yes, I could work with A if we had prayer together." The conversation was never communicated to A.—*Held*, 1. That a trust for "missionary purposes" was void, as too vague and uncertain. 2. That the letter was inadmissible to prove the trust. 3. That there was no acceptance of the trust by A.—*Riordan v. Bacon* (L. R. 10 Eq. 468) and *Re Fleetwood* (15 Ch. Div. 594) observed on.—*Scott v. Brewster* (Ch.), 9 L. R. 1r. 244.

**SEPARATE ESTATE**—[*See ANTICIPATION.*]

**SERVICE**—[*See APPEAL—SEA-SHORE.*]

**SETTLEMENT**—[*See CONVEYANCE—NEW TRUSTEE.*]

**SHARES**—[*See COMPANY—CONTRIBUTORY.*]

**SHIP**—[*See COLLISION.*]

**SIDE-BAR ORDER**—[*See SEA-SHORE.*]

**SOLICITOR'S LIEN**—A reference to arbitration having been made in action, the arbitrator awarded that a certain sum should be paid by the plaintiff to the defendant, and the award was confirmed by the Court. An order was made on the application of the defendant's solicitor, under the 3rd section of the Act 39 & 40 Vict. c. 44, declaring him entitled to a lien for the costs of the defendant in the action upon the amount awarded, as property recovered or preserved for the defendant through the instrumentality of the solicitor; and directing the plaintiff to pay thereout to the solicitor the amount of such costs when taxed.—*McAleavey v. McAleavey* (Ch.), 9 L. R. 1r. 165.

**SPECIFIC PERFORMANCE**—[*And see AGREEMENT FOR LEASE—VENDOR AND PURCHASER.*]

A railway company, as compensation for injury to the plaintiff's mill by the construction of their railway, agreed to lay down a siding from their line to the mill. The siding was made, but the plaintiff's not having used it, the railway company removed the points, undertaking by a letter of the 2nd March, 1871, to replace them on receiving sufficient notice of an intention to use the siding. In November, 1879, the siding not having been used, the railway company removed the rails, and the plaintiffs having required them to be replaced, its secretary on the 27th November, 1879, wrote to the plaintiffs that the rails had been removed under a misapprehension and would be replaced at once, or that the directors would undertake to do so at any time when called on. By regulations of the Board of Trade issued in July, 1879, railway companies were required to provide signals, &c., on the opening of any siding or branch-line which had not been in use before that time. On the 17th September, 1880, the plaintiffs required the railway company to replace the siding. On the 19th of October, the secretary replied, requiring the plaintiffs to indemnify the directors against the expenses occasioned by the regulations of the Board, in consequence of the non-user of the siding, if they required it to be replaced. The plaintiffs' solicitor refused, and having again required the siding to be replaced, on the 5th January, 1881, wrote to the secretary that unless in that month the plaintiffs should be fully compensated for the injury and expense sustained by them from the construction of the railway, proceedings would be taken to recover full compensation. The secretary replied on the 19th of January, denying the liability of the company in respect of a right never used, and on which the plaintiffs apparently placed no value. In an action for specific performance of the agreement to replace the siding:—*Held*, 1st. That the non-user of the siding and the expenses caused thereby under the regulations of the Board of Trade was not a defence to the action, and that the company was not entitled to any indemnity against those expenses. 2nd. That the plaintiffs were entitled to a decree to replace the siding and to keep it in working order, the Court considering damages an insufficient remedy. *Wilson v. Northampton and Banbury Junction Railway Company* (L. R. 9 Ch. 379); *Powell Duffryn Steam Coal Company v. Taff Vale Railway Company* (L. R. 9 Ch. 381) considered and distinguished.—*Todd v. The Midland Great Western Railway Company* (Ch.), 9 L. R. 1r. 85.

**STATUTE OF FRAUDS**—[*See FRAUDS, STATUTE OF.*]

**SUBTERRANEAN CHANNEL**—[*See WATER.*]

**SURVIVOR**—[*And see JOINT TENANCY.*]

A testatrix bequeathed two sums of money upon trust for her nieces M. and E. respectively. The legacy given to E. was bequeathed upon trust for her for life, for her separate use, and after her decease for her children, if any, living at her death, as she should appoint, and in default of appointment equally among them, and if but one child, the whole to be in trust for such only child. The legacy to M. was bequeathed upon similar trusts; and the testatrix directed that in case her said nieces, or either of them, should die without leaving issue, the legacy of the niece so dying should be equally divided between "the children of whoever of my said nieces shall happen to survive," and the children of C. in equal shares, on attaining twenty-one years or day of marriage; and if but one child, issue of such her surviving niece or of C., then living, the share of the niece so dying without issue to go to such only child of her surviving niece or of C. There was no express gift over of the whole fund in the event of there being no child to take it. M. died in 1877. E. died in 1881, without issue, and at the time of her death there were living children of M. and children of C.:—*Held* (by Law, C., and Deasy, L. J., *dis.* Fitz Gibbon, L. J.), affirming the decision of Chatterton, V.C., that the children of C. were entitled to the whole of the legacy so bequeathed to E., to the exclusion of

M.'s children; for that the words "whichever of my said nieces shall happen to survive" must bear their literal meaning, and could not be construed as equivalent to "the other." *Held*, by Fitz Gibbon, L. J., that the intention of the testatrix was to provide, in the alternative, for the case (which happened) of only one niece dying without issue, and that the words "whichever of my said nieces shall happen to survive" had reference to the other niece not so dying: a clue to the interpretation of the bequest being furnished by its containing in effect a gift over in the event (which did not happen) of both nieces dying without leaving issue.—*In re Dunlevy's Trusts* (App.), 9 L. R. Ir. 349.

## T

**TENANCY IN COMMON**—[See JOINT TENANCY.]

**TITLE**—[See PARTITION—SEA-SHORE.]

**TRESPASS**—[See SEA-SHORE.]

**TRIAL**—[See SEA-SHORE.]

**TRUST**—[See CONVERSION—EXECUTOR—MONASTIC ORDER—NEW TRUSTEE—POWER—SATISFACTION—SECRET TRUST—VOLUNTARY DEED.]

## U

**UNCERTAINTY**—[See SECRET TRUST.]

## V

**VENDOR AND PURCHASER**—[And see REGISTRY ACTS.]

At a sale by auction on the 10th August, 1880 (an announcement of which, endorsed on the particulars and conditions, had the auctioneer's name printed at foot), D. signed a memorandum appended to the particulars and conditions, acknowledging that he had "this day purchased from Mr. Stafford, the vendor, by public auction, subject to his approval, the premises mentioned in the annexed particulars, for the sum of £250, subject to the conditions of sale also annexed thereto;" but there was no signature by the vendor, nor any subsequent adoption of the contract under his hand. At the time of sale D. paid portion of the purchase-money in cash, and for the balance of the stipulated deposit he gave his I O U. Three days afterwards D. paid a further sum on account of the deposit, and was handed a receipt, dated the 13th August, 1880, signed by the auctioneer's clerk, on behalf of "Michael Crooke" (the auctioneer), and acknowledging that he had "received from Mr. Dyas (the purchaser) £30 sterling, which, with £20 paid 10th August, makes £50 deposit on his purchase, Lot 4, Mr. John Stafford's property." The vendor's solicitor subsequently wrote to D. recognizing the sale, furnished him with copies of the title-deeds, and approved of the draft conveyance to him, which, however, the vendor refused to execute; whereupon D., having brought an action for specific performance:—*Held* (reversing the judgment of Chatterton, V.C.), that there was no agreement enforceable against the defendant, as the contract of the 10th August having been made expressly "subject to his approval," the memorandum of that date only amounted to a proposal, and did not constitute a note in writing, within the Statute of Frauds; there not being then in fact any contract in existence; that subsequent parol approval by the defendant or his agents could not have the effect of altering the character in which his name appeared in the memorandum, so as to convert it into an authentication of a contract; and that the auctioneer's name at foot of the endorsement on the particulars and conditions merely authenticated the announcement of the sale. *Held* also (in accordance with the opinion of the Vice-Chancellor on that point), that the receipt of the 13th August did not satisfy the statute. *Per* Fitzgibbon, L.J.:—A defendant who succeeds upon a plea of the Statute of Frauds is not to be regarded as an unmeritorious litigant, to be reluctantly allowed his costs.—*Dyas v. Stafford* (App.), 9 L. R. Ir. 530.

**VESTING**—[See CONTINGENT GIFT.]

**VOID BEQUEST**—[See MONASTIC ORDER—SECRET TRUST.]

**VOLUNTARY DEED**—1.—The failure by matter *ex post facto* of what was, at the date of a conveyance of land, sufficient to constitute a consideration for it of value, will not operate retrospectively, so as to render the conveyance liable to be defeated under the statute 10 Car. 1, sec. 2, c. 3, by a subsequent conveyance for value of the same land by the same grantor to other uses. J., who was tenant in tail in remainder of the lands of A., in 1840, joined his father T., who was tenant for life in possession, in barring the entail; and in a re-settlement, which included limitations to J. and his issue, T. by the deed of re-settlement conveyed the lands of B., to which he was absolutely entitled, to the same uses. All the lands were charged by the re-settlement with a jointure for T.'s wife and portions for his younger children and a present rent-charge for J. It was afterwards discovered that J., who was supposed to have attained his majority at the date of the re-settlement, was in fact an infant at the time, but there was no imputation of fraud upon the transaction. J., upon this discovery and within a reasonable time, repudiated the re-settlement; and T. purported, in 1852, to execute a new settlement, admittedly for valuable consideration, including amongst others the lands of B.:—*Held*, that as the re-settlement of 1840 was voidable only by J., and not void as against him until his election to repudiate it, there was a sufficient consideration for that deed in its inception to render the settlement of B. a conveyance for value on the part of T.; and that, as this consideration for value originally existed the statute 10 Car. 1, sec. 2, c. 3, was inapplicable, and the deed was not avoided by the subsequent settlement of 1852, notwithstanding the failure of the consideration by J.'s repudiation of the deed of 1840.—*Paget v. Paget* (Ch.), 9 L. R. Ir. 128. (Reversed on app.)

2.—F, a child of tender age, was adopted with the consent of his parents by L., a stranger to him in blood, who promised the parents to adopt and provide for the child. L. by deed, expressed to be made between himself of the one part and T. and J. of the other part, but executed

by himself alone, purported, in consideration of natural love and affection towards F., to assign to T. and J. £5,000, invested in railway debenture stock, to hold from L.'s death, upon trust to apply the income of the said sum for the education, maintenance, and benefit of F. till he F. should attain twenty-one, and then upon trust to assign to F. the said sum, with all accumulations thereon. The deed was not registered as a transfer of the stock, and the stock remained standing in L.'s name till his death. In a suit by the personal representatives of L. for the administration of his estate, and seeking a declaration that the stock which was claimed by T. and J. formed part of it, the court being of opinion, on the evidence, that there had been no change in the status of F. which would have rendered it inequitable on the part of L., or those claiming under him, to refuse to carry out the provisions of the deed:—*Held*, that the deed, as a voluntary instrument, could not be deemed operative as a declaration of trust; and that, as a gift, it must fall as imperfect and incomplete, unless T. and J. could compel the railway company to register the deed as a transfer of the debenture stock, pursuant to the 8 Vict. c. 16; and the company not being parties to the suit, the court allowed T. and J. reasonable time to institute proceedings for that purpose, if so advised.—*West v. West* (Ch.), 9 L. R. Ir. 121.

**VOLUNTARY SOCIETY**—[See CHARITY—MONASTIC ORDER.]

## W

**WATER**—T., who was lessee for lives renewable for ever of a parcel of ground, expressed in the original lease to be demised, "together with the free use of all springs and streams of water arising in or running through the demised premises, or any part thereof, for any bleach-green or other works which then were, or at any time thereafter should be, erected on the premises," made two sub-leases to different persons, for lives renewable for ever, of portions of the premises, the first sub-lease being made in 1861, and describing the premises therein comprised as "that parcel of ground formerly used as a bleach-green, together with the free use of all waters running in or running through the demised premises, or any part thereof, theretofore used for the purposes of linen manufacture on the said lands, as fully as T. was entitled thereto;" and the second being made in 1863, of the remaining portion of the lands, "together with the free use of all water, if any, arising in or running through the demised premises, or any part thereof, as fully as T. was entitled thereto." The interest in both sub-leases, as well as the equity of redemption in the superior lease (which had been mortgaged), afterwards became vested in W., who was subsequently adjudicated a bankrupt, and the lands were sold by the Court of Bankruptcy. The plaintiff purchased the portion of the lands comprised in the sub-lease of 1861; and one C., under whom the defendants claimed, became the purchaser of the portion included in the sub-lease of 1863. Both portions of the lands were set up for sale by auction on the same day—one of the conditions of sale providing that each would be sold "subject to existing easements"—but the court having refused the plaintiff's first tender, he subsequently increased it, and was not actually declared the purchaser until a few days after the confirmation of the sale to C. By deed of the 15th March, 1876, made between the assignee of W. and certain other persons and the plaintiff, which recited (*inter alia*) the superior lease, the sub-lease of 1861, with the water rights thereby respectively granted, and the sub-lease of 1863, the grantors conveyed to the plaintiff the parcel of land formerly used as a bleach-green, together with the full use of all water rising in or running through the demised premises, or any part thereof, theretofore used for the purposes of linen manufacture, as fully as T. was entitled thereto under the recited superior lease or otherwise; and all other (if any) the premises comprised in the lease of 1860, "excepting thereout and out of this grant" the premises purchased by C. By deed of the 11th of April, 1876, made between the same grantors and C., and containing similar recitals to those in the conveyance to the plaintiff, the grantors conveyed to C. the lands comprised in the sub-lease of 1863. The *testatum* of this deed made no mention of water rights. The plaintiff's lands were at a lower level than the lands of C.; and in the plaintiff's lands, a few feet from the fence dividing them from C.'s lands, a copious stream of pure water issued from the ground. This water was peculiarly suitable for bleaching purposes; and the plaintiff, who was a bleacher, deposed that he intended to use it for bleaching; and at the time of action brought, it was used for domestic purposes in the dwelling-house on the plaintiff's ground, and for the supply of a large mill thereon. The defendants, who were the local sanitary authority, entered into an agreement with C. to permit them to bore for water on his lands, and they made a cutting on them a few feet from the fence, and obtained a large supply of water, whereupon the stream on the plaintiff's land ceased to flow. The plaintiff having applied (or an injunction to restrain the defendants from diverting and obstructing the water from his stream, Chatterton, V.C., decided that the conveyance to the plaintiff expressly granted him this water; and that, as the grantors could not derogate from their own grant, neither C., who derived his title from those grantors, nor the defendants claiming through him, could lawfully deprive the plaintiff of the use of the water in question:—*Held*, on appeal (reversing the decision below), (a) that the conveyance to the plaintiff did not grant him the right claimed, and that he would not have been entitled to it even if the conveyance to C. had contained an exception of all existing easements; and (b) that, although the water flowed subterraneously in a channel which was, and by excavation could have been, ascertained to be defined, the principle of *Chasmore v. Richards* (7 H. L. C. 249) applied, as the channel was not known.—*Evart v. The Belfast Poor Law Guardians* (App.), 9 L. R. Ir. 172.

**WILL**—[See CHANGE ON REAL ESTATE—CHARITABLE BEQUEST—CONTINGENT GIFT—COISTS—EXECUTION OF WILL—EXECUTOR—JOINT TENANCY—LOCKE KING'S ACT—MONASTIC ORDER—POWER—PRIORITY—PROBATE—RECITALS—"RESIDUE"—REVOCATION OF WILL—SECRET TRUST—SURVIVOR.]

**WINDING-UP**—[See AMENDMENT—CONTRIBUTORY.]

**WITNESS**—[See PROBATE.]

# COMMON LAW CASES.\*

## A

**ACTION TO RECOVER POSSESSION OF LAND**—[See COSTS—EMBARRASSING PLEADINGS—INTERROGATORIES—LANDLORD AND TENANT—NOTICE OF SALE—STAYING PROCEEDINGS—TRANSFER OF ACTION.]

**ADDING PARTIES**—[See AMENDMENT.]

**ADDRESS FOR SERVICE**—[See SERVICE.]

**ADMINISTRATOR**—[See INTERROGATORIES.]

**ADVOCATE**—[See PREVENTION OF CRIMES ACT.]

**AFFIDAVIT**—[See SECURITY FOR COSTS—SURETIES TO BE OF GOOD BEHAVIOUR.]

**AMENDMENT**—[And see PLEADING.]

1—Where, in proceedings against a husband and wife for breach of contract by the wife before marriage, it is sought to charge the separate estate of the wife, the court will allow the pleadings to be amended by inserting a claim against it. A new and independent claim cannot be introduced into a statement of claim without amending the writ of summons. *Moore v. Atwell*, 15 Ir. L. T. Rep. 51, followed.—*Morris v. Crosswell and wife* (Ex.), 16 Ir. L. T. Rep. 32.

2—Writ of summons; Summary Procedure on Bills of Exchange Act; action not brought within six months; promissory note, what constitutes.—*Qualey v. Dwyer* (Ex.), 16 Ir. L. T. & S. J. 104.

3—Where, in an action against a railway company for breach of contract in not carrying the plaintiff's pigs safely from a station in Ireland to Liverpool, and for wrongful conversion, the defendants, by answers to interrogatories, showed that the alleged conversion took place wholly in England, and was committed by another railway company without their sanction, leave was granted to the plaintiff to add the latter company as co-defendants.—*Creton v. M. G. W. Ry. Co.* (Ex.), 16 Ir. L. T. Rep. 94, 10 L. R. Ir. 74.

4—On an application by a defendant, under the Jud. Act, Sch. r. 19, to compel the plaintiff to amend by joining other parties as co-defendants in the action on the ground of their joint liability with him, he must establish that joint liability by clear and distinct evidence.—*White v. Workman and another* (Ex.), 16 Ir. L. T. Rep. 97.

**APPEAL**—[See COSTS—LANDLORD AND TENANT.]

**APPEARANCE**—[See DEFAULT OF APPEARANCE—SECURITY FOR COSTS—SERVICE.]

**APPORTIONMENT**—Where a tenant in occupation of lands, in lieu of his right to emblements, elects, under section 34 of the Landlord and Tenant Law Amendment Act, 1860, to continue to hold and occupy such lands until the last gale day of the current year in which his tenancy has determined, the rent which under the same section the landlord, or succeeding landlord or owner, becomes entitled to recover from the tenant, as if the tenant's interest had only determined on such gale day, is an apportionable rent within the meaning of the Apportionment Act, 1870, but the person entitled to the apportioned part thereof is not entitled to sue the tenant for such apportioned part; the entire gale must be recovered in the first instance by the person who, if the rent had not been apportionable, would have been entitled thereto.—*Irvine v. Fraser* (App.), 10 L. R. Ir. 230.

**ARREARS OF RENT ACT, 1882**—[See LANDLORD AND TENANT.]

**ASSAULT**: constable witnessing; assaulted party refusing to prosecute; summons by constable in his own name; 24 & 25 Vict., c. 100; 26 & 26 Vict., c. 50.—*Burns v. Justices of Ennisterry* (Co. Ct.), 16 Ir. L. T. & S. J. 193.

**ASSEMBLY**—[See UNLAWFUL ASSEMBLY.]

**ASSESSMENT OF DAMAGES**—[See DEFAULT OF APPEARANCE.]

**ASSIGNMENT**—[See CHOSE IN ACTION.]

**ATTACHMENT OF DEBTS**—Money due on a bank deposit receipt, payable *in futuro*, is attachable under a garnishee order; and on the *ex parte* application of the plaintiff, who has obtained judgment against the defendant, the court will make a conditional order to attach, but not to pay.—*Reidy v. Casey* (C. P.), 16 Ir. L. T. Rep. 93.

**ATTEMPT**—[See CRIMINAL LAW.]

**AUCTION**—[See INJUNCTION.]

## B

**BAIL**—[See SURETIES TO BE OF GOOD BEHAVIOUR.]

**BAILMENT**—[See DETINUEE.]

**BANKRUPTCY**—[See LANDLORD AND TENANT.]

**BILL OF EXCHANGE**—[See AMENDMENT—NEGOTIABLE INSTRUMENT.]

**BLACK LIST**—[See DAMAGES.]

**BREACH OF MARRIAGE PROMISE**: evidence; corroboration.—*v. Rice*, 16 Ir. L. T. & S. J. 163.

## C

**CARRIER**—[And see CONTRACT—REASONABLE CONDITIONS.]

A railway company, carrying live animals, are not insurers thereof, and, in the absence of any evidence of negligence or proof of the cause of injury to the animals, will not be liable to damages for such injury.—*M'Indoe v. M. G. W. Ry. Co.* (Cir. C.), 16 Ir. L. T. Rep. 92. [And see com., and other cases collated by the present writer, 16 Ir. L. T. & S. J. 222, 227.—*E. N. B.*]

**CERTIORARI**—[See JUSTICE OF THE PEACE—SURETIES TO BE OF GOOD BEHAVIOUR—TAXATION OF COSTS.]

**CHANGING SOLICITOR**—[See SOLICITOR.]

**CHOSE IN ACTION**—The payee of a promissory note, not negotiable and not then payable, indorsed it as follows:—"I indorse the within promissory note for £100 to my sister L." and delivered over the note to L. There was no consideration for the indorsement and delivery, but it was found as a matter of fact that such indorsement and delivery were made by the payee with the intention of vesting in L. the beneficial interest in the money represented by the note. The payee died before the note fell due, and bequeathed to one of the makers of the note all the moneys she should die possessed of or entitled to, and appointed him executor. After the death of the payee, and before action, express notice in writing of the indorsement was given to the makers.—*Held* (reversing the judgment of the Common Pleas Division), 1st, that as the appointment of one of the makers of the note executor of the payee extinguished the debt prior to the service of the notice of assignment, there had been no legal transfer of the debt to L. within sect. 3, sub-sect. 6, of the Judicature Act, so as to enable her to maintain an action on the note; 2ndly, that the payee had not constituted herself a trustee of the note or debt for L.—*Lee v. Magrath* (App.), 10 L. R. Ir. 313.

**COMMITTAL**—[See LUNATIC.]

**CONCEALMENT**—[See SURETY.]

**CONDITION PRECEDENT**—[See POOR LAW.]

**CONTAGIOUS DISEASES (ANIMALS) ACT, 1873**—[See CONTRACT.]

**CONTEMPT OF COURT**: publication in newspaper of letter reflecting on jurors; high sheriff.—*Gray's case*, 16 Ir. L. T. & S. J. 489; *Macdonald v. Tully*, *id.* 531. [And see REPORT OF H. C. SELECT COM. ON PRIV., *id.* 576.]

**CONTRACT**—[And see CARRIER—DAMAGES—FRAUDS, STATUTE OF—LANDLORD AND TENANT PENALTY.]

1—By the 28th section of the "Blackrock Township Act, 1863," it is provided that the Corporation of Dublin "shall supply, and thenceforth continue to supply a quantity of water equivalent to 30 gallons per head per day for the population from time to time of the township." By a Provisional Order of the Local Government Board, in 1874 (confirmed by 37 & 38 Vic., c. 186), it was ordered "that it shall be lawful for the Corporation, should they deem it expedient, and in the event of their having a quantity of water in excess of the quantity required for the use of the city of Dublin, and for the supplies provided for the said several townships by the said statutes and contract, to give to the Commissioners respectively of the said several townships permission to draw quantities of water respectively in excess of the quantities provided by the said statutes and contract respectively, from the pipes or mains of the Corporation, on receiving notice from the Commissioners of the several townships respectively of their desire to take such supply in excess of the statutable or contract allowance, at a rate or rates to be agreed upon between the Corporation and such Commissioners respectively, not exceeding in any case the rate of four pence per 1,000 gallons, and it shall be lawful for the Commissioners of the said several townships respectively to pay out of the rates levied in their respective townships the rents, rates, or charges respectively made by the Corporation for such supply in excess as hereinbefore defined." Accordingly, Sir John Gray, acting for the Corporation of Dublin, and Mr. Vance, acting for the Blackrock Township Commissioners, entered into a written arrangement, not under seal, nor signed by two Commissioners (under the Towns Commissioners Clauses Act, s. 66), by which it was agreed that the statutable allowance of water which the Corporation were to supply should be calculated upon a population of 10,000, until the publication of the then next Government census; and that all water supplied in excess of the statutory allowance of twenty gallons per head per diem to such a population should be paid for by the defendants, at a price to be subsequently fixed; and by a subsequent written arrangement it was agreed that the price should be fixed at 3d. per 1,000 gallons. The Corporation supplied the water accordingly. In an action brought by them to recover on foot of the stipulated price:—*Held*, on demurrer to the statement of defence (1), that the Corporation were entitled to sue as plaintiffs, although the contract was not under seal, same having been wholly performed on their part (applying the *The Fishmongers' Co. v. Robertson*, 5 M. & Gr. 197); (2) that, upon the true construction of the contract, it was in effect revocable at the pleasure of the parties at any moment, and, therefore, did not come within the Statute of Frauds, requiring agreements not to be performed within one year to be in

\* See Explanation of Abbreviations, ante p. vii.



writing (applying *Knowlman v. Blissett*, L. R. 9 Ex. 1, 307; *Eley v. Positive Assurance Co.*, 1 Ex. Div. 24), and so, under the 56th section of the Towns Commissioners' Clauses Act, was not required to be signed by two Commissioners; (8) that, the contract was not rendered illegal or *ultra vires* by reason of the reference in it to the fixing of the population of Blackrock, for the purposes in question, as 10,000 until the next census. Per Fitzgibbon, L.J.; The meterage rate under the Provisional Order of 1874 is a rate within the 61st section of the Dublin Waterworks Act of 1861, and the provisions of that section are incorporated in the Provisional Order as effectually as if they were in terms repeated therein. *Corporation of Dublin v. Commissioners of Blackrock* (App.), 16 Ir. L. T. Rep. 111.

- 2—In an action against a railway company by a consignor of cattle, delivered in Ireland to be forwarded to March and Lynn in England, the statement of claim alleged (par 4) that the defendants did not deliver 20 of said cattle at Lynn within a reasonable time, but delayed and detained them in trucks and waggons after their arrival at Lynn for a long and unreasonable time, whereby the cattle were injured; and (par. 5) that the defendants did not deliver 26 of said cattle at March within a reasonable time, but, on the contrary, delayed them for a long time in trucks and waggons on the journey between Liverpool and March, whereby they were injured. The defendants, by their statement of defence, pleaded (par. 14) to the 4th paragraph of the statement of claim, that the defendants were always ready and willing to deliver the 20 head of cattle within a reasonable time, but were prevented from so doing by the causes thereafter mentioned. They then referred to the Contagious Diseases (Animals) Act, 1878, and stated that by an order of the Privy Council, made in pursuance of that Act, the county of Norfolk, in which Lynn is situate, was declared to be an area infected with foot and mouth disease; and that under the 4th schedule of the said Act and the orders of the Privy Council of Jan. 3, 26, 1881, it became unsafe to move the cattle from the trucks in which the same had arrived at Lynn except by a licence of the local authority, granted on conditions prescribed by the orders in Council; and they averred that no such licence was forthcoming when the cattle arrived at Lynn. The local authority of and for the county of Norfolk refused to allow the cattle to be, and prevented the same from being, moved out of the said trucks unless and until such licence was obtained and produced to their proper officer; and the defendants averred that such licence was afterwards obtained and produced to the officer, whereupon the local authority permitted the cattle to be removed from the trucks, and the defendants thereupon forthwith removed the same and delivered them to the plaintiff. They further pleaded (par. 15) to the 5th paragraph of the statement of claim, referring to the same Sanitary Act and orders in Council, and stating that the defendants carried the cattle with due and reasonable speed as far the town of Peterborough, on the borders of the county of Norfolk, and that it was unlawful to move or carry the cattle from Peterborough to March without a licence of the local authority of the county of Norfolk, and that previous to the arrival of the cattle at Peterborough the plaintiff had not obtained such licence, nor was any such licence given, and by reason of the premises it became unlawful to carry the cattle further on the journey, and the cattle were prevented from being so carried for a time, and did remain at Peterborough for a time. To the 14th paragraph of the defence the plaintiff replied that one of the conditions prescribed by the Privy Council upon which the said licence would be granted was, that the owner of the cattle would make and sign a declaration, as in the schedule to the order set forth, and the plaintiff, as the owner of the cattle, made and signed the said declaration, and at the request of the defendants, and before the cattle were dispatched from Liverpool on the way to Lynn, delivered the declaration to the defendants, but the defendants did not forward the declaration to Lynn with the cattle, so as to have the same forthcoming when the cattle arrived at Lynn or March, but, on the contrary, negligently made default in so doing; that the local authority at Lynn was always ready and willing to grant the licence upon the production by the defendants of the declaration, and the refusal of the local authority to allow the cattle to be removed from the waggons was occasioned by the neglect and default of the defendants in not producing the declaration to the said local authority. To the 15th paragraph of the defence the plaintiff replied to the effect that the licence there referred to was obtainable from the proper local authority on the arrival of the cattle at Peterborough by the production to the local authority of a declaration in writing made by the plaintiff and delivered by him to the defendants before the departure of the cattle from Liverpool, and which declaration the defendants negligently and improperly omitted to produce to the said local authority, by reason whereof a licence for the removal of the cattle from Peterborough could not for a long time be obtained, and the delay in the 15th paragraph mentioned was occasioned thereby. The defendants having demurred to those replications, on the ground that they did not disclose any contract or obligation upon the part of the defendants to forward the declaration to the local authority:—*Held*, allowing the demurrer, that the defendants were under no obligation, by any express or implied contract, or by reason of any duty otherwise imposed on them, to procure the licence, nor was any duty imposed on them to forward the declaration; but that, the contract being to carry and deliver within a reasonable time, and not at any specified time the case did not fall within the doctrine that, if a person contracts absolutely to do a certain act, he is not discharged from his obligation by the supervention of circumstances rendering performance difficult or impossible; while for delay in carriage within such reasonable time, occasioned by the regulations of the Act and Order in Council, they would not be responsible under the circumstances appearing.—*Lynch v. The Midland Railway Co.* (Q. B.), 16 Ir. L. T. Rep. 116. [See com., and cases collected by the present writer, 16 Ir. L. T. & S. J. 275, 289, 317, 326, 335.—*E. N. B.*]

#### CORONER—[See PRESENTMENT.]

#### COSTS—[And see COUNTY COURT—LANDLORD AND TENANT—SECURITY FOR COSTS—SOLICITOR—STATING PROCEEDINGS—TAXATION OF COSTS.]

- 1—An action was brought in a Division of the High Court of Justice to recover possession of lands on the expiration of a lease for thirty-one

years at a yearly rent of £40, under which the lands had been held, the writ of summons being issued before the passing of the Land Law (Ireland) Act, 1881. By his statement of claim, delivered in October, 1881, the plaintiff claimed to recover possession and mesne rates. A consent for judgment for possession and a sum for mesne rates was given by the defendants:—*Held*, that the action for possession and mesne rates might have been brought in the County Court; and that the plaintiff was therefore, by sect. 51 of the Land Law (Ireland) Act, 1881, disentitled to costs.—*Greville v. Kirk* (C. P.), 10 L. R. Ir. 41.

- 2—Where at the trial the Judge refuses costs to a successful party, the Divisional Court will not in general interfere with his discretion. Where a defendant in an action for slander, having paid money into Court, obtained a verdict upon that plea, but failed upon issues joined on pleas in bar, the Court refused to vary the order of the Judge of Nisi Prius, refusing the defendant costs.—*Kearney v. Harrison* (C. P.), 16 Ir. L. T. Rep. 65, 10 L. R. Ir. 17.
- 3—When a holding at a rent under £100 per annum has been evicted for non-payment of rent, the tenant or other party having a specific interest in the holding is entitled to a writ of restitution, under 23 & 24 Vic., c. 184, without paying the costs of the action.—*Scully v. Mandeville* (Q. B.), L. R. Ir. 327.
- 4—Action to recover land on title; Land Law Act, 1881, s. 51; Jud. Act, s. 53 County Courts Act, 1877, s. 53, 44.—*Lord Cloncurry v. Devans and others* (C. P.), 16 Ir. L. T. & S. J. 97.
- 5—C. having bequeathed a chattel interest in land to his widow so long as she continued unmarried, the widow married D., and died intestate. E. C., the eldest son of C. took out administration to C.'s will, and brought an action to recover possession of the land against D. and his two brothers, to which D. alone took defence. The trial was listed for hearing on Dec. 15, 1881, when the plaintiff's solicitor was informed that the action had been settled by an agreement; and the case was struck out accordingly. By this agreement, signed by the plaintiff and defendants, the plaintiff was to abandon his claim, receiving from the defendants £120 and a promissory note for £20, each party paying his own costs. A few days before this compromise one of D.'s brothers had, as a legatee, instituted a civil bill suit to administer the assets of C. The solicitor for the plaintiff applied to him, without success, for payment of the costs; and the plaintiff afterwards went to America, and on March 2, 1882, the solicitor applied for payment to D., but alike unsuccessfully. On June 29, 1882, the solicitor having moved for an order that he be declared entitled to a charge on the lands, as being property recovered or preserved through his instrumentality, under 39 & 40 Vic., c. 44, s. 3, or for an order that D. should pay the costs, the £120 having been paid in his own wrong: The Court, being divided in opinion, pronounced "no rule."—*Cois v. Dawson* (Ex.), 16 Ir. L. T. Rep. 96. [See a. c. on app., *id.* 97, n. And see com., and cases collected by the present writer, 16 Ir. L. T. & S. J. 331, 345.—*E. N. B.*]
- 6—Solicitors' fees: Rules and Orders of Supreme Court of Judicature.—16 Ir. L. T. & S. J. 331.

#### COUNTERCLAIM—[See DEFAULT IN PLEADING—EMBARRASSING PLEADINGS.]

#### COUNTY COURT—[And see COSTS—LANDLORD AND TENANT—REMITTAL TO INFERIOR COURT—TAXATION OF COSTS.]

- 1—Where an action has been brought in the County Court under the Employers' Liability Act, 1880 (43 & 44 Vic., c. 42), and is required to be removed into the High Court of Justice under section 6 (1), an application may be made *ex parte* for a conditional order for the purpose under the County Officers and Courts Act, 1877 (40 & 41 Vic., c. 56), section 57. While the circumstances that more than £50 is claimed will not be *per se* a ground for refusing to remove the action, the Exchequer Division, in accordance with its analogous practice in reference to remitting actions to the County Court under the C. L. P. A. Act, 1870 (33 & 34 Vic., c. 109), will consider the case "fit to be tried in the High Court" under 40 & 41 Vic., c. 56, section 57, if reasonably satisfied that the plaintiff ought, should he succeed at all, to recover a large sum, more than that amount.—*Mages v. Martin* (Ex.), 16 Ir. L. T. Rep. 6.
- 2—Where the amount sued for by an ordinary civil bill is tendered before the entering of the civil bill, the plaintiff's solicitor is entitled to payment of the prescribed fee for instructions.—*Bell v. M'Nally* (Co. Ct.), 16 Ir. L. T. Rep. 14.

#### COVENANT—[See LANDLORD AND TENANT.]

#### CRIMINAL LAW—[And see ASSAULT—BAIL—EVIDENCE—FORCEFUL ENTRY—JURY—JUSTICE OF THE PEACE—SURETIES TO BE OF GOOD BEHAVIOUR—WHITEBOY ACT—WITNESS.]

Quere, whether a person can be convicted of inciting another to commit a felony, where the latter is ignorant that the act to which he was incited was a felony?—*The Queen v. Brian* (Cir. C.), 16 Ir. L. T. Rep. 106. [See papers by the present writer, on "Criminal Attempts," 16 Ir. L. T. & S. J. 573, 587, 601, 611.—*E. N. B.*]

## D

#### DAMAGES—[And see DEFAULT OF APPEARANCE—PENALTY.]

An action was brought by the plaintiff, a trader, for entering judgment against him on a bond, in breach of an agreement by the defendant not to do so except in certain events, which had not happened; and upon the question of damages, he gave in evidence, subject to the defendant's objection, a copy of the *Black List* containing an entry of the judgment:—*Held*, that such evidence was properly admitted, as the publication in the *Black List* was an ordinary and natural consequence of the breach of contract.—*Blairst v. Kinch* (C. P.), 10 L. R. Ir. 284.

#### DANGEROUS LUNATIC—[See LUNATIC.]

**DEATH**—[*And see EMPLOYERS' LIABILITY ACT, 1880—LANDLORD AND TENANT—NEGOTIABLE INSTRUMENT.*]

- 1—Evidence of; burial: life shown to be still in existence.—*Noles v. Kelly*, 16 Ir. L. T. & S. J. 205.
- 2—Evidence of; presumption from circumstances.—*In re Murray*, 16 Ir. L. T. & S. J. 359. [See com., and cases collated by the present writer, *id.* 359, 373, 381.—*E. N. B.*]

**DEFAMATION**—[*See SURETIES TO BE OF GOOD BEHAVIOUR.*]**DEFAULT IN PLEADING**—[*And see JUDGMENT BY DEFAULT.*]

Where the plaintiff makes default in delivery of reply to the defendant's statement of defence and counterclaim, the Court will order final judgment to be entered for the defendant in respect of both the original claim and the counterclaim, under Order XXXIX, r. 9.—*Thornon v. Chinch* (Ex.), 10 L. R. Ir. 378.

**DEFAULT OF APPEARANCE**—[*And see MOTION.*]

In default of an appearance in an action for unliquidated damages, after judgment marked by the plaintiff, the notice of the inquiry before the Master of the Court to assess damages may be served by filing it with the proper officer.—*O'Connor v. Hogan* (Q. B.), 10 L. R. Ir. 262.

**DEMURRER**—[*And see CONTRACT—PLEADING.*]

O. XXVII, r. 6, allowing either party to enter a demurrer "immediately," must be taken as repealing G. O. 1854, r. 50, requiring demurrer books to be made up; and, accordingly, a party whose pleading is demurred to is bound, without waiting for points of demurrer or demurrer books, to enter the demurrer within ten days; otherwise the demurrer is admitted.—*Holmes v. Connolly* (Ex.), 16 Ir. L. T. Rep. 31.

**DEPOSIT**—[*See ATTACHMENT OF DEBTS—SAVINGS BANK.*]

**DETINUE**—An action of detinue does not lie against a bailee of goods until demand made by the bailor, after the determination of the bailment and before action brought.—*Cullen v. Barclay* (App.), 10 L. R. Ir. 224.

**DISCONTINUANCE**—In an action against several defendants, a notice wholly discontinuing the action as against some of the defendants is irregular, and will be set aside. The proper course for the plaintiff to adopt is to obtain leave to withdraw his cause of complaint as against such defendants. A plaintiff is entitled, under G. O. XXII, r. 1, by leave of the Court or a Judge, so to discontinue his action wholly, so far as some of the defendants are concerned, and to strike out such defendants from the statement of claim, where the causes of action against such defendants are in the alternative, and distinct from the causes of action alleged against the remaining co-defendants.—*Carlisle v. The Belfast Board of Guardians, Anderson, and others* (Ex.), 10 L. R. Ir. 38.

**DISCOVERY AND INSPECTION**—[*And see INTERROGATORIES.*]

- 1—On an application under O. XXXI, r. 17, the court will not grant an order for inspection of documents, though some of them are referred to in the pleadings of the opposite party, if the documents are not in the possession or power of that party.—*Cronin v. Paul and others* (Ex.), 16 Ir. L. T. Rep. 36.
- 2—A defendant may obtain discovery of documents, under Order XXXI, r. 11, before a statement of defence has been delivered, when such discovery is necessary for the purpose of ascertaining what damage the plaintiff has actually suffered, with a view to paying money into Court with the defence.—*Megan v. M'Diarmid* (Q. B.), 10 L. R. Ir. 376.

**DISMISSAL FOR WANT OF PROSECUTION**—An abortive notice of trial does not preclude the dismissal of the action under G. O. XXXV, r. 2, 4. Where the time mentioned in G. O. XXXV, r. 2, had elapsed, the Court dismissed the action for want of prosecution, though notice of trial had been served, the trial having been postponed on the application of the plaintiffs, and no further proceedings having been taken by them to bring the case to trial.—*The Hibernian Bank v. Hughes* (C. P.), 10 L. R. Ir. 15.

**DISPENSARY**—[*See POOR LAW.*]**DISTRESS**—[*See LANDLORD AND TENANT.*]**DRAINAGE BOARD**—[*See TRESPASS.*]**E**

**EASEMENT**—A right of way on foot through the passage of a house does not include a right to carry heavy goods or burdens on trucks through it.—*Austin v. Scottish Widows' Fund Mut. Life Assurance Society* (App.), 16 Ir. L. T. Rep. 3.

**EMBARRASSING PLEADINGS**—1 In an ejectment for non-payment of rent, brought by the devisee of a deceased lessor against a person claiming the interest in the lease, the defendant made a counterclaim, in substance alleging that through a mutual mistake of the lessor and lessee a bulk instead of an acreable rent was reserved; that such acreable rent at the stipulated rent per acre would have been less by £45 yearly than the rent reserved in the lease; and that by taking credit for the excess paid in respect of the rent actually reserved, all rent properly due and claimable under the lease had been paid, up to the time of action brought; and the defendant counterclaimed to have the lease rectified by reducing the rent therein from the bulk rent of £119 15s. 3d. to the sum of £74 yearly, being the alleged acreable rent.—*Held* (affirming the decision of the Common Pleas Division), that the counterclaim should be set aside.—*Curren v. Christopher* (App.), 10 L. R. Ir. 38.

2—In an action to recover possession of land for non-payment of rent, the defendant denied first, that he became, or was, or is, tenant to the plaintiffs or any of them; and, secondly, that he paid rent to the plaintiffs, or any of them.—*Held*, embarrassing and defective, in not answering the substance of the claim by a denial that there was a subsisting tenancy in any person under the plaintiffs. In such an action, when the pleader wishes to traverse the alleged tenancy, it is necessary for him to negative any tenancy, whether subsisting in the defendant specially named, or any other person under the plaintiffs. *Semble*, an allegation in the statement of claim that the defendant paid rent is unnecessary and embarrassing, as either wholly immaterial or as pleading evidence merely; but if payment of rent be alleged, the allegation may be traversed by the defendant in his statement of defence.—*Rowley v. Laffan* (C. P.), 10 L. R. Ir. 9.

3—In an action for trespass to the plaintiff's dwelling-house, and conversion of his goods, the statement of claim containing allegations that the defendants put bailiffs in the house, stayed therein a long time, and on two different days brought in a concourse of people; the defendants justified the acts complained of as done in execution of a *fiert facias*, and the plaintiff replied, that in continuing in the house for a long time, posting auction bills, and introducing a concourse of people as in the statement of claim mentioned, the defendants stayed more than a reasonable time and brought in more people and made a greater noise and disturbance upon the plaintiff's premises than was reasonable in order to levy under the *fi. fa.*—*Held*, that the reply was either a new assignment, and therefore inadmissible under G. O. XVIII, r. 7, or was embarrassing, and that in either view it should be set aside, with leave to amend the statement of claim.—*Byrne v. Duckett* (Ex.), 10 L. R. Ir. 24.

**EMBLEMENTS**—[*See APPOINTMENT.*]**EMPLOYERS' LIABILITY ACT, 1880**—[*And see COURT COURT*]

- 1—Notice of injury from negligence; delivery.—*Adams v. Nightingale*, 16 Ir. L. T. & S. J. 247. [See com., by the present writer, *id.*—*E. N. B.*]
- 2—Contract in ouster of; public policy; power to contract surviving relatives out of benefit of Lord Campbell's Act.—*Griffiths v. Earl of Dudley*, 16 Ir. L. T. & S. J. 303. [See com., by the present writer, *id.*—*E. N. B.*]

**EVIDENCE**—[*And see BREACH OF MARRIAGE PROMISE—DEATH—JUSTICE OF THE PEACE—LANDLORD AND TENANT—MASTER AND SERVANT—NOTICE OF SALE—SURETIES TO BE OF GOOD BEHAVIOUR—WITNESS.*]

The prisoner, who had been Stamp Distributor of the Queen's Bench Division, was indicted for uttering three law forms with forged stamps impressed thereon. The forms which were the subject of the indictment were those ordinarily used by the Stamp Distributor of the Exchequer Division, and bore his particular mark. It sometimes happens that, in the process of stamping, a second sheet of paper is inadvertently placed under the sheet which is brought into contact with the die; this second sheet receives an impression, but of a fainter character, and one which can be distinguished from the impression made on the outer sheet. These second sheets are termed "bilinda," and are never supposed to be issued by the Stamping Department, or regarded as genuine stamps. The principal defence was that when the prisoner sent to purchase genuine stamps at the Custom House, his messenger, either deceived by the guilty party or in collusion with him, brought back these "bilinda," which were then innocently sold by the prisoner. To meet this defence, counsel for the Crown proposed to give in evidence several documents from the files of the Queen's Bench Division, which were on forms headed with the printed device used on the prisoner's forms, and date-stamps on which were proved by the evidence of an expert to have been made with the same instrument as the forged stamps on the documents the subject of the indictment; and in the prisoner's office implements were found suitable for the forging of such stamps. These documents were submitted by the learned judge to the jury, notwithstanding that the prisoner's counsel objected to their reception on the ground that there was not sufficient evidence to connect the prisoner with them.—*Held*, in the Court for Crown Cases Reserved (*dis. FITZGERALD, B., and BARRY, J.*), that there was sufficient evidence to connect the prisoner with these documents, and of their having been uttered by him; and that they were rightly submitted to the jury as evidence of guilty knowledge in uttering the stamped instruments which were the subject-matter of the indictment.—*Reg. v. Colclough* (C. C. R.), 10 L. R. Ir. 241, 16 C. C. 32.

**EXECUTION**—[*See NOTICE OF SALE—SALVAGE CREDITOR.*]**EXECUTOR**—[*See CHOSEN IN ACTION.*]**F****FIERT FACIAS**—[*See EMBARRASSING PLEADINGS—NOTICE OF SALE—SALVAGE CREDITOR.*]**FINAL JUDGMENT**—[*See JUDGMENT.*]

**FORCIBLE ENTRY**—An action cannot be maintained by a person who has been in possession of lands, without title, against the true owner of the lands, for, with force and strong hand, entering the lands, expelling the plaintiff from the possession, and taking goods the property of the defendant then being on the lands. *Newton v. Harland* (1 Sc. N. R. 474) observed upon.—*Beattie v. Muir* (Ex.) L. R. Ir. 238. [See paper by the present writer, 16 Ir. L. T. & S. J. 663.—*E. N. B.*]

**FORFEITURE**—[*And see LANDLORD AND TENANT.*]

Where the right of renewal of a lease for lives renewable for ever had been forfeited, by non-payment of renewal fines within the time prescribed by the lease, though demanded in writing by the reversioner, the Court refused to grant relief against the forfeiture, under section 14, subsection 2, of the Conveyancing Act, 1881.—*Rutledge v. Whelan* (Ex.), 10 L. R. Ir. 263.

**FORGERY**—[See EVIDENCE.]

**FRAUDS, STATUTE OF**—The defendant, an Irish tradesman, gave a verbal order for goods to the plaintiff, who carried on business in England, and the goods were sent by the route agreed upon by the parties. The invoice was forwarded at the same time, but was immediately returned by the defendant, with a letter stating that it did not correspond with the agreement, and notifying his refusal to take the goods:—*Held*, that there was no evidence of any receipt and acceptance of the goods by the defendant, and that an action against him for the price could not be maintained. *Norman v. Phillips* (14 M. & W. 277) followed.—*Hopton v. M'Carthy* (Q. B.), 10 L. R. Ir. 264.

**G****GARNISHEE**—[And see ATTACHMENT OF DEBTS.]

A mortgage of lands having been assigned, the assignee served notice on the tenants to pay him their rents. A judgment creditor of the mortgagor obtained an order attaching rents accrued prior to the assignment, and a conditional order on the tenants to pay. The rents due at the date of the assignment of the mortgage were not thereby assigned to the transferee, but were assigned to him by the mortgagee after the garnishee order. On a motion by the judgment creditor to make absolute the conditional order to pay, notwithstanding cause shown on behalf of the tenants and the transferee of the mortgage:—*Held*, 1st, that the transferee, whose right to the antecedent arrears was derived by their assignment after the garnishee order, had no *locus standi* to show cause. 2ndly, that, under section 23, sub-section 5, of the Judicature Act, the rents attached were, notwithstanding the mortgage, debts due to the mortgagor, and liable to be made the subject of a garnishee order, and that, therefore, the conditional order for payment should be made absolute. *Collins v. Thompson* (13 Ir. C. L. R. App. 51, *held* distinguishable, having regard to the Judicature Act, sec. 23, sub-sect. 5.—*Patterson v. O'Reilly*, 10 L. R. Ir. 304.

**GIFT** [See CHOSE IN ACTION.]**GOOD BEHAVIOUR**—[See JUSTICE OF THE PEACE—SURETIES TO BE OF GOOD BEHAVIOUR.]**GRAND JURY**—[See PRESENTMENT.]**GUARANTEE**—[See SURETY.]**H****HUSBAND AND WIFE**—[See AMENDMENT—MOTION.]**I****ILLEGALITY**—[See CONTRACT—POLICY OF INSURANCE—SAVINGS BANK—UNLAWFUL ASSEMBLY—WHITEBOY ACT.]**IMPOSSIBILITY**—[See CONTRACT.]**INCITEMENT TO COMMIT CRIME**—[See CRIMINAL LAW.]

**INDORSEMENT OF SERVICE**—The court will not extend the time within which the indorsement of the date of service of a writ of summons may be made by the process-server.—*Breen v. Dunne* (Ex.), 10 L. R. Ir. 304.

**INFORMATION**—[See SURETIES TO BE OF GOOD BEHAVIOUR.]

**INJUNCTION**—Pending the proceedings in an action for rent, and before judgment, the defendant called an action of all the stock and effects on the farm tenanted, on which the plaintiff had been prevented from distraining in consequence of the disturbed state of the district:—*Held* (affirming the decision of the C. P. D., 16 Ir. L. T. Rep. 4), that an injunction should not be granted to restrain the auctioneer from parting with the proceeds of the sale pending the recovery of judgment. *Wetton v. Wilson*, 12 Ir. L. T. Rep. 143, and *Shaw v. Earl of Jersey*, 4 C. P. Div. 120, 269, distinguished.—*Max v. Buckley* (App.), 16 Ir. L. T. Rep. 1.

**INQUIRY**—[See DEFAULT OF APPEARANCE.]**INSPECTION**—[See DISCOVERY AND INSPECTION.]**INSURANCE**—[See POLICY OF INSURANCE.]**INTERROGATORIES**—[And see DISCOVERY AND INSPECTION.]

In an action by an administratrix for recovery of lands, which formerly were in the possession of the deceased, the defendant was not compelled to answer interrogatories as to the circumstances under which he went into possession, the instrument (if any) under which he held, and the character of his possession. If in an action for recovery of land, it is alleged that there are peculiar circumstances entitling the plaintiff to administer interrogatories of such a character as the above, there should be an affidavit setting out the facts relied on.—*Bleasby v. Bleasby* (Ex.), 10 L. R. Ir. 80.

**J****JUDGMENT**—[And see DAMAGES—DEFAULT OF APPEARANCE—DEFAULT IN PLEADING—LANDLORD AND TENANT—SATISFACTION OF JUDGMENT.]

1—Where the writ of summons was specially indorsed, claiming two half-years' gales of rent due to the plaintiff for the use and occupation of the lands, and the plaintiff, in his affidavit in support of a motion for leave to sign final judgment under O. XIII., r. 1, alleged the existence of a lease of the said lands made by him to the defendant and executed by the defendant, in which the defendant covenanted to pay the said rent, and the plaintiff claimed the rent as due under said lease:—*Held*, that the motion should be refused.—*Hartford v. Maher* (C. P.), 16 Ir. L. T. Rep. 53.

2—A defendant having entered an appearance requiring a statement of claim, the plaintiff moved in vacation for final judgment under G. O. XIII.; and the judge made "no rule" on the motion, no special time being limited for the delivery of the defence:—*Held*, that after the lapse of eight days from the termination of the vacation, the plaintiff might sign judgment by default without delivering a statement of claim, or notice in lieu thereof.—*Roe v. Langford* (Ex.), 10 L. R. Ir. 108. [S. c., 15 Ir. L. T. Rep. 105.]

3—Where, on a motion for leave to sign final judgment on a specially indorsed writ, under O. XIII., r. 1, no rule is pronounced, leave to defend is thereby impliedly given, and the defendant is not entitled to a statement of claim, though demanded, but must deliver a statement of defence within eight days from the date of the order. *Roe v. Langford*, 15 Ir. L. T. Rep. 105, followed.—*Optiby v. O'Donnell* (C. P.), 16 Ir. L. T. Rep. 53. [Affirmed on app.]

**JURY**—[And see CONTEMPT OF COURT.]

Juror sworn under wrong name, in mistake for another person; indictment.—*R. v. Power*, 16 Ir. L. T. & S. J. 123.

**JUSTICE OF THE PEACE**—[And see LUNATIC—SURETIES TO BE OF GOOD BEHAVIOUR—UNLAWFUL ASSEMBLY.]

F. (a Catholic clergyman), in addressing a meeting of the tenantry of C, who were his parishioners, advised them, if any one of their number should be evicted for non-payment of rent, to pay no rent till such evicted tenant should be restored to his holding. F. was summoned to appear at petty sessions, to show cause why he should not give security for future good behaviour, the summons reciting, and the depositions upon which it was founded alleging, that F., on the occasion of the meeting, had endeavoured to excite discontent in the minds of Her Majesty's subjects, to incite them not to fulfil their lawful duties, and to combine to impoverish persons who would not obey an unlawful society known as the "Land League." At the hearing of the summons, portion of a newspaper report of F.'s speech at the meeting was read by counsel on his behalf, and the solicitor for the prosecution tendered the whole of the report in evidence, which was admitted by the justices, notwithstanding the objection of F.'s counsel. F. was tendered as a witness on his own behalf, but the justices refused to allow him to be examined. An order having been made for F. to give sureties for good behaviour, F. obtained a conditional order for a *certiorari*. On cause shown against making the conditional order absolute:—*Held*, 1. That the nature of F.'s speech at the meeting of tenantry, the substance of which was not disputed, afforded sufficient ground for the order made by the magistrates. *Reg. (Reynolds) v. Justices of the County of Cork* (16 Ir. L. T. Rep. 89, 10 L. R. I. 1) adhered to. 2. That in an application under the statute 34 Edw. 3, c. 1, to bind a party over to be of good behaviour, several distinct instances of misconduct may be alleged and relied upon. 3. That there was no improper admission of evidence. 4. That F. was not a competent witness, and that the magistrates were right in refusing to allow him to be examined.—*Reg. (Fechan) v. The Justices of the Queen's County* (Q. B.), 10 L. R. Ir. 234.

**L****LANDLORD AND TENANT**—[And see AFFORTIONMENT—COSTS—EMBARRASSING PLEADING—FORFEITURE—GARNISHEE—INJUNCTION—JUDGMENT—NOTICE OF SALE—PRESENT TENANT—PUBLIC HEALTH ACT, 1878—SALVAGE CREDITOR—STATING PROCEEDINGS—SUB-LETTING.]

1—A landlord served a notice to quit on his tenant, and afterwards commenced an action for recovery of the land for non-payment of rent, on which judgment was entered. A mortgagee of the tenant's interest redeemed the tenancy. The landlord then commenced an action of ejectment for overholding, on which judgment was entered up, and no notice of which proceedings were served on the mortgagee:—*Held*, that the mortgagee was entitled to notice of the proceedings, and that the judgment should be set aside.—*Burt of Liscove v. Kelly* (C. P.), 16 Ir. L. T. Rep. 4.

2—Where, pending the proceedings in an action for rent, and before judgment, the defendant had called an action of all the stock and effects on the farm tenanted, on which the plaintiff had been prevented from distraining in consequence of the disturbed state of the district, the court refused to grant an injunction, on the application of the plaintiff, to restrain the auctioneer from parting with the proceeds of the sale.—*Max v. Buckley* (C. P.), 16 Ir. L. T. Rep. 4. [Affirmed on app, *id.*.]

3—Land Law Act, 1881, s. 21; setting aside lease; jurisdiction.—*Levings v. Darcy* (L. C.), R. & D. 57.

4—Where, in determining any question relating to a holding, the Land Commission has directed an independent valuer to report to the court his opinion on any matter referred to him, under the Land Law Act, 1881, section 48 (4), such report will be communicated to the litigants, so as to be subject to comment on either side before the court pronounces judgment: Mr. Vernon dissenting.—*Adams v. Dunscomb* (L. C.), 16 Ir. L. T. Rep. 6.

5—A tenant who has sub-let portion of his holding, and delivered over the occupation thereof, under circumstances which did not amount to a default up to the passing of the Land Law Act, 1881, but in the exercise of the right incident to his tenure at the time of the passing of that Act, is not precluded from applying to the court to have a judicial rent determined, notwithstanding the definition of "tenant" given in section 57, with the clause thereto added, in reference to sub-letting, which provision is not to be construed as retroactive. Where no evidence of value is given save by the tenant's valuator, there being no conflict of testimony, the Assistant Commissioners are not obliged and ought not to go beyond the evidence so adduced, and should not make an independent valuation of the land upon their own judgment for the purpose of determining a judicial rent.—*Smith v. Colley* (L. S.-C.), 16 Ir. L. T. Rep. 8.

- 6—Where tenants interfere with landlord's valuator, and prevent valuation, the hearing of their claim to have a fair rent fixed will be adjourned. Costs given against the tenants.—*Dunphy v. Lord Mountgarrett* (L. C.), R. & D. 62.
- 7—In order to constitute a town park, within the meaning of the Land Law Act, 1881 (44 & 45 Vic., c. 49), section 58, sub-section 2, it is not necessary that it should be shown by affirmative evidence that the holding was originally let and taken *quod* accommodation land, provided that the actual user of the holding was as accommodation land. *Lord Dunally v. Hodgins*, 7 Ir. L. T. Rep. 181, and *Chism v. Beatty*, 10 ib. 33, discussed. *Wilson v. Earl of Antrim*, 8 Ir. L. T. Rep. 501, applied.—*M'Gowan v. Clements* (L. S.-C.), 16 Ir. L. T. Rep. 11.
- 8—A tenant, a retired grocer, who farmed over 200 acres, held land adjoining the town of Donegal, but in a different townland. He lived in the town and used the land for grazing cattle, brought from his other farms. The words "park" and "town park" had appeared, under protest from him, in the rent receipts since 1871. The lands were described as "town parks" by means of a pencil entry in the rental dated 1st November, 1857.—*Held*, that, there being no sufficient evidence that the lands bore any increased value as accommodation lands over and above the letting value of an ordinary farm near the town, the holding was not a town park within the meaning of the section 58 (2) of the Land Law Act, 1881.—*Davis v. Earl of Arran* (L. S.-C.), 16 Ir. L. T. Rep. 12.
- 9—A tenant in 1864 purchased a holding, within the town boundary of Ballyshannon, not generally known or ordinarily called in the locality a town park, but described in a lease of 1838 as a "park or field." The land was used as accommodation land by the tenant, a butter merchant, living in the town.—*Held*, a town park within the meaning of the Land Law Act, 1881, s. 58 (2).—*Bigger v. Shell* (L. S.-C.), 16 Ir. L. T. Rep. 13.
- 10—Where land was held under a lease for years containing a covenant on the part of the lessee for the execution of works of reclamation and drainage, and works of this description were carried out during the continuance of the lease and subsequent to its expiration.—*Held*, that such works were, to the extent covenanted for, to be treated as having been executed under the covenant, and therefore to be excluded from consideration on the question as to determining a judicial rent under the Land Law Act, 1881.—*Mullin v. Lavins* (L. S.-C.), 16 Ir. L. T. Rep. 13.
- 11—Setting aside originating notice to fix fair rent, several distinct holdings included in one notice.—*Derham v. Hamilton* (L. C.), R. & D. 103.
- 12—Judicial rent, determination of; improvements; predecessor in title; lessee continuing in occupation as tenant from year to year; improvements not compensated for by landlord; fair rent, how calculated; decision of Sub-Commission, when subject to review; costs.—*Adams v. Dunsath* (L. C.), 16 Ir. L. T. Rep. 15.
- 13—If the terms of a lease, taken in their entirety, are unreasonable or unfair to the tenant, having regard to the provisions of the Act of 1870, and the rights of the tenant under that Act, such a lease may come within the class which the Court is empowered to set aside. By empowering the Court to annul the lease and to enable the tenant to have a fair rent fixed, the legislature has shown that the lease in its entirety, rent as well as everything else, is to be considered. Even though a clause be not specifically referred to in the originating notice to set aside a lease, the fact that there are no formal pleadings and that the Court has ample power of amendment, will enable the Court to take such clause into consideration. *Per* LITON, Q.C. The reservation of an exorbitant rent is in itself a term of the lease which the Court is bound to regard, and which may be unfair and unreasonable having regard to the provisions of the Act of 1870.—*Ewart v. Gray* (L. C.), 16 Ir. L. T. Rep. 23.
- 14—Application on the part of the landlord to have an originating notice to have a fair rent fixed set aside, on the ground that the tenant held under an agreement for a lease for an unexpired term of twenty-one years.—*Bingham v. Macrory* (L. C.), R. & D. 104.
- 15—A tenant from year to year compelled, by threat of eviction, to accept a lease at an excessive rent and to pay a fine, is entitled to have the lease set aside as containing terms unfair or unreasonable, having regard to the provisions of the Act of 1870. *Quere*, whether the lowness of the rent would be taken into account as counterbalancing terms in other respects unfair to the tenant—*e.g.*, loss of his right to compensation for improvements, and the fact of the tenant's having paid a fine might be counterbalanced by the lowness of the rent? *Semble*: An excessive rent will be regarded as determining the fairness of the other terms in the lease.—*Kelly v. Griffith* (L. C.), 16 Ir. L. T. Rep. 29.
- 16—Where a portion of land covered with turf was adjacent to the original holding of the tenant, though not comprised in the ambit of the holding, and the tenant possessed a right of turbary over such land.—*Held*, that the tenant possessed no right to the soil after the turf was cut away, but that the soil remained vested in the landlord, subject to the easement on the part of the tenant of cutting turf. The Rentals of Estates are admissible in evidence in cases before the Court.—*Oates v. Stoney* (L. S.-C.), 16 Ir. L. T. Rep. 30.
- 17—*Held*, that a lessee under the ordinary form of lease granted by the Court of Chancery for a term of seven years, or pending a cause or matter, is not, on its determination, entitled to claim the benefit of being a present tenant, and to so acquire against the inheritor a right to a statutory term for fifteen years being created. *Held* also, that lettings under the Court of Chancery pending minority must be regarded as made for temporary convenience of the parties and are, therefore, within the exceptions contained in the Act of 1831.—*Callan v. Dowdall* (L. C.), R. & D. 335.
- 18—*Semble* that a covenant by which the tenant agreed to make at his own expense any improvements that might be necessary and desirable, and not claim compensation for them, even though the tenant's valuation empowered him to enter into such a covenant, would be unreasonable. *Quere*, whether the Court has jurisdiction to raise a personal representative to a deceased lessee, for the purpose of having a lease declared void under the Land Law Act, 1881, s. 21. The insertion in leases of declarations, contrary to the fact, that all improvements had been made by the lessor, and advertised on, and their effect discussed.—*Magner v. Norreys* (L. C.), 16 Ir. L. T. Rep. 33.
- 19—Where cases, entered for hearing at a previous sitting in Armagh of a Sub-Commissioner, were adjourned on the terms of the payment by the tenants of the costs of the day.—*Held*, that payment of the costs as ordered was a condition precedent to cases being called on for hearing now; following the practice in the Civil Bill Court under Rule 2 (Land Act, 1881) and Rule 22 of 29th October, 1870.—*O'Hara v. M'Geough* (L. S.-C.), 16 Ir. L. T. Rep. 35.
- 20—Application on behalf of the tenant to have lease declared void, on the ground that it contained terms unreasonable and unfair to the tenant, having regard to the provisions of the Landlord and Tenant (Ireland) Act, 1870, and was procured by the landlord by threat of eviction and undue influence. Motion on behalf of the landlord, that the tenant should inform him by whom, and at what times, and in what manner, the threats of eviction mentioned in the originating notice in this matter were made use of.—*Held*, that the tenant was obliged to give the names only of the witnesses upon whom he relied as to the proof of threats of eviction.—*Gliseman v. Staples* (L. C.), R. & D. 241.
- 21—A landlord having, upwards of thirty years ago, resumed possession of about 77 acres of land near his residence, and kept them in his own hands as his own farm for many years, had let parts of them, in 1856, to yearly tenants, who held them till 1859, when the landlord again resumed possession, and laid down the entire in grass. In 1866 the house, demesne, and these particular lands were all let to another tenant who gave all up in November, 1868; and about a month afterwards the present tenant took a lease for seven years of 17½ acres of these 77 at a rent of £35. On the termination of the lease he continued to hold on as a yearly tenant.—*Held*, that the holding formed part of the home farm attached to the landlord's residence, and that notwithstanding the dealings since 1866 with these lands, they still retained the character of a home farm, and were therefore excluded from the operation of the Land Law Act, 1881, by virtue of section 58 (2).—*Stothers v. Nicholson* (L. S.-C.), 16 Ir. L. T. Rep. 35.
- 22—On an application to fix a fair rent of a holding in Ardara East, county Armagh, containing 8a. 1r. 20p. statute measure, let at a rental of £23 per annum, and consisting of a farm and cottage thereon, the tenant, a book-keeper in a mill concern two miles distant, having admitted that he took the place as a residence merely.—*Held*, that the holding was within the meaning of section 58 (1) of the Land Law Act, 1881, and accordingly that the notice should be dismissed, with costs.—*Wilson v. Ennor* (L. S.-C.), 16 Ir. L. T. Rep. 36.
- 23—Where the reference to arbitration has not been lodged with the Court in compliance with Rule 132 I. L. (Ir.) Act, 1881, the Court cannot, after award made interfere to compel either party to produce the reference, and the award cannot be recorded.—*Lee v. Dyeart* (L. C.), R. & D. 245.
- 24—Where land was held under an agreement in writing for a yearly tenancy, and the premises were set out as "all that and those the mill, kiln, and mill farm," the acreage not being more than 30 acres, and the rent £63.—*Held*, that the holding was not an agricultural one within the meaning of the Land Law Act, 1881.—*M'Curdy v. Heygate* (L. S.-C.), 16 Ir. L. T. Rep. 36.
- 25—In order to constitute a town park, within the meaning of the Land Law Act, 1881, s. 58 (2), it is not necessary that the holding should be used as pasture, if it is held as an accommodation to, and accessory of, the tenant's town residence. A tenant, who resided in a house in Dunganran, occupied an adjoining plot of land under another landlord, which he used for the cultivation of potatoes and cabbage for consumption by his family. The land had been held to constitute an "agricultural holding" within the meaning of the L. & T. Act, 1870, by *Dowse, B.* On an application by the tenant to have a judicial rent fixed, under the Land Law Act, 1881.—*Held*, that, even though the holding were to be treated as an agricultural one, it was a town park, within the meaning of the Land Law Act, 1881, s. 58 (2), as it was held solely as accommodatory and accessory to the tenant's town residence, for the purpose of supplying his family with cabbage and potatoes. *Taylor v. Dowden* (8 Ir. L. T. Rep. 83, Don. L. R. 517) discussed.—*Fitzgerald v. Shanahan* (Co. Ct.), 16 Ir. L. T. Rep. 37.
- 26—A. held under lease for ten years from B. The lease recited that it was made as B. was desirous of leaving Ireland for America, and it gave B. a power of resumption at any time during the ten years, on fulfilling certain conditions. B. went to America, and returned at the end of two and a-half years; but did not during the residue of the ten years, although residing near the demised holding, claim to exercise his power of resumption. The lease expired in March, 1882, and A. claimed to be a present ordinary tenant under sect. 21 L. L. (Ir.) Act, 1881, and as such entitled to have a fair rent fixed.—*Held*, that the letting was one to meet the temporary convenience of the landlord, sect. 58, sub-sect. L. L. (Ir.) Act, 1881, and that the originating notice to have a fair rent fixed should be set aside with costs.—*Eari v. Neill* (L. C.), R. & D. 244.
- 27—Where it appeared that the holding of a tenant who sought to have a judicial rent fixed, had been originally let to the tenant's husband for grazing purposes, and had not been tiller or meadowed by her husband without the original landlord's consent; but afterwards, since 1875, when the present landlord entered on the inheritance, his consent was not asked, and a portion of the lands were of late years kept in tillage.—*Held*, that, in the absence of evidence of any new arrangement or alteration of the original letting having been made by the present landlord, the holding came within the Land Law Act, 1881, s. 58 (4), as being let to be used wholly or mainly for the purposes of pasture; and that the application to fix a judicial rent should be refused.—*Molony v. Delandre* (Co. Ct.), 16 Ir. L. T. Rep. 38.
- 28—Within a couple of months after the expiration of the last of a series of leases, and while the tenant continued to overhold, the landlord stated that he required the land for building purposes, but, the tenant having urged that if possession were resumed he would be a heavy loser, as he had highly manured the land, the landlord replied that he might keep the land until he had exhausted the manure. The amount of the rent

- to be payable was not fixed, the landlord requiring more and the tenant less than the amount payable under the lease. The tenant, with the landlord's consent, continued in possession thus for three years, and from time to time, after two years, paid various sums as and towards rent, but still without any settlement of what should be the amount. On appeal from an order of the Land Commission, refusing to set aside an originating notice to fix a fair rent for the holding:—*Held*, that, whether a yearly tenancy had been created or not, the letting was for "the temporary convenience" of the landlord or tenant within the meaning of section 86 (7) of the Land Law Act, 1881 (44 & 45 Vic., c. 49). *Per Fitzgibbon, L.J.*: The temporary convenience or temporary necessity which excludes a tenant's claim may be existing "for a time" compatible not only with a tenancy at will, or a tenancy less than a tenancy from year to year, under section 69 of the Landlord and Tenant Act, 1870, but also under both that Act and the Land Law Act, 1881, subject to the restriction as to written evidence, with a tenancy from year to year or for life or lives. Though circumstances were here shown which, if unexplained or unqualified by the other facts, might afford presumptive evidence of a tenancy from year to year, they had been so explained and qualified, and there was no sufficient evidence to sustain the finding of the court below that a tenancy from year to year existed in the holding; nor was the court debarred, under the circumstances, from reversing the decision, as being upon a question of fact, the question largely depending on legal considerations. *Montgomery v. Montgomery*, 14 Ir. L. T. Rep. 9, applied.—*Etffe v. M'Kenna* (App.), 16 Ir. L. T. Rep. 32.
- 29—Service of a notice on a landlord's land-agent to whom the tenants' rent has been usually paid, under Rule 28, need not be effected by serving him in person, but may be effected by leaving a copy for him with any of such persons, including his clerk, as are specified in Rule 27. The court will not, in the exercise of its discretion, set aside proceedings on the ground that a party has not been personally served with an originating notice unless it is distinctly shown that it has not reached his hands. The question as to what constitutes due service pursuant to the rules of the court is one of practice and procedure, not of law such as is contemplated by the 48th section of the Land Law Act, 1881, as being the subject-matter of appeal to the Court of Appeal.—*Falconer v. Oramels* (L. C.), 16 Ir. L. T. Rep. 47.
- 30—Where there is a dispute between the landlord and tenant as to the terms of a parol agreement for a lease, alleged to be followed by part performance, the court will not dismiss the originating notice to fix a judicial rent, but will adjourn the application, in order to enable the landlord to enforce specific performance of the agreement, with liberty to either party to apply subsequently.—*Ruledge v. Farrell* (L. C.), 16 Ir. L. T. Rep. 48.
- 31—Where the affidavits of the landlord and tenant, as to the existence of a parol agreement for a lease and part performance of the agreement, are of a substantially conflicting character, the court will not assume the jurisdiction of deciding that there was such parol agreement, followed by part performance, as would oust the tenant from his *prima facie* right to be considered a tenant from year to year, but will adjourn the case for such time as will enable the party to take steps to enforce specific performance of the agreement.—*Bros v. Mounsell* (L. C.), 16 Ir. L. T. Rep. 48.
- 32—The landlord of a tenant from year to year, holding at a rent of £40 per annum, having informed him that he should take a lease at an increased rent of £30 per annum, the tenant, after refusing at first so to do assented, as he was informed by the landlord that others were offering as much rent, or more, and that he would take advantage thereof. The lease, executed accordingly, contained covenants against keeping dogs on the farm, and requiring the tenant to preserve the game from being poached upon, with a proviso for forfeiture on breach, or that the landlord might exact an increased rent of £1 per acre:—*Held*, (without deciding whether a great increase of rent would bring the case within the Land Law Act, 1881, s. 31), that the lease should not be declared void, as it contained, within the meaning of the enactment, no unfair or unreasonable covenants, nor was it procured by threats of eviction or undue influence.—*Blyth v. Kirwan* (L. C.), 16 Ir. L. T. Rep. 49.
- 33—Where a tenant has been evicted for non-payment of rent, the Court has no jurisdiction, under the 18th section of the Land Law Act, 1881, to enlarge his time for redemption save as ancillary to a proceeding by him for a sale of his tenancy. Where a tenant has been evicted for non-payment of rent, prior to the passing of the Land Law Act, 1881, an application made by him to the Court to extend his time for redemption, after the six months allowed by the Landlord and Tenant Act, 1860, have expired, is made in sufficient time through the combined operation of sections 18 and 80 of the former Act if made between the 20th of October and the 12th of November, 1881—the periods fixed for the first session of the Court, under the Orders of October 19, 27, 1881; and in defining the "first occasion" of the sitting of the Court, so as to extend beyond merely the first day of its sitting, those Orders are not *ultra vires*.—*Barratt v. Lord Venry* (L. C.), 16 Ir. L. T. Rep. 50.
- 34—Leave to sign final judgment: writ of summons claiming for use and occupation; plaintiff's affidavit relying on defendant's covenant in lease.—*Hartford v. Maher* (C. P.), 16 Ir. L. T. Rep. 58.
- 35—Where a tenant applies to stay ejectment proceedings pending an application to the Land Commission to fix a judicial rent, the Court will not, on such an interlocutory application, determine whether the tenancy is one to which the Act applies. *Boyd v. Hodson*, 15 Ir. L. T. Rep. 120, followed. *Semble, per Palles, C.B.*:—A tenancy under a written agreement for a year certain, existing at the date of the passing of the Act is one to which section 21 applies.—*Fitzgerald v. Brennan* (Ex.), 16 Ir. L. T. Rep. 58.
- 36—In April, 1842, a lease was made for 21 years, and during the life of Bryan Gill, then aged 21, or 24. In 1846 Bryan Gill went to Stevens's Hospital, Dublin, suffering from an affection in his eyes; and a short time afterwards some members of his family called, but could hear nothing of him. It was deposed that he had left this country in that year; and it was stated that, when leaving home, before going to the hospital, he had got £5 from his relatives. It did not appear that he had at any time subsequently asked for any assistance from them; and William Gill, his brother, had not heard from him since, and stated his belief that his other brothers and sisters had not heard from him. But the other brothers and sisters made no affidavit; nor did it appear what inquiries were instituted to discover his whereabouts; and it was sworn by or on behalf of the lessor that a bailiff had been informed that Bryan Gill was a mate on board an American vessel in March, 1875. During Bryan Gill's absence rent had been paid by William Gill, and received by the lessor, but not, so far as appeared, with knowledge that, as alleged, Bryan Gill was dead. William Gill (whose elder brother would have been entitled to the land, if Bryan Gill was still alive) claimed to be a "present tenant," under a tenancy from year to year, and served an originating notice to fix a judicial rent, under the Land Law Act, 1881, at a time when Bryan Gill, if still alive, would be about sixty years of age:—*Held*, that the evidence was insufficient to warrant the presumption that Bryan Gill was dead; and that, even if he were to be so presumed, no circumstances were shown such as would create a tenancy from year to year between the lessor and William Gill; and therefore, it at the originating notice should be set aside.—*Gill v. Manly* (L. C.), 16 Ir. L. T. Rep. 67. [See com., by the present writer, 16 Ir. L. T. & S. J. 101, 111, 123, 137.—*E. N. B.*]
- 37—A tenant, who alleged that he held from year to year, applied to have a judicial rent fixed. An agreement, signed by both parties, to pay an increased rent, and that there should not be a revaluation for 21 years, was produced:—*Held*, that the tenancy continued to be a yearly one.—*Cushbert v. Young* (L. C.), 16 Ir. L. T. Rep. 18.
- 38—The term "improvements" in the 9th sub-section of section 8 of the Land Law Act, 1881 (44 & 45 Vic., c. 49), has the same meaning as in section 70 of the Landlord and Tenant Act, 1870 (38 & 34 Vic., c. 48). The terms "tenant or his predecessors in title" in section 8, sub-section 9, of the Act of 1881, have the same meaning as in the 7th section: *dis. May, C.J., Morris, C.J., and Deasy, L.J.* The provisions of the final paragraph of the 4th section of the Act of 1870, as to improvements made before the passing of that Act, are applicable to such improvements in determining fair rent under the 8th section of the Act of 1881: *dis. Law, C.* The enjoyment, during the currency of a lease, of improvements made by a tenant during its sub-existence does not constitute a compensation by the landlord, within the meaning of section 8, sub-section 9, of the Act of 1881. A lease made before the passing of the Act of 1870, demising lands, together with all houses, edifices, and buildings, and appurtenances thereunto belonging, and containing the usual covenants, precludes the tenant from being regarded as having any interest in respect of improvements made (*e.g.*, a house built) before its execution, in determining what is the fair rent of the holding, under the 8th section of the Act of 1881: *dis. Law, C., Sir F. Sullivan, M.R., and Palles, C.B.* *Per Law, C.*: "Improvements" simply mean suitable and ameliorative works executed or done upon the holding; and no rent is to be imposed or made payable in respect of the yearly value of such actual improvement-works themselves; but, the increased letting value of the land beyond that, subsequently accruing to the land in consequence of the execution of such works, may be taken into account as entitling the landlord to benefit in the determination of the rent. "Predecessors in title" denote a series of tenants who have transmitted from one to the other their respective tenancies or titles to the possession of a holding, whatever those tenancies or titles may be, or whatever changes they have undergone. In estimating the "interest of the tenant," when determining fair rent under the 8th section of the Act of 1881, not merely his right to claim compensation under the 4th section of the Act of 1870 should be taken into account, but his right to sell his tenancy as it stands, improvements and all, whether executed before or after the Act of 1870, for the best price that can be got for the same, under section 1 of the Act of 1881; while, if the landlord seeks to exercise his right of pre-emption, he must pay, as the "true value" of the holding, what it would *bona fide* bring in the open market, if sold to an unobjectionable purchaser. *Per May, C.J.*: "Predecessor in title," within the meaning of the Act of 1881, does not mean an antecedent occupier, but a previous tenant from whom the existing tenant derives his title to the tenancy. Upon an appeal from the decision of a sub-commission to the Land Commissioners they should form their own independent judgment upon the evidence, which may not be confined to that which was adduced in the court below, as the appeal should be regarded as a re-hearing. *Per Sir E. Sullivan, M.R.*: "Improvements," within the meaning of the Act of 1881, section 9 (8), does not refer to the increased letting value of the holding caused by the making of the improvements, but simply the works which have caused that increase, or rather the interest of the tenant who made them, measured by the money expended on them, as declared and limited by the Acts of 1870 and 1881. The right of sale given by the Act of 1881 does not give an absolute right to sell all the improvements as they stand, and the "true value" which the landlord must pay, when exercising his right of pre-emption, is not the market value, but what, having regard to the interest of landlord and tenant respectively under the code, would be the true estimate of price as between "them." *Per Morris, C.J.*: While the tenant is entitled to the benefit of improvements which add to the letting value of the holding, the inherent qualities and capacity of the land for such works should be taken into consideration in favour of the landlord, when determining a fair rent. The interest of the landlord in the pleasy interest in the holding, save so far as the tenant establishes, in diminution, claims under the Acts of 1870 and 1881, which constitute his interest. The mere abstinence by the landlord from availing himself of his legal rights, and allowing the tenant to enjoy what, if the landlord chose, he himself might enjoy, amounts to a "compensation" by the landlord, within the meaning of the Act of 1881, section 8 (9), irrespective of threat or statement to that effect. *Per Palles, C.B.*: "Improvements," within the contemplation of the Act of 1881, section 8 (9), mean works which, being suitable to the holding, add to its letting value, as distinguished from the increased letting value itself; and the enjoyment by the tenant of improvements executed before the passing of the Act of 1870 cannot be excluded from consideration in determining fair rent. *Per Deasy, L.J.*: With respect to

- the fixing of a fair rent and the ascertainment of compensation for improvements to the tenant, the Land Commission has an unlimited discretion, and no general rule or principle should be laid down by the Court of Appeal that could or ought to bind the exercise of that discretion. *Per Fitzgibbon, L.J.*: The words "paid or otherwise compensated by the landlord or his predecessors in title," in the Act of 1881, section 8 (9), include every form of recoupment which the tenant receives, at the hands of the landlord, whether by way of cash payment or out of the landlord's estate, as an equivalent for the tenant's improvements; so, if a landlord gives over to an improving tenant, because he is such, the soil with all its natural powers, at a price so far below the letting value of the landlord's interest as to recoup the tenant for his improvements. The determination of fair rent is not such a mere question of fact as should not form the subject of appeal: *Montgomery v. Montgomery*, 14 Ir. L. T. Rep. 9, applied, and contrasted with *Grey v. Turnbull*, L. R. 1 H. L. 63. *Holt v. Harborton*, 6 Ir. L. T. Rep. 1, discussed.—*Adams v. Dunseath* (App.), 16 Ir. L. T. Rep. 61.
- 39—Order of court (L. C.), Jan. 2, 1892; notice of sale of farm; service in prescribed districts.—16 Ir. L. T. & S. J. 10.
- 40—Action to recover land on title: costs; Land Law Act, 1881, s. 51; Jud. Act, s. 53; County Courts Act, 1877, ss. 53, 54.—*Lord Cloncurry v. Devane* (C. P.), 16 Ir. L. T. & S. J. 97.
- 41—Ederney, Co. Fermanagh, is not sufficiently populous to constitute a town, within the meaning of the Land Law Act, 1881, s. 58 (2). Designating a holding as "town-park," in the agreement under which it is let, is of no avail to constitute the holding a town-park, if in other respects it appears not to possess the characteristics contemplated by the statute.—*M'Morrow v. Irvine* (L. S.-C.), 16 Ir. L. T. Rep. 110.
- 42—Sale of bankrupt's interest in tenancy; application to Court of Bankruptcy for leave to apply to Land Commission; practice; Land Law Act, 1881, s. 1 (4); Rule 37.—*In re Martin* (Ba.), 16 Ir. L. T. & S. J. 106.
- 43—Judicial rent, determination of; improvements; predecessor in title; lessee continuing in occupation from year to year; compensation by landlord; low rent; Land Law Act, 1881, ss. 7, 8 (9).—*Collier v. Lord Fitzwilliam* (L. S.-C.), 16 Ir. L. T. Rep. 86.
- 44—Land Law Act, 1881, s. 5; fees payable: notice of appeal; copies of orders and documents.—16 Ir. L. T. & S. J. 163.
- 45—Land Law Act, 1881; effect of, as to party responsible for condition of premises under the Sanitary Act.—*Athy Board of Guardians v. Keegan*, 16 Ir. L. T. & S. J. 175.
- 46—Judicial rent, determination of; tenant, who entitled to proceed for; award of compensation on quitting holding; fixing fair rent, whether ancillary to sale.—*Bonar v. Wilson* (L. C.), 16 Ir. L. T. & S. J. 192.
- 47—Land Law Act, 1881; valuer employed under County Court; expenses of.—*Byrne v. Byrne* (Co. Ct.), 16 Ir. L. T. & S. J. 193.
- 48—Town-park, what constitutes; town; holding partly used for agricultural purposes; Land Law Act, 1881, s. 53 (2).—*Doyle v. Boland* (Co. Ct.), 16 Ir. L. T. & S. J. 193.
- 49—Land Law Act, 1881; extension of time for serving notices, &c.; expenses of inquiries on applications for advances; agreements to refer amounts of fair rents to valuer named by Land Commission.—16 Ir. L. T. & S. J. 203.
- 50—Land Law Act, 1881; agreements as to amount of fair rent; Form No. 33; withdrawal of originating notice.—16 Ir. L. T. & S. J. 202.
- 51—The plaintiff having sued to recover one and a half year's rent, payable in respect of a holding of land up to May, 1892, the defendant, who had paid a year's rent in June, 1891, offered to pay the November rent of 1891, and applied, after final judgment and execution issued, to postpone or suspend the proceedings, under section 13 of the Arrears of Rent (Ir.) Act, 1882 (45 & 46 Vic., c. 47), on the ground that the payment in June, 1891, was applicable, in part, to the May rent of that year, that arrears prior to 1891 thereby became and still were due, and that the case came within the purview of the Act:—*Held* that, as the May rent was usually paid in December following the payment in June was not applicable thereto, that the May rent was still due and no antecedent arrears had become due; and that the application should be refused accordingly.—*Quinn v. M'Archie* (Q. B.), 16 Ir. L. T. Rep. 98.
- 52—Section 13 of the Arrears of Rent (Ir.) Act, 1882 (45 & 46 Vic., c. 47), enabling the Court to suspend proceedings for the recovery of rent, or for the recovery of a holding for nonpayment on account of the rent in respect of the year 1891 and antecedent arrears, does not apply unless, in addition to rent due in respect of 1891, arrears antecedent to 1891 be due, and be sued for in such proceedings.—*Aitken v. Jeffers* (Co. Ct.), 16 Ir. L. T. Rep. 99.
- 53—Section 1 (3) of the Arrears of Rent (Ir.) Act, 1882 (45 & 46 Vic., c. 47), enacts that all payments on account of rent made by the tenant to the landlord in or subsequent to 1891, but before Nov. 30, 1892, shall be deemed to have been made on account of the rent payable in respect of 1891, to the extent to which the rent for that year had at the time of such payment accrued due, provided that where it appears that, according to the ordinary course of dealing between the landlord and tenant of a holding, the rent of such holding has usually been paid on some day after the day on which it became legally due, the usual day of payment shall be deemed to be the time at which the rent accrued due. In construing this enactment, and applying the latter proviso, the usual day of payment by each particular tenant must be ascertained, regardless of what may be usual on the estate; and where the tenant, not paying regularly, has no such usual day, all that can be done is to assume in favour of the tenant, as is implied in the previous part of the enactment, that the question as to the usual day of payment is not to be influenced by the nonpayment of recent years. If payments were previously made regularly, the tenant should be entitled to the benefit of the prior part of the enactment. The last clause,—that the usual day of payment shall be deemed to be the time at which the rent accrued due,—taken in connexion with the preceding words, must be considered, not as a definition of what should be deemed the usual day of payment, but, as defining what should be deemed the
- time at which the rent accrued due, and thus to declare that it be deemed to be, not the legal, but the usual day of payment in order to put a limit on the prior part of the clause. Where a process was brought to recover £14 14s., being £2 18s. balance of rent to November 1890, and £11 16s. for one year's rent to November, 1891, it appeared that the tenant had made payments of £6 on May 26th, and £3 on December 24th, 1891. Prior to the accruing of the present arrear, the usual times of payment, a few years since, for both the May and November gales was between Nov. 1st and Christmas each year. The tenant having applied for a suspension of the proceedings, under section 13 of the Arrears of Rent Act, 1882:—*Held*, that the May and November gales should be deemed to have accrued due only after November 1st; that the payment made on May 26th, 1891, could not be applied in discharge of the gale which fell legally due on May 1st, 1891, but that the payment made on December 24th, 1891, should be applied in discharge of so much of the year's rent which legally accrued due on November 1st, 1891, leaving a balance of £5 16s. owing; and that the proceedings should be stayed, on the terms of judgment in court of said balance and costs.—*Aitken v. Kerr* (Co. Ct.), 16 Ir. L. T. Rep. 100.
- 54—The acceptance, by a tenant from year to year, before 1870, of a lease of the holding for twenty-one years, containing the usual covenants to keep and give up the premises in repair, precludes the tenant from being entitled to compensation, under the Land Act of 1870, for improvements previously made, and excludes such improvements from the prohibition to have rent charged in respect of them contained in the Land Law Act, 1881, section 8 (9); but, in determining what would be a fair rent, the court is at liberty to consider, having regard to all the circumstances of the case, whether it is just and fair that any and, if so, what deduction should be made from the full letting value of the lands, in respect of the money expended on such improvements, no correlative obligation being imposed to charge the highest rent upon all that the court is not prohibited from putting any rent upon, but the amount of the rent being to be fixed having regard to the interest of the landlord and tenant respectively, and considering all the circumstances of the case. *Adams v. Dunseath*, 16 Ir. L. T. Rep. 59, discussed and applied.—*Brennan v. Latouche* (L. S.-C.), 16 Ir. L. T. Rep. 102.
- 55—Section 13 of the Arrears of Rent Act, 1882, enabling the Court to suspend proceedings for the recovery of a holding for nonpayment of rent in respect of the year 1891 and antecedent arrears, does not apply, unless, in addition to the rent due in respect of 1891, arrears antecedent to 1891 be due and sued for in such proceedings. Where, on a motion to stay proceedings in an action to recover land for nonpayment of rent due in 1891, and 1892, it appeared that a receipt had been given for a half-year's rent, up to November, 1890, and it was contended that, by virtue of section 1 (3), this payment should be appropriated to the rent accrued due in 1891:—*Held* that the application could not be sustained, within the provisions of section 13.—*Hamilton v. Maguire* (Q. B.), 16 Ir. L. T. Rep. 103.
- 56—Action to recover land for nonpayment of rent; statement of claim introducing new causes of action; amendment.—*Crossthwaite v. Smith* (Q. B.), 16 Ir. L. T. Rep. 103.
- 57—The County Court possesses no jurisdiction to stay proceedings, under the Arrears of Rent Act, 1882, on a decree for rent or for possession granted at a former session, the proceedings being no longer "pending."—*M'Gough v. M'Govern* (Co. Ct.), 16 Ir. L. T. Rep. 110.
- 58—Where, subsequent to the Landlord and Tenant Act, 1870, the tenant of a holding, subject to the Ulster tenant-right custom, who had been liable to pay the entire grand jury cess, sold his interest, and the purchase money was paid into the estate office and the purchaser put into possession by the agent:—*Held*, that a new tenancy in the purchaser was created, but that it was an implied term thereof that he should continue liable to pay the whole grand jury cess, section 65 of the statute not preventing such an agreement from being entered into.—*Martagh v. Marquis of Bath* (Cir. C.), 16 Ir. L. T. Rep. 112.
- 59—In order to deprive a tenant of the benefit *prima facie* arising from the initiatory provisions of section 1 (3) of the Arrears of Rent Act, 1882 (45 & 46 Vic., c. 47), it lies on the landlord, relying on the terminal proviso thereof, to establish affirmatively that, according to the "ordinary course of dealing" between him and the particular tenant the rent has "usually been paid on some day after the day on which it became legally due." Such deferred day of payment must be a definite day upon which the rent has been usually paid, or a day capable of being fixed and defined with as much certainty as that upon which, in law and fact, the rent accrued due.—*Monaghan v. Sir John Leslie* (L. C.), 16 Ir. L. T. Rep. 107, 119.
- 60—In 1869 the Rev. Mr. Kearney, parish priest of Bohernmeen, became tenant from year to year, under Mr. Coddington, of twelve Irish acres of land, and a dwelling-house, and offices thereon, which at that time were in the landlord's possession, at a rent of £45 per annum, afterward reduced to £40, the Poor Law valuation being £28 10s. The dwelling-house and offices, which could not now be built for less than £400 or £500, were valued at £18 (included in the £28 10s.), and would be unsuitable for a person living by agriculture and occupying a farm of that extent, while the house was even rather larger than the average residence of Catholic clergymen. Built about seventy years ago, it had ever since been occupied by the successive priests of the parish, except during a short interval, when it was occupied by a medical doctor. The house had been originally demised in 1798 as an agricultural holding, since when the house had been built by one of the clergymen in occupation:—*Held* (Mr. Foley, Q. C., *disc.*), that the holding was not agricultural or pastoral, within the Land Law Act, 1881, section 63.—*Kearney v. Coddington* (L. S.-C.), 16 Ir. L. T. Rep. 123.
- 61—Where a tenant serves on his landlord a notice of his intention to sell his tenancy, and the landlord serves on the tenant a notice electing to purchase the tenancy, and applying to the Land Commission to fix the true value of the tenancy, a sale made by the tenant subsequent to such notice by the landlord will be set aside. In fixing the true value of the tenancy, the Court will not consider the market value of the tenancy, but what, having regard to the interest of landlord and tenant respectively under the code, would be the true estimate of price between

them. *Adams v. Duncouth*, 16 Ir. L. T. Rep. 59, applied.—*Lloyd v. Irwin* (L. S.-C.), 16 Ir. L. T. Rep. 126.

- 62—In order to come within sub-section (4), section 8, of the Land Law Act, 1881, providing that an application to determine a fair rent may be disallowed where the improvements have been made by the landlord, it must appear that such improvements were so completely, and not merely partially, made by the landlord, that there would be nothing in respect of which the tenant would be entitled to compensation. And it is open to the tenant to show that improvements made by him cost an amount in excess of the sum allowed to him therefor by the landlord, and to claim the benefit thereof to that extent, notwithstanding his having given a receipt admitting that the sum so allowed by the landlord "was paid pursuant to agreement" (contrary to the fact), "and was received by him in full discharge of all claims" on foot of said improvements.—*Lyons v. Lord Ormathwaite* (L. S.-C.), 16 Ir. L. T. Rep. 128.
- 63—A landlord persistently refusing to perform his part of a parol agreement for a lease for eight years, will not be permitted to set up said agreement, so practically waived, as a bar to the tenants coming in to claim, as yearly tenants, the benefits of the Land Law (Ireland) Act, 1881.—*Griffin v. Hickson* (L. S.-C.), 16 Ir. L. T. Rep. 128.
- 64—By an agreement of letting, the tenant was to hold 66 acres for three years, for grazing and depasturage; he was to reside on them, and might till 4 acres; and the landlord was to pay all taxes, and the tenant to give up possession at the end of the term. On an application to determine a judicial rent, under the Land Law Act, 1881:—*Held*, that the tenancy came within the Act, not being excluded as for a "temporary depasturage," under section 58 (6), nor being for "temporary convenience" under section 15, sub-s. 4, of the L. & T. Act, 1870.—*Connell v. Sheehan* (Co. Ct.), 16 Ir. L. T. Rep. 129.
- 65—Action for rent; counter-claim to set aside lease; transfer to Chancery Division.—*Wilson v. Connolly* (Ex.), 16 Ir. L. T. & S. J. 104.
- 66—Action to recover land on title; counter-claim for specific performance; transfer to Chancery Division.—*Earl of Ranfurly v. Dickson* (Q. B.), 16 Ir. L. T. & S. J. 106.
- 67—Land Law Act, 1881; fixing value of tenancy; true value what, and when to be determined.—*Flynn v. Pratt* (L. S.-C.), 16 Ir. L. T. Rep. 124.
- 68—Land Law Act, 1881, s. 27; independent valuer, appointment of; costs; jurisdiction of County Court.—*Fiffe v. Beatty* (Co. Ct.), 16 Ir. L. T. & S. J. 328, 360.
- 69—Land Law Act, 1881, s. 58 (3); pastoral holding, what constitutes.—*Harpur v. Davies* (App.), 16 Ir. L. T. & S. J. 329.
- 70—Land Law Act, 1881; agreements fixing fair rents; witness; commissioners to administer oaths.—16 Ir. L. T. & S. J. 412.
- 71—Arrears of Rent Act, 1882; Rules of Court and Instructions to Investigators.—16 Ir. L. T. & S. J. 418, 461, 548, 566, 609.
- 72—Arrears of Rent Act, 1882; joint applications by landlord and tenant; affidavit.—16 Ir. L. T. & S. J. 493.
- 73—Land Law Act, 1881; Rules of Court (L. C.), and Instructions to Assistant Commissioners.—16 Ir. L. T. & S. J. 461, 473.

**LEASE**—[*See FORFEITURE—LANDLORD AND TENANT—POOR LAW—PRESENT TENANT—SUB-LETTING.*]

**LEAVE TO DEFEND**—[*See JUDGMENT.*]

**LIBEL**—[*See SURETIES TO BE OF GOOD BEHAVIOUR.*]

**LIEN**—[*See COSTS.*]

**LIFE**—[*See DEATH.*]

**LIQUIDATED DAMAGES**—[*See PENALTY.*]

**LOCAL GOVERNMENT BOARD**—[*See POOR LAW.*]

**LUNATIC**—Where the blanks in a printed form of a warrant to commit a dangerous lunatic to the district asylum, under 30 & 31 Vic. c. 116, were not filled in with statements that the magistrates called in the assistance of a proper medical officer, and that he gave a proper medical certificate, the warrant was held void. A medical certificate, described in the warrant as "annexed," but not identified in any way by the reference as one which was before the magistrates previous to the signing of the warrant, cannot be taken as incorporated therewith for the purpose of supplying defects therein not of form but of substance. The medical custodian of the lunatic, acting and justifying under such warrant, is equally liable with the magistrates to an action for false imprisonment.—*Coghlan v. Woods* (Ex.), 16 Ir. L. T. Rep. 105, 10 L. R. Ir. 29.

## M

**MAGISTRATE**—[*See JUSTICE OF THE PEACE—LUNATIC—SURETIES TO BE OF GOOD BEHAVIOUR—UNLAWFUL ASSEMBLY.*]

**MALICIOUS INJURY**—[*See PRESENTMENT.*]

**MANDAMUS**—[*See SAVINGS BANK.*]

**MARINE INSURANCE**—[*See POLICY OF INSURANCE.*]

**MARKET**—B. held under a lease for seventy-five years, from the Corporation of Dublin, a certain piece of land in Green-street, in the city of Dublin, which formerly had been the site of Newgate prison, the lease having been granted in 1875. He erected sheds or stalls thereon, and carried on there the business of a fruit auctioneer, in the same manner as similar business was carried on in other fruit markets, and the premises were advertised as the "City Fruit-market, Green-street." The sheds or stalls were closed at night, and B. kept the keys of the place, and except with his sanction no person had any right to go there:—*Held*, that the place was not a public building, or a build-

ing used for public purposes, and therefore was not subject to a measurement rate under the 12 & 13 Vict., c. 97, s. 117, but ought to be rated under the General Valuation Act of 1852 (15 & 16 Vict., c. 63).—*Byrne v. Collector-General of Rates* (Q. B.), 10 L. R. Ir. 63.

**MARRIED WOMAN**—[*See AMENDMENT—MOTION.*]

**MASTER AND SERVANT**—[*And see EMPLOYERS' LIABILITY ACT, 1880.*]

1—The deceased was employed, with others, to shift a cargo on the defendants' vessel. Upon going on board the names of the men employed were taken down by one of the officers, who told them to go down between decks to have supper. In going below it was necessary to pass round an open hatchway, which was insufficiently lighted, and the passage round which was obstructed by some obstacles. The deceased, when returning from supper, fell through the open hatchway, and was killed:—*Held*, upon these facts, that, even assuming negligence, it was the negligence of a fellow-servant of the deceased and that, as there was no evidence of the negligent employment by the defendants of the incompetent fellow-servant, the plaintiff suing for damages for the death of the deceased was rightly non-suited. It is not true as a general proposition of law, that a negligent act or default on the part of a servant is in itself evidence of the incompetence of such servant.—*McCarthy v. British Shipowners' Company* (Ex.), 10 L. E. Ir. 281. [S. c., 17 Ir. L. T. Rep. 21.]

2—Upon a plea traversing negligence by the defendant, the defence that the injury complained of was caused by the negligence of a fellow-servant is open.—*McCarthy v. British Shipowners' Company, Byrne v. Fennell* (Ex.), 10 L. E. Ir. 397.

**MEASUREMENT RATE**—[*See MARKET.*]

**MEDICAL OFFICER**—[*See LUNATIC.*]

**MESNE RATES**—[*See COSTS—PLEADING.*]

**MINISTERIAL ACT**—[*See TAXATION OF COSTS.*]

**MORTGAGE**—[*See GARNISHES—LANDLORD AND TENANT—MOTION.*]

**MOTION**—[*And see DEFAULT IN PLEADING—JUDGMENT—LANDLORD AND TENANT—PLEADING—REMITTAL TO INFERIOR COURT.*]

1—Where a notice of motion did not specify the date on which it was to be moved, but stated that it would be moved on the "first opportunity," and two clear days had elapsed since the service:—*Held*, that the notice of motion was sufficient, within O. LII., r. 8.—*Campbell v. Armstrong* (C. P.), 16 Ir. L. T. Rep. 3.

2—Ejectment on title; redemption by mortgagee of tenant's interest; new ejectment for overholding; motion to set aside judgment; notice to mortgagee.—*Earl of Listowel v. Kelly* (C. P.), 16 Ir. L. T. Rep. 4.

3—In an action against husband and wife, the plaintiff, claiming that the wife's separate estate should be declared charged with the amount of his claim, and no appearance having been entered, delivered a statement of claim, and lodged a notice of motion with the officer of the Division to have said amount so charged, but did not serve the notice:—*Held*, that, notwithstanding the absence of an appearance, the notice of motion should be served.—*Devitt v. Fawcett and wife* (C. P.), 16 Ir. L. T. Rep. 54.

**MUTUAL MISTAKE**—[*See EMBARRASSING PLEADINGS.*]

## N

**NAME**—[*See JURY—SAVINGS BANK.*]

**NEGLIGENCE**—[*See CARRIER—EMPLOYERS' LIABILITY ACT, 1880—MASTER AND SERVANT.*]

**NEGOTIABLE INSTRUMENT**—[*And see AMENDMENT—CHOSE IN ACTION.*]

Delivery with blanks not filled; implied authority.—*Angle v. N. W. Ince Co.*, 16 Ir. L. T. & S. J. 261. [And as to the effect of the death of an acceptor of a bill of exchange, blank as to drawer's name, see cases collated by the present writer, *id.*—*E. N. B.*]

**NONSUIT**—[*See STATING PROCEEDINGS.*]

**NOTICE**—[*See CHOSE IN ACTION—DEFAULT IN APPEARANCE—DISCONTINUANCE—DISMISSAL FOR WANT OF PROSECUTION—MOTION—NOTICE OF SALE.*]

**NOTICE OF SALE**—In an ejectment by the purchaser of a tenant's chattel interest other than the landlord, to recover possession under a sheriff's assignment, the court will presume, in the absence of evidence to the contrary, that all notices requisite to the regularity of the sale have been given, and the onus of proving the non service of the notice of sale required by the 82nd Rule of the Land Commission lies on the defendant. *Query*, whether the validity of the assignment is affected by omission to serve the notice?—*Goddard v. Ryan* (C. P.), 10 L. R. Ir. 309.

**NOTICE OF TRIAL**—[*See DISMISSAL FOR WANT OF PROSECUTION.*]

## P

**PARTIES**—[*See AMENDMENT.*]

**PENALTY**—A foreman tailor, in consideration of his employment at a certain salary, entered into a written agreement with his employer to the following effect:—"In consideration, &c., I agree and hereby bind myself, under a penalty of £200, not to violate any of the following undertakings: not to go into business in the tailoring trade, nor enter into the employment of another in said trade within twenty miles of Dublin, for one year after leaving or being discharged from your employment; and at no time to use the name of 'Macdonald & Browne' in any form in connexion with the tailoring trade, out of your actual

employment." He was afterwards dismissed, and, within a month of the dismissal, opened a tailoring establishment in Dublin, and described himself as "from Macdonald's," and as having been "foreman cutter in Macdonald's." In an action for breach of the contract, no special damage was proved, and a verdict was found for the plaintiff, with nominal damages. On motion by the plaintiff to increase the damages to £300, pursuant to leave reserved at the trial:—*Held*, that the sum of £300, mentioned in the agreement, was a penalty and not liquidated damages. In such cases, ss. 145, 146 of the Common Law Procedure Act, 1852, apply, and the plaintiff cannot recover more than the actual damage shown to have been sustained. The principle of *Mages v. Lavel* (L. R. 9 C. P. 107) applied. *Bonsall v. Byrne* (L. R. 1 C. L. 578) observed upon.—*Browne v. Phillips* (Ex.), 10 L. R. Ir. 212.

**PLEADING**—[*And see* AMENDMENT—CONTRACT—DEFAULT IN PLEADING—EMBARRASSING PLEADINGS—JUDGMENT—MASTER AND SERVANT—POOR LAW—SERVICE—SPECIAL INDEMNEMENT—STAYING PROCEEDINGS—SURETY—UNLAWFUL ASSEMBLY.]

1—When a plaintiff applies for liberty to reply and demur to a statement of defence, the application should be made on summons.—*Kane v. Stoneyford River Drainage Co.* (C. P.), 16 Ir. L. T. Rep. 93.

2—The plaintiff, in an action to recover land for non-payment of rent, having delivered a statement of claim for a larger sum than was claimed by the writ of summons, and for mesne rates which had not been included therein:—*Held*, that the statement of claim was irregular, and should be amended.—*Crosthwaite v. Smith* (Q. B.), 16 Ir. L. T. Rep. 108.

**POLICY OF INSURANCE**—A marine policy containing a provision that the premises insured are warranted free from all average and without benefit of salvage, and that no further proof of interest than the policy shall be required in case of loss, is a wagering policy. Such a policy is not void at common law. *Daiby v. India and London Life Assurance Company* (15 C. B. 385) followed. The statute, 19 Geo. 3, c. 37, avoiding such policies in Great Britain, does not purport to bind Ireland, and is not a statute "concerning commerce," and "importing to impose equal restraints on the subjects of Great Britain and Ireland and to entitle them to equal benefits," within the purview of 21 & 22 Geo. 3, c. 48 (Ir.), and is consequently not extended to Ireland by that Act. Such a policy is not illegal in Ireland.—*Keth v. The Protection Marine Insurance Company of Paris* (Ex.), 10 L. R. Ir. 61.

**POLICE CONSTABLE**—[*See* ASSAULT.]

**POOR LAW**—1—No action lies against Poor Law Guardians in their corporate capacity for damage by reason of the inferior quality of seed supplied by them under the provisions of the Seed Supply (Ireland) Act, 1890, and merely in carrying out same, there being no evidence of fraud or negligence.—*Ferguson v. Guardians of the Poor of Ballina Union* (Ex.), 16 Ir. L. T. Rep. 45.

2—In an action by the guardians of the poor for the recovery of rates, brought in one of the superior courts against the immediate lessor of lands, the plaintiffs must aver in their statement of claim that the Local Government Board have given their consent to the institution of the action. *The Guardians of the Poor of the Ballynaboe Union v. Browne* (11 Ir. L. R. 346) approved of.—*The Guardians of the Poor of the Claremorris Union v. Martin* (Q. B.), 10 L. R. Ir. 342.

3—Dispensary; liability of members of committee.—*O'Rourke v. Monahan* (Co. Ct.), 16 Ir. L. T. & S. J. 120.

4—Where, under the obligation of his bond, a poor rate collector has paid the full amount of the rates struck to the Poor Law Guardians, he is not debarred from suing, in his own name, to recover arrears still due by a ratepayer. *Boyle, app., v. Lennon*, resp., 12 Ir. L. T. 161, distinguished. *Wilson v. Gahan* (Cir. C.), 16 Ir. L. T. Rep. 98.

**POSTPONEMENT OF TRIAL**—[*See* DISMISSAL FOR WANT OF PROSECUTION.]

**PRACTICE**—[*See* AMENDMENT—ATTACHMENT OF DEBTS—COSTS—COUNTY COURT—DEFAULT OF APPEARANCE—DEFAULT IN PLEADING—DEMURRER—DISCONTINUANCE—DISCOVERY AND INSPECTION—DISMISSAL FOR WANT OF PROSECUTION—GARNISHMENT—INDEMNEMENT OF SERVICE—INJUNCTION—INTERROGATORIES—JUDGMENT—PLEADING—REMITTAL TO INFERIOR COURT—SALVAGE CREDITOR—SATISFACTION OF JUDGMENT—SAVINGS BANK—SECURITY FOR COSTS—SERVICE—SOLICITOR—STAYING PROCEEDINGS—TAXATION OF COSTS—TRANSFER OF ACTION.]

**PRESENTMENT**—1—Coroner; salary; expenses: 44 & 45 Vic., c. 35; 9 & 10 Vic., c. 37.—*In re Mastyn's Presentment* (Cir. C.), 16 Ir. L. T. & S. J. 122. [*And see* *id.* 121.]

2—Malicious injury; fishing net: 6 & 7 Will. IV., c. 116, s. 135.—*In re Lord Cloncurry's Presentment* (Cir. C.), 16 Ir. L. T. & S. J. 132.

**PRESENT TENANT**—[*And see* LANDLORD AND TENANT—STAYING PROCEEDINGS.]

A lease for lives determined on the 10th of August, 1881. Part of the demised premises were in the occupation of a sub-tenant as tenant from year to year to the lessee at a rack-rent, and the sub-tenant (as admittedly entitled) continued in occupation till the 29th September, being the last gale day of his tenancy, pursuant to the 28 & 24 Vic., c. 154, s. 24. After the passing of the Land Law (Ireland) Act, 1881, which came into operation on the 22nd of August, he applied to the Land Commission to fix a fair rent of the lands in his occupation, and a judicial rent was fixed by a Sub-Commission under the Act. In an ejectment on the title, subsequently brought by the superior landlord without service of any notice to quit:—*Held*, that the former sub-tenant was not a "present tenant" to the plaintiff within the meaning of the Land Law (Ireland) Act, 1881; that the order of the Sub-Commission, even if it was to be treated as a decision that the relation of landlord and tenant existed, was not binding upon the Court; and that therefore the superior landlord was entitled to recover possession.—*Hemphill v. Frazer* (C. P.), 10 L. R. Ir. 87.

**PRESUMPTION OF DEATH**—[*See* DEATH—LANDLORD AND TENANT.]

**PREVENTION OF CRIMES ACT**—Audience of solicitors under.—*In re Murphy*, 16 Ir. L. T. & S. J. 522. [*And see* *id.* 527.]

**PRINCIPAL AND SURETY**—[*See* SURETY.]

**PRIORITY**—[*See* SALVAGE CREDITOR.]

**PROMISSORY NOTE**—[*See* AMENDMENT—CHOSE IN ACTION—NEGOTIABLE INSTRUMENT.]

**PUBLIC BUILDINGS**—[*See* MARKET.]

**PUBLIC HEALTH ACT, 1878**—J. held certain premises in the city of Dublin from B. as tenant from year to year, at the yearly rent of £85. The premises were valued under the Acts relating to the valuation of rateable property in Ireland at £72 10s. J. let the premises to weekly tenants at rents from which he had a profit out of the premises. The sanitary authority of the city of Dublin served on J. a notice under the Public Health Act (Ireland), 1878, addressed to the owner of the premises, or to J., requiring certain specific sanitary works to be done; and on the 3rd of September, 1878, the police magistrate made an order that the works should be done within seven days. J. alleged that B. was the owner under the Public Health Act (Ireland), 1878, on the ground that the rent payable by him (J.) to B. was more than two-thirds of the valuation of the premises:—*Held*, that B. was not the owner of the premises within the meaning of the Public Health Act (Ireland), 1878.—*Bowen v. James* (Q. B.), 10 L. R. Ir. 28.

## B

**RAILWAY**—[*See* CARRIERS—CONTRACT—REASONABLE CONDITIONS.]

**RATES**—[*See* CONTRACT—LANDLORD AND TENANT—MARKET—POOR LAW.]

**REASONABLE CONDITIONS**—In an action against a Railway Company, as carriers, for negligence, whereby a horse delivered to them by the plaintiff was injured at one of their stations, Gormanstown, the defendants in the 11th defence pleaded that they received the horse under a special contract, containing a condition that, in case of animals for which a contract note with two rates of carriage should be offered to the customer, the defendants would give him the alternative of carrying at either rate; that at the full rate, which would be charged when the contrary was not expressed, the defendants would undertake the ordinary duties of carriers, subject to the conditions in the said contract note and their statutory rights; but that at the reduced rate the defendants would carry at the owner's risk, exempt from all liability not occasioned by the wilful misconduct of their servants acting within the scope of authority; and that the plaintiff elected to have his horse carried at the lower rate; and that the injuries were not caused by the wilful misconduct of the defendants' servants acting as aforesaid. They also, as a 12th defence, pleaded that another condition in the said contract was that the defendants should not be liable for injuries occasioned by the fear or restiveness of animals; and that the injuries complained of were solely occasioned by the restiveness of the said horse. The plaintiff signed a contract note containing the above conditions:—*Held*, that the condition exempting the defendants "in all cases from liability for injuries caused by fear or restiveness of animals" did not embrace cases in which the injury immediately flowed from the fear or restiveness of the animals, directly occasioned by some act of negligence or want of care on the part of the defendants, but applied only to injury from fear or restiveness, caused by the transit, with its ordinary incidents, and without any negligence or default on the part of the Company; and that, taken in this limited sense, the condition was not unreasonable:—*Held*, also, that it was unnecessary that the two alternative rates should appear on the face of the contract note, but that it was sufficient that the contract note referred to the defendants' tariff containing all the rates. The contract note also contained, amongst others, the two following conditions:—No. 8, that no claims in respect of goods would be allowed unless made within three days after delivery; and No. 9, that all goods were received subject to the Company's general lien, both for carriage thereof and all other charges against the customer:—*Held*, that "goods" in these conditions meant inanimate goods, not horses or cattle, and that the conditions were reasonable; but *Semble*, that they did not properly come before the Court for decision under the 17 & 18 Vic., c. 31, s. 1, which only deals with the receiving, forwarding, or delivering of animals, goods, and things, and these conditions related to something occurring after delivery.—*Moore v. The Great Northern Railway Company* (Q. B.), 10 L. R. Ir. 96. [*See* com., by the present writer, 16 Ir. L. T. & S. J. 223, 227.—*E. N. B.*]

**REDEMPTION**—[*See* COSTS—SALVAGE CREDITOR.]

**REFORMATION OF LEASE**—[*See* EMBARRASSING PLEADINGS.]

**REMITTAL TO INFERIOR COURT**—1—On a motion to remit an action for damages for assault and battery under the C. L. P. Act, 1870 (33 & 34 Vic., c. 109), s. 6, the defendant, in his affidavit deposed that the plaintiff was a "small farmer," and "that neither the plaintiff nor I have any means to carry on expensive litigation in the superior courts;" and the plaintiff deposed to his having two large farms of land:—*Held*, that the defendant's affidavit did not sufficiently comply with the requirements of the statute, as to negating the plaintiff's having visible means of paying the costs should a verdict not be found for the plaintiff.—*McManus v. Maguire* (C. P.), 16 Ir. L. T. Rep. 31. [*As* to visible means see paper by the present writer, 16 Ir. L. T. & S. J. 94.—*E. N. B.*]

2—Defendants resident in different civil bill jurisdictions: action of tort: C. L. P. Act, 1870, s. 6.—*Griffin v. Griffin and Purcell* (Ex.), 16 Ir. L. T. & S. J. 98.

3—Where the notice of motion sought to have the action remitted "to the County Court Judge, at the next ensuing Civil Bill Sessions to be held at Belfast, for the Division of Belfast, in said county," but did not specify what county:—*Held*, that the motion should be refused.—*Ferguson v. Burrows* (Q. B.), 16 Ir. L. T. Rep. 93.

4—In computing the time within which an application to remit should be made, the holidays are to be ascertained by reference to the Common Law Procedure Acts, and not by the Judicature Act. Where time is limited by the Judicature Act and the Rules thereunder, Sundays are to



be included or excluded, and holidays are to be ascertained, by those Rules; but where time is limited by the Common Law Procedure Act, or by Acts, *in pari materia* with it, then Sundays must be excluded, and the holidays must be ascertained by the 23rd section of the Common Law Procedure Act, 1853.—*Grant, Coburn & Co. v. Guthrie* (Ex.), 10 L. R. Ir. 20.

**RENEWAL FINES**—[See FORFEITURE.]

**REPLY**—[See DEFAULT IN PLEADING.]

**RESIDENCE**—[See REMITTAL TO INFERIOR COURT—SERVICE.]

**RESTITUTION**—[See COSTS.]

## S

**SALE**—[See FRAUDS, STATUTE OF—NOTICE OF SALE—SALVAGE CREDITOR.]

**SALVAGE CREDITOR**—A. and B. were tenants of a farm which was under eviction for non-payment of rent, the last day for redemption being the 20th of July. The plaintiff and another had executions against A. and B. but the landlord refused to allow their interest in the farm to be sold unless the rent in arrear were paid. The plaintiff paid the amount of the arrears on the 20th of July, which the landlord accepted from him, and the interest of A. and B. in the farm was thereupon sold by the sheriff. The sheriff, after paying the executions, brought the balance into Court under an interpleader order:—*Held*, that the plaintiff as a salvage creditor was entitled, under the circumstances, to be recouped out of the money brought into Court the amount paid in discharge of arrears of rent. *Semble*, however, that the plaintiff, as a mere judgment creditor, had not such an interest in the lands as would have entitled him to redeem, against the will of the landlord.—*Warnock v. Laitie* (C. P.), 10 L. R. Ir. 68. [Affirmed on app.]

**SANITARY WORKS**—[See PUBLIC HEALTH ACT, 1878.]

**SATISFACTION OF JUDGMENT**—Where both consor and consuee of a judgment, entered on a bond in 1854, were deceased several years, and there was no personal representative of the consuee, and the devisee of lands, against which the judgment had been registered as a statutable mortgage, deposed of her own personal knowledge to payment of the debt by the consor in the year 1868, and that no claim had since been made on foot of the judgment, and held in her possession the bond which she swore had been delivered to the consor on payment, a conditional order was made for the entry of satisfaction unless cause should be shown by the eldest son and only surviving male member of the family of the consuee.—*Scott v. Wood* (Ex.), 10 L. R. Ir. 355.

**SAVINGS BANK**—By the 26 & 27 Vict., c. 87, s. 38, it is provided that it shall not be lawful for a depositor in a savings bank to make any deposit in any other account at the same or any other savings bank; and that every depositor at the time of the first deposit, and at such other times as such depositor shall be required so to do by the trustees and managers of the bank, shall make a declaration that he is not entitled to any deposit in or any benefit from the funds of any savings bank other than that into which such deposit shall be made, or any other funds in the said savings bank; and if such declaration shall not be true, or if any person shall, at any time, have any deposit or funds in more than one savings bank within the United Kingdom, except as provided by the Act, every such person should, if such deposit were, in the opinion of the barrister-at-law appointed under the Act, made with a fraudulent intention, forfeit all right to any deposit in or funds of any and every such savings bank. By section 48 it was provided that if any dispute should arise between the trustees and managers of any savings bank and any individual depositor thereon, or his personal representatives, claiming to be entitled to any money deposited in such savings bank, the matter in dispute should be referred to the barrister appointed under the Act, whose award should be binding and conclusive. By the 39 & 40 Vict., c. 57, s. 2, the duty of determining any such disputes was transferred to the Assistant-Registrar of Friendly Societies in Ireland. C., after the passing of the Act 36 & 37 Vict., c. 87, placed various sums of money on deposit in a savings bank in fictitious names, with however the knowledge of the officers of the bank. He had also deposits remaining in his own name previously made. The deposits in the aggregate exceeded considerably £200, notwithstanding that the Commissioners for the Reduction of the National Debt had directed that the trustees of any savings bank should not add interest to any annual account so long as it continued at or above £200. C. died in 1880, leaving these moneys on deposit. His personal representatives claimed them, but the trustees refused to pay the sums deposited in fictitious names. On an application by C.'s personal representative for a mandamus to the Assistant-Registrar of Friendly Societies to hear and determine his claim as a dispute between him and the trustees:—*Held*, 1st, that there was no forfeiture of the deposits under the 38th section; and, 2ndly, that the claim made by the personal representative, and resisted by the trustees, constituted a dispute within the meaning of section 48, which the Assistant-Registrar had jurisdiction to entertain; but, 3rdly, that the deposits in the fictitious names having been made illegally, and in wilful contravention of the 38th section, and contrary to the policy of its provisions, the writ of mandamus, which is one *in subsidium justitiæ*, ought not to be granted.—*Reg. (Cochrane) v. Littledale* (Q. B.), 10 L. R. Ir. 78. [Affirmed on app.]

**SECURITY FOR COSTS**—In an action to recover the balance alleged to be due on a bill of exchange between the original parties to the bill, and in which the indorsement of the writ credited the defendants with certain alleged payments, the defendants entered an appearance requiring a statement of claim, and afterwards applied for security for costs, on the ground that the plaintiff resided out of the jurisdiction. The affidavit of merits stated that the bill was an accommodation bill, for which no value was received, and that the defendants had a good defence on the merits:—*Held*, 1st, following *Tollett v. Lalor* (8 L. R. Ir. 8), that the defendants had not waived their right to security for costs by appearing; 2ndly, that the affidavit of merits was sufficient.—*Charlencorth v. Clayton* (Ex.), 10 L. R. Ir. 367.

**SEED SUPPLY ACT, 1880**—[See POOR LAW.]

**SERVICE**—[And see DEFAULT OF APPEARANCE—INDORSEMENT OF SERVICE—LANDLORD AND TENANT.]

After service of a writ of summons, the defendant entered an appearance, giving an address at which, on subsequently proceeding to serve a statement of claim, it was found he did not reside, the house being unoccupied. It was stated that he had gone to America, but that his wife, residing in Dublin, was in communication with him. On motion to set aside the appearance, or for leave to substitute service of the statement of claim: Leave to substitute service was given, by posting a copy of the statement of claim on the unoccupied house, and serving the wife in person.—*City and County Building Society v. Hayes* (Ex.), 16 Ir. L. T. Rep. 106.

**SHERIFF**—[See NOTICE OF SALE.]

**SHIP**—[See POLICY OF INSURANCE.]

**SOLICITOR** [And see BILL OF SALE—COSTS—PREVENTION OF CRIMES ACT—TAXATION OF COSTS.]

Where the solicitor for a plaintiff, in consequence of abusive conduct on the part of his client, refused to proceed with the action, and the plaintiff thereupon entered the ordinary rule to change, and afterwards applied to amend the order by omitting the usual condition as to payments of costs, the Court made no rule upon the motion, the solicitor undertaking forthwith to hand over all papers and documents, save original deeds; and also to attend and produce at the trial any deeds connected with the case in his possession, the plaintiff undertaking to return all such documents within ten days after the trial; with liberty for the solicitor to issue execution for the amount of his taxed costs, if not paid within fourteen days after taxation.—*Riordan v. Coakley* (Q. B.), 10 L. R. Ir. 22.

**SPECIAL INDORSEMENT**—The claim endorsed on a writ of summons was for £154 14s., balance due on foot of wages for three and half years; and the particulars stated the dates, the credits allowed, and how they were calculated:—*Held*, a good special indorsement, and sufficient as a statement of claim.—*Gibson v. Walsh* (Ex.), 16 Ir. L. T. Rep. 118.

**SPECIFIC PERFORMANCE**—[See LANDLORD AND TENANT—TRANSFER OF ACTION.]

**STATEMENT OF CLAIM**—[See AMENDMENT—PLEADING—SERVICE—SPECIAL INDORSEMENT.]

**STAY OF FRAUDS**—[See FRAUDS, STATUTE OF.]

**STAYING PROCEEDINGS**—[And see LANDLORD AND TENANT.]

1—Under the 13th section of the Arrears of Rent (Ireland) Act, 1882, the Court can only postpone or suspend proceedings in an action in which the plaintiff sues for some arrears of rent antecedent to the year 1881, or alleges such arrears to be due.—*Gresille v. Reilly* (Ex.), 10 L. R. Ir. 323.

2—The Court will not stay proceedings under the 13th section of the Arrears of Rent (Ireland) Act, 1882, for the purpose of enabling the tenant to make an application under that Act, where the only rent sued for is rent due up to November, 1880.—*Trench v. Dunne* (Q. B.), 10 L. R. Ir. 340.

3—Action to recover land on title; staying proceedings, pending application to Land Commission to fix judicial rent; Land Law Act, 1881, ss. 8, 16 (3), 21, 58 (7).—*Fitzgerald v. Brennan* (Ex.), 16 Ir. L. T. Rep. 56.

4—In an action to recover possession of land, the Court will not, at the instance of the defendant upon an interlocutory application, stay proceedings pending an application by him to the Land Commission to fix a judicial rent, unless the status of the defendant as tenant be either admitted or be clearly established by him. Where an ejectment was brought upon notice to quit, expiring in September, 1881, the Court refused an interlocutory motion to stay proceedings, the status of the defendant as tenant being disputed.—*Boyd v. Phelan* (C. P.), 10 L. R. Ir. 380.

5—Plaintiff had brought an action for slander and libel. The libel was contained in a letter written by the defendant, the words of which, as set forth in the statement of claim, the plaintiff failed to prove, and he was non-suited. The costs of this action were not paid by the plaintiff. He then brought a second action for slander and libel against the same defendant. The statement of claim in the second action relied upon the same causes of action in slander, and three of the same causes of action in libel, as were contained in the statement of claim in the first action, but the plaintiff further relied upon other statements contained in the letter which had not been used upon in the former action. The plaintiff having entered a *nila prosequi* on the causes of action, as far as they were identical with those in the former action, the Court refused to stay proceedings upon the additional causes of action relied on in the second action. Where the plaintiff has been non-suited in a former action, relying upon the same causes of action as he sues upon in a second action, the defendant should (except where the action is one of ejectment) plead the non-suit in bar of the second action, a non-suit under Order X.L., r. 6, being of the same effect as a judgment on the merits for defendant.—*Bywater v. Dunne* (Ex.), L. R. Ir. 380. [8. c. 17 Ir. L. T. Rep. 15.]

**SUB-LETTING**—By an instrument in writing not under seal, J. agreed to take from F. certain lands as tenant from year to year, determinable either by six months' notice to quit, or at J.'s death, whichever should first happen; to pay a certain yearly rent; and not to sub-let the premises, or any part thereof. This instrument was signed by J. only. J. purported to let a part of the premises to H. as tenant from year to year. No consent was given by F. to the sub-letting. J., having brought an ejectment on the title against H. to recover possession of the part of the lands so sub-let, without service of notice to quit:—*Held*, that the instrument under which J. was tenant created a yearly tenancy; that it was a "lease" within the interpretation clause of the Landlord and Tenant Act, 1880 (23 & 24 Vic., c. 164); that, therefore, the sub-letting was void, under the 13th section of that Act; and that J. was consequently entitled to recover.—*Jago v. Harrington* (C. P.), 10 L. R. Ir. 325.

**SUBSTITUTION OF SERVICE**—[See SERVICE.]

**SUMMONS**—[See ASSAULT—JUSTICE OF THE PEACE—MOTION—PLEADING—SURETIES TO BE OF GOOD BEHAVIOUR.]

**SURETIES TO BE OF GOOD BEHAVIOUR**—[And see JUSTICE OF THE PEACE.]

1—While the society styled the Irish National Land League were alleged to be acting in unlawful combination for the purpose of inducing tenants not to pay their rents, the following words were addressed by H. R. in the presence of a crowd, including a tenant against whom a writ of *habere* for non-payment of rent was then being executed:—"Pay no rent to the landlord. We will make you all right about the land. We will build you a house at any expense, and make you comfortable during the winter." The district had been prescribed under the Act for the better Protection of Person and Property in Ireland (44 & 45 Vic., c. 4); and on the occasion in question the sheriff and his officers were accompanied by an armed force of police for their protection, under the command of a magistrate. H. R. appeared to have been entirely unconnected with the tenant, and to have come there, accompanied by an attendant crowd, for the seeming purpose of interrupting the legal proceedings, and apparently as the emissary or agent of a plurality of persons in possession of funds applicable to the fulfilment of the promises held out to the tenant. On informations sworn accordingly, a summons was issued calling on H. R. to show cause why she should not be bound over to be of good behaviour, on the hearing of which she was ordered by the justices at petty sessions to find bail for that purpose, or in default to be imprisoned for six months. She refused to give bail; and on application for a writ of certiorari to quash the order:—*Held*, that sufficient reasons existed to warrant the justices in inferring that, when so exhorting or encouraging the tenant to pay no rent, H. R. was acting in unlawful concert and combination with an association, and in concluding that the repetition of such conduct should be prevented; and that, while the Court would interfere with the exercise of such jurisdiction only in a strong and clear case of misused authority, the order made was justified, on the ground of probable suspicion that a crime was intended or likely to happen which should be so prevented, and having regard to 34 Edw. 3. c. 1, empowering justices of the peace to bind over to be of good behaviour all that be "not of good fame." On showing cause against a conditional order for a writ of certiorari, it would be contrary to the practice, confining parties to the evidence given before the justices, to allow it to be supplemented by affidavit.—*The Queen (Reynolds) v. The Justices of the County Cork* (Q. B.), 16 Ir. L. T. Rep. 89, 10 L. R. Ir. 1, 15 C. C. 78.

2—On an information having been made by a police officer, that he had reason to believe, and did believe that M.C. was a member of the "Ladies Land League," a stranger to the locality, and had been visiting various persons therein who had been served with writs for rent, and had advised them rather to submit to eviction than pay rent, while outrages followed immediately after her visits to a disturbed district, a warrant was issued against her, and she was arrested at a Land League meeting, and brought to the police barrack and thence to the petty sessions court. The presiding magistrate then read over to her the information made by the police officer, whom she declined to cross-examine, but admitted the truth of said allegations, and avowed that she was a member of the "Ladies Land League" and was carrying out its objects, declining to give any other explanation, or satisfactory account of herself. Accordingly, the magistrate made an order binding her over to be of good behaviour, or in default directing her to be imprisoned for three months. She refused to give bail; and on application for a writ of certiorari, to quash the order:—*Held*, that the magistrate had jurisdiction, and was bound to act in the matter; and, on the information made and what took place subsequently in court, was justified in making the order, having just ground for suspecting that she had entered, or was likely to enter upon a course likely to lead to crime, and having regard to 34 Edw. 3. c. 1, empowering justices of the peace to bind over to be of good behaviour all that be "not of good fame."—*The Queen (McCormick) v. The Justices of the County Clare* (Q. B.), 16 Ir. L. T. Rep. 91.

3—Justices of the peace: sureties to be of good behaviour; summons; objection that several distinct offences charged; party accused, as witness; criminal proceeding.—*R. v. Justices of County Cork* (Q. B.), 16 C. C. 149.

4—Threatened breach of the peace: sureties to keep the peace, or for good behaviour: 34 Edw. 3. c. 1; informations; defamatory libel.—*O'Kane v. Sellheim*, 16 Ir. L. T. & S. J. 603.

**SURETY**—In consideration of the plaintiff accepting one H. as his tenant of certain lands, the defendant guaranteed the payment of the rent to become payable by H. as such tenant. In an action upon the guarantee, the defendant pleaded that, prior to the making of the guarantee, H. had been tenant to the plaintiff of the lands at a rent, and had been guilty of gross irregularity and delay in payment of such rent, and at the date of the guarantee was indebted to the plaintiff in a large sum for arrears of such rent, of which the defendant was ignorant; that the plaintiff did not, prior to the guarantee, communicate to the defendant these facts, but concealed from him the said material facts, which, if communicated to the defendant, would have prevented him from executing the said guarantee:—*Held*, upon demurrer, a bad plea.—*Roper v. Cox* (C. P.), 10 L. R. Ir. 200.

**T**

**TAKATION OF COSTS**—P., a landlord, served several of his tenants, in the year 1-74, with notice to quit, for the purpose of raising the rents. In 1874 the estate was re-valued, and new rents fixed. Thereupon the tenants filed land claims, with the view, as was stated on their behalf, of having the rents "recorded at Quarter Sessions under the Landlord and Tenant Amendment Act (Ireland), 1870," in order

to prevent a further increase of rent at an early period. Notices of dispute were filed by M. as solicitor for P. The Chairman declined to entertain the cases, on the ground that he had no jurisdiction to do so. M. furnished his costs to P., and in October, 1880, served notice to tax the costs in each of the cases before the County Court Judge, under Rule 26 of the 29th of October, 1870; and the costs of M., as between solicitor and client, were taxed and certified by the County Court Judge accordingly. On application by P. for a certiorari to bring up for the purpose of being quashed the orders and certificates of taxation, on the ground that the County Court Judge had no jurisdiction to tax such costs:—*Held*, that the writ of certiorari should not be granted, as the County Court Judge in taxing the costs under the Rule was acting solely in a ministerial not in a judicial capacity, and the certificates did not determine any liability on the part of P. to pay the costs so certified.—*Reg. (Powerscourt) v. County Court Judge of Tyrone* (Q. B.), 10 L. R. Ir. 217.

**TENANT FROM YEAR TO YEAR**—[See YEARLY TENANT.]

**THREATENING NOTICE**—[See WHITEBOY ACT.]

**TIME**—[See INDORSEMENT OF SERVICE—JUDGMENT—LANDLORD AND TENANT—REMITTAL TO INFERIOR COURT.]

**TRANSFER OF ACTION**—[And see COUNTY COURT—REMITTAL TO INFERIOR COURT.]

1—Action to recover land on title; counter-claim for specific performance of lease; transfer to Chancery Div.; Jud. Act. ss. 35, 36, 37, 38; O. L. r. 3.—*Earl of Ranfurly v. Dickson* (Q. B.), 16 Ir. L. T. & S. J. 103.

2—Where a plaintiff claimed for rent due under a lease, and the defendant, admitting the lease and the rent as due, counter-claimed damages for non-performance of an agreement and that the lease should be set aside, the action, on the plaintiff's application, was transferred to the Chancery Division.—*Wilson v. Connolly* (Ex.), 16 Ir. L. T. Rep. 104.

**TRESPASS**—[And see EMBARRASSING PLEADINGS—FORCEFUL ENTRY.]

Works were executed by the Contractor of a Drainage Board, pursuant to contract with them and by their authority, under the superintendence of their engineer and his assistants, and according to plans and specifications prepared by the engineer, who directed and instructed the contractor, was frequently present on the ground and saw the works in progress, but did not further interfere. Some of the works were admittedly acts of trespass to lands of the plaintiff, as the Board had not obtained an assessment of compensation, or paid such compensation before entry. *Held*, that the engineer was not liable to the plaintiff for the trespass so committed. *Stone v. Carrwright* (6 T. R. 411) followed. *Mill v. Hawker* (L. R. 10 Ex. 92) distinguished.—*Moss v. Dillon* (Q. B.), 10 L. R. Ir. [Reversed on app.]

**TRIAL**—[See COSTS—DISMISSAL FOR WANT OF PROSECUTION.]

**TRUST**—[See CHOSE IN ACTION.]

**U**

**UNLAWFUL ASSEMBLY**—A magistrate is not justified in forcibly dispersing a meeting upon the ground merely that he believes, and has reasonable and probable grounds for believing, that the meeting was held with an unlawful intent, unless the meeting be in itself unlawful; and a plea justifying an assault, upon the ground that it was committed by a magistrate in the dispersion of a meeting, must either allege as a fact that the meeting was unlawful, or must state facts from which its unlawfulness can be inferred.—*O'Kelly v. Harvey* (Ex.), 10 L. R. Ir. 285. [Affirmed on app.]

**V**

**VACATION**—[See REMITTAL TO INFERIOR COURT.]

**W**

**WAGERING POLICY**—[See POLICY OF INSURANCE.]

**WARRANT**—[See LUNATIC—SURETIES TO BE OF GOOD BEHAVIOUR.]

**WARRANTY**—[See CARRIER—POOR LAW.]

**WAY**—[See EASEMENT.]

**WHITEBOY ACT**—The prisoner was indicted under the Whiteboy Act for posting a notice to the following effect:—"G. T. is hereby declared boycotted by the competent tribunal, for taking into his employment Stanley the assassin. All Irishmen must shun him as their deadly enemy." The indictment alleged that the notice tended (1) to excite an unlawful confederacy; (2) to excite a riot; (3) that it was against the form of the statute. The judge at the trial, upon the requisition of the counsel for the Crown, ruled that the notice on the face of it was an unlawful notice within the meaning of the statute, but reserved for the court the point whether he should have so ruled or should have left the question to the jury. The jury, in answer to the only question submitted to them, found that the prisoner had in fact posted the notice, and the prisoner was accordingly convicted:—*Held*, that the notice was capable of bearing the meaning alleged in the indictment; but that the question whether it did, in fact, bear such meaning should not have been withdrawn from the jury.—*Reg. v. Coady* (C. C. R.), 10 L. R. Ir. 205, 15 C. C. 89.

**WITNESS**—[And see BILL OF SALE—LANDLORD AND TENANT—SURETIES TO BE OF GOOD BEHAVIOUR.]

Privilege as to criminating questions; discretion of court.—*Temple v. Fitz Commonwealth*, 16 Ir. L. T. & S. J. 497. [See papers, and cases collected by the present writer, *id.* 429, 443, 457, 467, 477, 497, 517; and see *id.* 617.—*E. N. B.*]

**WRIT OF SUMMONS**—[See INDORSEMENT OF SERVICE.]

REPORTS.

100.

[AP.]

MAX v. BUCKLEY.

[AP.]

had been signed, on Jan. 9th, but the solicitor to whom it was sent down for execution stated that owing to the disturbed condition of the country it would be impracticable to levy the distress.

*Eiffe*, in support of the application.—We presume the sale has been held, and the only course now open to us is to apply for an injunction, under the Jud. Act, s. 28 (8), to restrain the disposal of the proceeds, pending the recovery of judgment, or until further order.

[LAW, C.—What right have you to such an injunction? If you are entitled to it, the plaintiff in any ordinary action for debt would be equally entitled to restrain the defendant from proceeding with a sale of his property pending the action. FITZGIBBON, L.J.—For aught we know the sale may be for the very purpose of providing funds to meet the rent.]

Such an assumption is negated by the letters of the defendant; in one she merely offers to give up the farm if a half-year's rent deposited by her husband, in 1870, was returned. Our position is different from that of a plaintiff in an ordinary action for debt. This is an action to recover the rent of the lands, the stock and plant on which has been sold by the defendant; and the plaintiff had a right to levy a distress for the rent, either at common law or under the lease,\* and to attach the chattels, which he would have done but for the disturbed condition of the country, which precludes the enforcement of his ordinary legal rights. The only remedy remaining is by injunction under the enlarged jurisdiction conferred by the Jud. Act; and the Court, in order to protect the suitor's right, should grant that remedy, where, owing to the state of the country, and the proceedings of the defendant, the plaintiff cannot exercise his ordinary rights: *Smith v. Peters*, L. R. 20 Eq. 513. We were unable to communicate in time with the police authorities of the district in order to procure assistance. And neither could we in time obtain a remedy by resorting to the Court of Bankruptcy.

[LAW, C.—Here the plaintiff, because he has brought his action to recover a debt, his right to which may be disputed, seeks an injunction to prevent the defendant from disposing of her property. How can we grant this. The state of the country has really nothing to do with the matter; such an application, if at all defensible in point of legal principle, would be equally tenable if the country were undisturbed. FITZGIBBON, L.J.—There are cases in which injunctions have been granted to restrain parties from disposing of property when the right to that property in specie was the subject of pending litigation;† but I know of none against a third party requiring him to hold money till another person recovered judgment.]

Of course, we can cite no direct authority in support of the application, which has been rendered necessary by an abnormal state of things; but even in the absence of precedent the Court can exercise its authority in a fit case, as where a landlord was restrained from exercising his right of distress: *Shaw v. Earl of Jersey*, 4 C. P. Div. 120, 339. In an action by a principal against an agent, to recover the amount of certain goods supplied to the agent for sale, and admitted to be sold by him, the defendant was restrained, pending the result of the action, from drawing out of the bank, and the bank from paying out certain moneys lying to the agent's credit in the bank, which appeared to be the

proceeds of his sale of the goods: *Wetton v. Wilson*, 12 Ir. L. T. Rep. 148.

[LAW, C.—In *Shaw v. Earl of Jersey* the right to the rent was disputed, and what the landlord wanted to do was to get his rent by seizing his tenant's goods before the dispute was decided—the right to the rent was the question in dispute; so that it differs entirely from the present case; and neither has *Wetton v. Wilson* any application to this case, where it is not touching property in dispute that the injunction is sought.\*] No doubt, our application is of a novel kind, but then it has been rendered necessary by the unprecedented state of the country; and the Court has at all events complete jurisdiction to grant a remedy: *Beddow v. Beddow*,\* 9 Ch. Div. 89; *Anglo-Italian Bank v. Davies*, 9 ib. 286, 293; *Bryant v. Ball*, 10 ib. 158. An injunction, or receiver has been granted, upon the application of the grantees of a bill of sale—who has in reality merely a security for his debt which may be defeated if not registered—to prevent the grantor from selling: *Taylor v. Eckersley*, 2 Ch. Div. 302; *Ex p. Evans*, in *re Watkins*, 11 Ch. Div. 691.†

[FITZGIBBON, L.J.—If you had gone before a magistrate and sworn an information that you apprehended a breach of the peace on the occasion of levying the distress, it would have been his duty to protect you in exercising your rights. If you did not do that, why should we be called on to do what the state of the country has nothing to say to? DEASY, L.J.—You presume there has been a sale; and you presume the auctioneer has been paid—which does not necessarily follow. LAW, C.—Suppose the auctioneer has paid over the money to the defendant, you do not seek an injunction against her?]

Yes, we should seek it to prevent her parting with the money.

[LAW, C.—But, you will be content with an injunction against the auctioneer on the chance of his having the money. Surely, it is hard to seek for an injunction under these circumstances.]

We could have notice at once served on him. What injury can accrue? We do not ask to have the sale prevented, or the money handed over to the plaintiff. We ask merely for a conditional order to direct the auctioneer to retain the money pending the result of the action; and if there be any substantial grounds against it, or if any injustice might arise, cause could be shown.

LAW, C.—We are of opinion that this application must be refused. We do not consider that the authorities referred to establish the principle for which counsel for the applicant here has contended. It is not a matter depending on the state of the country; it is an application that might be made by any man who brings an action and thinks that he will not be paid the defendant disposes of certain goods. But, in our opinion, the court has no right to make an order restraining a defendant, in an action merely commenced, from disposing of or realising his or her property, on the mere assumption that the plaintiff would obtain a judgment, and that the amount would not be paid. I never heard of such an application before, and hope I will never hear one again—there is no foundation for it, and it must be refused.

DEASY and FITZGIBBON, L.JJ., concurred.

*Appeal disallowed.*

Solicitor for appellant: R. Vance.

\* See *Gordon v. Phelan*, 15 Ir. L. T. Rep. 70.—[Rep.]

† See *Powell v. Wright*, 7 Beav. 444, 452.—[Rep.]

\* Cf. *Powell v. Heffernan*, 15 Ir. L. T. Rep. 78.—[Rep.]

† Cf. *Demarus v. Royant*, 2 J. & H. 425, n.—[Rep.]

AP.]

AUSTIN v. SCOTTISH WIDOWS' SOCIETY.—CAMPBELL v. ARMSTRONG.

[C. P.]

Reported by HANS AYLMER, Esq., Barrister-at-Law.  
(Before PALLES, C.B., DEAST and FITZGIBBON, L.JJ.)  
AUSTIN v. SCOTTISH WIDOWS' FUND MUTUAL LIFE  
ASSURANCE SOCIETY.

June 27, 28, 29, 1881.—*Easement—Right of way on foot—Extent of user—Carrying heavy burdens and goods rolled on trucks—Obstruction.*

*A right of way on foot through the passage of a house does not include a right to carry heavy goods or burdens on trucks through it.*

Appeal, by plaintiff, from order of C. P. Div., reported in 15 Ir. L. T. Rep. 52, where the facts and authorities cited are stated.

Monroe, Q.C., and Hodder, for the appellant.

P. White, Q.C., The Macdermot, Q.C., and Bercley, contra.

*Judgment reserved.*

PALLES, C.B.—This is an appeal from an order made by the Common Pleas Division. The action is for obstruction of a right of way. The 3rd paragraph of the statement of claim is a typical example of embarrassing pleading. What it alleges could not extend the right of way, and it was only evidence as to the user. However, the defendants did not move to strike it out, but delivered a statement of defence. At the trial, before Judge Barry, at *Nisi Prius*, there seems to have been no controversy except as to the question—had the right of way, as in the 2nd paragraph of the statement of claim set forth, been obstructed? [His lordship stated the facts as to raising of the floor and erecting steps.] From the report of the Judge, it appears that the plaintiff relied on there being evidence of obstruction of such right, and on the belief that the Judge could not rule that carrying heavy goods through the passage was unreasonable. Towards the carriage of heavy goods most of the evidence was directed; it was all given without objection being raised by the defendants, and much of it was given by the defendants themselves. It was impossible for the Judge to accede to the defendants' requisition as to obstruction. The first question put by the Judge to the jury was a highly proper one. Questions 2 to 4 inclusive, relate to burdens ordinarily carried by persons on foot. As I understand, these questions are not in this appeal objected to by defendants' counsel. I offer no opinion in regard to them, and pass them by. Then we come to questions 5-8, which relate to such burdens as might, previously to the alterations, have been carried through the passage (or, as I understand it, such burdens as the physical conditions of the passage would permit to pass), and also to burdens on trucks. I think defendants' view of these questions is correct, and that the Judge should have complied with them. Had the answer to the Judge's first question been in the negative, the defendants would have been entitled to a verdict, but it was in the affirmative; and we are now asked by defendants to set aside that finding, because other additional questions were also left to them. There is here involved a question of much importance. Where a question of law was (as in this case) involved, the only course formerly was for the jury to return a special verdict. Afterwards the modern practice arose of reserving the question at the trial, which the Court in banc were enabled to decide on afterwards; and thus grew up the practice of leaving all the questions to the jury, which were material on either alternative. By the Act of 1856, an appeal was given on the point reserved at the trial to the House of Lords. This has in practice led to the abolition of special verdicts, and is well described by Lord Blackburn in *Dublin, Wicklow, and Wexford Railway Co. v. Slattery*, L. R. 3 App. Ca. 1206. But it can only be done by leaving the facts in either alternative before the jury. This is what was here

done. Defendants' counsel says that the first question was not in fact tried at all. But is this the fact? The jury was a view jury and a special jury, and I think their verdict on the first question not unreasonable. I cannot agree that it was not fairly tried. It is said these other questions will prejudice the defendants if an injunction is sought. I think these answers will have no such effect except as to the question of obstruction, and that has been decided by the answer to the first question. Under the Jud. Act, sched. r. 82, we are enabled to set aside the findings on some of the questions, leaving others to stand. We think, therefore, the order for a new trial made by the Common Pleas Division should be discharged, the findings on questions 2 to 8 to be struck out, as being in our opinion immaterial, and that on question 1 to stand, and the judgment for the plaintiff thereon, with 8d. damages and costs, to stand; each party to bear his own costs of the proceedings in the Common Pleas Division and this Court.

DEAST, J.—A user of trucks through a gentleman's hall-door, when a right of footway only was claimed, I think most unreasonable, and the finding of the jury on the question was equally so. Mr. Austin never carried trucks through the passage; Mr. Toole, his predecessor, did, but he was the owner of the premises. Question 2 was very objectionable. What are the burdens ordinarily carried by foot passengers? Are there included what a porter ordinarily carries on his shoulders or a bag of coal? But the alterations undoubtedly materially impeded the right of way, and on the first question the finding of the jury was very proper. By putting in an exaggerated claim, the plaintiff has lost the costs he might otherwise perhaps have obtained.

FITZGIBBON, J.—I concur with the previous judgments. There was evidence in support of the first question, and a second trial would most probably have on this point a like result. But we wholly get rid of the other findings by striking them out as immaterial. It certainly appears to me that a reasonable user of a right of footway, such as this, must be one consistent with the ordinary use by a gentleman of his own hall-door.

*Order accordingly.*

Solicitors for plaintiff: *Casey & Clay.*

Solicitor for defendants: *B. Whitney.*

## HIGH COURT OF JUSTICE.

### COMMON PLEAS DIVISION.

Reported by J. P. BRETT, Esq., Barrister-at-Law.

(Before MORRIS, C.J., and HARRISON, J.)

CAMPBELL v. ARMSTRONG.

Jan. 11, 1882.—*Practice—Dismissal for want of prosecution—Notice of motion—Date not given in notice—O. LII., r. 3.*

*Where a notice of motion did not specify the date on which it was to be moved, but stated that it would be moved on the "first opportunity," and two clear days had elapsed since the service:*

*Held, that the notice of motion was sufficient, within O. LII., r. 3.*

Motion to dismiss action for want of prosecution. The writ of summons was served on the 10th September, 1881; appearance filed on the 14th September; and on the 7th November a motion to mark final judgment was refused, defendant's costs to be costs in the cause. Since then no step had been taken by the plaintiff. The notice of motion was as follows:—"Take notice that counsel on behalf of the defendant will on the first opportunity apply to the Divisional Court," &c.

*Gordon*, for defendant, in support of the motion.

C. P.]

THE EARL OF LISTOWEL v. KELLY.—MAX v. BUCKLEY.

[C. P.]

*M'Conchy*, for the plaintiff, objecting *in limine*.—There is no date in the notice of motion; O. LII., r. 3.

[MORRIS, C.J.—Are the two clear days expired?] They are expired, but it must be two clear days between the day of service and the date given in the notice of motion. The “first opportunity” means the first legal opportunity after the day named.

*Gordon, contra*.—The date usually given in a notice of motion is the first opportunity on which the motion could be moved. There is no direction given in the rule to name a day, and no change from the common law rule. This day is the first opportunity on which the motion could be moved.

*M'Conchy*, in reply.—The common law rule is changed: O. LII., r. 3, reversing 131 G. O. 1854; Eiffe, J. A., p. 519.

MORRIS, C.J.—We think this notice of motion comes within the rule. This day is the first opportunity on which the motion could be moved. There was nothing to be gained by naming this day.

*Motion granted.*

Solicitor for defendant: *J. Harbison*.  
Solicitor for plaintiff: *D. M'Laughlin*.

#### THE EARL OF LISTOWEL v. KELLY.

Jan. 13, 1882.—*Action for recovery of land for non-payment of rent—Notice to quit—Judgment for possession—Redemption by mortgagee—Judgment in action of ejectment and for mortgage debt by mortgagee—Judgment in action of ejectment by the landlord for overholding—Notice not given to mortgagee—Judgment set aside.*

A landlord served a notice to quit on his tenant, and afterwards commenced an action for recovery of the land for non-payment of rent, on which judgment was entered. A mortgagee of the tenant's interest redeemed the tenancy. The landlord then commenced an action of ejectment for overholding, on which judgment was entered up, and no notice of which proceedings were served on the mortgagee:

Held, that the mortgagee was entitled to notice of the proceedings, and that the judgment should be set aside.

Motion, on behalf of Patrick Harnett, a mortgagee of the defendant's interest, to set aside the judgment in this case against the defendant.

The writ of summons, issued the 21st April, 1881, claimed the recovery of the possession of the lands of Islandanny, in the Barony of Irraghticonnor and County Kerry, for non-payment of £22 2s. 6d., one year's rent thereof. Judgment for possession was entered up on the 11th May, 1881, and a writ of habere issued. By an indenture of mortgage dated the 24th February, 1879, the defendant assigned to the said P. Harnett all his estate and interest in the tenancy, for the consideration therein mentioned; and the indenture was registered on the 4th March, 1879. On the 9th February, 1881, the said P. Harnett issued a writ against the defendant for recovery of possession of the lands and for the amount of the mortgage debt. On the 2nd of July, 1881, on the trial of P. Harnett's action against the defendant, a verdict was found for the plaintiff therein, by direction of the Lord Chief Justice. On the 2nd August, 1881, P. Harnett obtained an order for a writ of restitution of the possession to said lands to the defendants, he having paid the sum of £29 2s. 6d., the amount of the judgment debt, and costs, into Court. On the 28th September, 1881, P. Harnett lodged with the Sheriff of Kerry the writ of restitution, and also a writ of habere in his action against the defendant. On the 14th

October, 1881, a writ for the recovery of the said lands on the title was issued out of this Division against the defendant by the plaintiff herein; and judgment by default was entered up thereon on the 25th October, 1881. These last-mentioned proceedings were carried out without the knowledge of P. Harnett or anyone representing him. On the 31st October, 1881, the Sheriff of Kerry executed the writ of restitution by restoring the defendant to possession; and then executed the writ of possession at the suit of P. Harnett by dispossessing the defendant. The defendant was admitted as caretaker under a written agreement. On the 5th Nov., 1881, the Sheriff executed a writ of possession on foot of the judgment dated 25th October at the suit of the plaintiff. The entire of the mortgage debt remained due to P. Harnett. The plaintiff herein alleged that on the 26th March, 1881, he caused a notice to quit to be served on the defendant.

*Murray*, for P. Harnett, in support of the motion.—The ejectment for non-payment of rent determined the tenancy of Kelly subject to redemption as and from the 25th March, and thereby rendered invalid and uncertain the notice to quit, which was served on the day following, i.e., the 26th March: *Hall v. Flanagan*,\* I. R. 11 C. L. 470, 11 Ir. L. T. Dig. 23. The landlord having elected to proceed for non-payment of rent, and having determined the tenancy thereby, could not proceed on the notice to quit served previous to the proceeding in ejectment for non-payment of rent: *Jones v. Carter*, 15 M. & W. 718.

*O'Riordan*, Q.C. (with him *M. J. Bourke*), for the plaintiff, *contra*.—There is a custom on the plaintiff's estate against mortgaging, or sub-letting; and the mortgage was executed without the knowledge or consent of the plaintiff.

[MORRIS, C.J.—You got judgment for non-payment of rent, and the mortgagee paid the money and got a writ of restitution. Is there any case in which, when the landlord accepts the money of a mortgagee redeeming, he can then evict the tenant mortgagor?] The mortgagee never went into possession.

MORRIS, C.J.—We think the plaintiff should have served notice on the mortgagee of the ejectment proceedings.

*Motion granted, with costs.*

Solicitor for plaintiff: *F. Creagh*.  
Solicitor for mortgagee: *R. C. Harnett*.

#### MAX v. BUCKLEY.

Jan. 12, 1882.—*Practice—Injunction—Jurisdiction—Action for rent—Auction by defendant of stock—Jud. Act, s. 28, sub-s. 8.*

Where, pending the proceedings in an action for rent, and before judgment, the defendant had called an auction of all the stock and effects on the farm tenanted, on which the plaintiff had been prevented from distraining in consequence of the disturbed state of the district, the Court refused to grant an injunction, on the application of the plaintiff, to restrain the auctioneer from parting with the proceeds of the sale.

Motion, *ex parte*, for an injunction to restrain an auctioneer who was selling the defendant's stock and effects from parting with the proceeds of the sale. A writ of summons had been issued claiming £479 18s. 5d., one year's rent of the defendant's holding, the defendant holding the lands under a lease, ten years of

\* See *Hall v. Singleton*, 11 Ir. L. T. Rep., 34.—[E. N. B., Ed.]

Ex.]

MAGEE v. MARTIN.

[Ex.]

which were unexpired. The district in which the lands were situate had been prescribed under the Act for the Better Protection of Life and Property in Ireland, 1881; and one copy of the writ of summons was posted to the defendant, another copy on the nearest police barrack, and an affidavit setting forth same was duly filed in the office of this Division, but judgment had not been yet entered. On the 9th January, 1882, an advertisement appeared in the *Clonmel Chronicle* of an auction of the defendant's stock and effects to be held on the 11th January. On the 9th January plaintiff signed a distress warrant to be levied on the defendant, but owing to the disturbed state of the country was unable to have same executed. A letter was received from the defendant saying she was willing to give up the farm on condition of receiving a remission of rent.

*Effe*, for the plaintiff, in support of the motion.—The court can grant an injunction to restrain proceedings pending an action: Jud. Act, s. 28, sub-s. 8; *Shaw v. Earl of Jersey*, 4 C. P. D. 120, 359; *Beddow v. Beddow*, 9 Ch. D. 89; *Anglo-Italian Bank v. Davies*, 9 Ch. D. 286, 293; *Bryant v. Ball*, 10 Ch. D. 153. This is a clearance sale, and we ask, pending proceedings, to restrain the payment away of the proceeds. It is impossible to execute the distress warrant, and if this order be not made the plaintiff cannot recover his debt.

MORRIS, G.J.—This is an entirely novel application and quite unwarranted. It may be taken to the Court of Appeal, however; but, as that court will not entertain the question unless some order has been made, the officer will make out a statement that an order was applied for here and refused.

No rule.\*

Solicitor for the plaintiff: R. Vance.

## EXCHEQUER DIVISION.

Reported by HANS AYLMER, Esq., Barrister-at-Law.  
(Before FITZGERALD, B.)

MAGEE v. MARTIN.

Nov. 29, 1881; Jan. 11, 1882.—Practice—Employers' Liability Act, 1880, ss. 3, 6.—Removal of action from county court into superior court—40 & 41 Vic., c. 56, s. 57.

Where an action has been brought in the County Court under the Employers' Liability Act, 1880 (43 & 44 Vic., c. 42), and is required to be removed into the High Court of Justice under section 6 (1), an application may be made *ex parte* for a conditional order for the purpose under the County Officers and Courts Act, 1877 (40 & 41 Vic., c. 56), section 57.

While the circumstance that more than £50 is claimed will not be *per se* a ground for refusing to remove the action, the Exchequer Division, in accordance with its analogous practice in reference to remitting actions to the County Court under the C. L. P. A. Act, 1870 (33 & 34 Vic., c. 109), will consider the case "fit to be tried in the High Court" under 40 & 41 Vic., c. 56, section 57, if reasonably satisfied that the plaintiff ought, should he succeed at all, to recover a large sum, more than that amount.

Motion, *ex parte*, for an order to bring up for trial in the superior court an action instituted in the Belfast Recorder's Court by the widow of a workman against his employer. She claimed, on behalf of herself and her three children, £245 14s. damages under the Em-

ployers' Liability Act, 1880, for the death of her husband, caused on September 17th, 1881, by the fall on him of a crane whilst in the employment of the defendant. This sum represented three years wages of the deceased (who had been a skilled stone-cutter, engaged at £1 10s. 6d. a week), being the maximum amount she was entitled to claim under s. 3 of the Act. An affidavit, filed in support of the application, stated that the said crane was registered to lift and carry a weight of a ton, but that it was constantly and on the occasion in question, used to carry a ton and a half, with the knowledge and by the direction of defendant's foreman; and it was further stated that the Recorder of Belfast had in a similar recent case (*Shelcock v. Great Northern Railway Co.*), expressed his opinion that he could not give a decree for a greater sum than £50. The deceased was the sole support of his family.

*Cuming*, in support of motion.

[FITZGERALD, B.—Should not notice be given to the other side?]

G. O., 1854, r. 149, provided that writs of certiorari to remove actions from inferior courts of record before judgment should issue on the mere production to the officer of an affidavit that the application was not for the purposes of oppression, vexation, or delay. Application under Sir Colman O'Loughlen's Act (37 & 38 Vic., c. 66, s. 2), for removing actions from the county court into the superior courts are made *ex parte*. Two such orders under that section\* have been so made by Fitzgerald, B., in *Boyd v. Church Temporalities Commissioners*, December, 1879, and the cause subsequently shown by the plaintiff disallowed. In *Symonds v. Dimsdale*, 2 Ex. R. 583, it was laid down that an order made to bring up an action from an English County Court under 9 & 10 Vic., c. 95, s. 90 (a very similar one to this), was rightly made *ex parte*.

FITZGERALD, B.—You had better take a conditional order.

Order accordingly.

(Before PALLES, C.B., and FITZGERALD, B.)

MAGEE v. MARTIN.

Jan. 11, 1882.—Motion to make conditional order absolute.

*Cuming*, in support of the motion.—We contend that we could recover greater damages if the jury were empowered to grant more. That large sum is sufficient to make the case a proper one for the superior court.

[PALLES, C.B.—Did the Recorder decide, in the case alluded to in plaintiff's affidavit, that he could only give £50 damages, and is that the law? †]

He stated that to be his opinion, but the case was settled. That expression of opinion would certainly influence his mind if the present case were tried before him.

[PALLES, C.B.—Are there any English cases on this point? ‡]

We cannot find any, for they are there argued in

\* And so, under 40 & 41 Vic., c. 56, s. 85, see *The Provincial Bank v. Fulton*, 13 Ir. L. T. 373.—[E. N. B., Ed.]

† As far as could be gathered from the subsequent interlocutory discussion, the inclination of opinion seemed to be, on the whole, that more than £50 (the limit under 40 & 41 Vic., c. 56) might be awarded; but the *dicta* were inconclusive, and the point was not decided.

‡ See the English case of *Davidson v. Moss*, 15 Ir. L. T. S. J. 218, as to what questions are fit for adjudication in the County Court under the Act.—[E. N. B., Ed.]

\* See *ante*, p. 1.

EX.] MAGEE v. MARTIN.—ADAMS v. DUNSEATH.—SHEPPARD AND OTHERS v. TENNANT. [L. C.]

Chamber and are not reported. By 37 & 38 Vict., c. 66, s. 2, which is an Act *in pari materia*, an action may be brought up by certiorari on certain specified grounds, "or any other ground which may make it more proper to have the case tried" in the Superior Courts. Reasonable and proper grounds are here shown. By 40 & 41 Vict., c. 56, s. 57, an action may be removed into the Superior Court by order of a Judge of the High Court "in any case which shall appear to the Judge fit to be tried" in that Court. The defence in this case is one of contributory negligence, and this has always been a formidable ground of opposing a remitting motion under the C. L. P. A. Act, 1870.\*

*Shaw, contra.*—We may leave the amount of compensation out of the question, for the Employers' Liability Act places a limit on it by section 3, and says the action shall be brought in the County Court; clearly then that Court has jurisdiction to give the full amount. The amount of compensation will be the same whether in the County Court or in the Superior Court. Contributory negligence is nearly always pleaded in these cases; and if that were a good ground for removal, the jurisdiction of the County Courts would be practically ousted. If the merits are all with the defendant on account of contributory negligence, he will have been put to much needless expense. The intention of the legislature in enacting that actions under this Act should be brought in the County Courts was to protect employers in the matter of costs.

PALLES, C.B.—On the best consideration we can give to this case we think this action ought to be removed. It is not very easy to gather the intention of the legislature as to this Act, or to find out whether any of the Acts referred to by counsel were in its contemplation when this Act was passed. A new cause of action is given to workmen against employers which did not exist before. The statute deals with and embraces a number of classes of injuries, including slight injuries, and varying in degree up to the class of injuries resulting in death. I think the legislature contemplated that the majority of cases under the Act would deal with sums of small amount. Death is on the whole an unusual result. For this reason the action is to be brought in the County Court, but a power of removal into the Superior Court is given. The question now before us is, in what class of cases is this power of removal given. [His lordship read 43 & 44 Vict., c. 42, s. 6.] It is admitted that 40 & 41 Vict., c. 56, s. 57, is the only existing Act relating to this power of removal. We must decide the question by construing s. 57 of the one Act with s. 6 of the other. [His lordship read s. 57.] We are driven here to determine is this a case fit to be tried before the superior court. Judging as we are in the habit of judging under the Act of 1870, and regarding the fact that the amount sought to be recovered exceeds £50 by a considerable amount, we think it is a fit case for the High Court of Justice, as, without saying she will succeed at all, we think the plaintiff, if she does succeed, will probably get a large sum by way of compensation. As to terms, under section 57, if the claim does not exceed £5 we have no power to make an order without requiring security for costs, but if the claim exceeds £5 we may make an order in a fit case. But, where we think the case is

more fit to be tried in the High Court than in the County Court I do not see why the plaintiff should be called upon here to give security for costs. The order will have the effect of a certiorari.

FITZGERALD, B.—I concur, but it is not to be taken as decided that an order for removal would be granted where the sum claimed exceeded £50.

PALLES, C.B.—I assent.

*Order made absolute, costs of both parties costs in the cause.*

Solicitor for plaintiff: A M<sup>r</sup> Erlean.

Solicitors for defendant: Messrs. Seeds.

#### LAND COMMISSION.

(Before O'HAGAN, J., LITTON, Q.C., and J. E. VERNON, Esq.)

ADAMS AND OTHERS v. DUNSEATH. (1.)

SHEPPARD AND OTHERS v. TENNANT.

Jan. 11, 12, 16, 1882.—Practice—Report of independent valuer—Communication of, to litigants—Examination of valuer—Land Law Act, 1881, s. 48 (4).

Where, in determining any question relating to a holding, the Land Commission has directed an independent valuer to report to the Court his opinion on any matter referred to him, under the Land Law Act, 1881, section 48 (4), such report will be communicated to the litigants, so as to be subject to comment on either side before the Court pronounces judgment. Mr. Vernon dissenting.

Appeals from decisions of Assistant Commissioners, determining judicial rents.

In the case firstly above entitled,

Holmes, Q.C., for the landlady, appellant, applied that the report made by the independent valuator appointed by the court under the Land Law Act, 1881, s. 48, should be communicated to the parties, and that their advocates should have an opportunity of considering and commenting on it before the court pronounced judgment. In any contested litigation before any court of justice it is the duty of counsel to ascertain all circumstances and documents which might form the basis of decision; and this document is not different, save in one or two particulars, from any other document that may be used in evidence. Under ordinary circumstances evidence is a statement made under the sanction of an oath, and by a person subject to examination and cross-examination; but the Legislature can, if it sees fit, under certain circumstances, dispense with the oath or a sifting by cross-examination. For many reasons the litigants on both sides should have an opportunity of seeing the report. No matter how skilled a valuator is he may be liable to make a mistake, and he is the more open to make a mistake if he is making a valuation of land in a district with which he was not previously acquainted. Persons who were acquainted with the district, upon reading the report, might be able to detect an error which no amount of skill on the part of the valuator, coming from another part of the country, would be able to avoid, and there might also be errors which could escape the notice of the commissioners, and be detected by the counsel engaged in the case. Then, the court in giving its decision could not altogether ignore the report, and could not entirely avoid references to it. And if they intimated that there was something behind the evidence given in court which influenced them in coming to the conclusion they did, that it need hardly be said would be a judgment which would go forth

\* See *Doyle v. Richardson*, 6 Ir. L. T. Rep. 56; *sed vide Rodgers v. Johnston*, 11 Ir. L. T. Dig. 23. And as to the questions with reference to the amount of damages recoverable, see *Toole v. Shaw*, 12 Ir. L. T. & S. J. 47, and paper by the present writer (E. N. B.) in 14 *ib.* 611. How should a like question be determined, arising in reference to the existing limits of compensation provided by the Met. Inner Circle Completion Act, 1874, s. 74 (*et cf.* the Merchant Shipping Act)?—[Ed.]



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without authority and would return without respect. The judge would have to state to some extent whether or not the evidence of the report had been acted upon, and if the court allowed the contents of the report to be known to some extent, it would be illogical not to let the whole of it be known. There is another ground to which attention should be called as affording a strong argument and reason of letting the report be at the disposal of the litigants. It had been stated by the Judicial Commissioner on the previous day that he had considered the matter with reference to cases in which an independent valuator had been appointed by the court below under s. 37, and that it was the right of the litigant in that case to see it.

[O'HAGAN, J.—I did not say it was his right. What I said was that it would be a right thing; and my reason was that it might influence him one way or other with regard to appealing]. At all events, it is an argument in support of our proposition.

[O'HAGAN, J.—At what stage of the proceedings would you say the report should be placed at the disposal of the litigants?]

As soon as the report is in the possession of the court. If it is in their possession at the commencement of the case we should get at it, or as soon as the report is made to the court it should be given to us. We look upon it to a certain extent as a public document.

[O'HAGAN, J.—The Legislature seemed to have contemplated that the report would be asked for after the case. What would be done then?]

In that case it ought to be furnished so that there would be 24 hours, or some sufficient time to enable counsel on either side after reading the report to appear before the court, or to submit to the court in writing whatever appeared of importance.

[LITTON, Q.C.—If the report was given during the progress of the case, the whole case would be fought out over it. O'HAGAN, J.—It would be impossible for any tribunal not to be fully impressed by the arguments Mr. Holmes has urged, but there might be great inconveniences as the result of the practice being varied, and there might be great complaints of hardship in some cases. In one case, for instance, the report might be made before the case, and the litigants might get it, and be able to examine witnesses about it without any opportunity being given to the gentlemen who made it to explain. In another case the litigant might not have an opportunity of examining or cross-examining witnesses; so that the variety of practice would necessarily lead to great complaints. Suppose we yielded to your application and gave the report to counsel on both sides after their evidence was closed? That is very reasonable.

Dodd, on behalf of the tenant, joined in the application. The reports are public documents, and could be got in the manner that other public documents are got—by moving for their production in Parliament. If such happened it would not be salutary to find that there were certain things in the report by which the court had been influenced, and which counsel, if he had known they existed, could have dealt with in a satisfactory manner. It is for the interests of the public, as well as of the profession, that the report should be given to the litigants, and it would also be for the interests of the tenants.

In the cases secondly above entitled,

Overend, on behalf of the landlord, supported the same contention.

Mr. M'Mordie, solicitor, for the tenants, contra.—In what position would the Government be placed supposing a *prima facie* case was made out assailing such a report if it was made public? The court would be obliged to repudiate those whom they had appointed for their own guidance and assistance. We all know that many witnesses might be damaged in the box, so far as public opinion was concerned, while the value of their testimony might not in the smallest degree be affected. It is, therefore, doubly desirable that nothing should occur in relation to these assessors and their reports that would tend to weaken the value of their testimony in the eyes of the public, or shake confidence in this tribunal. To assail the report of the assessors, who are not examined as witnesses, is to assail the court itself.

[LITTON, Q.C.—Mr. Holmes's suggestion was not that these reports should be handed to the parties to enable them to bring forward discrediting witnesses, and to impeach their reports, but that at the conclusion of all the evidence counsel should be allowed an opportunity of seeing them, so as to make any observations they might think desirable.]

There would then be discussion on the reports, and the court ought to consider that there must be some finality to litigation. Logically, if this proposal be acceded to, there is no reason why it should not be asked that every member of the court should be obliged at some stage of the case to submit himself to examination and cross-examination. There must be some person finally in whom we are to have confidence, and if we are to have confidence in this tribunal the best way to secure that confidence is not to make an inroad into its private transactions or to attempt to get from it such information as it might think desirable to get to assist it in coming to a just conclusion. The shorter litigation is the better, and the less time occupied in courts the better for the administration of the law and the public interest, and it would be deplorable, if there was nothing else in this matter, that an hour should be occupied in discussing the accuracy or otherwise of these reports. Supposing the assessors were shown before the public to have generously erred in some case, would not the court be obliged at once to dispense with the services of the gentlemen, and yet these errors might be as easily detected by the court as by any of the persons here engaged.

#### Decision deferred.

O'HAGAN, J.—In the cases in which Mrs. Dunseath is landlady, and David Adams and others are tenants, Mr. Holmes has made an application that the reports of the independent valuers, whom we appointed, pursuant to the 48th section of the Act, should be communicated to the parties, and that the advocates on either side should have an opportunity of considering and commenting upon them before the court pronounced judgment. Mr. Dodd, who appeared for the tenants in the same cases, supported the application. On the other hand, Mr. M'Mordie, the solicitor for the tenants in the succeeding cases, in which Mr. Tennant was landlord, urged upon us very strongly that we ought not to yield to the application of Mr. Holmes. He contended that these reports should be treated as confidential documents intended for the eye of the court alone—that the valuers were to be deemed in the nature of assessors forming part and parcel of the court, whose reports should not be disclosed to the parties any more than the communications which a skilled member of the court might make to his less expert brethren. He urged, moreover, that the independence which is to be the characteristic of these valuers, and which forms the reason for their existence,

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would be seriously affected if while prosecuting their inquiries they knew that their reports would be subjected to searching and hostile criticism. He said that if their reports were to be put into the hands of counsel the matter could not rest there—that the valuers must be put into the box to explain their reports; that they should be examined and cross-examined; confronted with the evidence given by the experts employed by the parties; and that thus they might become discredited and cheapened and their whole worth as independent witnesses seriously affected. Some of these consequences need not, I think, ensue, as I shall state presently. But, Mr. M'Mordie's general view is undoubtedly based upon reasons of weight, and I own I should be glad if it were possible to be enabled to avail ourselves of the assistance of men as skilful and trustworthy as we believe our valuers to be, given to us in absolute confidence. Nevertheless, I feel, as I felt during the delivery of Mr. Holmes's argument, that to any lawyer trained in our ideas of jurisprudence his reasons are absolutely irresistible. In truth, our whole forensic system is one of publicity and openness. Litigants never would endure that their rights should be decided upon, and their property affected for secret and undisclosed reasons. Mr. Holmes put it even in a stronger point of view. However honest and careful the valuers may be, their reports may contain fallacies which might pass undetected by a judge, but which might not escape the more sharpened eye of an advocate. Is the judge then to decide, at the risk of being misled, without having obtained that assistance which, if afforded in the usual way by the professional men of either side, might have preserved him from error? No judge could, I think, feel quite at his ease in so deciding. This observation is made all the stronger by the words of the section, enabling the judge to direct the valuer to report facts and circumstances to enable the Commission to form a judgment as to the subject matter of the report. Further, we must look to the matter and grounds of our judgment as pronounced from the Bench. If we profess to go upon the sworn evidence, omitting all reference to the reports of our valuers, whereas in fact and truth those reports are to some extent what we go by, our judgments are unreal and illusory. If we refer to them at all, we, as it were, embody them, and could not on any principle refuse to give the parties the opportunity of judging whether our statement of their contents were right or wrong. But lastly, there is the all powerful authority of precedent. The provision in question contains nothing new. It has been a very common experience in our courts that a judge, hesitating between the conflicting evidence of experts, has referred the matter to some independent skilled person. The rules promulgated under the Irish Chancery Act, 1867, contain an express provision for that purpose. Every lawyer who has practised in Chancery must have in his memory cases in which this course has been adopted. Now, it never was thought of that the reports or certificates should be kept secret, and be seen by the judge alone. They are part of the proceedings kept for record in the office, copies given to the solicitors, and briefed to counsel. And here I revert to Mr. M'Mordie's argument as to the cross-examination of the valuers on oath, which he said would be the necessary consequence of disclosing their reports. In my opinion it need not be so. It certainly is not so in the cases I have referred to of similar references made by the supreme court. I put to Mr. Holmes a question, namely, supposing that we had acceded to his application, at what period of the proceedings he thought it would be most convenient to furnish the reports. He said he thought it would be quite satisfactory if the reports were given to the parties at the close of the evidence, so that the advocates might have an opportunity of commenting on them in their address to the court. In this view I concur. We shall, therefore, permit copies to be taken of the reports by the

respective solicitors, and we will hear counsel address us in all these cases of Mrs. Dunseath to-morrow morning. Our valuers, I may mention, are Mr. Gray, an English gentleman long connected with land in this country, both as an agent and as a farmer, and Mr. Murrrough O'Brien, who is at the head of the purchase and sale department of the Land Commission, and who, during a long period of service under the Church Commission, has had large experience in the valuing of land. Mr. O'Brien's services as valuer can, of course, be only temporary, as his own department has paramount claims upon him.

LITTON, Q.C.—It is right it should be understood that Mr. Murrrough O'Brien has not undertaken the duty of making these valuations except at the instance of the Court. He has not for that purpose given up the office which he at present holds in Dublin. With regard to the reports, I entirely concur in the propriety—and I might almost say the necessity—of handing these reports to the parties before finally adjudicating on the cases. I am equally clear that it would be utterly impossible to call these gentlemen who gave their reports to be placed in the witness box or submit to cross-examination. That is a course that has never been adopted in the practice of Equity Courts, and it is a course that we are not prepared under any circumstances to approve of.

MR. VERNON.—I am bound to dissent from that view on these grounds—that I do not see how it is possible that counsel ought to have before them a document with which they are to deal without the party who has furnished that document having the opportunity of explaining, and of giving others the opportunity of cross-examining him. I believe that the cross-examination of a witness is the essence of his testimony; and believing that, I think they should be cross-examined, or that their reports should be considered as the private report of the Assessor of the Court. I entirely take Mr. M'Mordie's view of this subject, and I believe that cross-examination will be found eventually to follow.

#### LAND SUB-COMMISSION.

(Before ROMNEY FOLEY, Q.C., LAURENCE DOYLE, Barrister-at-Law, and JAMES HOWLIN, Esqrs.)

#### SMITH v. COLLEY.

Jan. 1, 2, 8, 1882.—*Determination of judicial rent—Definition of tenant—Sub-letting without landlord's consent—Land Law Act, 1881, s. 57, not retroactive—Evidence of value—Tenant's valuers uncontradicted—Independent valuations by Assistant Commissioners ultra vires.*

*A tenant who has sub-let portion of his holding, and delivered over the occupation thereof, under circumstances which did not amount to a default up to the passing of the Land Law Act, 1881, but in the exercise of the right incident to his tenure at the time of the passing of that Act, is not precluded from applying to the court to have a judicial rent determined, notwithstanding the definition of "tenant" given in section 57, with the clause thereto added, in reference to sub-letting, which provision is not to be construed as retroactive.*

*Where no evidence of value is given save by the tenant's valuers, there being no conflict of testimony, the Assistant Commissioners are not obliged and ought not to go beyond the evidence so adduced, and should not make an independent valuation of the land upon their own judgment for the purpose of determining a judicial rent.*

Application, by tenant, to fix judicial rent of holding, consisting of 265a. Or. 22p. statute; present rent, £247 4s. 6d.; poor law valuation, £162. The general circumstances appearing are sufficiently explained in the judgment; and in reference to the point as to sub-

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letting, the tenant deposed as follows:—I have a carpenter occupying a house on the farm. He holds a rood of land. He pays me £4 a year, and I have to keep the house in repair for him. I give him the grazing of a sheep, two goats, and an ass, in addition to the house, for £4 a year. He works for me and other people. When I got possession in 1848, the place was set to this carpenter, and continued so up to the present time. Mr. Enos Morris, the sub-agent, was aware of the sub-letting all the time, and he never made any objection on the part of the landlord. By the agreement for the sub-letting, produced on the part of the tenant, it appeared that the premises occupied by the carpenter were vacant in 1879.

*Miles Kehoe*, for the tenant.

*T. P. Law*, Q.C., for the landlord.—This application should be dismissed, inasmuch as the tenant, having sub-let portion of his holding, without the consent of his landlord, has no claim under the Land Law Act, 1881. No doubt the amount sub-let was very small, but still the principle is the same as if there had been a large sub-letting. One of the most startling changes effected by the new law is the 15th section of the Act. Under the Act of 1870, when a tenant's lease terminated, or he was evicted, all the sub-tenancies fell with it, but under the 15th section of the Act of 1881, when the tenant's interest terminates, the sub-tenants become immediate tenants to the landlord: the result being that were it necessary to evict Mr. Smith in this case for non-payment of rent, the carpenter would remain a direct tenant to the landlord. The Legislature may not have contemplated this in passing the 15th section, but it is one of the results, and, therefore, it becomes vital to the landlord to urge on the Court the position in which he was placed. By s. 57 the person who comes into Court to claim the benefit of the Act must, at the time of his coming into Court, be a "tenant," who is defined as a person "occupying" land, &c.; and this construction derives greater force from the clause added to that definition, that a tenant sub-letting with consent shall still be deemed in occupation. But here no consent to the sub-letting is shown, and the tenant is not in occupation. It will be argued that the section operated prospectively, but we rely on section 2 to dispose of that contention, expressly contemplating the future when enacting that a tenant "shall not" sub-divide his holding without the consent the landlord, in writing, when the tenancy is from year to year. Again, it may be sought to make out that the consent of the landlord had virtually been given to the sub-letting, because he had not brought an ejectment against the tenant. If he had, it would be deemed a case of most capricious eviction under the Act of 1870. Mr. Smith had a very easy remedy. He could get rid of the carpenter, and then come before the Court in proper form at the next or a future sitting; but as he stands at present, we submit that the Court has no jurisdiction, and that this application to fix a judicial rent should be dismissed. We shall rest our case on this point, and will not go into any evidence, lest in case of an adverse decision, it might prejudice our rights of appeal.

*Miles Kehoe*, in reply.—As regards the alleged startling changes effected by the 15th section of the Act of 1881, it would be a much more startling thing if a little holding of half a rood of garden could affect the rights of a man in respect of a holding of 265 acres, and drive him out of Court. This 57th section can have no application to the present case. At common law the tenant had a right to sub-let his holding; for a while

that right was abrogated by the sub-letting Acts; those Acts were repealed; and at the date of the passing of the Land Law Act, 1881, it was the right of every tenant to sub-let his holding in the absence of agreement to the contrary. Therefore, this clause in the 57th section, if construed as the landlord contends, takes away a right, or rather imposes a penalty on the tenant, who exercises the right which he previously had. It is an elementary rule of construction that penal statutes or clauses in a statute must be strictly construed; but here it is contended that a tremendous penalty is inflicted, not by express direct enactment but by an implication that the tenant is forbidden to sub-let, alleged to arise from the obscure terms of a definition clause in the Act. Further, this being a section not affecting procedure but the vested rights of parties, it is not retrospective but prospective only. The case of *Chute v. Busted* (16 Ir. C. L. R. 222), which went to the Exchequer Chamber, and was decided on the 3rd section of the Act of 1860, is important to show that the clause now in question cannot have a retrospective effect. Even assuming it was retrospective, the landlord's agent was aware of the sub-letting; the rent was received with knowledge of it; and there is nothing in the section requiring the consent to be in writing. The Commissioners are entitled and bound to look to the general purpose of the Act, and to decide if possible in accordance with it, and it would be an astounding thing if the first result of this Act were to be that probably ten thousand farmers, in order to qualify themselves to come in here, should begin by making clearance of all their tenants, and turning at least ten thousand poor families forth upon the world.

*Decision deferred.*

*Mr. Foley*, Q.C.—In this case, in which Mr. H. F. Colley is landlord, and Mr. Arthur Smith, Collinstown, tenant, the holding contains 265 a. Or. 22 p. statute measure, the annual rent being £247 4s. 6d., and the poor law valuation, £162. It appeared in evidence that Mr. Smith succeeded his uncle in the occupation of the lands in 1848, Mr. Colley having become the purchaser of the property in 1846. In 1861, on the falling in of a lease, the rent was raised from £204 12s. 4d. to £247 4s. 6d.—say an increase of about £40. These facts, as I have already said, were stated by the tenant in his evidence. On being cross-examined by Mr. Law, the tenant frankly admitted that a carpenter named John Langan occupied a house and one rood of land on the premises by virtue of an agreement or contract in writing, dated 29th April, 1879, at an annual rent of £4. Mr. Law thereupon submitted that the claim of the tenant should be dismissed, inasmuch as he had sub-let a portion of his holding without the consent of the landlord, and that therefore he had no claim as a tenant under the Act of 1881. Mr. Smith's remedy, counsel contended, was first to get rid of the carpenter, and then come before the Court in proper form at a future sitting. We invited Mr. Law (subject to the legal question) to give evidence as to what would be a fair rent for this holding, but he preferred to rest his case upon the legal point raised, lest, in the event of an adverse decision by us, he might be prejudiced in his right in case of an appeal. Mr. Kehoe, for the tenant, submitted that the 57th section of the statute was inapplicable to the facts of the case, and should be construed with reference to acts of future and prospective sub-lettings; that the consent of the landlord was not required, and that his client was entitled to the full benefits of the Act. The question is plainly one of the greatest moment. It is raised, I believe, for the first time by Mr. Law, on

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behalf of the landlord.\* It will, or may affect the rights of a large portion of other tenants in the community; consequently it has received, as it was entitled to receive, from me a most careful, anxious, and respectful consideration. The contention for the landlord is presented in this way: By the 57th section of the Land Act, 1881, a tenant is defined to be a person occupying land; and for the purpose (as I conceive) of enlargement, not of restriction, this provision is subjoined—"Where he sub-lets part of his holding with the consent of his landlord he shall be deemed to be still in occupation." Are these words necessarily retrospective, as they must be in order to create an incapacity or disability in the tenant who sub-let a portion of his holding at a time when, according to the then state of the law, this tenant had as good a right to sub-let a part of his holding as the landlord (if owner in fee) had to sell the estate? At the best the words are ambiguous, and susceptible, if you choose, of either interpretation. The rule of construction to be applied is stated in the case of *Chute v. Bustard*, decided in the Exchequer Chamber, in which Mr. Justice Christian said—"I confess I do not see anything to entitle this statute (Deasy's Act) to exemption from the ordinary rule of construction; none of its sections are retrospective, unless expressly made so by the Act." In reason and good sense why should it be held otherwise? Under the then existing state of the law, which was always recognised until interrupted by the sub-letting Acts, the right of a tenant to sub-let, unless he was restrained by a condition or covenant in a lease or agreement against sub-letting, was as clear as the proprietary right of the landlord himself. Lord Eldon was so averse to restrictions of sub-letting as to hold them to the very letter of the contract. The tenant in this case was in no default when the Land Act of 1881 was passed, and therefore I am of opinion that the act of sub-letting with consent could only apply to some act of sub-letting to the validity and efficacy of which the landlord's consent was material, and cannot have reference to an act of sub-letting which was an incident to the independent right and tenure of the tenant at the time when this Act was passed. Let us pause for a moment to consider the vast consequences of Mr. Law's contention, and the extent to which its success would invade the remedial policy of the Land Act of 1881. Under circumstances similar to the present, the tenant's right to sell under section 1 would be forfeited. According to section 5, sub-section 3, sub-letting without written consent on the part of the landlord is forbidden as a condition of a statutory lease and the fixing of a judicial rent; but, under the 13th section of the Act the breach of this condition may be atoned and condoned for if the Land Commission consider that the tenant may be justly and safely relieved from it. Is it to be argued that a tenant, who was in no default when he exercised his undoubted right of property by sub-letting, is to be held to be incapacitated and disabled from obtaining a statutory lease at a judicial rent? In the House of Lords Lord Cairns has declared that the words of a will, contract, or even of a statute, may be rejected if a literal construction of them would lead to a manifest repugnancy and incongruity.† At all events, I have carefully looked to see if the words would admit of a construction consistent with the policy of the Land Act. For these reasons, I may state that I am not of Mr. Law's opinion as to the construction of the mea-

sure, and I therefore hold that the tenant is well entitled to a statutory lease, and to have a fair rent fixed; and the question may arise, what was our mode of fixing it. In this case (among others) Mr. Law, on the part of the landlord, declined to go into evidence, and we are consequently left without any evidence of the value of the land, except that which was given on behalf of the tenants. Under these circumstances, inasmuch as there is no conflict of testimony in these cases, Mr. Doyle and I are of opinion that the Sub-commissioners are not obliged, and ought not to go beyond the evidence adduced before them, and should not make an independent valuation of the land upon their own judgment for the purpose of determining a fair rent. The judicial rent which we have fixed (£187 16s.) is, accordingly, based on the uncontradicted evidence of the tenant's valuers, on which, in our view of the matter, we are bound to act, and is not to be considered as fixed upon our own opinion of the absolute value of the holding. Each party to pay costs. Game to be reserved to the landlord. Our general observations are, that the rents on this estate were increased in many instances in or about 1861, a time at which the country enjoyed a great amount of agricultural prosperity. In consequence of remarks which were made during the hearing of these cases, we feel called upon to notice the fact that although the landlord of this estate is non-resident, yet he seems to have always taken a great interest in the well-being of his tenantry. Sums varying from £75 downwards were given at five per cent. to several of the tenants for building and other purposes; to others, slates, timber, &c., were given. On the bog-lands, main drains were opened at the landlord's expense; and a school-house was also built on the property. It has appeared in evidence that an income of from £40 to £80 a year had been received by the landlord from the sale of turf, yet he voluntarily gave this right up for fear the bogs should be cut out, and the tenants—who are permitted to have turf free of charge—be left at any future time without that advantage. Having made inquiries as the dwellings of labourers on the property, we have been informed that the landlord has set apart several houses, with small allotments, for that purpose, which are let at low rents, and are kept in repair free of charge. We consider that these observations are due to Mr. Colley, because it has been stated that he is a non-resident landlord.

Mr. DOYLE concurred.

Mr. HOWLIN.—My colleagues are of the opinion expressed in the judgment just delivered, that they have no alternative but to fix a rent in accordance with the evidence placed before them by valuers on behalf of the tenants. Being both gentlemen possessed of high legal attainments, it would ill become me to venture to express an opinion contrary to their views, but as to what is my own duty in the matter I feel no doubt. In my opinion, my duty is to aid in fixing, in each case, as the judicial rent that which I believe to be the best of my own judgment to be a fair one to both landlord and tenant on "live and let live" principles, and which may remain unchanged for fifteen years. I have inspected both these farms, and I must say I cannot agree in the view taken by the valuers on the tenants' part as to what would constitute a fair rent for them. The majority of the Court having decided otherwise, I abstain from expressing my opinion as to what would be a fair rent, particularly as the cases will probably come before a higher tribunal. I merely wish to mention that in determining the rents in these three cases I have taken no part.

Order accordingly.

Solicitor for tenant: *T. O'K. White*.  
Solicitors for landlord: *Messrs. Fry*.

\* It is stated that the question was previously raised before Assistant Com. Fitzgerald, and was decided by him in the same way; but, that the contrary was decided by Assistant Com. Reeves, Q.C., in *O'Callaghan v. O'Callaghan*, Jan. 16, 1882.—[*Rep.*]

† See notes to *Vernon v. Rye*, 9 Ir. L. T. Rep. 125; *Shearman v. Kelly*, 10 *ib.* 122; and see *per Com. Litton, Q.C., Rutledge v. Rutledge*, 15 *ib.* 110; *Ex p. Walton*, 45 L. T. N. S. 1.—[*E. N. B., Ed.*]

L. C.]

M'GOWAN v. CLEMENTS.—ALGEO v. CLEMENTS.

[L. C.]

(Before CECIL ROCHE, Barrister-at-Law, M. G. LYNCH, and H. R. MORRISON, Esqrs.)

M'GOWAN v. CLEMENTS.

ALGEO v. CLEMENTS.

Dec. 20, 1881; Jan. 2, 1882.—*Town park, what constitutes—Accommodation land—Holding not let for that purpose—User as such—Land Law Act, 1881, s. 58 (2).*

*In order to constitute a town park, within the meaning of the Land Law Act, 1881 (44 & 45 Vic., c. 49), section 58, sub-section 2, it is not necessary that it should be shown by affirmative evidence that the holding was originally let and taken quod accommodation land, provided that the actual user of the holding was as accommodation land. Lord Dunally v. Hodgins, 7 Ir. L. T. Rep. 181, and Chism v. Beatty, 10 ib. 93, discussed. Wilson v. Earl of Antrim, 8 Ir. L. T. 501, applied.*

Applications, by tenants, to fix judicial rents.—In the case firstly above entitled, the tenant, a carter, said he held the farm in question (39a. 29p.; rent £15; valuation £7) within half a mile of Manorhamilton, with another holding; it had been originally held by his father, and since his death by the tenant and his brother, who used to get receipts for the two holdings, at £19 upon the one receipt. In 1857 the tenant got separate receipts, but his rent was raised to £13. Lord Leitrim, the former landlord, used himself to receive the rents, and with each receipt a tenant got a notice to quit. In 1870, after the Land Act passed, his receipt was made out for Ross, a town park. In 1876 he got notice that his rent would be raised £2 per year. Accordingly, next November when he went to pay his rent he was asked to pay £15. He demurred, as the land was not worth it, and Lord Leitrim told him if he would not pay the increased rent to give up possession. After argument the tenant finally paid the increased rent. Lord Leitrim then told his clerk to draw up an agreement by which the tenant was bound to take the holding at the increased rent and as a town park, but the tenant refused to sign it. About ten days after, the tenant received an order from the bailiff to attend at his office. He attended, and was presented with an agreement which he was asked to sign. He again refused, and was again threatened with eviction, so he signed it. The agreement was produced. It consisted of three pages of closely printed small type, and the tenant on signing it deprived himself of the benefits of the Ulster custom or any other benefits which he might have under the Land Act of 1870, compensation or otherwise. He also had to bind himself to take the lands as town parks. He was not allowed to erect buildings or keep sporting dogs, and would be fined £3 if he kept a goat.

Michael M'Gowan valued the yearly letting at £8 2s. 6d., and Patrick Gilgan at £8.

Mr. Stewart, agent of the property, said he would give the lands at the old letting, £13. When Colonel Clements succeeded to the estate he (witness) was told to make a re-valuation of the estate, and reduce the rents where necessary. This re-valuation was nearly completed. He would not depend on the agreement to make the lands town parks, but would let it rest on the evidence.

Mr. Gore Dacre Cochrane, agent and farmer, valued the lands at £13 yearly.

In the case secondly above entitled the circumstances were similar, save that the tenant, while living in the town, carried on a trade therein in leather and groceries.

The acreage of her holding (about 400 yards from the town) was 39a. 29p.; rent, £56; valuation, £25 5s.

Mr. C. Sedley, solicitor, for the applicants.

Duns, for the landlord, contra.

The following cases were cited:—*Adams v. Jones*, 5 Ir. L. T. Rep. 74; *Lord Dunally v. Hodgins*, 7 ib. 181; *Chism v. Beatty*, 10 ib. 93; *Wilson v. Earl of Antrim*, 8 Ir. L. T. 501.

*Decision deferred.*

Mr. ROCHE.—In these cases, I have reserved judgment for the purpose of considering whether the lands are town parks within the meaning of section 58 of the Land Law Act, 1881, and as such excluded from its benefits so far as regards fixing a judicial rent. In the first case, it appeared that Thady M'Gowan, the present tenant, and Denis, his brother, were in occupation of two farms, one of them the farm at present in dispute, and the other the adjoining farm, as tenants from year to year of the then Lord Leitrim, in the year 1851. In that year and up to 1857, joint receipts were given for the two holdings; but in that year, the late Lord Leitrim having come into his estate in 1855, a separate receipt was given for the holdings, and the rent raised.—Thady M'Gowan being treated as tenant of the farm now in dispute, Denis M'Gowan retaining the adjoining farm. There has been no change in Thady M'Gowan's tenancy since, save successive additions being made to his rent by the late Lord Leitrim. In May, 1877, an agreement was forced upon the tenant by the then Earl of Leitrim, by which the tenant acknowledges the holding to be a town park. That agreement, I should, for my part, have been inclined to treat as a nullity on the ground of its having been obtained by duress, but it was not necessary for the Court to decide the point, as Colonel Clements, the present landlord, acting with that high sense of honour and fairness which has marked his dealings with his tenantry in all cases which have come before me, has waived any rights he might have acquired by that document, and rests his case here on the simple fact as to whether these cases are or are not town parks, independent of any estoppel on the tenant's part. The tenant admittedly lives in the town of Manorhamilton, and is by trade a carter. The lands are situate about 700 yards from the town. Such being the facts, let us see do they fall within the definition of town parks. Baron Fitzgerald, in *Lord Dunally v. Hodgins*, 7 Ir. L. T. Rep. 181, lays down that there are three requisites for a town park—the first, that the land should adjoin a city or town, which requisite this holding certainly does comply with; second, that it should bear an increased value, as accommodation land, over and above the ordinary letting value of lands occupied as a farm in the neighbourhood. Now it is on this point, and this point only, that I entertained any doubt in this case—can it be said this is accommodation land?—and this doubt rose from the further definition given by Baron Fitzgerald in *Lord Dunally v. Hodgins*. He defines accommodation land to mean “land taken by persons living in a city or town for the accommodation of their residence.” Now, does this mean that we should hold no case to be a town park in which there is not affirmative evidence of the lands having been taken for the purpose of accommodation lands? I think not. In *Chism v. Beatty*, 10 Ir. L. T. Rep. 93, Don. 506, Chief Baron Falkner, after referring to and approving of the definition given in *Lord Dunally v. Hodgins*, says:—“I am not satisfied that the farm in question was taken or used for this purpose, and I am of opinion that the value the lands bear is to be attributed not to any particular purpose for which they have been taken or used but to the locality in which they are situate, and that such value is their ordinary value as a farm.” In this judgment the learned Chief

\* See *Gallagher v. Earl of Antrim*, Don. 536; *Davis v. Earl of Arran*, *infra*; and other cases collected by the present writer (E. N. B.) in 16 Ir. L. T. 683.—[Ed.]

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[L. C.]

Baron evidently supplements the definition in *Lord Dunally v. Hodgins* by the use of the words "or used." Indeed, the inconveniences which would otherwise arise are manifest. How is proof to be given of what the intention of the parties was who first made the contract? It may have been made forty or fifty years ago. Who shall say that the original contracting parties intended the lands, at the period of letting, to be used as accommodation or not? In fact if this be the law, it is virtually impossible to prove that such a thing as a town park exists in Ireland; and this portion of the Land Act is a dead letter. Besides, are we not coerced by the strong and plain language of Mr. Justice Keogh in *Wilson v. The Earl of Antrim*, 8 Ir. L. T. 501: "No doubt, years ago, when there was nothing there but Glenarm Castle, there could be no such thing as a town park in existence there, but the world is every day progressing, and lands that were not town parks 200 years ago might become town parks by the fact of a town growing up about them." For these reasons the question I put is in the language of the Chief Baron in *Chism v. Beatty*—Was this farm taken or used for the purpose of the accommodation of a residence in a town or city? I answer that it was so used; as to whether it was so taken I have no reliable evidence. The third requisite is that the lands should be in the occupation of some person living in the city or town. This the tenant admittedly is. In his case, therefore, I find all the requisites of a town park. That the lands should be "ordinary termed town parks" is not a requisite but merely an explanatory expression: *per* Fitzgerald, B., in *Lord Dunally v. Hodgins*. I, therefore, declare the lands to be a town park, and, as such, we have no power to fix a judicial rent, and the originating notice must be dismissed.

In *Mary Algeo's* case the facts are simpler. The tenant, or her predecessor, seem always to have resided in the town, where she carries on a trade in leather and groceries. There is no doubt the lands were used for accommodation of the residence in the town, and bear an increased value in consequence. The distance is about 400 yards from Manorhamilton. This case must be dismissed on the same grounds as the other.

(Before ULICK BOURKE, Esq., Barrister-at-Law, ED. W. O'BRIEN, and WM. DAVIDSON, Esqrs.)

DAVIS v. EARL OF ARRAN.

Dec. 7, 1881.—Town park—Accommodation land—Increased value—Rent receipts—Office books—Land Law Act, 1881, s. 58 (2).

A tenant, a retired grocer, who farmed over 200 acres, held land adjoining the town of Donegal, but in a different townland. He lived in the town and used the land for grazing cattle, brought from his other farms. The words "park" and "town park" had appeared, under protest from him, in the rent receipts since 1871. The lands were described as "town parks" by means of a pencil entry in the rental dated 1st November, 1857:

Held, that, there being no sufficient evidence that the lands bore any increased value as accommodation lands over and above the letting value of an ordinary farm near the town, the holding was not a town park within the meaning of the section 58 (2) of the Land Law Act, 1881.

Application to have judicial rent fixed for the lands of Mullins, containing 4a. 3r. 35p., statute measure; present rent £6 18s. 6d.; valuation, £4.

The facts, as they appeared in evidence, are sufficiently explained in the judgment.

*Mr. Mecready*, solicitor, for the tenant, cited *Gallagher v. Earl of Arran*, Don. Rep. 586; *Boyd v. Graham*, 5 Ir. L. T. Rep. 104, Don. Rep. 406.

*Kisbey*, for the landlord.

*Decision deferred.*

*Mr. Bourke*.—James Davis, the applicant in this case, resides in the town of Donegal, has been a farmer all his life, and is now farming over 200 statute acres. He also had for about 20 years a grocer's shop in Donegal, but he retired from business about five years ago. In the year 1851 he took 4a. 3r. 35p. known as Mullins, situate about half a mile from Donegal, outside the boundary of the town, and in a different townland from the Town of Donegal. The yearly rent in 1851 was £3 10s., which rent has since been raised to £6 18s. 6d. According to the evidence before us, when James Davis took this land it was waste land, partly used as a brick-field, and James Davis drew soil to it, filled up the holes, levelled and drained it, and has since used it for feeding bullocks and young stock in summer, and as a winterage; the stock going to or coming from his other farms.

By the agency books produced it appears that the lands were described in Lord Arran's Rental as "Mullins" up to 1854; the Rental of 1855 is mislaid, but in the Rental of 1856 the heading for these lands, together with other lands, on some of which tenants reside, is changed from "Mullins," and is given as "Town Parks;" and this is continued up to the present time. In the receipts given to James Davis the words "his holding" were always used until 1870, but in 1870 they were changed to "Mullins," and in 1871 to "Mullins' Park," and in 1872 to "Mullins' Town Park," against which Mr. Davis is admitted to have protested several times.

The lands are undoubtedly in the occupation of James Davis, who lives in Donegal, they adjoin or are near to Donegal, and the only questions we have to decide are: whether these lands are such as are ordinarily termed town parks, and do they bear an increased value as accommodation lands over and above the ordinary letting value of lands occupied as a farm?

We have no evidence on either side that these lands were known as "Town Parks," except this alteration in the heading on the Rental, from 1856 to the present time, and the alteration in the form of receipts already alluded to, and objected to by James Davis. No further evidence is given that these lands were ordinarily known as "Town Parks," and, therefore, we do not consider this conclusive evidence. We have, therefore, to make out from the rest of the evidence is or is not this a town park?

Are these accommodation lands let at an amount over and above the ordinary letting value of lands occupied as a farm? It is not sufficient that they should bear an increased value because they are in the neighbourhood of a town; they must bear increased value as accommodation land; that is, land taken by a person residing in the town for the accommodation of his residence: *Lord Dunally v. Hodgins*, 7 Ir. L. T. Rep. 181, Don. Rep. 465. On the evidence, it appears that when these lands were taken, they were used as a brick-field, portion of them were levelled and drained by James Davis, were kept by him in grass, were not used for grazing cows for milking purposes, but were kept for accommodation land for feeding stock brought from other farms, and that it was not until 1870 that James Davis, after he had filled up the brick-holes and drained the field, was told that Lord Arran considered it to be a "town park."

The original letting value of this field of 4a. 3r. 35p. statute was 70s., and no increase was put on it until 1859, being the time when Lord Arran commenced a general increase of rent on his estate. Was this rent of 70s. an increased rent as accommodation taken by a person residing in the town for the benefit of his residence? We think the lands do bear an increased value, but we are of opinion that this is to be attributed, not to any particular purpose for which they may have been taken or used, but solely to the locality in which they are situate, and that such value is their ordinary value as a farm; and, therefore, we decide that these

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lands are not town parks, and fix £5 as the judicial rent and give the tenant his costs.

Solicitor for tenant: *R. Macredy, junr.*  
Solicitor for landlord: *Paul Dana.*

## BIGGER v. SHEIL.

Nov. 29, Dec. 2, 1881.—*Town park—Accommodation land—Sale by previous tenant—Holding described in lease as “park or field”—Land Law Act, s. 58 (2).*

A tenant in 1864 purchased a holding, within the town boundary of Ballyshannon, not generally known or ordinarily called in the locality a town park, but described in a lease of 1838 as a “park or field.” The land was used as accommodation land by the tenant, a butter merchant, living in the town:

Held, a town park within the meaning of the Land Law Act, 1881, s. 58 (2).

Application to have a judicial rent fixed of a holding in lands of Coolcolly, containing 8 acres 3 roods, statute measure; present rent, £18 2s. 10d.; valuation, £9 15s. 0d.

The material facts were as follows:—The holding, distant half a mile from Ballyshannon, was stated to be within the town boundary, and rates had been collected upon it as town rates since 1860. The tenant had been in occupation for 17 years, and gave £15 for his interest without the knowledge of the landlord. The tenant was a butter merchant, and lived in the town of Ballyshannon. He used the lands in connexion with his business as accommodation lands, mainly for grazing cattle, but had broken up and tilled about 3 roods. None of the land was broken up when he got it, but there was evidence that within the last 65 years it had been used for tillage, meadow, and grazing. The lands were not generally known as, nor ordinarily called town parks, but appeared as such in the rate collector's books. In a lease (the lessor's interest in which had been purchased in the Court of Bankruptcy by the landlord), dated 1st November, 1838, and produced in Court, the lands of which the holding formed a part were described as a *park or field*, and in the advertisements of the sale in bankruptcy they were called “town parks.” Two witnesses, produced by the tenant, fixed £10 to £11 as their estimate of the fair rent, but it was admitted that some land close by produced as much as £4 or £5 per acre yearly.

*Mr. Macredy*, solicitor, for the tenant, cited *Daly v. Scott*, Don. Rep. 388; *Boyd v. Graham*, 5 Ir. L. T. Rep. 104, Don. Rep. 406; *Gallagher v. Earl of Arran*, Don. Rep. 536; *Adams v. Jones*, 5 Ir. L. T. Rep. 74, Don. Rep. 414.

and *Boyd v. Graham* did not apply, as the tenant resided on the holding; he relied on the lease of 1838,

*Kisbey*, for the landlord, cited *Christy v. Gordon*, 13 Ir. L. T. Rep. 79.

*Decision deferred.*

*Mr. Bourke*.—This holding consists of 8 acres 3 roods, and the rent is £18. *Alexander Bigger*, the tenant, has applied to have his rent fixed, and *Dr. Sheil* has asked us to dismiss the application on the ground that this holding is excluded from the Act by reason of its being a town park.

We have seen the lands, and we have looked into the cases cited, and have carefully considered the definitions of town parks given in the Land Act of 1870, the Land Law Act of 1881, the judgment of Chief Baron Palles in *Chism v. Beatty*, 10 Ir. L. T. Rep. 93, Don. Rep. 507, and in *De Moleyns's Land Owners' and Agents' Practical Guide*, 229. On the evidence before us, we

have come to the conclusion that this holding fulfils the requirements necessary to constitute town parks. We, therefore, decide that this holding is a town park, and dismiss the application with costs.

It is right, however, to say that one of the Assistant Commissioners has a doubt in the matter, and would be glad if a further decision was taken on this case.

*Application dismissed with costs.*

Reported by *GEORGE H. SMITH*, Esq., Barrister-at-Law.  
(Before *G. FITZGERALD*, Esq., Barrister-at-Law; *A. COMYN*, and *P. MAHONY*, Esqrs.)

## MULLIN v. LAVENS.

Jan. 11, 17, 1882.—*Originating notice to fix judicial rent—Holding formerly held under lease for 21 years, expiring November 1, 1880—Reclamation—Building and drainage works executed by tenant during continuance of the lease and subsequently—Land Law Act, 1881, ss. 7, 8, (9).*

Where land was held under a lease for years containing a covenant on the part of the lessee for the execution of works of reclamation and drainage, and works of this description were carried out during the continuance of the lease and subsequent to its expiration:

Held, that such works were, to the extent covenanted for, to be treated as having been executed under the covenant, and therefore to be excluded from consideration on the question as to determining a judicial rent under the Land Law Act, 1881.

Application to have a judicial rent fixed in respect of a farm of land in Clare, Co. Tyrone, containing about 39 acres, held by Mullin as a yearly tenant, subject to a rent of £47 per annum.

From the evidence given it appeared that the late Alice Mullin had for some years, prior to 1860, held these lands as yearly tenant, at a rent of £44 per annum. At that time the bulk of the buildings now on the holding were erected. In the year 1860 an arrangement was entered into, by which a lease of the holding for 21 years, from 1st November, 1859, at a rent of £47, was agreed to be accepted. Accordingly, a lease dated the 9th March, 1860, from John Lavens to Alice Mullin, widow, and Peter Mullin, was executed, demising all that farm of land, messuage, and premises in the townland of Clare, Co. Tyrone, containing 40 acres, statute measure, or thereabouts, for a term of 21 years, from the 1st of November, 1859, at a yearly rent of £47. It reserved all timber, trees, minerals, quarries, freestone, lime, sand, gravel, &c., and game, to the landlord, and contained the following covenants on the part of the lessees:—“And also, that they, the said Alice Mullin and Peter Mullin, their executors, administrators, and assigns, shall and will, within the space and time of six years, from the said 1st November, 1860, fence, hedge, drain, improve, and reclaim a portion of the premises hereby demised, containing about six acres of cut-out bog, being part of the premises hereby demised, and make good pasture land or arable land of the same, and otherwise improve and manage the said piece or parcel of cut-out bog and premises during the residue of the term hereby granted, in a good and husbandlike manner, and shall and will sufficiently maintain and repair, amend, and keep in good and substantial order all buildings, windows, doors, fixtures, hedges, gates, ditches, drains, or fences, when and so often as need shall be;” and also a covenant, at the end of the term thereby granted, “to leave and yield up the premises and every part thereof,

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and all improvements made, and to be made thereon, in good and sufficient order, repair, and condition." The tenant and his witnesses deposed to additional buildings having been erected on the land, and to drainage and fencing works having been executed during the past twenty years; and on the part of the landlord objection was taken to the reception of such evidence in so far as it dealt with works of any kind done on the farm up to the 1st November, 1880, when the lease expired.

The Commissioners having determined on hearing the evidence, subject to a discussion afterwards on the legal point raised, the evidence was received and in effect proved that about 6½ acres of the farm had been reclaimed by the tenant at an alleged cost of from £10 to £12 per acre, and that a fence costing about £5 had been erected within the last twenty years, and some 4 acres drained many years ago.

[Mr. FITZGERALD.—I must now ask counsel for the landlord to look at sub-section 9 of section 8 of the Land Law Act, 1881, which provides that "no rent shall be allowed or made payable in any proceedings under the Act in respect of improvements made by the tenant or his predecessors in title, and for which, in the opinion of the court, the tenant or his predecessors in title shall not have been paid or otherwise compensated by the landlord or his predecessor in title," and then at section 7, paragraph 1; and to consider whether he can contend that the landlord here had a right to have these improvements included in this valuation of the farm for the purpose of fixing a fair rent.]

*Smith*, for the landlord.—The two sections referred to have no application. They might be held to apply to cases where, there being no special duty cast by the instrument upon a lessee, he had voluntarily made improvements upon his holding during the continuance of the lease, and such improvements were suitable to the farm and calculated to increase its letting value. But here the lessees, by their acceptance of the lease on the 9th of March, 1860, must be held as in law admitting that at that moment all that was then on the farm was the absolute property of the landlord. The question then resolves itself into this: Having taken that lease on that day, what was the position of the lessees on the expiration of the term on the 1st of Nov., 1880, with respect to the premises? Here comes in the consideration which shows not only that the sections of the Act already referred to have no bearing upon the facts of this case, but that every particle of reclamation, beyond three-quarters of an acre, and all the buildings, drainage, and fences proved to have been done, the tenant had no right whatever to have excluded from the value of the holding on his present application. To make this clear it is requisite to point attention to the terms of that lease. [Counsel then quoted them.] I submit that under that lease the tenant was bound at its expiration to hand back to the landlord all the buildings then on it, and also to treat 6 acres of the reclaimed land as having been reclaimed, and all the drainage and fences proved as having been made, done under the special covenant in the lease as one of the considerations for the granting of the lease originally. It has been suggested, on the part of the tenant, that inasmuch as about 4 acres of the 6½ had actually been reclaimed since November, 1880, therefore no part of those 4 acres could be held to be included in the covenant. But this Act is to be administered according to the principles of equity, and one of the first principles of equity is, that he who seeks justice must do justice. The lessee was bound to do certain works during the term of a lease, and by now

giving him the benefit of any portion of those works, on the ground that he had done, after the lease expired, what he was bound by covenant to do while the lease subsisted, the Court would be aiding him in taking advantage of his own wrongdoing, and thereby confiscate the property of his landlord. Even on a claim for compensation this case could not be brought under the terms of sect. 7.

*Mr. Venables*, solicitor, for the tenant, contended that the sections quoted (7 and 8, sub-sect. 9) applied to this case, and that when it was clear that the greater part of this reclamation, drainage, &c., had been carried out after the lease expired the tenant was entitled to have its value treated as an improvement under these sections in which the landlord was not entitled to have any rent fixed; that the work was outside the covenant altogether, and the third paragraph of sect. 7 was strongly in favour of the tenant's view.

*Decision deferred.*

Mr. FITZGERALD.—On the 9th of March, 1860, a lease of the farm was made to Peter Mullin and his mother for a period of twenty-one years, from 1st November, 1859, at the yearly rent of £47. By this lease the lessees covenanted to retain 6 acres of land, and to yield up possession of the farm at the determination of the term with all improvements thereon. Peter Mullin appears to have reclaimed about 7 acres, and to have executed some other improvements to which he deposed, and all the buildings on the farm are admitted to have been erected by him or his predecessors. With reference to the buildings the landlord has offered no evidence to show what increase (if any) they have made in the letting value of the farm, and the evidence of valuation which he has produced deals with the farm exclusive of the buildings. Therefore, I do not think we are called upon to estimate any rent on the tenant in respect of those buildings, nor have we taken them into consideration. With reference to six acres of the reclamation, which was referred to in the covenant in the lease, I hold that in point of law that improvement forms part of the consideration of the lease, and that at the determination of the same it became the property of the landlord. We shall declare the judicial rent to be £85.

Solicitor for landlord: *J. Glover*.

Solicitor for tenant: *W. J. Venables*.

COUNTY COURT.

(Before R. W. GAMBLE, Esq., Q.C.)

BELL v. M'NALLY.

Dec. 29, 1881.—*Practice—Costs—Fees for instructions to plaintiff's solicitor prior to entry of civil bill.*

*Where the amount sued for by an ordinary civil bill is tendered before the entering of the civil bill, the plaintiff's solicitor is entitled to payment of the prescribed fee for instructions.*

This was a civil bill to recover £15 19s. 11d. for the use and occupation of defendant's holding under the plaintiff. The rent was admitted to be due, and was tendered with certain costs to plaintiff's solicitor two days before the entry of the civil bill. The payment was refused on the ground that the costs did not include the fee for instructions, which is set out in the schedule prior to the fee for entry. On the question, whether this fee is properly chargeable, the case came before the Court.

*Mr. R. A. Mullan*, solicitor, for the plaintiff.

*Mr. A. Gartlan*, solicitor, for the defendant.

The Judge held that the plaintiff's solicitor was entitled to charge as against the defendant the fee for



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instructions before the entry of the civil bill, on the ground that it was reasonable, as it was necessary that a solicitor should have instructions to ascertain whether or not the case was one in which a civil bill should be issued, and the fees were graduated in proportion to the sum claimed, and without the fee for instructions the remuneration to the solicitor would be insufficient.

## LAND COMMISSION.

(Before O'HAGAN, J., LITTON, Q.C., and J. E. VERNON, Esq.)

## ADAMS v. DUNSEATH (2).

Jan. 9, 11, 18, 1882.—*Judicial rent, determination of—Improvements—Predecessor in title—Lessee continuing in occupation as tenant from year to year—Improvements not compensated for by landlord—Fair rent, how calculated—Decision of Sub-Commission, when subject to review—Costs—L. & T. Act, 1870, s. 4—L. L. Act, 1881, ss. 7, 8 (9), 57.*

In determining a fair rent, under the Land Law Act, 1881, section 8, the rent is not to be calculated on improvements effected by the tenant while in occupation of the holding under a lease, though after its determination the nature of his tenancy has been changed by his continuing in possession as tenant from year to year. *Murphy v. Mahony*, 14 Ir. L. T. Rep. 87, approved and applied.

Where a lessee has made improvements during the currency of the lease, and on his death devises his interest to a devisee who, instead of surrendering the possession and claiming compensation for the improvements, continues in possession, after the determination of the lease, as tenant under the implied tenancy from year to year, arising from payment of the rent subsequently, and afterwards submits to an increase of rent while he is tenant from year to year, semble, his right to compensation for the improvements effected by the deceased lessee is not extinguished under the Landlord and Tenant Act, 1870. In such case, in determining a fair rent, under the Land Law Act, 1881, section 8 (9), the rent is not to be calculated on such improvements, having regard to the provisions of section 7 (amending the Act of 1870), the effect of which is that, in construing the Act of 1870, a prior tenant may be deemed the predecessor in title of a subsequent one, if in reality and substance the tenancy is derived by the latter from the former, notwithstanding that, by reason of determination or merger or surrender, the tenancy of the latter may not be strictly the same tenancy that was held by the former. *Holt v. Lord Harberton* (6 Ir. L. T. Rep. 1), *Darragh v. Murdock* (5 ib. 38, 67), and *Milliken v. Hardy* (9 ib. 79, Don. Rep. 473), distinguished.

In order to entitle a landlord to claim rent in respect of the improvements made by a tenant or his predecessors in title, on the ground that they have been paid for or otherwise compensated for by the landlord or his predecessors in title, within the meaning of the Land Law Act, 1881, section 8 (9), it must appear that something was given or done or foregone by the landlord as an equivalent for the improvements, the mere fact of a tenant's holding under a lease not amounting in itself to compensation for improvements made during the currency of the lease, without any special circumstances: per O'HAGAN, J., and LITTON, Q.C. (Mr. VERNON, dis.).

In calculating what would constitute a fair rent, under the Land Law Act, 1881, the inquiry should be directed to ascertaining what annual sum could a tenant of ordinary capital, skill, and intelligence be reasonably asked to pay one year with another for the holding as it stands, with all its surroundings, regarding the circumstances of the holding and district, and assuming that the landlord had the farm

in his own possession to let it to a solvent tenant; but the competition value must be excluded from the estimate, and neither should the personal qualifications, disqualifications, or condition of the occupying tenant be taken into consideration.

The decision of a Sub-Commission in reference to the amount of rent fixed, on a valuation of the holding, will not be subjected to variation on appeal, unless it be shown that the Assistant-Commissioners have erred in point of principle, or were clearly wrong in point of fact, and will not be disturbed for trifling differences as to the amount of rent proper to be determined.

The principle that costs should be awarded to the successful litigant as a general rule, is inapplicable to proceedings under the Land Law Act, 1881; but, where the decision of the Land Commission is appealed from, the appellant, if unsuccessful, should, as a general rule, be visited with the costs of the appeal.

In this case both tenant and landlord appealed from a decision, on an application by the tenant to have a judicial rent fixed, pronounced by Assistant-Commissioners Greer, Baldwin, and Ross, who reduced the rent to £30 15s. from £36 7s. 6d.

The circumstances, so far as material for the purpose of the present report, are sufficiently explained in the judgments.

Holmes, Q.C. (with him Orr and Overend), for the landlord.\*

Dodd, for the tenant.

Judgment reserved.

O'HAGAN, J.—This case, the first appeal which has been heard before us, is one of the greatest importance. The holding is not an extensive one, nor does the question of value of itself present much difficulty. But, it so happens that several of the most serious and most debated questions of law which have been mooted on the construction of the Land Act of 1881, require decision in this case. I regard this as a fortunate circumstance, inasmuch as an opportunity will be given not by our decision alone, but, as we trust, by that of the Court of Appeal, of setting some of these questions at rest, and of determining the principles in regard to them upon which our courts must in future act. The facts of the case lie within a short compass. The holding consists of 42a. 1r. 5p. statute measure, which may be divided into two parts, one containing 20a. 2r. 21p. Irish, or a little more than 33a. statute, formerly held under a lease, which expired in 1875, and of about 9 statute acres of bog, taken from time to time by the tenant since the expiration of the lease. In the year 1842 the 20 acres Irish were in the possession of a man named James M'Kee. The landlord was the then Earl of Mountcashel. In that year Lord Mountcashel thought it right to have the holdings of the tenants valued, with the view of granting leases to them. It has chanced that one of the gentlemen engaged in the valuation, Mr. Raphael, survives, and has been a witness in the present case. Mr. Raphael has given us the details of the then valuation, field by field, amounting in the aggregate to £26 11s. 6d. No lease was executed for more than three years afterwards, and, in the meantime, M'Kee built a good house on the

\* At the opening of the case, O'Hagan, J., said—We have considered as to what would be the best method, both as regards expedition and a satisfactory result, of hearing those appeals, and we have come to the conclusion that the best way will be to treat them as a rehearing—that is to say, the tenant makes his case, and then the landlord makes his case; but we think it will be better, upon the whole, to dispense with any opening statement. The cases speak for themselves in nine cases out of ten. We shall therefore hear the evidence, and at the conclusion of the case we will hear whatever observations counsel have to make.

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holding, partly, as it appears, with the materials of an older and inferior house, which he took down. Although the new house was built two years before the date of the lease, yet it is admitted that the lease was spoken of and contemplated. The lease itself bears date the 2nd of March, 1846. It is from the Earl of Mountcashel to James M'Kee, for the term of 30 years from the 1st of November, 1845, at the rent of £26 11s. 6d. It contains the usual covenants to keep the premises in repair, and to render them up at the end of the term. It contains a covenant against alienation, but no other special clause. In the October of the same year M'Kee sold and conveyed the holding comprised in the lease to John Adams, father of David Adams, the present tenant, for a sum of £240. Adams, the father, died thirteen years ago, and the land came through him to his son. Improvements were made both in the lifetime of the father, and after his death by the present tenant. These improvements consisted of additions to the buildings, and of reclamation of waste lands, and the making of a farm road. The lease expired in November, 1875. Other leases on the estate expired at the same time, and a revaluation took place. Mr. Raphael, who had taken part in the valuation of 1842, was once more the valuer. He valued the lands which had been in lease at £31 17s. 6d., a valuation which, as he stated, excluded all improvements whatsoever, so as to render it a rent which the tenant ought to pay irrespective of the improvements executed upon the holding. Adams had, from time to time, taken portions of bog at rents amounting in the aggregate to £4 10s., so that his rent altogether became £36 7s. 6d., at which amount it stood until the decision of the Sub-Commission, from which this is an appeal. The Sub-Commission fixed the judicial rent at £30 15s., and we have now to decide whether this judicial rent ought to any, and if so, to what extent, to be varied. But, before approaching the question of the fair rent, there arises the discussion of the principles upon which the rent is to be estimated, and first amongst these the controversy how far improvements effected by the tenant are to be excluded in estimating such rent.

Mr. Holmes submitted to us certain legal propositions on the part of the landlord in this and other cases of *Mrs. Dunseath*, which, as applied to the present case, are as follows:—(1) That the landlord is entitled to rent in respect of all improvements made previous to the expiration of the lease in 1875, inasmuch as such improvements were not made by the tenant or his predecessors in title. (2) If the court declined to accede to his first requisition, that the landlord is entitled to rent in respect of all improvements made during the currency of the lease, except those made by the present tenant himself, inasmuch as his predecessors in occupancy were not his predecessors in title. (3) If the court declined to accede to requisitions 1 and 2, then (a) that the landlord was entitled to rent in respect of all improvements made prior to the making of the lease of 1846; and (b) that the landlord is entitled to some rent in respect of improvements made during the currency of the lease, on the ground that, under the 1st clause of section 4 of the Act of 1870, some deduction must be made, in ascertaining the tenant's interest in such improvements, from the value thereof, and upon the further ground that, by holding under lease, he has been, if not altogether, to some extent compensated for his improvements. I now proceed to consider those propositions of law.

Mr. Holmes's first requisition amounts to a demand on the part of the landlord of rent in respect of all improvements made prior to the expiration of the lease of 1845, and the legal ground is that these improvements were not made by the tenant or his predecessors in title. But it was proved in the case, and could not be contested, that some of the improvements were made by David Adams himself, the present tenant. The words of the 9th sub-section of section 8, of the Act of 1881,

are that "no rent shall be allowed or made payable in any proceedings under this Act in respect of improvements made by the tenant or his predecessors in title." Is it to be seriously argued that David Adams is to be charged with rent in respect of improvements made by himself while in occupation of the land as tenant, because his tenancy under the lease has expired, and he is now in possession under a tenancy from year to year, arising on the termination of the lease? In the course of the argument I called Mr. Holmes's attention to the case of *Murphy v. Mahony*, decided by Mr. Justice Lawson, and reported in 14 *Irish Law Times Reports*, 87. That eminent judge held that, under the Act of 1870, changes in the nature of the tenancy did not affect the right of the tenant who had made them to claim for improvements. That decision is an express authority on the construction of similar words in the Act of 1881.

I pass now to the second of Mr. Holmes's propositions, which is of a more serious complexion. He calls on us to hold that the landlord is entitled to rent in respect of all improvements made during the currency of the lease, except those made by the present tenant himself, upon the ground that his predecessors in occupancy were not his predecessors in title. To sustain this proposition he chiefly relied on the well-known case of *Holt v. Lord Harberton*, 6 Ir. L. T. Rep. 1. That was a case arising under the 6th section of the Act of 1870, which provides that where either a landlord or a tenant is desirous of preserving evidence of improvements made by himself or his predecessors in title, he may register those improvements in the prescribed manner. John Holt had been tenant from year to year to Lord Harberton of 364 acres of land, and in the year 1842 he built a substantial house upon the lands, at a considerable outlay. In the year 1844 Lord Harberton granted him a lease not only of those lands, but of 91 acres in addition, of which Holt had not previously been in possession, and gave him a lease of the entire at a less rent than had been previously paid for the portion he had held; and it was admitted that this lease was so given in consideration of the tenant's outlay in building the house. Holt the lessee, having died, his son, who became entitled to the lease, claimed to register the house as an improvement against the landlord. It was held by the Court of Land Appeal, consisting of eleven judges, that he could not do so. It is a case of the very highest authority, to which every court in this country must explicitly bow, but I am bound to say, it seems to me not to have decided the abstract principle contended for. Lord O'Hagan, the then Lord Chancellor, said that all former title to the lands and the improvements upon them had been surrendered and done away with by the acceptance of the lease, and there was no other title to which the son could be deemed a successor, but the title under it. Unquestionably, under the circumstances of that case, all former title had been surrendered and done away with, it being taken as assumed that the new lease was granted in consideration of the circumstance of the dwelling-house having been erected. Chief Baron Pigot, of whose high legal attainments it is hardly necessary for me to speak, distinctly stated that he based his judgment upon the transactions which occurred when the new lease was granted, and he expressly guarded himself against being supposed to take any general view which would limit the construction of the Act. His words are these—"I do not consider myself at liberty to speculate on the intentions of the Legislature. I am to take what the Legislature has said, when the Act describes the persons by whom the improvements must be made. The statute treats the person claiming as a person who is to have compensation for all improvements upon his holding, made by him or his predecessors in title. Are we at liberty to add to these words the words following, that is to say, 'at a time when he or they held the premises on which the improvements were made, and under the same title under

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which he holds them when the claim is made? I do not think it necessary to consider and decide that question. I do not consider myself in the present case bound to determine that the statute is to be read as if those or equivalent words had been inserted by the Legislature, which has omitted them in both these sections."

There are two other cases to be considered—one prior, and the other subsequent to that case. The former is the case of *Darragh v. Murdock*, 5 I. L. T. R. 33, 67. It was a claim for compensation for improvements under the Act of 1870. The father and grandfather of Darragh, the claimant, had been in occupation of the farm for nearly one hundred years. Darragh's father held them by a lease for his own life, which expired in June, 1866. The claimant Darragh, the son, on his father's death, entered into possession of the farm, and remained in such possession until November, 1867. In that month an agreement was entered into between Mr. Murdock, on the one hand, and Darragh, and two sureties for him named Kirk and Sloane on the other, by which Murdock agreed to let to the three conjointly the farm for a year certain, from the 1st November, 1867, at the rent of £22 16s. 9d., an increase upon the former rent, they agreeing to give up possession at the end of the year, and to pay for any depreciation of the lands. It was, also, provided that Murdock might at any time enter upon the farm and lay down materials for building. In the month of November, 1868, a similar agreement was made for another year. In November, 1869, a like agreement was also made. In May, 1870, a notice to quit was served, which expired in the November of that year, when an ejectment was brought. Darragh thereupon claimed under the Act of 1870, in respect of improvements made by his father upon the holding. The learned Chairman of the County of Antrim held that he was not entitled to compensation in respect of these improvements on the ground that his father was not his predecessor in title. This decision was upheld by Mr. Justice Fitzgerald on appeal. The latter expressed himself as follows:—"Upon the question of law in this case I entertain no doubt. The claimant is not such a successor as is recognised by the Act. I should be slow to hold that continuity of possession and title would be broken by a mere increase of rent, but this case is wholly different. The claimant's predecessor held under a lease which expired with himself. The claimant then having acquired a tenancy from year to year, entered into a totally new arrangement with the landlord, under which the term and the rent were altered. It is clear that the landlord wanted the farm for building ground, and took it up for this purpose. It was expressly provided by the agreement made in 1867 that the claimant was only to be tenant for a year, and that at the end of the year possession was to be absolutely given up, and the landlord to resume possession, as he had a right to do. To talk of continuity of possession is quite out of the question, as in 1867 a new title in every particular was created." I do not, of course, venture to question the authority of a case so decided. But what is the case? The lease during which the improvements had been executed expired with the life of the lessee who made them, and at no moment of time did the claimant represent or succeed to the title of his father. As the law then stood the lands, with all the improvements upon them, became absolutely vested in the landlord, and the claimant made three successive agreements for taking the lands for a time certain.

I now turn to the case which followed *Holt v. Harberton*. It is the case of *Milliken v. Hardy*, also heard before the Chairman of the County Antrim: 9 I. L. T. R. 79. The case was this:—On the 21st April, 1832, Joseph Wallace had executed to William Terlford a lease of the holding for one life or thirty-one years, at the rent of £27 6s. There was a covenant to expend £100 in building a dwelling-house. The estate of Wal-

lace, the lessee, devolved first upon a gentleman named Hill Hamilton, and then upon Mr. Hardy, the respondent. The lessee's interest became vested by assignment in William Walker, and the then landlord, Mr. Hill Hamilton, having obtained judgment against Walker, and issued an execution on foot of this judgment, the lessee's interest in the premises was in 1854 sold by the sheriff to George Milliken, the claimant's testator. In the month of May, 1854, George Milliken took from Mr. Hamilton a new lease for the term of 12 years from 1st November, 1862, at an increased rent of £30 12s. 1d., that increased rent to commence immediately—that is to say, from the 1st May, 1854. George Milliken afterwards died, having bequeathed his farm to Milliken, the claimant. On the termination of the lease in November, 1874, an ejectment was brought, and thereupon a land claim was filed by the tenant claiming in respect of improvements executed by Terlford and his assignees prior to the lease of 1854. The learned chairman, holding that the lease of 1854 operated as a surrender by operation of law of any existing lease, thought the case was governed by the cases of *Holt v. Harberton* and *Darragh v. Murdock*. His decision was upheld on appeal by the Chief Justice of the Common Pleas: Don. Rep. 473. "Morris, C.J., held, on the authority of *Holt v. Harberton*, that the claimant was not entitled to compensation for improvements executed prior to the new lease in 1854. The lessee of the 1832 lease was not the predecessor in title of the present claimant. Predecessor in title does not mean predecessor under another title, but predecessor in the same title."

Now, in this case also the claimant had never for a moment of time been possessed of the estate which existed in the lands at the time the improvements claimed for were made. It was assumed throughout the case that the lease of 1832 was surrendered and gone by the acceptance of the lease of 1854, and the claimant never had any title save to the latter lease alone. But, does it flow from any of these decisions that if a father, the lessee under a lease, makes valuable improvements and then dies, bequeathing the lease to his son, and, if the son, on the termination of the lease, instead of at once surrendering the possession and claiming compensation for the improvements, continues on as tenant under the implied tenancy from year to year, arising from payment of rent after the expiration of a lease, that by his doing so his right to compensation, which undoubtedly existed at the end of the lease, is absolutely gone and forfeited. I confess I do not think such a consequence flows either from the decisions or from any words in the statute of 1870, and I conceive it to be opposed to the spirit and intention of that statute. Then suppose the same person to submit to an increase of rent whilst he is tenant from year to year, would that circumstance make such a difference as to debar him from compensation for the improvements in question? In my opinion, it would not. The tenancy itself is not changed by an increase of rent. I should, therefore, be of opinion that in the present case David Adams might, on quitting his holding, claim compensation in respect of improvements on his holding made by his father as being his predecessor in title. Such is my opinion on the construction of the Act of 1870. And it follows, in my opinion (apart from the question of compensation by the landlord, with which I shall deal hereafter), that under sec. 8, sub-sec. 9, of the Land Act of 1881, no rent should be allowed or made payable in respect of those improvements. But there is a further question, namely—whether the 7th section of the Act of 1881 can be considered as in any way affecting the construction of sec. 8, sub-sec. 9, of the same Act. The 7th section, so far as is material, is as follows:—

"A tenant on quitting a holding of which he is tenant shall not be deprived of his right to receive compensation for improvements under the Landlord and

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Tenant (Ireland) Act of 1870, by reason only of the determination, by surrender or otherwise, of the tenancy subsisting at the time when such improvements were made by such tenant or his predecessors in title, and the acceptance by him of a new tenancy.

"Where in tracing a title for the purpose of obtaining compensation for improvements it appears that an outgoing tenant has surrendered his tenancy in order that some other person may be accepted by the landlord as tenant in his place, and such other person is so accepted as tenant, the outgoing tenant shall not be precluded from being deemed the predecessor in title of the incoming tenant by reason only of such surrender of tenancy by him. The court in adjudicating on a claim for compensation for improvements made before any such change of tenancy or of tenants shall take into consideration all the circumstances under which such change took place, and shall admit, reduce, or disallow altogether such claim as to the court may seem just."

This section was plainly intended to meet what was supposed to have been decided in *Holt v. Harberton*. It purports to provide for the twofold case—first, the case of the determination, by surrender or otherwise, of the tenancy subsisting at the time when the improvements were made by the tenant or his predecessor in title, and the acceptance by him or them of a new tenancy; and secondly, for the case, common especially in Ulster, of a tenancy being transferred, not by assignment, but by surrender of the old tenancy and the creation of a new one in the person of the new tenant. But certainly, if we assume that before the passing of the Act the term "predecessor in title" had acquired a definite construction, and that, according to this construction, no person could be deemed a predecessor in title whose tenancy had determined or been surrendered, and a new tenancy accepted by him before the tenant who claims compensation had become tenant, and if the same construction is to be applied in interpreting section 7, it appears to me that the first paragraph of that section is deprived, not only of all efficiency, but of all meaning. Take a case such as *Mullikin v. Hardy*. If the same case arose now, and if the claimant relied on the change of the law effected by section 7, he might be answered in this way—"Under section 7, in order to entitle you to claim for improvements, the person by whom the improvements were made must have been your predecessor in title, which the person who made the improvements for which you claim was not." Therefore, to give an intelligible construction to the first paragraph of the section, it is necessary to read the words "predecessors in title" as if they meant "those who, but for such surrender or merger, would have been his predecessors in title," or some words to that effect. The second paragraph is more clearly worded, and under it when a tenant surrenders his tenancy, in order that another may become tenant in his place, the former may be deemed the predecessor in title of the latter, notwithstanding the surrender. It is to be observed that in both paragraphs the words "by reason only" are used, showing that there may be attendant circumstances which might operate to bar the claim for compensation, and the concluding paragraph of the section expressly enacts that all the circumstances under which the change took place shall be taken into consideration towards the admission, reduction, or disallowance of the claim. I am of opinion that the effect of the 7th section taken in its entirety is, that in construing the Act of 1870 a prior tenant may be deemed the predecessor in title of a subsequent one, if in reality and substance the tenancy is derived by the latter, from the former, notwithstanding that by reason of determination or merger or surrender the tenancy of the latter may not be strictly the same tenancy that was held by the former.

We have now to consider what bearing, if any, the 7th section has on the 8th. Sub-section 1 of the 8th section directs that in fixing a fair rent regard shall be had to the interests of the landlord and tenant respectively, and

to the circumstances of the case, holding, and district. Under that sub-section it is clear that regard must be had to the interest of the tenant in such improvements as he would be entitled to compensation for under the Act of 1870, as amended by section 7 of the Act of 1881. Therefore, if improvements had been made by a person who would not have been deemed a predecessor in title according to the decisions on the Act of 1870 to which I have referred, but who would be deemed such predecessor in title under section 7 of the Act of 1881, the interest of the tenant in those improvements must be had regard to. Then after the intervening sub-sections comes sub-section 9, enacting that no rent should be made payable in respect of improvements made by the tenant or his predecessors in title unless compensated for by the landlord. Are we to read the words "predecessors in title" here in their strict technical signification as if section 7 had not been passed? If so, this consequence would follow: Suppose a tenant to have made improvements, and desiring to sell his tenancy to another, effected such sale by way of assignment, his assignee could not, in fixing a fair rent, be charged with any rent in respect of those improvements; but if, on the other hand, he carried out the sale by the method so common especially in the North of Ireland of having the vendee entered as tenant in the books of the estate, thereby effecting a surrender of his tenancy by act and operation of law, in that case, although the object arrived at was identical, the incoming tenant could be fixed with rent in respect of the improvements of his predecessor, because in strictness of law he was not his predecessor in title. Such it is contended is the construction to be put upon the words "predecessor in title" under sub-section 9 of section 8 of the Act of 1881, although it is conceded that section 7 of the same Act makes it otherwise if compensation were sought for under the Act of 1870. This seems to me to lead to great difficulty. By the last paragraph of s. 57 of the Act of 1881 it is provided that—

"Any words or expressions in this Act which are not hereby defined, and are defined in the Landlord and Tenant (Ireland) Act, 1870, shall, unless there is something in the context of this Act repugnant thereto, have the same meaning as in the last-mentioned Act; and the Landlord and Tenant (Ireland) Act, 1870, except in so far as the same is expressly altered or varied by this Act or is inconsistent therewith, and this Act shall be construed together as one Act."

No definition of the term "predecessors in title," is given by either Act, but construing the Acts as one Act, and finding that by section 7 of the Act of 1881, the words "predecessors in title," obtain as regards the Act of 1870, a construction which looks to the substance and reality of the succession, and not its merely technical form, why should we not give the same construction when dealing with the very next section of the Act of 1881. In my opinion, on the soundest principles of the construction of statutes we are at liberty to do so.\* Let us suppose that the Act of 1870 had been differently construed, and had been held to embrace (as was suggested by Chief Baron Pigot), not only those who had been in possession of precisely the same estate, but those who had substantially been the predecessors of the claimant in the holding, though the actual tenancy which they held had been determined by surrender and acceptance of a new tenancy, in that case must not a similar interpretation have been put upon the words in section 8, sub-section 9 of the Act of 1881? But if instead of judicial decision we have, in section 7 of the Act of 1881, what is tantamount to a statutory interpretation of the Act of 1870, should not the same principle be applied?

I know it has been stated, and has in the present case been urged as an argument against this view, that such a construction would sweep away from the landlord's rent all improvements that from time immemorial had been executed on the soil, and leave nothing subject

\* See 15 Ir. L. T. 621.—[E. N. B., Ed.]

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to rent, but the waste and unimproved value of the land itself. Such an apprehension appears to me chimerical. In the first place, the fact of the improvements themselves requires to be proved. In the next place, as regards all improvements made before the 1st August, 1870, there are distinct limits placed to the presumption that such improvements were made by the tenant or his predecessor in title, and every thing outside the statutory presumption must be proved, and although a formal surrender and acceptance of a new tenancy would no longer form a break in the title, yet the title, must in reality and substance, be traced from the tenant who executed the improvements, to the tenant who claims in respect of them. I have so far dealt with the improvements made by John Adams, during the currency of the lease, but there are, moreover, the buildings which were erected by M'Kee, before the execution of the lease. If I be right in thinking that the extension of the meaning of the term "predecessors in title" effected by section 7, should be held also to govern sec. 8, subsec. 9, these buildings also should (apart from the question of compensation) be excluded from consideration in fixing a fair rent. But, in truth, having regard to what was admitted as to the offer and expectation of a lease, and to the fact that the valuation of 1849 was plainly made with a view to the granting of leases by Lord Mountcashel, I think it difficult to exclude those buildings from coming under the principles which govern the question of the improvements made during the currency of the lease.

I now come to the second part of Mr. Holmes's third requisition, which raises a question possibly surpassing in importance any other in this case.

He contended that the landlord was entitled to some rent in respect of improvements made during the currency of the lease. He put this in a twofold way. His first ground was that under the first clause of section 4 of the Act of 1870, some deduction must be made in ascertaining the tenant's interest in such improvements, from the value thereof. That would be so as regards improvements made prior to the Act of 1870, if we had only to consider the first sub-section of section 8. But sub-section 9 is peremptory in its terms, and absolutely forbids the allowing of any rent in respect of improvements made by the tenant or his predecessors in title, "for which, in the opinion of the Court, he shall not have been paid or otherwise compensated by the landlord or his predecessors in title." Mr. Holmes's second ground is that the tenant, by holding under a lease, has been, if not altogether, to some extent compensated for his improvements. The words of the sub-section are, "compensated by the landlord." It is not as under the last clause of the Act of 1870, with respect to improvements prior to that Act (for with such improvements alone does the clause deal), that mere enjoyment of the advantages of the improvements reduces the tenant's claim. Under the Act of 1881 the compensation must emanate from the landlord. In order to enable him to claim rent in respect of the tenant's improvements, he must, so to speak, have bought them from the tenant, paid him for them, or otherwise compensated him. What amounts to such a compensation? It may take a hundred forms, which it would be impossible to enumerate, but it must, I conceive, be something given or done, or foregone, by the landlord as an equivalent for the improvements. We are not called on to decide whether a lease given at a low rent, in order to enable the tenant to improve, might not in some cases be held to be compensation, or whether in the case of tenancies from year to year the landlord's abstention for a considerable period from the exercise of his legal right to evict the tenant or enforce a larger rent from him by menace of eviction might not, in some cases, be deemed compensation by him. Every case of that kind would, I conceive, be governed by its own special circumstances. But when improvements are simply made

during the currency of a lease, without any special circumstances, what equivalent is there? It has been said that the giving over, to the tenant, of the soil with its natural powers is in itself a compensation. But could that have been meant by the legislature? If so, the tenant is worse off in this respect, under the Act of 1881, than he was under the Act of 1870; for, under the Act of 1870, enjoyment of the advantages of improvements forms no ground for reduction of the tenant's claim to compensation, as regards improvements effected since that Act. But if the contention now put forward as to the construction of the Act of 1881 be well founded, then, in every case future as well as past, the mere enjoyment of his own improvements would compensate the tenant. Let us take the case of two neighbouring tenants holding under lease for the same term and at the same rent, say £30 a year each. One tenant by industry and outlay effects improvements which make the holding worth £60 a year. The other does not improve at all, and his holding remains worth £30. At the end of the lease is the landlord under this Act to be entitled to assess the improving man at the full letting value of his holding on the plea that he had compensated him? It seems to me that this would simply be a judicial repeal of the clause. In this view Mr. Litton concurs; but I regret to say that our colleague, Mr. Vernon—for whose opinion on all subjects connected with land, indeed I may say all subjects whatsoever, I have learned to entertain the greatest esteem—does not take the same view, and thinks that our construction would work great injustice and hardship upon landlords. It is satisfactory to reflect that the Court of Appeal will soon put the question at rest.

Having thus said what occurred to me on those very difficult and important questions of law, I now come to the question of value, on which it is not my intention to dwell long or to recapitulate the evidence which has been given. We found that the usual mode of valuing land in Ulster for the purpose of regulating rent was to put an estimate on the tenant's interest and on the landlord's interest respectively, and to fix a fair rent on the principle of not including the tenant's improvements, so as not seriously to affect his tenant-right. We found this mode of valuing common to valuers produced both on the side of the landlord and that of the tenant. Another mode of valuing is, of course, to take the land as it stands, value it as it would be set to a solvent tenant by an equitable landlord, and from the rent so fixed, to deduct what should properly be allowed to the tenant in respect of improvements. So habituated are the people here to the former mode of valuing, that some of the witnesses, when asked what the land would fairly set for in the hands of the landlord, said they had never considered it from that point of view. Mr. Raphael, who had fixed the rent in 1876, gave a valuation field by field, stating the acreage of each field and the rent it ought to bear per acre. The valuation, he said, was made on the basis of fixing in every case the assessable rent at such a figure as would not interfere with the tenant's improvements. He adhered to his valuation of 1876, and declared that the rent of £31 17s. 6d. with the addition of £4 10s. for the bog, making together £36 7s. 6d. was now the fair rent. Mr. Edward Murphy, a gentleman of high reputation as a valuer, said he valued the land in the same way, field by field, making in each case an exclusion in his own mind of the tenant's improvements as he valued. His estimate of the fair rent is £30 2s. 11d. for the land formerly in lease, which, adding £4 10s. for the bog, would make his estimate of a fair rent for the entire £34 12s. 11d. On the other hand, the valuers for the tenant went far indeed in their reduction. Mr. Robinson says that he conceives the lands, if in the hands of the landlord, might be worth £44; yet, excluding the tenant's improvements, he brings the rent as low as £22 2s. 3d. Our official

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valuers, Mr. O'Brien and Mr. Grey, gentlemen of high ability and unimpeachable integrity, fix the setting value of the land at £37 10s. If this were to be deemed their estimate of a fair rent, there would be an increase of the actual rent fixed by Mr. Raphael. But this is by no means so. They merely excluded the buildings from their valuation, in other respects valuing the land as it stood; and from their valuation, therefore, if I be right in the construction of the statute, reduction must be made in respect of tenant's improvements other than buildings. Mr. M'Mordie conceived it to be his duty, on behalf of his clients, to assail with no little asperity the reports of these gentlemen. As we had determined that their reports were to be given to the parties for comment,\* we cannot, of course, blame an advocate for any criticism upon them which he may deem just; but I did distinctly call Mr. M'Mordie's attention to the fact that in attacking these reports he quite misapprehended their basis. In my opinion, the rent of £37 10s. fixed by the valuers would, if an allowance be made for improvements other than houses, reduce the rent at the least to the judicial rent. There remains, then, the judicial rent itself.

Mr. Holmes, in his first proposition, submits to us that this court is not entitled in hearing these cases to have any regard to the "so-called valuation" made by the Assistant-Commissioners. Now, with all respect to Mr. Holmes, this also is a misapprehension. The Assistant-Commissioners are not valuers by profession, but judges appointed either as being members of the profession of the law or from their acquaintance with the value of land in Ireland. They decide, like other tribunals, on sworn evidence. It is true that, by one of our rules, they ought personally to visit the lands in every case in which they deem such visit will conduce to a just decision, and that duty they have, I believe, in every case discharged. By the "so-called valuations," I can understand nothing but their judicial decisions, based not alone upon their own inspection, which might of itself be an insufficient guide,† but assisted greatly by such inspection in deciding the whole case upon the evidence. Their decision comes before us on appeal. If the Sub-Commission have erred in principle, or can be shown to have erred seriously in amount, our plain duty is to vary their order. But is it our duty simply to decide as if we were judges of a court of first instance; and if, in our own opinion, the judicial rent should to some extent be either greater or less than that fixed, are we to vary the decision? If so, two consequences ensue: First, in hardly a single case could the decision of the Sub-Commission stand, for it is almost a moral impossibility that in a matter of opinion such as value two independent minds could arrive at precisely the same conclusion; secondly, that the Sub-Commission might as well not exist, we, the Commissioners, having to decide *de novo* the value of every farm which has come into court. But such, I apprehend, is not, and was never considered to be, the duty of an appellate tribunal. I shall cite a passage from Lord Chelmsford's judgment in the case of *Gray v. Turnbull*, reported in the *Law Reports*, 2 Scotch Appeals, page 53. He there says:—"Upon a question of fact, an appellate tribunal ought not to be called upon to decide which side preponderates in a mere balance of evidence. Different minds will, of course, draw different conclusions from the same facts, and there is no rule or standard which can be referred to by which the correctness of the decision either way can be tested. If we were upon the present occasion to come to the conclusion that the five judges who have decided in favour of the defendant miscarried, we should just as likely be wrong in our conclusion from the fact as they were in deciding the other; and, therefore, if there is to be an appeal on questions of fact—and I regret that there should be such—I think

that this principle should be firmly adhered to—namely, that we must call upon the party appealing to show us irresistibly that the opinion of the judges on the question of fact is not only wrong, but entirely erroneous." The same principle has been over and over again enunciated by judges of appeal.\* It has been said that this is not strictly an appeal but a rehearing. But now, under the Judicature Act, every appeal is by way of rehearing. In fact, this and the other cases have been very fully and very carefully reheard by us. Now, without saying that these strong expressions of Lord Chelmsford are to be adopted fully in cases like the present, I say this—Show us that the Assistant-Commissioners were in any way wrong in principle, or even clearly wrong in fact, and we will not hesitate to reverse them. But it would be absurd to do so for trifling differences. We, therefore, confirm the judicial rent.

There remains the question of costs. The Sub-Commissioners have given the tenant his costs against the landlord. This we conceive to have been an error. They thought it right, we conceive, to follow the general rule of our courts, by which costs follow success. But this principle is, in our opinion, inapplicable to courts such as ours. I do not term them courts of arbitration. They would only in strictness be so if landlord and tenant came in together. But they are courts established by the Legislature to determine impartially a matter upon which various minds may reasonably differ in opinion, and (exceptional cases apart) it would, in our judgment, be unfair to visit either party with costs in such a case. Of course, if the conduct of either party is such as to deserve reprobation, we may treat such cases as exceptions. The costs of the appeal are a different matter. An appellant comes into court at his peril to set aside a distinct judicial decision. No doubt, as a general rule, an appellant who fails should pay the costs of the appeal, and hereafter, when the principles upon which the court proceeds become more fixed and definite, it will be, we think, our duty to act upon this rule; but as yet they are to a great extent floating and indeterminate, and we cannot say that an appellant, especially in a case like the present, where questions of law of such moment are involved, was wrong in seeking to test the decision given below. We, therefore, vary the order of the court below by declaring that the parties respectively should bear their own costs, and we give no costs of this appeal. We shall suspend, however, the formal making up of an order until the decision of the Court of Appeal be stated, as, if that court should dissent from the principles I have laid down as to the tenant's improvements, it will follow that our decision as to value, based on those principles, may require reconsideration.

LITTON, Q.C.—In expressing my concurrence with the judgment which has been pronounced by the learned judge, and while I do not intend to travel over the ground so ably occupied by him, by entering, in detail into the considerations which have induced the court to arrive at the conclusion announced in this case, I think it to be my duty to make some observations of a general character upon the principles which should regulate the action of the court in arriving at a "fair rent," and in applying the provisions of the 9th subsection of section 8 with regard to improvements made by the tenant or his predecessors in title. I concur with Mr. Holmes, and, indeed, I may say with the opinion expressed by all the counsel and solicitors who have been engaged in the cases before us, that it is desirable that this course should be taken at the earliest possible moment. The public mind is much exercised on the subject, and both landlords and tenants have a right to expect the court to lay down some rules which, if not applicable to all cases, may at least afford some

\* See *ante*, p. 6.—[E. N. B., Ed.]

† Cf. *Smith v. Colley*, *ante*, p. 8.—[E. N. B., Ed.]

\* See note to *In re Murphy*, 11 Ir. L. T. Rep. 44; *Montgomery v. Montgomery* (H. L.), 14 *ib.* 9; cf. *In re Pemberton's Estate*, 13 *ib.* 151.—[E. N. B., Ed.]

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guidance in their relations with each other, and which may as far as possible facilitate and induce reasonable settlements out of court—a course which, in my mind, no effort on our part should be spared to secure.

Now, confining myself to the inquiry which principally concerns this court, and in which the various Sub-Commissions have been engaged, the object and aim is to ascertain the fair rent that, having regard to the language of the statute, the tenant in occupation should pay to his landlord for his holding—an inquiry extremely simple to state, but difficult beyond expression to define or answer—the fair rent, considering all the circumstances of the case, holding and district, considering the interest of the landlord and tenant respectively, and considering that no rent is to be allowed or made payable in respect of improvements made by the tenant or his predecessors in title, and for which he has not been paid or otherwise compensated. Now, I do not affect to define a fair rent. To do so is almost, if not altogether impossible, and for this reason, if for no other, that a different estimate of what is fair, as regards almost every action in life, will be arrived at by different men as the character of each may have been formed under those influences which conduce to make some men intuitively reasonable and just, and others exacting and ungenerous. The question of rent forms no exception to the general rule, and the estimate of a fair rent is, within certain limits, as uncertain as the character of the man to whose judgment the question is submitted. The great object, however, should be to arrive at a result in the particular case which will commend itself as just, not to one class or to the other class, but to reasonable men in both classes, and it would be unwise to even attempt a definition which, however applicable to some particular case, would mislead in the effort to make it of general application. Still it is right to point out considerations which should be entertained, and considerations which should be rejected. The rule suggested by the Bessborough Commission, if we guard it by one or two limitations, appears to me to commend itself to the judgment as indicating the direction of the inquiry. The members of that Commission state:—"The computation should in general start with an estimate—first, of the gross annual produce; and, secondly, of the full commercial rent, according to the rules observed by the best professional valuers. From this last should be deducted, as a rule, any portion of the annual value which is found to be due to improvements not made or acquired by the landlord." We should, in my mind, ask ourselves in each case, and as far as possible discover from the evidence, what annual sum could a tenant of ordinary capital, skill, and intelligence afford to pay, one year with another, for the holding as it stands with all its surroundings, regarding the circumstances of the holding and district, and assuming that the landlord had the farm in his own possession to let it to a solvent tenant. The question is not what a tenant could be got to offer, but what he could be reasonably asked to pay; and consequently, in answering these questions we should exclude from consideration, in my opinion, any increase of rent which persons might be induced to offer from a mere desire to acquire possession, or which might be procured by reason of circumstances affecting the person making the offer, and not affecting the holding itself. While, then, we should endeavour to ascertain the commercial or market value of the holding as it stands, we should exclude the competition value. The owner of land about to let a holding in his own occupation may demand whatever rent he pleases, and take whatever rent he can procure. It may well be that the desire to procure possession, or the hunger for land, will induce some persons to offer a rent far beyond the value. Nevertheless, the owner has a perfect right in such a case to refuse to accept less. He has a perfect right to the competition rent. But in estimating the rent between the landlord and the

present tenant—that is the tenant in occupation—whatever might be procured from the motives I have referred to, beyond the commercial rent, belongs to the tenant who holds the possession, just as it would belong to the landlord if about to let his land for the first time. It forms the element of good-will, and is part of the tenant-right or property of the tenant in possession. It may be said there is no difference in principle between a commercial or economic and a competition rent. This may be true, and in the case of the owner is true; but, in the case of the tenant in possession the landlord has not the possession to give, and therefore cannot claim the competition value. That which he can claim, and has a right to, is the competition value, less by whatever should be deducted as representing mere possession, which is a property in itself. The competition value, less by the good-will arising from actual occupation, I call the commercial value of the holding. The term may be somewhat inaccurate, but I know no better to express my meaning. From the result thus ascertained must be deducted the amount which the improvements of the tenant or his predecessors in title have contributed to the present letting value. The amount to be deducted is not of necessity to be estimated by the annual equivalent in the way of interest for the sum expended. It may so happen that large sums have been expended in the effort or with the intention to improve, and yet the holding in its letting value may not have been improved by the expenditure. The question, therefore, is—To what extent has the letting value been increased by the improvement, if at all? Deducting the latter, when ascertained, from the former, we get a result which ought to represent a fair rent. The amount deducted ought to represent that portion of the value which is independent of the property in simple occupation, and apart from what may be referred to the character of the landlord, which in some places has raised the tenant-right to an excessive figure, and which latter is an element, in my opinion, to be wholly disregarded.

It should be understood—and on this point there should be no mistake—the Act of Parliament never intended, and it would be manifestly unjust, to fix a rent below the commercial value of the holding, as I have defined commercial value, reduced by the value of the tenant's interest in his improvements. The course or rule suggested leaves the tenant-right, so far as it is derived from occupation, untouched, and, so far as it is derived from improvements, gives full effect to it in reducing the commercial rent by the value of the tenant's improvements. In no other way can you fulfil the requirements of the Act in having regard to the interests of the landlord and tenant respectively. To act otherwise would be to transfer the property or a portion of the property of one class to the other class, and to no extent ought this to be done. If it is our duty to recognise the tenant's interest, it is equally our duty to recognise that of the landlord, and we are bound by the highest considerations of duty to administer an Act which was intended to secure right in such a manner as that it may not become in our hands the instrument of wrong.

Again, it appears to me impossible to allow the personal qualifications or disqualifications of the occupying tenant to enter into our estimate, or to discuss whether a man can or cannot live in comfort on the particular holding. The inquiry concerns the land—its productive qualities, its commercial value, and not the condition of the tenant, his manner of life, or the number of his children. If the latter considerations were to be admitted the result would be that some holdings, where very small, should be subjected to no rent in order that the tenant might live and support his family in comfort. In numerous cases the remission of all rent would not secure that result, and the rent ascertained on such a principle to be fair to-day would

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be to-morrow unfair, if the holding passed into the hands of a man with a larger family, or of a less thrifty character. I only notice this doctrine to repudiate it.

I now proceed to make some remarks with respect to the construction of the Act, as it, in my mind, affects the question of improvements in connexion with the imposition of rents—a most important and vital question. By the 4th section of the Act of 1870 the tenant, on quitting his holding, was entitled to claim compensation for improvements made by him or his predecessors in title. The same form of expression is used in sec. 8, sub-section 9 of the new Act, with regard to the imposition of rent—"No rent shall be allowed or made payable in any proceedings under this Act in respect of improvements made by the tenant or his predecessors in title." If the case rested here, I, for my part, would feel bound, in placing a construction upon the expression "predecessors in title," to follow the cases which have been decided on the 4th section of the Act of 1870. The case of *Holt v. Harberton*, and other cases of the same class with which we are familiar, whatever may be said of them when closely examined, undoubtedly narrowed the effect of the 4th section of the Act of 1870. Dealing with the two Acts as part of one code, I would have felt bound to follow the general result of those decisions when dealing with the like expression in relation to the fixing of a fair rent. The 7th section of the Act of 1881, however, purports to affect and remedy the result of the cases to which I have referred in relation to the 4th section of the Act of 1870, for it declares that the tenant shall not be deprived of his right to compensation for improvements made by himself or his predecessors in title, by reason of the determination of the tenancy subsisting at the time the improvements were made, by surrender or otherwise, and acceptance of a new tenancy, and that the outgoing tenant who surrenders in order that some other person may be accepted as tenant in his place is to be deemed the predecessor in title of the incoming tenant. The technical and restrictive construction put upon the expression "predecessor in title" by the cases decided upon the 4th section of the Act of 1870 has been thus got rid of by the enactment in the 7th section of the Act of 1881; and when the new tenancy is accepted in place of the old, or when an outgoing tenant surrenders his interest in order that an incoming tenant may take his place the continuity of title is to be taken as not interrupted. If the law be thus altered in the case of claims for compensation, for improvements, it leaves the court free to construe the expression "predecessor in title," in the 8th section of sub-section 9, in accordance with the legislative declaration of its meaning when it occurs in the 4th section of the Act of 1870. If we now refer to the 9th sub-section of section 8, the language, in my opinion, plainly has reference to past as well as future improvements. The declaration is most distinct—"No rent shall be allowed or made payable in any proceedings under this Act in respect of improvements made by the tenant or his predecessor in title, and for which, in the opinion of the court, the tenant or his predecessors in title shall not have been paid or otherwise compensated by the landlord or his predecessors in title." I wish, in passing, to lay stress upon the latter words of the clause, for they are of great importance, and I shall have to refer to them presently. It is plain, then, that no rent can be placed upon a holding in respect of any improvements *proved* to have been made by the tenant or his predecessors in title, within the meaning given to the expression by the 7th section, no matter when made, and no matter whether the landlord's estate has been the subject of sale subsequent to the improvements or not. This rule, in its application, is, however, subject to the limitation that the tenant has not been paid or otherwise compensated; and it is also subject to the direction in the first clause of the same section that, in ascertaining the fair rent, the

interest of the landlord and tenant respectively shall be regarded. When, then, actual proof is given as to the making of the improvements, no length of time precludes the tenant from insisting that no rent shall be charged in respect of them; but where no proof is adduced or capable of being adduced as to by whom the improvements were made, the question is, what course should be taken? In such case it appears to me the 5th section of the Act of 1870 affords the principle which should be applied. It provides that all improvements made within twenty years prior to 1870 shall, until the contrary be proved, be presumed to have been made by the tenant or his predecessors in title, subject to certain important exceptions. This presumption in favour of the tenant cannot in my opinion, in either reason or law, be further extended. Lapse of time weakens the presumption. Mr. Grasley in his work on evidence—a work of the highest authority—quotes the following observation of Sir W. D. Evans:—"The effect and weight of presumption cannot be influenced by any consideration more extensively than by the opportunity which the nature of the case affords to support or contradict it by direct testimony." In other words, the presumption which exists in favour of the tenant must cease to exist when once we reach a time when it would be unreasonable to expect that evidence would be forthcoming to contradict it.

Bearing the foregoing observations in mind, and in the first place regarding tenancies from year to year, the enactment in sub-section 9 must apply to all such tenancies, notwithstanding that a change or changes may have taken place in the occupation by reason of sale, devise, or intestacy, or by reason of a surrender taking place in order to admit a new tenant, or by reason of an alteration in the rent. In all such cases the former occupier, whether the same or a different person is the predecessor in title of the latter, and only ceases to be so where a new tenancy is created with a tenant who has not been in some privity with the former tenant in person or estate, or where the old tenant enters into a contract so entirely new as to justify the conclusion that it has been entered into by the landlord in consideration of the tenant releasing his rights. With regard to holdings under lease or otherwise, in cases where the interest of the former lessee has been surrendered for the purpose of creating the new interest, or where, the lease having expired, the late lessee in occupation converts the tenancy which arose on the termination of the expired lease into a new leasehold interest, the mere fact that there has been a change of rent, or that the conditions of the tenancy were reduced to writing, or were embodied in an instrument under seal, will not deprive the lessee under the new lease of the right to claim, when his lease expires, to be successor in title to the former tenant, and to have the benefit of the improvements made by such former tenant, unless, I must repeat again, the lease was granted or accepted as compensation for the former improvements—a fact which, I am of opinion, the court may or may not infer from the acts of the parties and the circumstances of the particular case. And here the importance of the closing words of the 9th sub-section cannot be overlooked. On each occasion of a new lease granted by the landlord and accepted by the tenant in substitution for the former tenancy, although there may have been no break in the continuity of title (and in most cases there will be none under the law as regulated by the present statute), the Court is bound to consider, from the circumstances of the case, how far the consideration for such lease may have included the surrender to the landlord by the tenant of the prior improvements, or how far by executing the lease the landlord, in the words of the section, compensated the tenant for his past improvements.

Enjoyment by the tenant during the continuance of a lease, no matter for how long, cannot be re-



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garded as compensation for improvements made during the lease, and not contracted by the lease to be made. In this respect I consider the concluding paragraph of the 4th section of the Act of 1870, if it be not, as pointed out by the learned judge, confined to improvements made before that Act, is repealed by the 9th sub-section of section 8 of our Act. The words "paid or otherwise compensated" by the landlord must mean either actual payment or some positive and direct consideration moving from the landlord to the tenant, and not an enjoyment of occupation, which has no reference to the improvements one way or the other. Nor, in my mind, can occupation as tenant from year to year, after the expiration of a lease, be deemed compensation, unless it be expressly shown that such occupation was permitted with direct regard to the antecedent improvements and for the purpose of compensation. The duty imposed on the court in fixing the rent, "to have regard to the interest of the landlord and tenant respectively," and the further duty to consider whether the tenant has or has not been compensated by the landlord for his improvements, taken in connexion with the declaration that no rent shall be allowed or made payable in respect of improvements made by the tenant or his predecessor in title, appear to me to afford ample power to the Court to do what is just between the parties by recognising the property and the rights of each. I do not propose to occupy time by applying the principles I have endeavoured to lay down to the particular facts of the present case. It is enough to say they are the principles by which in the present case I have tested the evidence, and by which I am prepared to test the evidence in all similar cases. Acting accordingly, I have expressed my concurrence in the result arrived at in the case of *David Adams v. Dunseath*; and I only wish to say, in conclusion, that I entirely endorse the observation of the learned judge as to the rule which should regulate the action of this Court as to costs, both in the Court of first instance and in this Court of Appeal.

Mr. VERNON.—Sitting in this Court as a judge of fact, not of law, it would be presumption on my part to attempt to follow my learned colleagues through the elaborate judgments which they have delivered. I can only say, that in some important points their judgments do not carry conviction to my mind, and I learn with satisfaction that they are to be submitted to the High Court of Appeal without any delay. Their judgments appear to me to lay down principles and to lead to results which were never contemplated by the Legislature. I am, therefore, obliged, with much diffidence in my own opinion, but without any hesitation as to my duty, to dissent from their judgments. It follows that, dissenting from the judgments, I dissent from the valuations arrived at, so far as those valuations are governed by the principles laid down in reference to the meaning and force of the words, "otherwise compensated."

Order accordingly.

Solicitors for landlady: R. & H. Orr.

Solicitor for tenant: Caruth.

Reported by GEO. M'DERMOT, Esq., Barrister-at-Law.

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Dec. 5, 20, 1881.—Lease made since 1870—Unfair and unreasonable terms—Threat of eviction—Terms taken in their entirety—Rent—Clause in lease not specifically referred to in originating notice—Practice—Power of amendment and absence of formal pleading entitled Court to regard such clause—Land Law Act, 1881, sec. 21.

If the terms of a lease, taken in their entirety, are unreasonable or unfair to the tenant, having regard to the

provisions of the Act of 1870, and the rights of the tenant under that Act, such a lease may come within the class which the Court is empowered to set aside.

By empowering the Court to annul the lease and to enable the tenant to have a fair rent fixed, the legislature has shown that the lease in its entirety, rent as well as everything else, is to be considered.

Even though a clause be not specifically referred to in the originating notice to set aside a lease, the fact that there are no formal pleadings and that the Court has ample power of amendment, will enable the Court to take such clause into consideration.

Per LITTON, Q.C.—The reservation of an exorbitant rent is in itself a term of the lease which the Court is bound to regard, and which may be unfair and unreasonable having regard to the provisions of the Act of 1870.

Application, on behalf of a tenant, to have a lease declared void. The circumstances are sufficiently explained in the judgment.

Dodd, in support of the application.—There were two things contemplated by the Act of 1870 (1st), where the Ulster Custom prevailed the tenant was to be protected in his interest under it; (2nd) he was to be protected where it did not prevail in his property in improvements by compensation. Here the tenant was served with a notice to quit on the 12th of April, 1875, and served with a further notice on the 20th of May, informing him that the object with which the first notice had been served was to increase his rent. The tenant and his predecessors were for nine generations on the farm. He had a large family. There was no clause in the lease excluding him from compensation nor from his right to the value of his improvements; but the lease was for a term of 31 years, which by virtue of the 4th sec. of the Act of 1870 disentitled him to such compensation. The lease contained a covenant against buildings unsuitable to the holding, against assignment, sub-letting, bankruptcy, and one requiring the tenant to pay the whole of the Grand Jury Cess. The lease was carefully drafted with regard to the Act of 1870. The 21st sec. does not mean by terms unfair and unreasonable, covenants that would be void by the Act of 1870, because they had been already rendered void without the 21st section. The tenant would be entitled to his tenant-right, or otherwise to claim compensation for disturbance and all improvements. He covenants in this lease to deprive himself of the benefit of secs. 3 and 4 of the Act of 1870. Not only that, but as this might be regarded as a letting since 1870, the tenant would be entitled under the 65th sec. of the Act of 1870 to deduct half of the Grand Jury Cess, he has covenanted in this lease to pay the entire of it. As under the Act of 1870 he would be entitled to compensation for disturbance and improvements, it is an unfair term having regard to those rights to deprive him of such compensation by coercing him to take a lease in which the rent confiscated his improvements on the one hand, while the term deprived him of compensation for disturbance on the other. He was deprived of the benefits of the Ulster Custom. It was held by Deasy, B., Keogh, J., and Whiteside, C.J., that the Custom did not attach at the end of the lease, Monahan, C.J., alone holding the opposite view, 5 I. L. T. R. 173, in *Austin v. Scott*, on appeal from the Chairman of the Co. Londonderry. In *M'Noin v. Beauclerc*, 7 Ir. L. T. R. 185, Barry J., merely refuses to decide that the judgment of Chief Justice Monahan was erroneous. The effect is, that in the opinion of the majority of the judges the Ulster Custom was not proved to exist at

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the end of a lease. The tenant, therefore, was deprived of compensation under the 3rd and 4th secs. of the Act of 1870; and by the authority cited he was also deprived of any benefit he might derive under the Ulster Custom. He was deprived of all this by threat of eviction. "I will put you out if you do not accept my terms," was in effect the language of the landlord. The lease was not executed until three years after, and the tenant really did not know what terms or conditions it contained.

*Obv.*, for the landlord, *contra*.—The lease can be declared void, no doubt—other circumstances concurring—when it has been obtained by threat of eviction or undue influence. Undue influence is clearly out of the case. Has there been a threat of eviction from which the lease sprang as a necessary consequence? Is the acceptance of the lease referable to a threat of eviction within the meaning of the 21st section? The payment of an increased rent created a new tenancy, so that all improvements anterior to the change of tenancy became the property of the landlord. The lease given subsequent to such a change of tenancy, in so far as it deprived the tenant of compensation for improvements, cannot be regarded as containing an unfair term having regard to the provisions of the Act of 1870, for the tenant had already lost his title to the improvements. Looking at the lease, are there any unreasonable covenants having regard to that Act and to the state of the law at the time of its execution? The object of the Legislature in making, under the Act of 1870, a lease for 31 years an equivalent for the rights conferred upon yearly tenants by the 3rd and 4th secs., was evidently to encourage leases. Leases, therefore, not only are not to be regarded as opposed to the principles of that Act, but to have been contemplated by its policy; they are to be regarded as part of the results intended to be brought about by it. Therefore it is only leases containing terms expressly in contravention of the Act of 1870, and forced upon the tenant by threat of eviction, that are within the purview of the 21st sec. Can the lease here be regarded as answering that description? The valuation of the holding is under £50 a year, so that the tenant could not contract himself out of the benefits of the Act of 1870. The terms in the lease were in accordance with the Act of 1870. The conditions against assignment, sub-letting, and bankruptcy, are not more stringent than those contained in the 9th and 13th secs. of that Act. The covenant not to build any dwelling or other house unsuitable to the holding is, by implication of the strongest character, a licence to build a dwelling or other house suitable to the holding; it amounts to an express covenant enabling him to erect such buildings. We say (1) that the lease does not contain terms unfair and unreasonable to the tenant having regard to the provisions of the Act of 1870; and (2) we say that the lease was not procured by threat of eviction.

[O'HAGAN, J.—There were improvements made by the tenant that the increased rent might have been calculated upon. Would not that deprive him of the benefit of the improvements?]

The acceptance of the increased rent created a new tenancy; so that he had no claim to the improvements when the lease was executed.

[O'HAGAN, J.—The tenant had a right to enforce a lease when he paid an increased rent under that agreement for a lease. Would not its operation be retrospective?]

*Dodd*, in reply.—It is contended there was a new

and immediate tenancy created by the change of rent, and that the lease was in no way connected with the increased rent or the new tenancy. The evidence shows that the reverse was the case. The increase of rent was part and parcel of the agreement for the lease even though the lease was not executed for some years after. The first time the tenant sees the lease is when it was ready for execution. It is urged that as the valuation is under £50 it is outside, but it is admitted if it were above £50 it would be within, the purview of the section. That is not a correct view of the law, because the Act allowed it to be done. The Act of 1870 allowed a tenant to contract himself absolutely out of it where his valuation exceeded £50; it allowed him to take a lease for 31 years, no matter what his valuation was, by which he was held to have forfeited all title to improvements except for permanent building and reclamation of waste land. The taking of the lease forfeited all improvements made previous to it, and there only remained the consideration of the increased rent as a term of an unfair character. Any claim that might have escaped by the acceptance of the lease was captured by the increased rent.

O'HAGAN, J.—In this case, in which Thomas Ewart is tenant of the lands of Tullygawley, in the County of Antrim, and James Gray, representative of the late Major Gray, is landlord, an originating notice has been served, seeking, under the 21st section of the Act, to have a lease, accepted by the tenant after the passing of the Landlord and Tenant (Ireland) Act, 1870, declared void on the ground that it contained terms which were unreasonable or unfair to the tenant, having regard to the provisions of that Act, and that its acceptance was obtained by Major Gray by threat of eviction, and undue influence. The originating notice states, as the terms complained of, that the tenant had to sign away the benefits secured by the Land Bill of 1870; and states further the exorbitant rent. The holding is stated to contain 86 acres, statute measure. The rent is £83, and the gross poor law valuation is £20. The lease complained of is a lease of the 25th of September, 1875, from George Gray to Thomas Ewart, of part of the lands of Tullygawley, in the county of Antrim, as delineated by a map endorsed on the lease; to hold for a term of thirty-one years from the 1st of November, 1874, at the yearly rent of £83, payable every 1st of May and 1st of November, free of all deductions, except the landlord's proportion of poor rate. There is a covenant against assigning, sub-letting, or setting in coacre, or bequeathing the holding to more than one person, without the consent of the landlord; a covenant not to build any dwelling or other house unsuitable to the holding, or to use the premises as an inn, tavern, or public-house, without the assent of the landlord; and to keep all buildings in good and proper repair, and so to yield them up at the end of the term. There is also a covenant enabling the landlord to enter and give notice to repair; and if the repairs were not executed by the tenant, the landlord should have the power to re-enter, to execute the repairs, and recover the amount from the tenant as rent. There is a further covenant to spend upon the ground all muck, dung, &c., and to leave the same upon the ground at the end of the term. There is a proviso for the absolute cesser of the lease upon breach of any covenant, and there is also an express covenant by the lessee to pay the whole of the grand jury cess. Prior to the granting of this lease, Thomas Ewart was indisputably tenant from year to year of his holding. His ancestors had held it, he says, for nine generations, which brings us back to the plantation of Ulster. At the time of the earliest memories of the tenant the rent was £16; it was afterwards, some time about 1850, raised to £19. The rent

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of £19 was made up of £1 for a particular field, and £18 for the rest of the farm. The rent of £1 for the field was in a few years afterwards raised to £4 10s., making the entire rent £22 10s., at which figure it remained until the granting of the lease. It would appear from the evidence of Mr. Boyd, the agent, that the land had, after the death of the tenant's father, been divided; that the present tenant's brother held the greater part of the farm, and he himself only about 7 acres, and that he purchased from his brother in 1865 or 1866. Now, the account which the tenant gives as to what had been done on the farm is as follows:—He says part of it was called a barren hill, which no man thought would be laboured. He says it was he himself who reclaimed the worst of it; that his father reclaimed the easiest parts, and left things that he thought never would be done—things which he himself afterwards did. He described the buildings which he and his father erected on the farm, namely, a farmhouse, a slated byre and a stable, to which, he says, the landlord did not contribute one farthing. The land, he says, was, when he remembered it first, bad grazing ground, stony and heathy, and high ground. There were what he termed "the four old original acres." He did not explain exactly what he meant by this, but I would infer that he referred to the 7 statute acres which he held before he purchased from his brother. Now the tenement valuation, which was made in 1862, was £20 for the 'entire holding—that is to say, for the land £18 5s., and for the buildings £1 15s. I may say that on this question of the improvements, which he alleged were effected by himself and his father, the tenant was not cross-examined. A neighbour of his, named Powell, deposed that he knew Ewart's land for thirty-five years, that he knew it in his father's time; that it was very rough ground; that the tenant was a very improving tenant; that he knew of his own knowledge of his having reclaimed portions of it—large portions; that he could not fix the time, because he was doing it from one time to another; that he believed he did the most himself; that his father did some of it. Mr. Boyd, the landlord's agent, was not, on his direct examination, asked any question as to whether the tenant had been an improving tenant. On his cross-examination he is asked whether he knows the holding, and whether improvements have been made upon it, and he says, "Yes;" and whether the tenant is a good tenant, and he answers, "A most excellent man." It is, therefore, a clear conclusion, in our minds, that the tenant and his predecessors in title had effected considerable improvements upon the holding, not only by the buildings—which we do not take much into consideration, because on Mr. Boyd's evidence their value does not form a constituent part of the rent—but also by gradual reclamation of the waste land and amelioration of the farm. Upon this point there is no discrepancy whatever in the evidence. I now come to the circumstances under which the lease was granted and accepted, concerning which there is considerable discrepancy. The tenant's version is this:—He says that two years before the lease, that is to say in 1873, he was paying his rent to Mr. Boyd, the agent; the rent was paid annually in December. "Mr. Boyd said to me 'The Major has raised your rent.' I said I was paying all that I could pay, and more than I could pay, because I was bringing every farthing of money that I had, and I had often to borrow some once in a while to make things up. He said, 'You should go up to the Major and have an interview.' I did not go. I said I had just paid all the rent I could pay. He said the Major was intending to give me a lease. I said we never had one and did not need any." The tenant had an evident dread of the result of an interview with the Major, and did not go near him, and a year went by. The lapse of this year without any step being taken by the landlord is, I think, to be accounted for by a circumstance mentioned by Mr. Boyd, to which I shall

hereafter advert. In the following December of 1874, as he was paying his rent, Mr. Boyd reproved him somewhat sharply for not having gone to see Major Gray; and again the tenant said that he did not know what to do; that he had always paid his rent, and as much as he could pay; that it was too dear without adding more to it. After those two admonitions from Mr. Boyd, Ewart in the following spring received a third, which could not well be neglected. He was served with a notice to quit, bearing date the 12th April, 1875, requiring him to deliver up possession of his farm on the 1st November following. More than a month afterwards he received another document, dated the 20th May, 1875, informing him that the notice to quit was served for the purpose of raising his rent, and that his rent in future was to be £33. It does not appear from the tenant's evidence that he had ever before this been informed verbally of the amount of rent to be put upon him. However this may be, the two documents taken together were of a very serious complexion, and under their pressure Ewart sought that interview with his landlord, which he had previously rather shunned than courted. He went to him in the month of August, 1875, and saw him in his own house, Mr. Boyd being present. The landlord, Mr. Gray, said, "Who are you?" Mr. Boyd said, "This is Thomas Ewart, one of your tenants from Tullygawley." He said "he remembered me." Ewart then mentioned the fact of Major Gray having gone over the farm eighteen years before with Mr. Winder, the former agent, and observed upon its stony condition. He then proceeds with his narrative of the interview. "He (the Major) said, 'We found your rent a little too low, and we have raised it, and I am going to give you a lease to secure you against further rises.' I said a lease would not make me abler to pay rent, that a lease was no good, and I would take none. I asked to be allowed to make statements to him of what I had done. I began to tell him that my land was about the worst that ever had to be broken up in our country, and I had done what the neighbours said was the greatest thing ever done, and after I had it done it was bad land still, though I made it better looking. I said it lies high, and the wind blows down the crops. He said he did not need me to instruct him, I was to accept his terms, 'Do you know that you are my tenant? I will put you out if you do not.' I was hurt about it, that I had done so much, and a man to put me out after all; and I stood a minute, and I said 'that is the hardest thing I ever heard or read of. I am the ninth generation born there, and now you put me out and I have a family of ten children, and a wife, and no place to go to, and no money.' He just turned round and said—'Boyd, give him until Saturday to make up his mind, and if he accepts our terms, and takes a lease he will get the stay'; that he did not need me any further." This is Ewart's evidence. He yielded to the landlord's demand, and paid the rent of £33 as from the preceding gale day—November, 1874; but the lease was not, in fact, executed by him until three years after—November, 1878. The tenant's account of the delay is that he never asked more after the lease for about three years until Mr. Christy, the landlord's solicitor, met him one day in High-street, and told him there was the lease to be signed, and that he should go and get it signed and pay for it; that he said that he did not care if he never saw it; that Mr. Christy told him if he did not sign it he would have to bear the expenses of the court, and that he would charge him twice as much as if he took it directly; that after consulting another solicitor he signed it in Mr. Christy's office. He is asked in cross-examination if he did not ask Mr. Christy to get the lease for him. He says he did not, but that Mr. Christy told him to come and pay for it. He admits that he did ask Boyd to get him the lease about three years after the lease was first named; that Mr. Christy having told him that he would have to pay double if he did not take it then, he told Mr.

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Boyd to get the lease if he had to pay for it. He is also asked whether he did not say that he wanted the lease to borrow money on, but this he entirely denies. Now, we cannot conceal from ourselves that this narrative of the tenant is consistent with what is stated by Mr. Boyd and Mr. Christy. It is entirely a question of recollection, for to none of them can any want of veracity be imputed. Ewart obtained the highest character from Mr. Boyd himself, and certainly in the witness-box he showed all the marks and characteristics of a serious and truthful man. Mr. Boyd says that in the year 1875 a survey was made of the estate by a Mr. Thompson, who is now dead; that he surveyed Ewart's farm amongst others, and valued it first at £35, which increased rent Ewart was asked to pay and refused; that before the service of the notice to quit no mention of a lease was made. He then states that he was present at an interview between Ewart and Major Gray which he fixes as having taken place in the late summer-time of 1875; and in this he and Ewart agree. He is then asked if he recollected what took place at that interview, and he answers "I do not, indeed." He is then asked if he recollects anything at all. He says, "I recollect they had a conversation about the rent and Major Gray told him his farm was cheap, and he would increase the rent, but he did not tell him he would put him out." Of that Mr. Boyd was perfectly sure; he says he does not remember any mention of a lease at that interview. His recollection is that the first mention of a lease was made in 1875, when Ewart was paying the first year of the increased rent, which ran from November, 1874. He adds that decidedly the first proposal for a lease emanated from Ewart; that he said he would take a lease, but Major Gray wanted £85 for the holding, and refused to sign the lease for three years unless the rent should be £85 a year. He then states that Thompson made two valuations—one in 1873, at £35, and the other in 1875, at £33; that Major Gray had a regular tariff for granting leases—viz., an increase of 2s. 6d. the statute acre for thirty-one years, and 5s. the statute acre for sixty-one years. He says that when Ewart proposed in December, 1875, to take a lease he, Mr. Boyd, promised to speak to Major Gray; that he told Ewart what Major Gray said—namely, that he wanted £85 for the farm, and that it was agreed, probably in 1876, that he should have a lease; that it was then agreed that he should have the lease at £33, but that Major Gray refused to sign for three years. Now if Mr. Boyd's narrative of the sequence of events be correct, the tenant's case would encounter a most formidable obstacle; for if the tenant, succumbing to the pressure of the notice to quit, agreed to the increased rent without any reference to a lease, and if the proposal for a lease afterwards emanated from himself as an independent transaction, it would be difficult indeed to hold that the acceptance of the lease was procured by threat of eviction or undue influence. We have dismissed a case on that very ground. But can we rely on Mr. Boyd's memory? In the first place, who is more likely to preserve a recollection of the facts, and, above all, of the important interview in August—Mr. Boyd, to whom this case was but one among a multitude of dealings with tenants over an estate of nearly £6,000 a year, each of whom was to him of comparatively small importance; or the tenant, to whom it was possibly the most momentous event of his life, when the choice was given him of paying an addition of almost fifty per cent. or quitting the farm which he and his had held for close on 300 years? Again, Mr. Boyd's own admissions show plainly that he has nothing in the nature of a distinct recollection of the transaction. He stated so in the beginning of his direct examination; and in cross-examination, in answer to Mr. Dodd, who asked him whether he could recollect positively that in the interview of August there was not a word said about a lease, he answered, "I cannot say that." He is further

asked by Mr. Dodd when instruction was given him to prepare the lease, and he answered, "In the year 1876; I think early in 1876." "Are you trusting to your recollection, or have you any date to go upon?—None whatever. Are you perfectly certain it was in 1876?—No. Will you swear it was not in 1875?—No. Will you swear it was not in 1874?—No, I will not. You won't swear there was not a reference made to a lease before the first interview between Major Gray and the tenant?—Yes. Your evidence now is that you won't swear there was not something said about a lease before that interview in 1875?—Yes. And it may have been in 1873?—It might." It is plain that Mr. Boyd's recollection on the whole subject utterly fails him; nor is it, as I have said, wonderful that it should. But the documents themselves furnish the strongest evidence. The lease has a stamp, with the date of issue, 26th April, 1875. Mr. Christy, the solicitor, says that the lease was engrossed on a purchased stamp, and that, so far as he can recollect, he got instructions to prepare the lease about April, 1875. But as to the lease itself; it is a lease duly engrossed, tenant's part and landlord's counterpart. The acreage is stated, and the *habendum* is "to hold for the term of thirty-one years from the 1st November, 1874, yielding and paying the yearly rent of £83" (the rent being no subsequent insertion, but portion of the original engrossment), "payable half-yearly on the 1st day of May and 1st day of November in every year, the first of such half-yearly payments to be made on the 1st day of May, 1875." The time of the beginning of the lease is cast back to November, 1874, and the first payment is to be made in May, 1875, thus capturing the coming May gale. It seems to us little short of demonstration that that lease was an engrossed though not executed instrument prior to the 1st May, 1875. What, then, becomes of Mr. Boyd's theory that the first mention of a lease emanated from Ewart himself in Dec., 1875, or of the view that at the time of the notice to quit, or of the notice of May, 1875, there had been no thought of a lease, or of the idea that the rent contemplated by Major Gray throughout the year 1875 down to 1876 was £85 and not £83? I think it not unlikely that the idea of £85 was in Major Gray's mind during the year 1874, and that some hesitation on that point was the cause of his inaction during that year. But the evidence of the engrossments, in my opinion, completely confirms the statements of the tenant that when, in December, 1873, the rise of rent was mentioned, the intention to give a lease was also mentioned, and that in the interview of August, 1875 (the engrossments with rent and all fixed being then in Mr. Boyd's possession), Major Gray did say, "We intend to give you a lease, to secure you against any further rises of rent." The rise of rent and the lease were not two distinct and independent things, as Mr. Boyd's memory now tells him. They were one thing and one idea from the beginning. In saying so I do not leave out of account what Mr. Christy tells us. Mr. Christy's evidence, I am bound to say, is wholly irreconcilable with Mr. Boyd's evidence as to the first mention of a lease being in December, 1875. Mr. Christy says that about the time of the preparation of the lease, and after he had been instructed by Mr. Boyd, Ewart called upon him, and gave him to understand that his reason for getting a lease was that he might require to borrow a little money. Now the time of the preparation of the lease must have been before May, 1875. The notice to quit was in April; the notice to pay the increased rent was in May; the first time Ewart came face to face with his landlord was in August, Ewart still bitterly contending against an increase of rent; and yet Mr. Christy, who, I may observe, as well as Mr. Boyd, professes to speak wholly from memory, would tell us that in the spring of 1875 Ewart came in to him, and spoke about his getting a lease. That at some time before the actual execution of the lease, in 1873, Ewart

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may have asked for the lease, and stated that he might obtain money on it, may be true enough; but Mr. Christy, who, like Mr. Boyd, does not refer to a single book or document, but depends altogether on his recollection, is, in my opinion, entirely astray as to the date. And when Ewart was bound, as he was bound by his agreement, to yield to his landlord's demands; when he had paid the rent reserved by the lease, and from the time mentioned in the lease, there is nothing, I conceive, in the fact of his asking that at least he should get the document embodying the contract which proves that the contract itself was not on his part a most reluctant one. Mr. Orr said to Ewart in cross-examination: "You wanted the lease then?" and his answer to me is very intelligible—"Was I not paying £33, and I had either to take it or pay dear for it." He says Mr. Christy urged him to take out the lease, stating that he would charge him at a less rate than he would afterwards do; and this, in my opinion, derives confirmation from what Mr. Christy himself says, namely, that the sum of £5 which he charged for the lease was less than the usual legal fee. On the whole, we have come to the conclusion, with very little hesitation, that the acceptance of the lease by Ewart was procured by the threat of eviction. But the question remains whether the lease contains terms which at the time of its acceptance by the tenant were unreasonable or unfair to him, having regard to the provisions of the Act of 1870. And this question is no doubt a very serious one, and one requiring very careful consideration of the real meaning of the enactment we have to construe. It has been urged that the leases which the Legislature had in view were those containing covenants or conditions purporting expressly to debar the tenant from claiming compensation under section 3 or section 4 of the Act of 1870. Leases of that character, it was said, were those which the court obtained power to annul. To this it was answered that so limited a construction would render the effect nugatory; for if the lease were made to a tenant the aggregate of whose holding is valued under £50, any stipulation purporting to prevent the tenant claiming for disturbance under section 3 or for certain improvements under section 4 is made absolutely null and void. It is difficult to conceive that the Legislature meant either to strike at claims which were already annulled by the statute of 1870 itself, or that it only regarded leases to tenants valued at £50 or over. The following dilemma was put to us. How can you call such a stipulation unfair to a tenant valued below £50 when it is a nullity? How can you call it unfair to a tenant valued above £50 when it is authorized by the statute? We are of opinion that a wider construction must be given to the 21st section of the Act of 1881; and that if the terms of the lease, taken in their entirety, are unreasonable or unfair to the tenant, having regard to the provisions of the Act of 1870, and the rights of the tenant under that Act, such a lease may come within the class we are empowered to set aside. It has been urged that the court cannot take into account the amount of the rent in judging whether terms were unfair, because the section enacts that when the lease is set aside, the tenant shall be deemed tenant of a present ordinary tenancy from year to year, at the rent mentioned in the lease. It is argued that by leaving the rent unaltered, the Legislature showed that what it had in contemplation were certain oppressive clauses tending to frustrate the benefits of the Act of 1870. But a consideration of the policy of the Act, as shown by the previous sections, will displace that argument. To every tenant of a present tenancy from year to year is given the right to have a fair rent fixed for his holding. But no such right is given to leaseholders during the currency of their leases; they are bound by their contracts. If, however, a lease obtained since 1870 was both unfairly obtained and unfair in itself, with regard to the provisions of the Act of 1870, then the Legislature thought

that the tenant should be freed from the fetter of the lease altogether, and be placed in the same situation as a present ordinary tenant, with the same rights of having a fair rent fixed for his holding, and of acquiring a statutory term. If the Legislature had only in view onerous clauses in the lease, apart from the rent, then its object would have been fully attained by giving the court power to strike out those clauses. But by empowering the court to annul the lease altogether, and to enable the tenant to have a fair rent fixed, the Legislature has, we conceive, shown that the lease in its entirety, rent as well as everything else, was to be considered. Now, in the first place what was the position of the tenant just before the agreement for the lease? He held as tenant from year to year a holding valued at £20, at a rent of £23 10s. He was therefore entitled, if disturbed by the act of his landlord, to claim five years' rent as compensation for disturbance. His father had made improvements on the farm, both by buildings and by reclamation of land. He himself had made further improvements. For the value of all these he was entitled to be paid. It is somewhat singular that on neither side was the question asked whether the holding was subject to the Ulster Custom, and accordingly we take the rights of the tenant to be those existing under the 3rd and 4th sections of the Act of 1870. Now, what are the terms of the lease? The increase of rent is *prima facie* immense, close on 50 per cent. above what the tenant had been paying, and more than 100 per cent. above the rent which had been paid in the tenant's early days; and this increase was made on a tenant admitted to be an excellent and improving tenant of a holding on which, so far as appears, the landlord never spent a shilling. This increase of rent was based on Mr. Thompson's valuation. Mr. Thompson is, unfortunately, dead. Mr. Boyd, the agent, says the valuation was made exclusive of the improvements. He says so without hesitation as to the buildings. He is then asked whether the reclamations were excluded. To this he gives no direct answer, but said, "Oh, as to the reclamations!" and then proceeded to state what the tenant had made by the sale of turbarry; and as it so happened neither counsel brought him back to the point. I asked him whether he meant the land was valued as it then was, with the exception of the buildings. I thought his answer to me was in the affirmative, "I do, my lord." But the shorthand writer has taken it down in the negative, "I do not." He probably did not quite understand my question, for he goes on to say, "There is a large slice of the holding wants to be reclaimed still. Thomas Ewart got from Mr. Winder, he has informed me himself, ten acres of bog or turbarry, out of which he has been living for the last twenty years, and during the coal famine that man made a little fortune out of the bog." Mr. Dodd asked him whether he was charging him rent for that bog, and he answered "Surely it is part of his holding." And therefore he has had it in your opinion far too low? "No," Boyd answers, "It is a fair rent now." And Mr. Commissioner Vernon said to him, "You say that he made a good deal of money of turf;" and he answered, "He did and does so still." He is asked whether that is not contrary to the terms of the lease? He answered "I really cannot tell you; it is deep bog for turbarry." I asked him whether it was with his permission Ewart did that; and he answered, "Oh, yes." Now, if the rent which Mr. Boyd considers a fair rent were based, as would appear to some degree, upon the gains made by the tenant by the sale of turf, the tenant has not one hour's security for that right. Major Gray may be too honourable a man to deprive him of it, but who can answer for his successors? The 29th section of the Landlord and Tenant Act of 1860 expressly debars a tenant from cutting or using turf bog for profit or sale, unless the right so to use and enjoy it was expressly granted in writing by the landlord. The lease is absolutely silent on the subject, and the tenant might be prevented at once by injunc-

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tion from selling a particle of turf, and might possibly have to purchase the right by a further increase of rent. If the rent was measured on that basis, it would have been only fair to embody it in the lease. But we add that we think it almost inconceivable that Mr. Thompson could have valued the farm irrespective of the tenant's improvements on the land. How was he to know them? How was he to know the previous condition of the land? The tenant who made them appears never to have known of the valuation until it appeared in the formidable result. Mr. Boyd does not say that he spoke a word to Mr. Thompson on the subject, and Mr. Boyd himself was there but for a comparatively short time. It has been said that the amount of the rent is outside the scope of the section with which we are dealing. It is true that we are not engaged in fixing a fair rent; but inquiring whether the lease contains terms unfair to the tenant, having regard to the Act of 1870. And it seems to us that if the tenant had acquired under the Act a property in the holding, as he undoubtedly did, and if a rent were imposed by lease, of an amount sufficient, or more than sufficient, to countervail the property so acquired, we cannot leave this out of account in judging of the fairness of the terms, having regard to the Act of 1870. Again, this lease purports to be a lease for thirty-one years. If it be so in fact, the tenant would on its termination be deprived of all compensation for disturbance, and, to a partial extent, of compensation for improvements. And it may be argued, that inasmuch as the reserved rent of £32 was duly paid from the 1st November, 1874, the lease should be treated as one having its beginning at that date. Although I do not concur in this view, and am of opinion that the lease must be deemed to have its commencement at the earliest as of the date when there was a binding contract for a lease, yet the tenant would be likely to find the point litigated at the end of the lease. But further, some of these improvements were made by the tenant's father while he was tenant from year to year of the holding. Now under the authority of the case of *Holt v. Lord Harberton*, 6 Ir. L. T. R. 1., the effect of taking the lease, whatever the term may have been, was to preclude the tenant from claiming in respect of the improvements made by his father. This would be no longer so under sect. 7 of the Act of 1881; but we must judge of the lease as it stood at the time it was made. The lease itself is in the most stringent terms, evidently taken from precedents in use in England, and not at all adapted to the customary relations between landlord and tenant in Ireland. I will refer to one clause in particular. There is a proviso that if there should be a breach of any covenant contained in the lease, the landlord might re-enter, and thereupon the term thereby created should absolutely cease and determine. So that if the tenant should let the smallest particle of the lands in consore, or fail to spread and use on the premises all the manure, muck, or dung raised upon it, or fail to keep in due and proper repair all buildings, and also all bridges, gates, palings, rails and fences, watercourses, dykes, dams, ditches, &c., the landlord might at once put an end to the lease, and evict the tenant. A clause of this kind may possibly be fairly enough inserted in a lease where there is a mere arrangement for the hire of the land as a temporary commodity. But where, as in the present case, the farm was the tenant's patrimony, it was, in my judgment, an unfair and unreasonable clause, and not only unfair and unreasonable in itself, but unreasonable and unfair to the tenant, having regard to the provisions of the Act of 1870. For if, as I have shown, there were rights acquired under that Act, namely, the right to the value of the improvements made by his predecessors in title, which were forfeited by the mere fact of taking the lease, surely it was unfair that the lease, which if a fair lease should be a substitute for the rights thus lost, should be so

framed as to be practically a lease at the will of the landlord. It is quite true that these extravagant clauses of forfeiture were very seldom sought to be enforced. I only remember one instance in which the attempt was made, and I am glad to say it failed. But we have to deal with the terms of the lease, and not with the probabilities of their being enforced—probabilities which might on any day undergo a complete change. The clause of forfeiture is not specifically referred to in the originating notice. But as we have no formal pleadings, and have ample power of amendment, this omission does not, I conceive, prevent us from taking it into consideration. There is another clause to which I advert only because it was adverted to in argument—namely, the clause which throws the burthen of the entire grand jury oath on the tenant. I frankly say I do not lay any weight on this clause, both because it was only a continuance of a liability which had previously existed, and because, according to the case of *Powercrown v. Mitchell*, 4 L. R. I. 82, 13 Ir. L. T. Dig. 19, the result would have been the same if that clause had been omitted, the tenant having been in occupation previous to the lease. But, taking all the terms of the lease—the great increase of rent, sufficient, in our opinion, to countervail, or more than countervail, whatever interest in the land the tenant had under the Act of 1870, the loss by reason of taking the lease of the value of all improvements not actually executed by himself, and the stringent and severe clauses of the lease, rendering the tenure under it most precarious, so far as legal rights are concerned—we have unanimously come to the conclusion that this is a lease containing terms unreasonable and unfair to the tenant, having regard to the Act of 1870; and, being of opinion that its acceptance was procured by the landlord by threat of eviction, we will declare it to be void as from the date of this order.

LITTON, Q.C.—No one who has paid attention to the evidence in this case can entertain a reasonable doubt that the lease of 25th September, 1875, was "procured by the landlord by threat of eviction." To believe that Thomas Ewart signed a lease containing the covenants which have been referred to, and reserving a rent raised from £22 10s. to £33, except under the urgent necessity of having to choose between submitting to the terms imposed by his landlord and quitting his holding for ever, is, I think, simply impossible, if we are to regard the principles of prudence and common sense which regulate men's actions. It is not necessary to dwell upon this part of the case, but I wish to make one or two observations on the terms of the lease itself, as applicable to this and similar cases. To bring any particular case within the 21st section the lease must contain terms which were at the time "unreasonable" or "unfair" to the tenant, "having regard to the provisions of the Act of 1870." I am of opinion that the reservation of an exorbitant rent is *in itself* a term of the lease which the court is bound to regard, and which may be such as to be unfair and unreasonable to the tenant, having regard to the Act of 1870. It is manifest that rent, if forced up to a sufficient amount, must of itself destroy whatever property the tenant has in his holding, or whatever right the tenant has under the Ulster Custom when such custom prevails. The Act of 1870 aimed at securing the tenant by providing compensation for improvements and compensation for disturbance; and in considering the question whether any and what pressure has been brought to bear by the landlord on the tenant to compel him to accept a lease, when we find the tenant yielding to a large increase of rent, and if the facts of the case disclose anything equivalent to a threat of eviction, we ought, I think, speaking for myself, to draw the inference that the acceptance of the lease was due to the tenant's inability to resist a demand the refusal to accept which involved the loss of his holding, and that the increase of rent was unfair and unreasonable within the 21st section of the Act of 1881. The 3rd section of the Act of 1870 provided com-

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pensation to be paid to a tenant disturbed by his landlord, "for the loss which the court should find to be sustained by the tenant by reason of quitting his holding," and the compensation was to be awarded accordingly. This provision has been repealed by the 6th section of the Act of 1881. But between 1870 and 1881 the effect of forcing up the rent of a holding was to deprive the tenant of compensation in direct proportion to the increase of rent. The higher the rent the less must be the loss sustained, and the less the loss sustained the less the compensation to which the tenant would be entitled. Having regard to the Act of 1870 and the decision in *Hok v. Harberton*, nothing more was required in order to destroy the benefits intended to be conferred by the Act of 1870 than to procure the acceptance by your tenant of a lease for 81 years at a rack rent; and wherever any part of the rent so reserved represented the value of the holding as improved by the tenant, nothing could be more unreasonable or unfair, having regard to the provisions of the Act. As to covenant in relation to county cess, I do not think that such a covenant can be considered as unfair or unreasonable, standing alone. The Act of 1870 contemplated that the parties might contract regarding its payment, and it appears to me to be merely a question of more or less rent; but the presence or absence of the covenant in a lease may have, and indeed I think must have, some bearing on the fairness or reasonableness of the rent reserved, having regard to the rights of the tenant under the Act of 1870, immediately prior to the execution of the lease. I only desire to make one other observation, and that is on the forfeiture clause. I do not think a forfeiture clause is unreasonable or unfair if limited to breaches of covenant of the character of the statutory conditions set out in the 5th section of the Act of 1881; but when most minute and almost harassing provisions are inserted in a lease, in relation to the manner in which the holding must be used and enjoyed, and when the forfeiture clause is made applicable to the most trifling and insignificant breach, in such case I would be prepared to hold the clause unfair and unreasonable. I think it was so in this case, and I entirely concur in the conclusion that this lease should be set aside.

Mr. VERNON concurred.

Solicitor for the tenant: *Currie*.

Solicitors for the landlord: *A. O'Rourke & Son*.

#### KELLY v. GRIFFITH.

Dec. 7, 24, 1881.—*Lease made since 1870—Terms unfair or unreasonable—Fine—Excessive rent—Improvements—Disturbance—Forfeiture of right to compensation—Tenant having equitable estate under deed of trust—Right to apply—Landlord—Burthen of proof as to whether tenancy is one from year to year.*

*A tenant from year to year compelled, by threat of eviction, to accept a lease at an excessive rent and to pay a fine, is entitled to have the lease set aside as containing terms unfair or unreasonable, having regard to the provisions of the Act of 1870.*

*Quære, whether the lowness of the rent would be taken into account as counterbalancing terms in other respects unfair to the tenant—e.g., loss of his right to compensation for improvements, and the fact of the tenant's having paid a fine, might be counterbalanced by the lowness of the rent?*

*Semble.—An excessive rent will be regarded as determining the fairness of the other terms in the lease.*

Application, on behalf of a tenant, to have a lease declared void. The circumstances so far as they are material are sufficiently explained in the judgment.

*Kelly*, in support of the application.

*Bird*, for the landlord, *contra*.

O'HAGAN, J.—In this case an originating notice, bearing date the 25th October, 1881, was served, seeking to have a lease of the 29th September, 1872, declared void, upon the grounds that it contained terms which were, at the time of such acceptance, unreasonable and unfair to the tenant—namely, that the tenant was compelled to accept said lease at the yearly rent of £47 11s., which was and is excessive, and not a fair rent; and the said tenant was compelled to pay £150 as a fine, which was not stated in the said lease, and should have been taken into consideration in reducing said rent; and that the acceptance thereof was obtained by threat of eviction. Portion of the above statement is an error. The fine of £150 is stated on the face of the lease. The lease is one not made to Honor Kelly herself, but to her son Edward Kelly, for the life of the Duke of Cambridge, at £1 12s. 6d. per Irish acre; but by a declaration of trust signed by him, and bearing date the 23rd of March, 1877, he declared that he obtained the land as a trustee for his mother, Honor Kelly. A good deal of evidence was gone into to show that she was regarded as the tenant from the time of the lease; and one curious feature in the case was, that for some years after the lease the receipts were given neither to the son, who was the lessee in trust, nor to the mother, who was the *cestui que trust*, but to the representative of the deceased husband of Honor Kelly. There is no doubt that Honor Kelly remained in occupation of the house and farm throughout, and that it was she who cultivated and managed the latter. Her son, the actual lessee, was a shopkeeper in Collooney. He is now in America. The declaration of trust is before us, an unimpeached instrument upon which we must act. Although the legal estate is in him, the legal and beneficial owner of the lease is Mrs. Kelly, who is in the actual occupation of the lands. Therefore, though not having the legal estate, she is, in our opinion, a tenant entitled to apply under the 21st section of the Act. The husband of Honor Kelly died on the 4th April, 1861. The old rent was £32 16s. 6d. a year, about 16s. the Irish acre. The valuation of the premises was £45. It is alleged that her husband held under a lease. So far as we can collect, this was so; but no evidence sufficient for us to act upon as regards the terms, or duration, or determination of this lease appeared before us. The payment of rent being proved before the execution of the present lease, the presumption is that there was a tenancy from year to year, until the contrary is proved. The burthen of proof is on the landlord, and all that he says is that his father's documents were somehow lost or stolen at the time of his death, but he cannot speak as to the terms of the former lease. After her husband's death, in 1861, Mrs. Kelly continued in occupation of the premises and paid the rent, although the receipts were given in the name of the representatives of Michael Kelly. In September, 1871, there was a demand of possession by a bailiff of the estate, named Edward Kelly. She refused to give up possession. Afterwards, she says, Captain Griffith himself and his agent came to her house, in the year 1872. Captain Griffith asked her what she was going to do about her land, and she told him she intended to keep it if she possibly could. He told her she could not expect to have it at the old rent. "I said I thought it was plenty for it, when I myself made the improvements. He said I would not have it at that. He told me to say what rent I would give. I told him I thought the old rent was sufficient. He said 'That won't do. I can get double the rent, and £250 of a fine.' I told him I would not give that, because I could get no money. Then he said, 'You will not get it.' When he was leaving I told him I would give Griffith's valuation, and I could not give more than £1 an acre. He left my house, and he and my son had whatever more talk there was about it." The next matter she deposes to is as to what occurred in the office of Mr. Moloney, the solicitor, in Sligo, who is now dead. Mr. Griffith, according to her account, said to her: "Now, Mrs. Kelly, I am going to sacrifice £100 on your account, and I will take £150 and double the rent." She says they had then the lease in their hands, but she herself was not present at the actual

execution of the lease, which, strange to say, never appears to have been executed by the lessee at all. Captain Griffith and Mr. Palmer, his agent, were examined. Mr. Griffith says he never dealt with the old woman, but with her son, and that her son, who was a shopkeeper in Collooney, came to him in 1872, after the lease fell in, and asked him for a new lease. Captain Griffith said he would be very glad to give it to him, but could not give it to him at the same rent his father had it at, that he had it very cheap. He told him to send in a proposal; that there was another man, who is a large tenant of his on an adjoining farm, most anxious to get it. Captain Griffith further said he would double the rent, and that Kelly must give him a fine for the buildings. I will revert to the question of the buildings. At present I am dealing with the circumstances under which the lease was accepted. Mr. Palmer says he valued the farm, and put on it 32s. 6d. an acre. He was asked whether any objection was made by the tenant, and he answers significantly, "There was the usual conversation, and I think the end of it was, he wanted me to leave the rent at 30s." "Was anything said about a fine?—Yes, Captain Griffith wanted £250; and I think I was partly the means of inducing him to take £150." We are of opinion, that although there was no notice to quit or other legal proceedings, there was a very distinct intimation that if the tenants did not yield to Captain Griffith's terms, the land would be taken from them and given to another. There was in substance a threat of eviction.

Now, to turn to the lease itself. Does it contain terms unreasonable or unfair to the tenant, having regard to the Land Act of 1870? We have already decided in the case of *Ewart v. Gray*, 16 Ir. L. T. Rep. 23, that the section is not confined to leases containing clauses or covenants debaring the tenant from the benefits of the Act, but comprises every lease which, taken altogether, in our opinion contains terms unreasonable or unfair to the tenant, having regard to the Act of 1870. In this case valuable buildings had been unquestionably erected on the farm. Mrs. Kelly swears positively that these buildings were erected by her husband, who died in debt in consequence of the expense incurred in erecting them; upon that point, on which she spoke most positively, she was not cross-examined. Captain Griffith says the buildings were erected by his father; but of that he gives no evidence whatever, except that he says his father told him, which of course must be simply wiped out from our minds as forming no evidence whatever. Mrs. Kelly is asked as to her own knowledge as to what her husband did, and she answered, "all the improvements that are on it he made them all, and that he expended £500 upon them." Mr. Mitchell, a practical farmer residing in the neighbourhood, who knows the lands for about thirty years, says he remembers the improvements made by Michael Kelly, the husband of Mrs. Kelly; very extensive and very good improvements. That he saw Kelly's men working at the house; that he did not know who paid for the house, but he saw Mr. Kelly getting it built. He says, besides, that he saw him improving the land itself; that he was a very improving man; that he removed walls and took out stones, and made drains—everything a good tenant could do to the land. He estimates the value of the buildings at the present time, taking into account that the tenant had the use of them, at £350—£300 for the dwelling-house and £50 for the office. If, in fact, these improvements, which appear to have been made twenty years ago, were in reality made by the landlord, it is impossible there should not be some evidence of the fact forthcoming; we conclude that they were made by the tenant. For the value of these improvements the tenant was entitled to be paid, in addition to compensation for disturbance, what might amount to three years' rent of the holding. The entire of the compensation for disturbance was, as the law then stood, lost and forfeited by the acceptance of the new lease, according to the law as laid down in *Holt v. Harberton*, 6 Ir. L. T. Rep. 1, and other cases. In addition the tenant had to pay a fine of £150 on a lease for a single life, a rent of £1 12s. 6d. an Irish acre, double the former rent. In estimating this rent Mr. Palmer took into account not only the buildings, but also the fact

that the tenant had the lands before at a cheap rate. Mr. Commissioner Vernon then said to him, "You state that you valued the land, and one item you took into consideration was that the tenant had it for twenty-one years at a cheap rate. Would you consider that an element in valuing land as it stood, that the tenant had had it cheap for twenty one years?" He answers, "I would not; but I would consider it as an element that you should not be very lenient in fixing the rent." As to the amount of rent, we have the evidence of Mr. Mitchell, to whom I have referred above. He says distinctly that at any time £1 12s. 6d. an acre was an exorbitant rent for the land. It is true that for some time Mrs. Kelly did make something out of the land by letting in consacre. But on that subject Mr. Mitchell says, from his own experience, that anyone who lets in consacre cannot make by it, because the land is so much reduced. He says he knows that Mrs. Kelly has not run out the land by a system of consacre for any length of time; that she treated the land well after the consacre people, laying it down with clover. The present value of the land he estimates as follows:—For 36a. 3f. 3p. of arable, 18s. an acre; for 3a. 2r. 4p. of marsh and swamp, 4s. 6d. per acre. We enter into this question of the rent, not that we are directly estimating the fair rent of the holding, but because it is impossible for us, in this inquiry, to leave the rent out of our view. It might be possible that the terms might be in other respects unfair to the tenant—that the right to his improvements might be lost, that a fine might be paid, and that these losses might be counterbalanced by the lowness of the rent. But in this case we are of opinion that the rent itself is excessive, even if there were no improvements and no fine. We are unanimously of opinion that the lease is unfair to the tenant, having regard to the Act of 1870. We accordingly declare it void as from the date of our order.

Mr. VERNON concurred.

Solicitor for the tenant: *Horkan*.

Solicitor for the landlord: *J. C. Davys*.

#### LAND SUB-COMMISSION.

Reported by R. M. DANE, Esq., Barrister-at-Law.

(Before CECIL ROCHER, Esq., Barrister-at-Law; M. P. LYNCH, and H. R. MORRISON, Esqrs.)

#### OATES v. STONEY.

Jan. 10, 1882.—*Turbary*—Reclaimed lands not included in ambit of holding—Right of landlord to soil after turf cut away—Admission of Estate Rentals in evidence.

Where a portion of land covered with turf was adjacent to the original holding of the tenant, though not comprised in the ambit of the holding, and the tenant possessed a right of turbary over such land:

Held, that the tenant possessed no right to the soil after the turf was cut away, but that the soil remained vested in the landlord, subject to the easement on the part of the tenant of cutting turf.

The Rentals of Estates are admissible in evidence in cases before the Court.

Application, on behalf of a tenant, to have a judicial rent fixed for his holding.

The originating notice set out that the holding consisted of 12a. 1r. 20p., statute measure, and the present rent was £4. From the evidence it appeared that the tenant held 2a. 2r. Op. of the holding in the year 1836, at a rent of £2. In 1857 the landlord caused a survey of the holding to be made, when it was found that by reason of the cutting away of the adjoining bog the tenant was in possession of 5a. 2r. Op., and the rent was accordingly raised to £3. By a recent survey it was found the holding had in a similar manner been increased and contained 7a. 1r. 9p., statute measure, and the rent was raised to £4. It also appeared that the tenant



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had the privilege of turbary on 5 acres of the bog remaining, and was allowed to spread the turf when cut on the surface of the bog.

*Dane*, for the landlord, asked that the originating notice should be amended by inserting in it the area of the holding as 7a. 1r. 9p., and not 12a. 1r. 20p. He contended that it was clear from the evidence that the holding had been yearly added to by the cutting away of the bog; and the landlord had no objection to the tenant having included in his holding the land so reclaimed, and a fair rent then fixed; but he strongly objected to his being given 5 acres of bog which clearly had never formed portion of his holding.

*Mr. M'Donnell*, solicitor, for the tenant, contended that the holding had always consisted of 12a. 1r. 20p., which included the bog, and he relied on a Poor Law Valuation certificate which set out, that in 1858 Griffith's Valuation stated there was that area in the holding. The tenant also had sworn that he had been in possession of that area.

*Dane*.—That certificate is only *prima facie* evidence, and has been fully rebutted by that given.

*Mr. Roche*.—In this case the judgment I am about to deliver is that of my brother Lynch and myself, Mr. Commissioner Morrison dissenting from the view we take. The evidence is principally documentary, and, in my mind, the documentary evidence produced by the landlord is clear and conclusive on the point that this holding does not contain 12a. 1r. 20p. as stated in the originating notice, but 7a. 1r. 9p., and that the originating notice should be accordingly amended. The first entry we find is in the estate rental of 1836, where we find John Oates holding 1a. 1r. 18p. Irish, and the map attached to the rental and coloured blue defines this portion very clearly as in Oates' possession, a large area containing 4a. 3r. 9p. lying to the South of Oates' holding being coloured yellow. The lands were surveyed in 1857, and in that survey we find Oates holding 3a. 1r. 25p. Irish. The course which was adopted by the tenant is clear; he had a right of cutting turf on the lands adjoining his holding, and as he exercised this right he reclaimed the portion cut away and made it cultivated land, and this land is now in his possession, and Mr. Stoney does not dispute his right to this portion. This portion added to the original amount of the holding will amount to 7r. 1r. 9p. statute. The question arises whether the tenant has a right to the remaining 5 acres of bog adjoining his holding which is not yet cut away, but on which he appears to possess a right of turbary. In my opinion, he has no right to the ownership of this land when so cut away. The landlord, as appears by the rental, never included these 5 acres in the ambit of the holding, and the tenant never held the lands in any manner hostile to the landlord's ownership thereof. It would, in my mind, be a principle highly dangerous to property, if it were held that, by a course of proceedings such as has taken place here, a landlord's rights could be lost. I will be no party to any such principle, and am prepared to hold that, when a tenant has exercised his right of turbary, he has no further right or interest in the soil. An objection has been raised in this case to the admission of the rentals and maps of the estate in evidence. I have already in similar cases ruled in favour of their admission, and, unless my decision is reversed on appeal, I shall continue to do so. In my opinion, it would work a monstrous injustice to landlords, and indeed to tenants also, if a tribunal possessing the extraordinary jurisdiction we have entrusted to us, were to reject the only means available to prove the history of the estate, and were to reject the truthful evidence of these ancient documents connected with the estate, containing entries in favour of landlord and tenant alike.

Solicitors: *Farrell M'Donnell; A. W. Tisdall.*

## HIGH COURT OF JUSTICE.

## COMMON PLEAS DIVISION.

Reported by J. P. BRETT, Esq., Barrister-at-Law.

(Before MORRIS, C.J., LAWSON, and HARRISON, JJ.)

## M'MANUS v. MAGUIRE.

Jan. 25, 1882.—*Remittal to County Court—Action for assault and battery—Visible means—Defendant's affidavit—C. L. P. A. Act, 1870, s. 6.*

*On a motion to remit an action for damages for assault and battery under the C. L. P. A. Act, 1870 (33 & 34 Vict., c. 109), s. 6, the defendant, in his affidavit, deposed that the plaintiff was a "small farmer," and "that neither the plaintiff nor I have any means to carry on expensive litigation in the superior courts;" and the plaintiff deposed to his having two large farms of land:*

*Held, that the defendant's affidavit did not sufficiently comply with the requirements of the statute, as to negating the plaintiff's having visible means of paying the costs should a verdict not be found for the plaintiff.*

Motion, on behalf of the defendant, under the C. L. P. A. Act, 1870 (33 & 34 Vict., c. 109, s. 6), to remit the action to the Enniskillen Civil Bill Division of the Fermanagh County Court.

The writ of summons, issued the 10th January, 1882, claimed the recovery of damages for assault and battery. The defendant, in his affidavit, after detailing the circumstances under which the assault was alleged to have been committed, deposed that the plaintiff is a "small farmer," and, "that neither the plaintiff nor I have any means to carry on expensive litigation in the superior courts." The plaintiff, in his affidavit, deposed to his having two large farms of land, and denied that the action was speculative.

*Tracey*, in support of the motion.

*Trench, contra*.—The defendant's affidavit does not state that the plaintiff has no visible means of paying the costs of the defendant, should a verdict not be found for the plaintiff: 33 & 34 Vict., c. 109, s. 6; *Kav. & Quill, Remit. of Actions*. The defendant does not state his means of knowledge.

*Tracey*, in reply.—We have so set out substantially in the defendant's affidavit that the plaintiff has no means.

MORRIS, C.J.—That is very vague; the statute must be complied with.

*Motion refused, with costs.\**

Solicitor for plaintiff: *J. Alexander.*

Solicitor for defendant: *J. W. Dane.*

## EXCHEQUER DIVISION.

Reported by HANS ATLMER, Esq., Barrister-at-Law.

(Before PALLES, C.B.)

## HOLMES v. CONNOLLY.

Dec. 10, 1881.—*Practice—Demurrer—Demurrer books—O. XXVII., r. 6—G. O., 1854, 50.*

*O. XXVII., r. 6, allowing either party to enter a demurrer "immediately," must be taken as repealing G. O. 1854, r. 50, requiring demurrer books to be made up; and, accordingly, a party whose pleading is demurred to is bound, without waiting for points of demurrer or*

\* See *Ryan v. Broughall*, 14 Ir. L. T. Rep. 119.—[E. N. B., Ed.]

[Ex.]

HOLMES v. CONNOLLY.—MORRIS v. CRANWELL AND WIFE.

[Ex.]

demurrer books, to enter the demurrer within ten days; otherwise the demurrer is admitted.

Motion for judgment in an action for recovery of land for non-payment of rent. The statement of claim averred that the plaintiff had let the lands of Ballymacshanboy, in the County of Limerick, by lease to Daniel Connolly; that the defendant was in possession of the said lands and paid rent under the said lease, and that one year's rent was now due. The defendant pleaded that the lessee, Daniel Connolly, never executed the lease and did not enter into possession under it. To this defence the plaintiff demurred, on the ground that by such defence the defendant admitted the making of the lease by the lessor, the possession by the defendant of the lands demised, the payment of rent under the lease, and that more than one year's rent was due. The demurrer was not set down for argument within ten days, as required by O. XXVII., r. 6; but, on the ninth day, the solicitors for defendant wrote to the solicitors for plaintiff requiring to be furnished with the points of demurrer. The points of demurrer not having been furnished until after the tenth day, and the demurrer not having been set down, the plaintiff accordingly moved for judgment.

*Carson*, for plaintiff.—The demurrer not having been set down for argument within ten days after delivery, the plaintiff's claim must be taken to be admitted, under O. XXVII., r. 6, and he is entitled to judgment.

*Shannon, contra*.—It is conceded that under O. XXVII., r. 6, the onus is now cast on the party whose pleading is demurred to of entering the demurrer for argument, but the party demurring must still furnish the points of demurrer. These cannot be supposed to be within the knowledge of the party demurred to. It is true that O. XXVII., r. 6, is silent as to this, but G. O. 1854, r. 50, requiring demurrer books to be made up is still in force. These books must be made up by the party demurring—i.e., in this case the plaintiff, and he has failed to do so. Till they are so made up the defendant cannot set down the demurrer for argument. If there were no demurrer books the inconvenience to the court as well as to the parties would be considerable, the points for argument not being known till stated in court. In the only reported case on the subject since the Jud. Act, it is assumed that demurrer books are still necessary: *Crawford v. Heathcote*, 12 Ir. L. T. Rep. 135.

*PARSONS, C.B.*—In this case I must hold that O. XXVII., r. 6, practically repeals G. O. 1854, r. 50, requiring demurrer books to be lodged. I am aware that this change must be attended with the greatest possible inconvenience, but the words of the new rule are too strong to leave any other conclusion open to me. O. XXVII., r. 6, provides that either party may enter the demurrer for argument "immediately;" and this is inconsistent with G. O. 1854, r. 50, which would give six days for making up demurrer books and two more for examination. The defendant should have set down the demurrer for argument within ten days. However, as we do not wish that parties should be misled or taken by surprise through such a change in the old practice, I am prepared in this case to show both parties some indulgence. The defence was clearly well pleaded, and therefore, I shall allow the plaintiff, if he thinks fit, to withdraw the demurrer, and put the defendant upon terms which will insure a trial being had before Christmas. Each party must abide his own costs of this motion.

Order accordingly.

Solicitors for plaintiff: *Webb, Scott, & Seymour*.

Solicitors for defendant: *M. Gough & Fowler*.

MORRIS v. CRANWELL AND WIFE.

Dec. 21, 1881.—*Practice—Amendment of writ and statement of claim—Married woman—Separate estate—Married Women's Property Acts (33 & 34 Vic., c. 93, s. 12; 37 & 38 Vic., c. 50, ss. 1, 2, 4).*

*Where in proceedings against a husband and wife for breach of contract by the wife before marriage it is sought to charge the separate estate of the wife, the Court will allow the pleadings to be amended by inserting a claim against it.*

*A new and independent claim cannot be introduced into a statement of claim without amending the writ of summons. Moore v. Alwell, 15 Ir. L. T. Rep. 54, followed.*

Summons, on behalf of plaintiff, for liberty to amend the writ of summons and statement of claim. The action was for breach of promise of marriage by the female defendant before her marriage with the co-defendant. The original writ of summons claimed £1,500 damages against both defendants for the breach. The statement of defence contained, *inter alia*, a plea on behalf of the husband that the defendants were married after the passing of the Married Women's Property Act (1870), Amendment Act, 1874, and that he did not receive any assets on the occasion of the said marriage, and was not, therefore, liable for his wife's prior engagements. The amendment to the writ of summons sought was an addition to the claim in the indorsement, "that it may be declared that the separate estate of the said Matilda Cranwell is well charged with and liable to the payment of the said damages," and "an inquiry as to said separate estate, whereof it consists, and in whom it is vested," directed, and for further relief. An affidavit of plaintiff's solicitor, filed in support of the motion, stated that the female defendant was possessed of considerable property before her marriage, and that the same now formed separate estate belonging to her, save in so far as the defendant, Thomas Cranwell, might have received assets with her upon his marriage.

*Hitchcock*, in support of the motion.—The statement of claim could be amended before reply without leave: O. XXVI., r. 1; but this amendment could not be made unless the indorsement in the writ were also amended: *Moore v. Alwell*, 15 Ir. L. T. Rep. 54, 8 L. R. Ir. 245. The proposed amendment corresponds to the order made in *Picard v. Hine*, 5 Ch. D. 278. The proper course is to direct an inquiry into the separate estate in the first instance: *Davies v. Jenkins*, 6 Ch. D. 728. The plaintiff has the same right to charge the separate estate as he had before the Married Women's Property Act, 1870: *Chubbs v. Stretch*, L. R. 9 Eq. 555; and the claim against the separate estate must appear on the pleadings whether made under the old law or under the Act of 1870, s. 12. It is uncertain whether the word "debts" in s. 12 of the Act of 1870 includes breach of contract. Sec. 4 of the Amendment Act, 1874, does not apply, because, if the issue on the special defence were found in favour of the defendant, no damages could be recovered, and there could be no "residue" within the meaning of that section. The judgment to be of any use should specifically charge the separate estate.

*Lynch, contra*.—The amendment sought is unnecessary, for it is already given to the plaintiff by section 4 of the Amendment Act. He is not in any way advanced by having this claim on the writ.

He cited:—*Pollock on Con. 65, 69; Pike v. Fitz-*

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*gibbon*, 17 Ch. D. 454; *Johnson v. Gallagher*, 3 D. F. J. 494; *Dixon v. Dougan*, 8 L. R. Ir. 211.

PAILES, C.B.—I think the amendment should be allowed. In order to raise the question the plaintiff ought to put in this claim. We so decided in *Moore v. Alwell* (*ubi supra*), a case which ran counter to two English decisions, *Large v. Large*, W. N., 1877, 198, and *Johnson v. Palmer*, 4 C. P. D. 258, but which was lately followed in the English Court of Appeal. *Large v. Large* was therefore wrong, and it may now be taken as settled that *Moore v. Alwell* is right. Mr. Lynch does not contest this point, but he argues that the proposed amendment is unnecessary as the law gives the plaintiff the remedy he seeks. Now I will not decide that the plaintiff could not get relief without the amendment. [His Lordship read sec. 12 of the Act of 1870, and sec. 4 of the Amendment Act, 1874.] If he gets judgment against the female defendant he would be entitled to an inquiry into her separate estate, which would then become liable. But, I do not think this is a sufficient answer. A party has a right to an inquiry of that description if there is an allegation in the statement of claim that the married woman has separate estate: *Gallagher v. Lady Nugent*, 8 L. R. Ir. 353. The plaintiff is here entitled to proceed in either of two ways—the way he first adopted in the action, and the way he now proposes by the amendment. If the first course were pursued the defendant could deny the receipt of assets under s. 2 of the Act of 1874, and that could be decided at the hearing. There are several instances where bills have been dismissed on proof of no separate estate. Prior to the Act of 1870 separate estate was only liable in a Court of Equity, the legal estate being in the husband, subject to a trust for the separate use of his wife. If you proceeded *in rem* against her estate you had to proceed in a Court of Equity. By the Act of 1870, s. 12, the remedy is against her separate estate, which is made liable. On this section *Malina, V.C.*, in *Chubbs v. Stretch* decided that property settled by a woman to her separate estate continues liable for engagements entered into by her before marriage, though she be personally discharged by the bankruptcy of her husband. I am unable to prevent Mr. Hitchcock from raising this point. I will not, as a single judge, go against the decision in that case and prevent the plaintiff from raising the question; and, therefore, I shall extend the time for amending the statement of claim. If Mr. Lynch objects to this, he can raise the point afterwards by demurrer. I think *Pike v. Fitzgibbon* does not touch this case. Costs of both parties costs in the cause—Mr. Lynch to plead, if he likes, to the amended statement of claim without further order.

*Order accordingly.*

Solicitor for plaintiff: *J. K. Toomey.*

Solicitor for defendant: *M. Huggard.*

#### LAND COMMISSION.

Reported by GEO. M'DERMOT, Esq., Barrister-at-Law.

(Before O'HAGAN, J., LITTON, Q.C., and J. E. VERNON, Esq.)

#### MAGNER v. NORREYS AND ANOTHER.

Dec. 9, 1881.—*Undue influence—Threat of eviction—Lease—Unfair or unreasonable terms—Improvements—Compensation—Assignee—Personal representative—Jurisdiction—Land Law Act, 1881, s. 21.*

Semble, that a covenant by which the tenant agreed to make at his own expense any improvements that might be necessary and desirable, and not claim compensation for them, even though the tenant's valuation empowered him to enter into such a covenant, would be unreasonable.

Quære, whether the Court has jurisdiction to raise a personal representative to a deceased lessee, for the purpose of having a lease declared void under the Land Law Act, 1881, s. 21?

The insertion in leases of declarations, contrary to the fact, that all improvements had been made by the lessor, animadverted on, and their effect discussed.

Application that lease be declared void, under Land Law Act, 1881, s. 21.—The farm, the subject-matter of the application, was situated at Kilconway, near Mallow, and contained 89 statute acres at a rent of £105 5s. 5d., the valuation being £66 5s. The father of the tenant had in 1853 been put in possession of part of the land containing 37 Irish acres for three years at £1 3s. the Irish acre, and the land was at the time in a very impoverished condition. The tenant rebuilt the dwelling-house and built substantial farm buildings. In 1856 the rent was increased to 36s. per Irish plantation acre. It also appeared that the land had to be limed and manured in order to put it in a proper state for cultivation. In 1868 or 1869 a notice to quit was served, but rent was subsequently received. In 1869 an adjoining farm became vacant, and the applicant's father became tenant of it on paying a separate rent.

The rent of the new take, which comprised 18 acres, was £2 an acre. Two proposals had been sent to the landlord for the two farms, offering to take them at the increased rent for 31 years. They were not, however, accepted, and the matter continued in treaty from 1869 to 1871, when eventually two leases were given—one comprising the tenant's old take and the 18 acres already referred to which had belonged to a man named Farrell, and which the tenant wanted for the purpose of rounding his farm, and the other lease comprising the rest of Farrell's land. The lease contained a clause declaring that all the improvements necessary and proper for the working, cultivation, or management of the lands had been theretofore made and executed by the lessor. It was, also, covenanted that, in consideration that the necessary improvements had been made by the lessor and of the term granted, the lessee should make and execute at his own expense for the future any improvements that he might consider necessary or desirable, and that he would not claim any compensation in respect thereof. The lessee, also, covenanted not to claim any compensation for disturbance or upon any other account whatsoever under the Land Act of 1870, or under any other law, custom, or usage whatsoever. The lease contained a covenant against assignment; and notwithstanding it the father of the applicant assigned his interest without consent. Moreover, the tenant to whom the lease was made was dead intestate, and no letters of administration to him had been taken out. Both parties having gone into evidence,

*J. Roche*, for the tenant.—The recital that all the improvements had been made by the landlord is in fact false. It corroborates the evidence given that the leases had been forced upon the tenant. The tenant further binds himself not to claim compensation for any improvements that he might afterwards make, and which he covenanted to make and execute at his own expense. He had no solicitor.

[O'HAGAN, J.—There is no consent to the assignment endorsed on the instrument. The Court has power to raise any point between assignor and assignee. The objection can be waived by assent at any time.]

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[Lane, for the landlord.—The estate is vested in trustees, and they have no power to endorse the assignment.]

If they refuse to give assent to the assignment we shall raise a legal personal representative. The personal representative would be in the same position as the lessee. The Court has power to raise a personal representative.

[O'HAGAN, J.—We have all the powers of the Act of 1870 with respect to raising a personal representative, but I do not think we have power to raise a personal representative for the purposes of the 21st section.]

Lane, contra.—All the requisites of the 21st section must coincide. No threat of eviction has been proved, and the undue influence should be of the same character as would be relied on in a case before the Court of Probate. You may lead a party into a contract, but you cannot drive him. There is nothing to show it here except that some one said the landlord had stated that he had been offered £2 an acre. That is not undue influence. The increase of rent is only on the old take, but there is no increase where the two holdings are taken together. There is an important legal question as to the right of an assignee to claim the benefit of the 21st section. He is not entitled to apply. The setting aside of a lease has been always regarded as a personal equity in the lessee which he would not be entitled to assign. It would require express enactment to change the rule. The Legislature did not contemplate the conferring of any such right, as it did not provide the requisite machinery. How are you to work out the personal equities? The sum of £350 has been paid. If it be equitable that the lease should be set aside, the rights of the parties should be adjusted. You would not be dealing with the person injured, but you would be conferring a benefit on a party who never bargained for it. If the benefit of the 21st section be intended for one assignee, it must be intended for any other. The tenant is the person who accepted the lease, and the same language is used throughout the section. A person could not derive a title to set aside a lease by assignment. The Court will not depart from that principle unless coerced. Our objections are (1) that to hold an assignee entitled would be equivalent to champerty and maintenance; (2) the Legislature did not contemplate it, as they provided no machinery for adjusting the equities between the assignor and assignee.

J. Roche, in reply.—The receipt of rent between March and September is evidence of a yearly tenancy; undue influence or coercion in obtaining the lease is proved by the lease itself. The assignee is entitled because the definition of tenant includes successors in title.

O'HAGAN, J.—In order to bring himself within the 21st section, the applicant must have been a yearly tenant whose acceptance of a lease was procured by undue influence or threat of eviction, and it must be shown that the lease so accepted contained terms that were unreasonable or unfair, having regard to the provisions of the Act of 1870. Mr. Roche has put before us very strongly that one of the conditions of the section existed very clearly in the case—namely, that the lease contained terms that were unreasonable or unfair, and he relied upon the clause in which it was said to be hereby declared, admitted, and agreed by and between the said parties that all improvements, necessary, proper, or desirable for the working, cultivation, or management of the land had been heretofore made and executed by

the lessor, and in consideration thereof, and the term thereby granted, the lessee covenanted to make and execute, at his own expense, any improvements which might be necessary or desirable; and for any improvements that he should make at any time hereafter he should not claim compensation, nor was he to claim compensation for disturbance, or upon any other account whatsoever, under the Landlord and Tenant Act, 1870, or under any other Act, law, custom, or usage whatsoever.

Now, as to the declaration that all improvements necessary or proper for the due cultivation of the farm had been made and executed by the lessor—if that were the fact, and it was agreed upon between the landlord and tenant—it would be a right and proper thing to insert the declaration, in order to perpetuate the testimony of it. But, I observe that this lease is a printed form, elaborately framed, merely leaving spaces for the names, dates, and the amount of rent. The clause I have just read is a printed one, therefore plainly intended to be adopted and executed by every tenant, and it would therefore happen that it might be adopted and executed by the tenants, wholly irrespective of whether it might be applicable to their cases or not. That being so, I am bound to say for myself, and I am sure I may say the same for my colleagues, that I should speak in strong reprobation of any such clause being introduced as any ordinary printed clause in the leases of any estate. With respect to the clause by which the tenant covenants to make at his own expense any improvements which he might consider necessary or desirable, and should not claim compensation, all I can say is that it amounts in substance to a mutual covenant that the land should be unimproved during the whole term of the lease, because it could not be expected that a tenant bound by that covenant would improve his farm. The covenant is perfectly legal, as the tenant's valuation enabled him to contract himself out of the Act, but it was a covenant practically debarring him from making improvements; and though such a covenant might be perfectly legal within the Act of 1870, it might at the same time be most unreasonable. If it could be shown in any way that such a covenant had been procured by threat of eviction most certainly I would go a considerable way to think it an unreasonable covenant. However, the section requires that a lease containing unreasonable clauses and covenants should be obtained by threat of eviction or undue influence. On that point it is our unanimous opinion that the case of the tenant fails.

Two proposals, in technical form, drawn with care, and complete in all the essential requisites, had been sent to the landlord. One was signed by James Magner, and it began, "I propose and promise to pay £ as annual rent for the holding containing 41 acres for and during the time or term of 31 years." There was another proposal by Byrne: "I promise to pay, &c." [His lordship having read both proposals, which contained the term for which the leases were to be granted, the time from which they were to begin, the rent proposed to be paid, and the extent of the holding comprised in each proposal, continued.] These were two technically-drawn proposals, and if the landlord had accepted them they would have become leases, plainly upon their own proposal, without any suggestion of the landlord. That proposal had not been accepted; negotiations went on, and eventuated, in September, 1871, in two leases, both of them given to Magner—one of them comprising his own old take, together with 17 acres of Farrell's, and the second lease comprising the rest of Farrell's two holdings. The second lease he settled upon his daughter, the other he plainly intended for his son. Accepting these leases it would require most cogent evidence that, notwithstanding the two proposals referred to, and which have been just read, he had in the interval changed his mind, and became determined to remain a tenant from year to year, and

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[L. C.]

was forced out of that position by threat of eviction. The evidence as to this was of the weakest possible kind—such as no one would not upon.

*Application refused with costs.*

#### LAND SUB-COMMISSION.

Reported by GEORGE H. SMITH, Esq., Barrister-at-Law.

(Before G. FITZGERALD, Esq., Barrister-at-Law ;  
A. COMYN and P. MAHONY, Esqrs.)

O'HARA AND OTHERS v. M'GEOUGH.

Jan., 1882.—*Practice—Adjournment—Costs incurred at previous sittings—Rules, 1870, 20—Rules, 1881, 2.*

*Where cases, entered for hearing at a previous sitting in Armagh of a Sub-Commission, were adjourned on the terms of the payment by the tenants of the costs of the day:*

Held, that payment of the costs as ordered was a condition precedent to cases being called on for hearing now; following the practice in the Civil Bill Court under Rule 2 (Land Act, 1881) and Rule 22 of 29th October, 1870.

On those cases, which appeared in the list for hearing before the Sub-Commission at Armagh, having been called on by the Registrar,

Mr. Simpson, solicitor, for the landlord, applied that the costs of the adjournment, ordered by the former Sub-Commission in November, 1881, to be paid to the landlord, should be first paid. Rule 20 of the code under the Act of 1870 provided for the adoption, under the Act of 1870, of the practice in force for the Civil Bill Courts in ejectment proceedings, and Rule 2 of those issued under the Land Law (Ireland) Act, 1881, necessarily implies the same course of procedure. In the County Courts the invariable practice has always been that such costs should be paid before the party directed to pay them could proceed.

Mr. Girvin, solicitor, for tenants, argued that the practice referred to did not apply to proceedings under the Act of 1881.

Mr. FITZGERALD—In my opinion, Mr. Simpson's view is the correct one, and we accordingly direct that unless the amount of those costs be first paid we must, before the close of these sittings, strike out the cases altogether.

The costs were thereupon paid, and the hearing of the cases was by consent postponed until a subsequent day.

#### STOTHERS v. NICHOLSON.

Feb., 1882.—*Home farm, what constitutes—Land Law (Ireland) Act, 1881, s. 58 (2).*

*A landlord having, upwards of thirty years ago, resumed possession of about 77 acres of land near his residence, and kept them in his own hands as his own farm for many years, had let parts of them, in 1856, to yearly tenants, who held them till 1859, when the landlord again resumed possession, and laid down the entire in grass. In 1866 the house, demesne, and these particular lands were all let to another tenant who gave all up in November, 1868; and about a month afterwards the present tenant took a lease for seven years of 17½ acres of these 77 at a rent of £35. On the termination of the lease he continued to hold on as a yearly tenant:*

Held, that the holding formed part of the home farm attached to the landlord's residence, and that notwith-

*standing the dealings since 1856 with these lands, they still retained the character of a home farm, and were therefore excluded from the operation of the Land Law Act, 1881, by virtue of section 58 (2).*

Application to fix a fair rent in respect of holding containing 17a. 2r. 35p. statute of lands of Cranagill, county Armagh, held under a yearly tenancy at a rent of £35 per annum. The tenant had taken lands in November, 1868, on a lease for seven years at the same rent, and on the termination of the lease remained on in possession as yearly tenant at the same rent nominally, though he annually got an abatement of between £3 and £4. Evidence was given to show that in the year 1848 about 77 acres of the lands (of which the present holding formed a part) were in the occupation of several small tenants whose interest the landlord had purchased up, and whose holdings he had cleared of fences, houses, &c., and thrown into large square fields, and ornamentally fenced in. The entire lay immediately adjacent to the demesne and house of Cranagill. He had kept it in his own hands for a home farm until 1856, when parts of it were let to yearly tenants who kept them till 1859, when the landlord again resumed possession, and put all down in grass, and used them for his own farm till 1866, when he let the house, demesne, and lands (including these 17½ acres) to a Mr. Shillington, who occupied the place as a residence for two years. Then this particular part was let to the present tenant on lease as above mentioned. Other portions of the 77 acres had been also let since then to other parties, one of whom had given up his holding last December voluntarily. None of the tenants of any part of the 77 acres had ever paid any input in respect of their holdings.

Smith, for the landlord.—The lands were clearly part of the owner's "home farm," and as such were excluded from the operations of the Land Law (Ireland) Act, 1881, under the terms of sec. 58 (2). That sub-section has for the first time introduced the term "home farm" as a term perfectly distinct from that known since 1870 as "demesne" lands; and the very language of the sub-section shows that, in order to treat a holding as part of a "home farm," it is not necessary that it should have been originally demised as such. The only question is, "Did these lands form part of a home farm?" If so, no matter by what designation they were described in the lease, they are now, as part of a home farm, in fact, outside of the Act altogether. Admittedly they were made part of the landlord's home farm in 1848, and so used by him until 1856. He resumed ownership over them in 1859, and down to 1866 used them again as part of his home farm, in connexion with his residence and demesne adjoining; and then set the entire place to one gentleman, who for two years used them as the landlord himself had done before. In 1868, no doubt, the owner let this particular holding to the present tenant on a lease in which the lands were simply called "part of the lands of Cranagill;" but the lease contains covenants on the tenant's part to prevent trespass over the lands, to prevent footpaths being made across them, and to keep the farm path, abutting on part of the holding, in good order; and these covenants clearly indicate that, even in so temporarily letting the lands, the landlord had still in view the subsequent retention of the holding as part of the "home farm," from which, for the time, it was to be so excluded. It is submitted that the decisions in respect of "demesne" lands have no application to cases such as this.

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[L. C.]

*Mr. Gallagher, solicitor, for the tenant.*—Even assuming these lands ever had the character of part of a home farm, the fact that they had been let in 1856 simply as lands for ordinary agricultural purposes, and again in 1868, divested them of any such character. In the very lease executed to the present tenant in 1868 the lands were not called part of a home farm or of demesne lands, but simply lands. They were let as an agricultural holding; they were used as such by the tenant, uncontrolled by any special clauses in the lease, and the decision of Mr. Justice Fitzgerald in *Hill v. Antrim*, 5 Ir. L. T. Rep. 70, is a clear authority in favour of the tenant's contention in this case. The language of that decision might be applied to the case thus:—"Is it to be supposed that, because there is a wall or fence round these grounds, all within the enclosure is, therefore, a demesne or home farm within the Act. Even if it was once a demesne or home farm the parties have acted in such a way as entirely to denude it of that character."

The Commissioners having stated they would reserve judgment until they had inspected the premises,

*Mr. FITZGERALD.*—The holding in this case consists of two large fields, amounting in the whole to 17a. 2r. 35p. statute measure. It was let to the tenant in 1868, under a lease for seven years, at the rent of £25 8s. 4d. Since the expiration of the lease in 1875 the tenant has continued in possession as a yearly tenant. The holding is situated at the rear of Cranagill House, the residence of the landlord, who alleges that it forms part of the demesne or home farm attached to such residence, and that as such it is excluded from the provisions of the Land Law (Ireland) Act, 1881. It appears that the landlord's father purchased this residence many years ago; that at the time of his purchase there were a number of tenants occupying the present holding; that he bought up their interests, threw down the fences, and made the holding into what it is at present—namely, two large squared fields. There appears to be about 77 acres, inclusive of the holding in this case, lying completely round the residence. The residence, with the entire 77 acres, was let to a Mr. Shillington some time previous to the present tenant going into occupation of the holding, while from 1856 to 1859 about 44 acres, including the present holding, was let to a man named Hyde. With the exception of the foregoing lettings, the present holding appears to have been in the landlord's hands since 1848 and worked or grazed by him. Lettings appear to have been made of some other portions of the 77 acres; in one instance a letting so made of a portion similarly circumstanced to the present holding was voluntarily surrendered by the tenant to the landlord last December. The present landlord lives away from the residence the greater portion of the year. The tenant does not appear to have created any improvements. From our inspection of the premises, and consideration of the evidence, we have come to the conclusion that the holding formed part of a home farm attached to the landlord's residence; that there has been nothing in the dealings by the parties in connexion with it to denude it of that character; and that it was never intended to separate the holding in a permanent manner from the residence of Cranagill, to which it had been attached as a home farm. We consequently dismiss this case, but, taking all the facts into consideration, we consider that it was a fair case on the tenant's part to bring into court, and we do not allow any costs.

*Application dismissed without costs.*

Solicitor for landlord: *H. J. Harris.*

Solicitor for tenant: *W. Gallagher.*

## WILSON v. ENSOR.

Feb., 1882.—*Agricultural or pastoral holding—Farm taken as a residence merely—Land Law Act, 1881, s. 58 (1).*

*On an application to fix a fair rent of a holding in Ardress East, county Armagh, containing 8a. 1r. 20p. statute measure, let at a rental of £28 per annum, and consisting of a farm and cottage thereon, the tenant, a book-keeper in a mill concerns two miles distant, having admitted that he took the place as a residence merely:*

*Held, that the holding was within the meaning of section 58 (1) of the Land Law Act, 1881, and accordingly that the notice should be dismissed with costs.*

*Application to fix a judicial rent.*—The facts as appearing in evidence were as follows:—The holding had been occupied by successive clergymen in the parish as a residence from 1852 to about 1875. In the latter end of that year the present tenant applied for it and took it under a written agreement for a yearly tenancy at a rent of £28 per annum, and in that document the premises were described as "the cottage and farm of land." On the part of the landlord a notice of dispute (Form No. 29) had been served on the tenant. The tenant on cross-examination admitted that he took the place particularly as a residence, and had occupied it as such. He had farmed the land in both tillage and grazing.

*Smith, for the landlord.*—This application should be dismissed with costs, on the ground that the holding is clearly within the meaning of sub-section 1 of section 58 of the Land Law (Ireland) Act, 1881: *M'Cutcheon v. Lansdowne*, 9 Ir. L. T. Rep. 20; *Carr v. Nuan*, 7 Ir. L. T. Rep. 26.

*Mr. M'Mordie, solicitor, for tenant,* argued that the terms of the agreement were quite consistent with the holding being treated as a farm for agricultural purposes.

*Mr. FITZGERALD.*—We have, however, the admission of the tenant that he took the place for a residence, and that he is engaged as a book-keeper in a concern some miles distant from early morning till late in the evening. The agreement refers no doubt to the land, but it deals specifically with matters of repairs of the house; and we think under such circumstances the holding is clearly a residential one, and therefore we must dismiss the notice with costs.

Solicitors for tenant: *H. & P. M'Mordie.*

Solicitors for landlord: *Carleton, Atkinson, & Sloan.*

(Before ULICK BOURKE, Esq., Barrister-at-Law,  
ED. W. O'BRIEN, and WM. DAVIDSON, Esqrs.)

## M'CURDY v. HEYGATE.

Jan. 13, 1882.—*Originating notice to fix judicial rent—Agricultural holding—Mill and 30 acres of land—Land Law Act, 1881, sec. 58.*

*Where land was held under an agreement in writing for a yearly tenancy, and the premises were set out as "all that and those the mill, kiln, and mill farm," and where the acreage was not more than 30 acres, and the rent £63:*

*Held, that the holding was not an agricultural holding within the meaning of the Land Law Act, 1881, and that the application must be dismissed.*

*Application by tenant to fix judicial rent of a holding near Lifford, consisting of 28a. 0r. 29p.; present*

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M'CURDY v. HEYGATE.—FITZGERALD v. SHANAHAN.

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rent £63, and the Government valuation £44. The landlord produced an agreement of tenancy, dated 21st Nov., 1871, in which the premises were described as the "mill, kiln, and mill farm." The material facts, as they appeared in evidence, are sufficiently stated in the judgment.

*Colquhoun, Q.C.*, for the landlord.—This is not an agricultural or pastoral holding within the meaning of the Act. The rent of mill and land is not severed, but all held under one contract of tenancy. The landlord could not resume possession of the mill without taking up the land. The agreement contains a covenant to insure and also not to sell. If a judicial rent was fixed the tenant would have power to sell, and the landlord could not enforce these covenants. The last clause of sec. 7 of Land Law Act, 1881, allows a flax scutching mill to be deemed suitable to the holding on which it is erected, but does not provide for the case of a mill like the present one.

He cited *Doyne v. Campbell*, 9 Ir. L. T. Rep. 101; *M'Cutcheon v. Lansdowne*, 9 Ir. L. T. Rep. 20; *Carr v. Nunn*, 7 Ir. L. T. Rep. 26; *Kane & Nolan L. & T.*, p. 296.

*Mr. P. Gallagher*, solicitor, for the tenant, contended that the holding was agricultural.

He cited *Lindsay v. Kennedy*, 11 Ir. L. T. Rep. 59.

*Decision deferred.*

**MR. BOURKE.**—John M'Curdy has applied to us to fix a fair rent of his holding. The holding was originally held under lease dated the 14th of March, 1832, for lives and years, and the premises are therein called the Mill Farm, with the mill and corn kiln lately erected thereon. This lease expired on the death of James M'Curdy, and the premises were evicted, and the landlord kept them in his own hands for two years, repaired the mill, and re-let the premises to the applicant in Nov., 1871. It is right to say this eviction took place in consequence of disagreements amongst the M'Curdy's, and Mr. Gage, the landlord's agent, eventually settled the dispute, gave this holding to John M'Curdy, and M'Curdy paid £200 to the minors. An agreement was then entered into between the present landlord and tenant dated the 21st day of Nov., 1871, whereby Sir F. W. Heygate agreed to let and John M'Curdy agreed to take "all that and those the mill, kiln and mill farm, to hold unto the said John M'Curdy from the 1st of Nov., 1871, as tenant from year to year, at the yearly rent of £63, payable half-yearly;" and the agreement contains a covenant to insure the mill and kiln for £500. On the 16th of Dec., 1881, Mr. M'Curdy wrote a very proper letter to Sir Frederick Heygate, stating that he had asked Mr. Gage for a reduction, and that Mr. Gage had told him to send a statement of his case to the landlord; and in the letter he says:—"In the first place, I have no complaint about the land, with the exception of the acreage, which is only 21a. 1r. 6p." He then adds that the mill is not making much above the working expenses. He asks for a reduction in rent, and he suggests that £38 would be a fair rent. The landlord has offered to make a reduction in the yearly rent, but Mr. M'Curdy is not satisfied with the offer. It is unnecessary for us to consider who built the mill, it being in the landlord's hands before the letting to the present applicant. What we have to consider is, Was this let as an agricultural holding under the agreement of the 21st Nov., 1871, and is it a holding on which we can fix a rent? In my opinion we cannot divide this letting, and fix a rent on the land and leave the mill alone, and we could not fix a rent on the land and include the mill in the rent of the land. M'Curdy also states in his letter that he has no complaint about the land with the exception of the acreage, and solely complains that the mill is not now paying its working

expenses. Mr. M'Curdy has no residence on the holding, and lets a considerable quantity of the land in conacre every year. It appears to me that, looking at the agreement and the entire of the holding, and having regard to the dealings of both parties respecting it for the purpose of ascertaining its character, both parties appear to have dealt with it as a mill and not as an agricultural or pastoral holding, and I do not think it was taken as a farm, and therefore we dismiss the application. We think, however, it was a fair case to have brought before the court, and we therefore give no costs.

*Application dismissed.*

Solicitor for the tenant: *Patrick Gallagher.*

Solicitor for the landlord: *W. Wilson.*

### COUNTY COURT.

(Before GEORGE WATERS, Q.C.)

FITZGERALD v. SHANAHAN.

Jan. 30; Feb. 1, 1882.—*Town park, what constitutes—User—Pasture—Plantation of potatoes and cabbage—Agricultural holding—Accommodation land—Land Law Act, 1881, s. 58.*

*In order to constitute a town park, within the meaning of the Land Law Act, 1881, s. 58 (2), it is not necessary that the holding should be used as pasture, if it is held as an accommodation to, and accessory of the tenant's town residence.*

*A tenant, who resided in a house in Dungan, occupied an adjoining plot of land under another landlord, which he used for the cultivation of potatoes and cabbage for consumption by his family. The land had been held to constitute an "agricultural holding" within the meaning of the L. & T. Act, 1870, by Dowse, B. On an application by the tenant to have a judicial rent fixed, under the Land Law Act, 1881:*

*Held, that, even though the holding were to be treated as an agricultural one, it was a town park, within the meaning of the Land Law Act, 1881, s. 58 (2), as it was held solely as accommodatory and accessory to the tenant's town residence, for the purpose of supplying his family with cabbage and potatoes. Taylor v. Dowden (8 Ir. L. T. Rep. 83, Don. L. R. 517) discussed.*

*Application, by tenant, to have a judicial rent fixed.—The holding consisted of 35 perches (statute) in Dungan, held at a rent of £2, the poor-law valuation being 15s. The tenant, who resided in the town, in a cottage held under another landlord, deposed that when he took the land (originally at 30s.) it was a commonage. "He drew surface on it," and the landlord told him he would never disturb him. The use he made of the land was to grow potatoes and cabbage for his family. No witnesses were called for the landlord.*

*Mr. O'Connell, solicitor, for the tenant, mentioned that, on an appeal from a previous decision in the case, Dowse, B., had held that the holding was an agricultural one, and the case had been referred to in a book by Mr. Healy on the subject. He, also, referred to one of the papers on Town Parks in 15 Ir. L. T. & S. J., and submitted that, in order to constitute a town park, the holding should be used as pasture.*

*Matheson, contra, contended that, even though the holding were to be treated as agricultural, it was a town park within the Land Law Act, 1881, s. 58 (2).*

*Judgment deferred.*

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FITZGERALD v. SHANAHAN.—MOLONY v. DELANDRE.

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The JUDGE.—In this case the tenant seeks to have a fair rent fixed for his holding, which consists of 35 perches of land situate in the town of Dungarvan. He does not live on the holding but in a cottage in the town held under another landlord. This holding has been already the subject of judicial decision with reference to the Land Act of 1870. The landlord, Shanahan, brought a civil bill ejectment for over-holding against the present tenant, which was tried before me. A notice to quit, duly signed by the landlord and served on the tenant, was proved. It was objected on the part of the tenant that the holding was within the provisions of the Land Act, 1870, and as the notice to quit was not stamped I was asked to dismiss the ejectment. I held that the holding was not an agricultural or pastoral holding, and consequently was not within the provisions of the Act of 1870. An appeal was taken from my decision. The appeal was heard at Waterford Assizes before Baron Dowse, who decided that the holding was agricultural and within the Act of 1870, and, as the notice to quit was not stamped, he reversed my decision and dismissed the ejectment. As I believe that in fact no use was ever made of this holding except to grow potatoes and cabbages for use in the tenant's family, I cannot concur with the learned Baron's decision, but I am bound by it; and I have come to the conclusion that I must treat this as an agricultural holding within the meaning of the Act of 1870, and consequently of the Land Act of 1881 also. The tenant now seeks to have a fair rent fixed. Mr. Matheson, for the landlord, submits that, even though I treat it as an agricultural holding, I should not fix a fair rent as it comes within the exceptions provided for in section 58, sub-section 2, of the Land Law Act, 1881, because it is a holding "ordinarily termed 'town parks,' which bears an increased value as accommodation land over and above the ordinary letting value of land occupied as a farm, and is in the occupation of a person living in the town." Mr. O'Connell, solicitor for the tenant, urges that within the meaning of the Act of 1881 a "town park" must be a holding used as pasture, and that as the tenant in this case uses the holding to grow potatoes and cabbages it is not a "town park," and he referred to an article in the fifteenth volume of the *Irish Law Times*, quoting a decision of Robert Ferguson, Q.C., in the case of *Taylor v. Dowden*, in which he is reported to have said that a town park should be in grass. But, on looking to his decision in that case, as reported in *Donnell's Land Reports*, p. 517, I do not find any words bearing out that construction; but even if such a decision was made by him, I could not follow it. I am clearly of opinion that it is immaterial whether a tenant

\* It is impossible to conceive how such a misunderstanding of the reference to *Taylor v. Dowden*, in the article alluded to, could have arisen. Mr. Ferguson, Q.C., has never been reported to have said that a town park should be in grass; and nothing of the kind was stated by the writer, in any of the three articles on "Town Parks," within the Land Acts, 1870, 1881," published in the *Irish Law Times* last December. Precisely to the contrary, it is there stated:—"It must be allotted or used for the accommodation of a town residence, and not held and used for mere agricultural or commercial purposes: *Taylor v. Dowden*, 8 Ir. L. T. Rep. 83; *Walsh v. Duane*, 9 ib. 180; *M'Math v. Richards*, 13 ib. 80; *Mullally v. Moore*, 15 ib. 82; but it is not necessary that it should be used as pasture land: *Trustees of Lord Kilmorrey v. Anderson*, 8 Ir. L. T. & S. J. 109; *Corbett v. Carey*, 5 Ir. L. T. Rep. 15." So, in *Taylor v. Dowden*, as reported in *Donnell's Land Reports*, the learned Chairman said: "The important element is wanting that they have never been allotted or used for the accommodation of a house in the town. They have been held and used for agricultural and commercial purposes, and are not, in my opinion, within the meaning of the exception in sec. 15." Those are the identical words, also reported in 8 Ir. L. T. Rep. 83—a report revised by the learned Chairman, and occupying a page and a half, and the effect of which appears to have been accurately presented in Mr. Donnell's abstract, occupying eleven lines.—[E. N. B., Ed.]

uses a "town park" in pasture for grazing a cow or in tillage for growing potatoes, provided it is held as an accommodation to, and an accessory of the town house. In this case, I am clearly of opinion that the tenant holds this plot solely as an accommodation to his house in the town of Dungarvan—growing on it, as he has proved, potatoes and cabbages for consumption in his house—and that it is a "town park" within the meaning of section 58, sub-section 2, of the Land Law Act, 1881; and I, therefore, dismiss the case.

Solicitor for tenant: Daniel O'Connell.

Solicitor for landlord: D. F. Slattery.

## MOLONY v. DELANDRE.

Feb. 6, 1882.—*Holding for purposes of pasture under original letting—Subsequent user for purposes of tillage—Land Law Act, 1881, s. 58 (4).*

Where it appeared that the holding of a tenant, who sought to have a judicial rent fixed, had been originally let to the tenant's husband for grazing purposes, and had not been tilled or meadowed by her husband without the original landlord's consent; but afterwards, since 1875, when the present landlord entered on the inheritance, his consent was not asked, and a portion of the lands were of late years kept in tillage:

Held, that, in the absence of evidence of any new arrangement or alteration of the original letting having been made by the present landlord, the holding came within the Land Law Act, 1881, s. 58 (4), as being let to be used wholly or mainly for the purposes of pasture; and that the application to fix a judicial rent should be refused.

Application, by tenant, to fix judicial rent.—The circumstances are sufficiently explained in the judgment.

Carson, in support of the application.

Matheson, contra.

The JUDGE.—In this case the tenant has applied to have a fair rent fixed for her holding. It appears that the late Mr. Vernon Delandre, solicitor, held, under the Marquis of Waterford, a house and about 22 acres of land near Passage East, in this County (Waterford). For several years he occupied the house as a summer residence. The holding is divided by a road. At one side are the house and out-offices, consisting of stable and coach-house and other buildings, a garden and a lawn; at the other side lie some fields containing about 15 acres. In the year 1854, Mr. Vernon Delandre let the house, out-offices, garden and lawn, to Mr. Steele, and afterwards to Mr. Ryan, and at the same time he let the other fields to the late John Molony, the husband of the present tenant. Mr. Ryan was succeeded by another tenant who held only the house, and, upon this change, the lawn, garden, and out-offices, were given to Molony. He appears to have had only the occasional use of the stable and coach-house, as it was proved that when some of Mr. Delandre's family went to stay for a time in the house, the stable and coach-house were reserved for their use. The landlord has always paid all the rates and taxes and kept the premises in repair. John Molony, and, since his death, his widow, have remained in possession since 1854. Mr. Mark F. Delandre, son of the late Vernon Delandre, has examined and produced a rent-book of his father, containing entries relative to the tenancy of John Molony, from the year 1854 to 1863. In this book there is an entry in the late Mr. Delandre's handwriting, stating that the "grazing" of this land was let to Molony, and all the entries down to 1863 treat the tenancy as a letting of the grazing of the land only. These entries were given in evidence without objection by the tenant's



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counsel. Mr. Mark Delandre, in addition, proved that, in his presence, on several occasions, Molony asked permission from Mr. Vernon Delandre to till some of the lands, and also to use part as meadow; and he says that during his father's lifetime Molony never tilled or meadowed the lands without permission from his father; he proved that permission was asked down to the year 1874, when he left home. Mr. Vernon Delandre died in 1875, when the present landlord inherited the place. No evidence was given as to permission to till or meadow the lands having been asked since the death of the late Mr. Delandre; and it was proved, on behalf of the tenant, that about three acres of the land have in late years been always in tillage, and the rent receipts were given in evidence. These are ordinary receipts for rent, and do not allude to the nature of the tenancy. Under these circumstances, I have come to the conclusion that this holding was not let to John Molony as an ordinary farm. To hold that it is an ordinary farm and that the tenant is entitled to have a fair rent fixed, would work great injustice to the landlord; it would separate the residence from the out-offices, garden, lawn, and lands, leaving it on the landlord's hands, entirely isolated and greatly reduced in value. I believe that the holding was let by the late Mr. Delandre to be used wholly for the purpose of pasture, and that it continued so up to his death; and no evidence has been given that any new arrangement or alteration of the original letting was made by the present landlord. I, therefore, hold that the case comes within the exception prescribed by sec. 58, sub-sec. 4, of the Act of 1881—namely, that it is a holding "let to be used wholly or mainly for the purposes of pasture, the tenant of which does not actually reside on the same;" and I dismiss the case.

Solicitor for tenant: Feely.

Solicitor for landlord: Thornton.

SUPREME COURT OF JUDICATURE.

COURT OF APPEAL.

Reported by H. E. FITCHCOCK, Barrister-at-Law.

(Before LAW, C., SULLIVAN, M.R., DEASY, and FITZGIBBON, L.J.J.)

EIFFE (Appellant) v. M'KENNAS (Respondents).

Feb. 1, 2, 8, 1882.—*Land Law Act, 1881, s. 58 (7)*—Letting for "temporary convenience"—"Yearly tenancy"—Setting aside originating notice to fix fair rent—Appeal, right of.

Within a couple of months after the expiration of the last of a series of leases, and while the tenant continued to overhold, the landlord stated that he required the land for building purposes, but, the tenant having urged that if possession were resumed he would be a heavy loser, as he had highly manured the land, the landlord replied that he might keep the land until he had exhausted the manure. The amount of the rent to be payable was not fixed, the landlord requiring more and the tenant less than the amount payable under the lease. The tenant, with the landlord's consent, continued in possession thus for three years, and from time to time, after two years, paid various sums as and towards rent, but still without any settlement of what should be the amount. On appeal from an order of the Land Commission, refusing to set aside an originating notice to fix a fair rent for the holding:

Held, that, whether a yearly tenancy had been created or not, the letting was for "the temporary convenience"

of the landlord or tenant within the meaning of section 58 (7) of the Land Law Act, 1881 (44 & 45 Vic., c. 49).

Per FITZGIBBON, L.J.—The temporary convenience or temporary necessity which excludes a tenant's claim may be existing "for a time" compatible not only with a tenancy at will, or a tenancy less than a tenancy from year to year, under section 69 of the Landlord and Tenant Act, 1870, but also under both that Act and the Land Law Act, 1881, subject to the restriction as to written evidence, with a tenancy from year to year or for life or lives. Though circumstances were here shown which, if unexplained or unqualified by the other facts, might afford presumptive evidence of a tenancy from year to year, they had been so explained and qualified, and there was no sufficient evidence to sustain the finding of the court below that a tenancy from year to year existed in the holding; nor was the court debarred, under the circumstances, from reversing the decision, as being upon a question of fact, the question largely depending on legal considerations. *Montgomery v. Montgomery*, 14 Ir. L. T. Rep. 9, applied.

Appeal from an order made by the Land Commission on the 3rd December, 1881.

The respondents served an originating notice to fix a fair rent of a farm called Millfield, at Harold's-cross, county Dublin. The originating notice was as follows:—

Holding—

County Dublin.	Poor Law Union South Dublin.	Electoral Division Rathmines.
Name by which lands are known on Ordnance Survey,		Rathlands.
Area in Statute Measure 8A. 2R. 7F.	Rent of Holding £50 0 0	Gross Poor Law Valuation £14 15 0

The proceedings under this notice are intended to be carried on before the Land Commission Court.

Originating notice of application by tenant, or landlord and tenant jointly, to court to fix a fair rent. The tenants apply to the court for an order fixing the fair rent to be hereafter paid for the above holding.

(Signed), J. PLUNKET & SON, Solicitors.

Dated this 11th of November, 1881.

The appellant applied to the Land Commission Court for an order that the originating notice might be dismissed with costs on the ground—firstly, that the applicants were not tenants within the meaning of the 8th section of the Land Law Act, 1881; and secondly, that the holding was let to the tenants to meet the temporary convenience of the landlord and Charles Kavanagh, deceased. The application was refused with three guineas costs, and from this order the landlord appealed, leave to appeal having been given by the Land Commission Court.

The landlord made an affidavit, in support of his application, to the Land Commission Court, in which he stated the following facts:—On 7th May, 1847, George A. F. Robinson demised the holding in question to James Kavanagh for 31 years at the rent of £30 per annum. The lease expired on 7th May, 1878, and at and previous thereto all the estate and interest of

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George A. F. Robinson was vested in Mr. Eiffe; and all the estate and interest of James Kavanagh was vested in Charles Kavanagh, the respondents' testator. Charles Kavanagh held also three other holdings on lease under Mr. Eiffe. The four holdings adjoined, and the rents, amounting to £196 15s. 6d. per annum, were paid in one sum and one receipt was given for all. After the lease of the holding in question expired in May, 1878, the rents of the three other holdings, amounting to £166 15s. 6d., were paid in a similar manner, the holding in question being dealt with separately. In July, 1878, Charles Kavanagh called on Mr. Eiffe with reference to the portion of land out of lease, and said he thought that the appellant would renew his lease. The appellant told him that he purposed taking possession of the holding with a view of establishing a brick manufactory thereon, and building thereon or letting it for building. Charles Kavanagh then said he had highly manured the land, and if possession were taken he would be a heavy loser. Mr. Eiffe replied that he would not wish on any account that he should lose the benefit of the manure, and said he might keep the land until he had exhausted the manure, adding, that he had made arrangements as to starting the brick manufactory and the building scheme. Charles Kavanagh thanked him very much for leaving him in possession on those terms. Mr. Eiffe told him he should expect him to pay for such time as he might have the land at the rate of £10 per Irish acre, and that he should re-erect the fences which had been thrown down. He agreed to the latter; but said that £10 an acre was too much, and that he could not pay more than £8. No arrangement was come to as to the amount of rent to be paid. Charles Kavanagh made two payments after this, one of £80, on the 28th September, 1880, and the other of £25, on the 20th November, 1880. On neither of these occasions did he agree as to the amount to be paid. Mr. Eiffe continued to require to be paid at the rate of £10 per acre, and the tenant continued to refuse to pay more than £8 per acre. Mr. Eiffe accordingly only gave receipts on account. After the death of Charles Kavanagh the respondents, as his executors, accompanied by their solicitor had an interview with Mr. Eiffe, when they paid him the further sum of £40 10s. for the use of the holding. They told him that by the terms of the testator's will, it was necessary that a sale should take place of his holdings at Rathlands, and asked if he would consent to recognise a tenancy from year to year as subsisting in the portion of land out of lease (being the holding in question) for the purpose of sale. This Mr. Eiffe distinctly declined to do. Without any further communication the originating notice was served. The appellant further deposed that the respondents, as executors of Charles Kavanagh, occupied the holding merely on his sufferance, pending his making arrangements for brick-making or letting for building, and on the distinct agreement that at any moment he might take up possession of the same, and that the occupation was for the temporary convenience of himself and of Charles Kavanagh, so that pending such arrangement the land might not be idle.

James M'Kenna, one of the respondents, made an affidavit, in which he stated that the late Charles Kavanagh was in possession and occupation of the lands in the originating notice mentioned up to the expiration of the lease, on the 7th May, 1878, and continued in possession up to the time of his death, which took place on the 10th June, 1881; that since his death John M'Kenna and deponent, as his execu-

tors, continued in possession and occupation; that Charles Kavanagh and his executors had paid rent, as claimed by Mr. Eiffe, for the holding, at the rate of £10 per acre, up to the 1st of May, 1881; that the moneys thus paid were received as such rent and receipts given therefor; and he referred to several letters written and receipts signed by Mr. Eiffe, and submitted that John M'Kenna and deponent were present yearly tenants of the holding.

The letters and receipts referred to, so far as material, were as follows:—

"45 Fitzwilliam-square, Dublin,  
"2nd July, 1878.

" . . . . When do you propose coming to some arrangement as to the land out of lease, and what rent do you say for this half-year. I shall expect £10 the Irish acre, at least, for this half-year ending 7th Nov., 1878. If you do not wish to pay that please at once deliver up possession, and we can settle on what is fair for the land up to this date. If you deliver up possession the fences must be put up, which appear to have been completely destroyed.

"I remain, yours very truly,

"L. EIFFE.

"Mr. Charles Kavanagh."

"45 Fitzwilliam-square,

"28th September, 1880.

"Received from Mr. Charles Kavanagh, of Rathlands House, Harold's-cross the sum of £80 on account of £100 due for back rent of the mill-field lately out of lease.

"L. EIFFE."

"29/9/'80.

"Received from Mr. Charles Kavanagh on account of the use and occupation of land at Rathlands, lately out of lease the sum of £25, which, together with £80 previously received, makes £105. Received without any settlement as to what should be the rent.

"Dated 20th November, 1880.

"L. EIFFE.—20/11/'80."

"45 Fitzwilliam-square, Dublin,

"14th May, 1881.

"Half-year's rent due to me, ending 25th March, 1881, for part of Rathland, £83 7s. 9d.

"DEAR SIR,—I beg to apply for payment of the rent as above, and shall be obliged by your letting me have the same on or before the 21st of May next.

"I am, sir, your obedient servant,

"L. EIFFE.

"Mr. Charles Kavanagh.

"Please let us have a settlement."

"Received from the representatives of Charles Kavanagh, per Messrs. J. and J. M'Kenna, the sum of £45 in full of all demands for use and occupation up to the 25th March, 1881, of portion of land at Rathlands, lately out of lease. Poor-rate and income tax allowed in receipt for portions in lease.

"Cash, ... £40 10 0

"Abatement ... 4 10 0

"Dated 17th October, 1881.

"L. EIFFE.—17/10/'81."

"45 Fitzwilliam-square,

"Dublin, 30th July, 1881.

"DEAR SIR,—I beg to apply through you to the representatives of the late Charles Kavanagh for the rent, £83 7s. 9d., due to 25th March last, for three

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holdings of his situate at Harold's-cross. There is a fourth holding, which I must bring particularly under your notice. It was leased to the late Mr. James Kavanagh. The lease expired in May, 1878, since which time no arrangement had been made for a re-letting. I had some idea of working the brick clay therein, and also that portion of it might be taken for a railway. I told Mr. Charles Kavanagh that as long as he kept it he should pay me £10 per acre (Irish). The lot contains 5a. 1r. 4p. Irish. He paid me two sums on account of this—one of £80 and another of £25. There therefore remains due for the use and occupation of this portion up to the 25th March last the sum of £45. I must distinctly decline being in any way mixed up with any sale that may be made of the remainder of the premises. I may be disposed to let the land to a solvent tenant for £50 per annum, subject to certain restrictions. In the event of necessity I beg to inform the representatives of Mr. Charles Kavanagh that I shall require them to put up all fences levelled by him or his predecessors.

"Yours very faithfully,  
"L. EIFFE."

Letter from L. S. Eiffe to Messrs. Plunket & Son, solicitors for the tenants:—

"45 Fitzwilliam-square, Dublin,  
"10th October, 1881.

"KAVANAGH, deceased.

"DEAR SIRS,—There is now due for rent from the above estate, £236 15s. 6d. This sum is entirely more than I can afford to have due; but, before taking hostile proceedings to administer the estate, I wish to let you know, in order that the representatives may, if they so desire, pay the amount due. In order to avoid legal proceedings I shall be willing to take £83 7s. 9d. for the land in lease, and 10 per cent. off the amount (£45) due for the portion out of lease, making in all £123 17s. 9d., to clear all demands up to the 25th March, 1881, provided that amount be paid on or before Saturday next. The executors must also come to some arrangement as to the portion out of lease, as I must know whether or no they will hold it on on the terms I mentioned.

"Yours faithfully,  
"L. EIFFE.

"Messrs. James Plunket & Son."

*Campion, Q.C.* (with him *Houston*), for the appellant.—The facts are conceded and their legal effect alone is for the Court. In the contract there is not a single element of prospective tenancy, but simply an agreement as long as you keep it you pay at the rate, the landlord says, of £10, the tenant says £8, an Irish acre. Neither the £10 nor the £8 correspond with the rent in the original tenancy. The quantity of land is stated in the lease—viz., 5a. 1r. 3p., Irish, so that there is nothing like the continuation of the former lease, but everything is essentially different. The contract was for the convenience of both parties, and therefore within the 58th section of the Act, the tenant being permitted to take advantage of the manure; and on the other hand, it was for the convenience of the landlord to have the lands let until he wanted them for building purposes. For two years and four months not one shilling was paid for the occupation, because it was a simple occupation for the convenience of both parties impressed upon the very terms of the occupation itself. The gale days in the lease were in March and September. Whether there was a tenancy from

year to year is a question of evidence. Here were two receipts given—one for £80, on account of £100; in the other the landlord objected to the £100, and the tenant accepts a receipt in which are the words "without any settlement as to what should be the rent." The tenant made a request and the landlord complies with it by saying, "You may occupy until you exhaust the manures." The estate of the tenant is in legal effect an estate for the life of the lessee circumscribed by events. It may go to the extent of the life, it cannot go beyond it. There was no fixed or definite rent on the day the Act passed. It is a fixed principle of law that you cannot have a tenancy from year to year without a fixed rent being paid. After the death of the tenant, and two months after the passing of the Act, his executors came to the landlord and asked that the tenancy should be described as a yearly one. They were accompanied by their solicitor. The landlord said, "No; it was never a yearly tenancy." It would have been needless and nugatory for the tenants to have asked this if their case were true. Two things were confounded in the court below—presumptive evidence of facts and the facts themselves, the presumed evidence of tenure and the tenure itself: *O'Keefe v. Walsh*, 6 L. R. Ir. 348. The same thing cannot be expressed and implied. It is a contradiction in terms. It is a palpable incompatibility. Where a pre-existing right is sought to be divested the party endeavouring so to do must do so by clear, distinct, and unequivocal evidence, and should be held by the very letter. We submit (1) that, although it is conceded that payment of rent and occupation of land are sufficient presumptive evidence of a tenancy from year to year, it does not even constitute that on the whole evidence, because the essential characteristics of a yearly tenancy are absent. These are, (a) a defined and specific rent. (b) The rent must be referable to a yearly tenancy, and must be paid by a man in the character of a yearly tenant. (c) The possession must be unexplained by external evidence pointing to the original character of the occupation. (2) The tenure was plainly in its inception, within the very meaning of the 58th section, for the mutual convenience of the landlord and tenant, on the very terms of express contract as such. (3) When you have a grant or contract dependent on an event uncertain and contingent you cannot impress that with a term of years, or from year to year.

[LAW, C.—If the tenant was living could you put him out without notice?]

Yes; if the manure were exhausted.

[FITZGIBBON, L.J.—Would not the exhaustion of the manure depend on the tenant? Suppose he laid it down in grass?]

It is a matter capable of being determined by skilled agriculturists. It was not a tenancy at will. The appellant could not disturb the tenant without showing that the manure was exhausted. It was a tenancy for life, determinable on the exhaustion of the manures.

[LAW, C.—You say the contract was that this individual was to keep the land until the manure was exhausted?]

Yes; and on both sides that contract has been partly performed.

[LAW, C.—An overholding tenant is generally a tenant from year to year.]

When we are driven to give a character to the tenancy we have a right to adopt our 3rd alternative proposition. The whole law as regards this is given in the notes to *Smith's Leading Cases*, last edition, pp. 104-112.

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He cited *Davis* (app.), *Waddington* (resp.), 7 M. & Gr. 45-48, note; *Coke Littleton*, 42a; *Preston, Estates*, 45; *Kusel v. Watson*, L. R. 11 Ch. Div. 129; *Wood v. Davis*, 6 L. R. Ir. 50, 14 Ir. L. T. Dig. 17; *Spaight v. Commissioners of Irish Church Temporalities*, 12 Ir. L. T. Rep. 47.

*Sergeant Hemphill*, Q.C. (with him *Gordon*), for the respondent. Under sec. 8 of the Land Law Act, 1881, all we have to show is that we are tenants of a present tenancy to which the Act applies, and it is immaterial whether the tenancy is a yearly or any other one. The glossary of the Act is given in the 57th section. It first defines what a tenancy is:—"Present tenancy means a tenancy subsisting at the time of the passing of this Act, or created before the 1st January, 1883, in a holding in which a tenancy was subsisting at the time of the passing of this Act, and every tenancy to which this Act applies shall be deemed to be a present tenancy until the contrary is proved." That language is peculiar. If we can show an interest in a tenancy then the onus is thrown on the landlord to show we are not present tenants.

[FITZGIBBON, L.J.—To define what "present tenancy" is you have to define what "tenancy," "holding," "tenant," "contract of tenancy," respectively are, and you go back four steps not two.]

The court below unanimously drew the conclusion that we were present tenants, and they arrived at that conclusion as a conclusion of fact, having regard to the evidence that was before them. The principle then arises whether, in every case where a conclusion of fact is drawn by the court below, you will, without the clearest evidence to the contrary, come to the conclusion that an appeal lies. If you were sitting as jurors, or as judges and jurors combined, you could come to no other conclusion than that a tenancy from year to year existed at the passing of the Act. It is admitted that Mr. Eiffe was perfectly aware that the lease terminated on 7th May, 1878. Therefore we have now this broad fact that the tenant who was in under a lease which expired was, with the knowledge of the landlord, allowed to hold possession for three years after its expiration. That is most important in dealing with the question. The appellant accepted from the tenant himself, and his representatives, three years rent. The only controversy was what the rent should be—there never was a question of what the tenancy he should be allowed to hold on should be until just on the eve of the Land Act. No jury would hesitate to say that a tenancy from year to year was created on the facts. It was a well-settled principle in England that where an overholding tenant was allowed to hold on with the knowledge of the landlord it at once raised a presumption of a yearly tenancy: *Doe. d. Thomas v. Field*, 2 Dow Pr. C. 542. The mere fact of continuance in possession after the expiration of the lease to the knowledge of the landlord raises the presumption.

[SULLIVAN, M.R.—Do you mean without anything else? It is a strange proposition.]

The same point was decided in this country: *Fahy v. O'Donnell*, I. R. 4 C. L. 332.

[FITZGIBBON, L.J.—Those were not cases of mere possession, but the tenant was always occupying as a tenant to the knowledge of the landlord. The way to test it is, suppose the landlord was out of the country. SULLIVAN, M.R.—Your argument puts the proposition entirely too strongly.]

*Hanway v. Taylor*, 8 Ir. L. T. Rep. 98, I. R. 8 C. L. 254; and *Kelly v. Patterson*, L. R. 9 C. P. 681, show what position the parties are in after they are in

possession for three years. The landlord would not have been able to eject us without notice to quit if the Land Act had not been passed. It is impossible to say that the plaintiff would have been entitled to a direction in ejectment on the title. The letter of 2nd July, 1878, shows an intention to make a tenancy, and therefore a yearly tenancy.

[FITZGIBBON, L.J.—Suppose the tenant had accepted that proposal would not that be a letting for a temporary purpose?]

No.

[LAW, C.—It is perfectly plain from the letter that the continuance in possession was with the consent of the landlord. FITZGIBBON, L.J.—There was a tenancy created; but the question would arise whether it was a term of that tenancy that it was to be a tenancy of the ordinary character requiring six months' notice to quit, or a tenancy for a term uncertain to be put an end to by the landlord himself, which would be unusual.]

We are dealing with legal tenancies. There was no part performance. The landlord states his views, and the tenant uses it as an argument that he has the manure, which would make it unreasonable to put him out. During the whole of the winter of 1878 and during all 1879 Kavanagh goes on managing the farm and doing everything as before, and the landlord never intervened. If the amount of rent was not fixed it would not prevent his being tenant from year to year.

[SULLIVAN, M.R.—The letter of the 30th July, 1880, is consistent with some temporary understanding having taken place, but no definite arrangement.

FITZGIBBON, L.J.—If the tenants paid their money on the terms of that letter is it not inconsistent with any future tenancy. In order to establish your tenancy from year to year, you have to get over the state of facts shown in that letter.]

Where is the line to be drawn? If he was tenant until the manure was exhausted it was a continuing tenancy, because there was no evidence that the manure was exhausted.

[SULLIVAN, M.R.—Cannot a man who has a notice to let for building on his land allow a man in as his tenant, but say to him: Mind, as soon as it is taken for building you must go out? Is there anything in the Act to prevent that?]

That would give an opportunity for evading the Act altogether.

[SULLIVAN, M.R.—Not at all.]

It would not be a temporary purpose within the meaning of sub-section 7. If it were it would be the easiest thing in the world to evade the Act: Sect. 5, sub-s. 6.

[SULLIVAN, M.R.—That section applies only to tenancies within the Act.]

It is not temporary convenience to let until the land is built on: *Darragh v. Murdock*, 5 Ir. L. T. Rep. 38, 69.

[FITZGIBBON, L.J.—The time that is covered by the adjective "temporary" must be a time that must go on for more than a year. DEASY, L.J.—In the originating notice the rent is £50 a year. When did you agree to pay the £50?]

It was *in fieri*. We put the rent in the originating notice most strongly against ourselves. It is a contradiction in terms to say it was a tenancy from year to year at law and a tenancy at will. "Temporary" means for some short time—something that is to be put an end to. It occurs twice in the Act of 1870: s. 15 (4), s. 69. The argument on the other side must be pushed to this, that if for twenty years the lands were held under this contract, the man could be put out at

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the end of the twenty years without the benefit of the Act.

[FITZGIBBON, L.J.—What exactly do you mean by “temporary purpose?”]  
Letting for a couple of months.

[LAW, C.—That would not be within the Act at all.] Before the Act passed the tenant would be entitled to compensation for improvements and disturbance. What was intended by this Act was to give an equivalent for what he enjoyed under the Act of 1870, sec. 15. Will you give this construction to the 58th section of this Act of 1881 that would deprive the tenant of all right to compensation?

[LAW, C.—It would not deprive him. SULLIVAN, M.R.—The only effect of a decision against you would be that you are out of this Act of 1881.]

There is no express repeal of the 15th section of the Act of 1870. At law once a tenancy from year to year is created anything repugnant to it must be rejected. A clause or condition, which would be inconsistent with that established, could not be added to it. *Doe. d. Warner v. Browne*, 8 East, 165, decides that if there is enjoyment under a parol demise for life and payment of rent a pure and simple tenancy from year to year is created, and that the estate for life must be disregarded: *Wood v. Beard*, L. R. 2 Ex. Div. 30.

[LAW, C.—The Act of Parliament treats tenancies from year to year, and other tenancies, as being capable of being for temporary convenience. We cannot then listen to any argument to show that such a letting is impossible. What you have to show is that the tenancy from year to year in this present case, which we may assume it is, was not made for temporary convenience.]

Whatever the original idea was, the subsequent dealings of the parties created a pure and simple tenancy from year to year. Even though the original intention was to create an uncertain tenancy dependent on the exhaustion of the manures, the agreement in pursuance thereof only contemplated one year, and the subsequent dealings of the parties and the acceptance of rent by the landlord, changed that into a yearly tenancy.

*Houston*, in reply.—No matter what may have been the nature of the tenancy, it was one for temporary convenience within the meaning of this statute. The scope of the argument on the other side amounts to this:—that there are certain circumstances in this case—payment of rent, payment of certain sums for use and occupation, and continuance in possession—which make it necessary to draw an inference of a yearly tenancy, notwithstanding that those facts are explained by the parol evidence of the landlord and by the documents in the case. But whatever presumption those circumstances may raise, or whatever inference might be drawn from them in the absence of other evidence, those presumptions and inferences are explained away and rebutted by abundant evidence, both parol and documentary, displacing any inference of a yearly tenancy to be drawn from possession and payments. The letter of the landlord written in July, 1878, shows most distinctly and unmistakably that at that time the idea in the landlord's mind was that the arrangement was to be one of a purely temporary character. Everything which occurred only bears out the intention which was expressed on the face of that letter—that is, the intention of doing nothing which would not give the landlord the right to take up possession. Nothing turns on the mere use of the word “rent.” It was necessary to express the payment, and the word was used as the most convenient word to

express the payment, and in the next receipt the term which was used was “use and occupation.”

*Cur. adv. vult.*

LAW, C.—This is an appeal, brought by Mr. Eiffe, landlord, with the permission of the Court of Land Commissioners, under the Land Law (Ireland) Act; section 48, sub-section 2, from an order made by that Court on the 3rd December last, refusing with costs, his application to set aside an originating notice served on him by the defendants as executors of Charles Kavanagh, and seeking to have a fair rent fixed for certain lands in their possession as such executors, called the “Windmill Field,” situate in the Electoral Division of Rathmines, in the South Dublin Union. The field contains 5a; 1r. 4p., and was lately held by Mr. Charles Kavanagh from Mr. Eiffe under a lease for 31 years from the 7th May, 1847, at the rent of £80. The lease expired in 1878, and within a couple of months after the determination of the lease—viz., on the 2nd July, 1878—Mr. Eiffe wrote to Mr. Charles Kavanagh a letter, in which this passage occurs: “When do you propose coming to some arrangement as to the land out of lease, and what rent do you say for this half-year? I shall expect £10 the Irish acre at the least for this half-year ending 7th November, 1878. If you do not wish to pay that, please at once deliver up possession, and we can settle what is fair for the rent up to this date: If you deliver up possession the fences must be put up, which appear to have been completely destroyed.” No written reply appears to have been made to this letter; but Mr. Kavanagh seems to have called personally on Mr. Eiffe to discuss the subject of the letter, and what then occurred is narrated in the 4th paragraph of the affidavit made by Mr. Eiffe, the accuracy of which is not attempted to be disputed. That paragraph is as follows:—“In July, 1878, the said Charles Kavanagh called upon me with reference to the said portion of land out of lease. At such interview, the said Charles Kavanagh said that he thought I would renew his lease. I told him that I purposed taking possession of the said portion of land with a view of establishing a brick manufactory thereon, for the purpose of working the brick clay thereunder, and building thereon or letting it for building. The said Charles Kavanagh then said I have highly manured the land, and if you take possession I shall be a heavy loser. I replied that I would not wish on any account that he should lose the benefit of the manure, and said he might keep the land until he had exhausted the manure. I added that in addition I had not yet made arrangements as to starting the brick manufactory and the building scheme. The said Charles Kavanagh thanked me very much for leaving him in possession of the land upon the aforesaid terms. I told him I should expect him to pay for such time as he might have the land at the rate of £10 per Irish acre, and that he should re-erect the fences which had been thrown down. He agreed to the latter; but said that £10 an acre was too much, that he could not pay more than £8. We parted without coming to any arrangement as to the amount.”

As Kavanagh did not give up possession, but, on the contrary, was allowed to retain it, we must assume that this was on the terms thus stated by Mr. Eiffe, there being no evidence of any other arrangement at the time. The amount of rent, however, to be paid by Kavanagh would appear to have remained unsettled during his lifetime. He paid £80 on the 28th Sept., 1880, and took a receipt expressed to be on account of back rent of the Mill Field, lately out of lease, and afterwards, on the 20th Nov., paid a further sum of £20, getting a receipt which stated in terms that there was still no settlement as to what should be the rent. He died on the 10th June, 1881, leaving matters in that position. On the 30th July, Mr. Eiffe wrote to the respondents, who were Kavanagh's executors, asking

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for the rent of the three other holdings, and adding: "There is a fourth holding which I must bring particularly under your notice. It was leased to the late Mr. Charles Kavanagh. The lease expired in May, 1878, since which time no arrangement was made for a letting. I had some idea of working the brick clay thereon, and also that portion of it might be taken for a railway. I told Mr. Charles Kavanagh that as long as he kept it he should pay me £10 per acre (Irish) for it. He paid me two sums on account of it, one of £80 and another of £25. There, therefore, remains due for the use and occupation of this portion, up to the 25th March last, the sum of £45. I must distinctly decline being in any way mixed up with any sale that may be made of the remainder of the premises. I may be disposed to let the land to a solvent tenant for £50 per annum, subject to certain restrictions. In the event of necessity I beg to inform the representatives of Mr. Charles Kavanagh that I shall require them to put up all fences levelled by him or his predecessors."

Again, on the 10th October, Mr. Eiffe wrote to the executors saying—"The executors must also come to some 'arrangement' as to the portion out of lease, as I must know whether they will hold it on the terms I mentioned." In consequence of this letter, the respondents and their solicitor had an interview with Mr. Eiffe on the 17th October last, and paid him £40 10s., which, with £4 10s. allowed as an abatement, amounted to £45, and for this sum of £45 Mr. Eiffe gave them a receipt in full for all demands for use and occupation up to 25th March, 1881. On that occasion they also applied to Mr. Eiffe to recognise them as his tenants from year to year of this Windmill Field, so that they might sell it as part of their testator's effects. This he says he declined to do, and that without further communication they served him with the originating notice to have a fair rent fixed under section 8 of the Land Law Act. Mr. Eiffe further deposes in paragraph 7 of his affidavit—"The applicants, as executors of the said Charles Kavanagh, occupy the said portion of land merely on my sufferance pending my making arrangements for brick making, or letting for building, and on the distinct agreement that at any moment I might take up possession of the same. The occupation was for the temporary convenience of myself and the said Charles Kavanagh that pending such arrangement the land might not be idle."

Under these circumstances, Mr. Eiffe insists here, as he did before the Land Commission, in the first place, that the respondents are not his yearly tenants at all, and therefore not entitled to apply under the Land Law Act to fix a fair rent; and, secondly, that even if they were his yearly tenants their holding is excluded from the Act by section 58, sub-s. 7, as being one "for the temporary convenience or to meet a temporary necessity of either landlord or tenant." Both of these grounds of objection were, of course, disputed by the respondents, but, in the view I take of the case, it is unnecessary to express any opinion upon the first point in controversy; and, as it may possibly come before a jury for decision, I think it is better to leave it for that tribunal unprejudiced by any observations of mine.

As to the second point, I believe we are all agreed that, whatever the tenancy may be, the holding is one for temporary convenience within the meaning of the clause referred to, and, as such, excluded from the operation of the Act. It appears by the originating notice that the field is in the electoral division of Rathmines, and, taking the terms of the letting from Mr. Eiffe's affidavit, where alone we find any evidence of them, I feel satisfied that the land was let to Kavanagh as a matter of temporary convenience, so that Mr. Eiffe, when the necessary arrangements and preparations of which he told Kavanagh should be sufficiently advanced, might be able to recover possession without inconvenient delay, and that in the meantime the land might not remain idle and unproductive of

income. In fact, it appears to me that this is precisely the sort of case for which the exemption in question is most needed, and to which it most properly applies. If land which is likely soon to become building ground, or, what is the same thing, which the owner contemplates soon dealing with as building ground, is not to be saved from the operation of the Land Law Act very great injustice would be done. The fixing a fair rent under the Act would frustrate all such building designs on the part of the landlord, giving absolute fixity of tenure to the tenant for the first fifteen years, and, after that, only enabling the landlord, if the Court allowed him, to purchase out the tenant at the full value of his interest. Taking then the arrangement between Mr. Eiffe and Charles Kavanagh, as described in Mr. Eiffe's affidavit, I have no doubt that it was of the temporary character indicated by the exempting clause referred to. Nor can I find anything in the two letters which Mr. Eiffe subsequently wrote at all inconsistent with such temporary arrangement. On the contrary, they seem to me, rightly or wrongly, to treat even the arrangement, whatever it was to be, as still incomplete, and therefore it is impossible to regard them as showing that the occupation was not treated by Mr. Eiffe, at least, as still of the temporary character mentioned at his personal interview with Kavanagh in July, 1878.

As to the receipts, they also are valueless for any purpose of this kind. Even assuming the occupation to have been that of a yearly tenant he was, of course, bound as such to pay rent, and therefore this cannot affect the present question. On the whole, therefore, I am of opinion that this holding was one for the temporary convenience of Mr. Eiffe, and indeed Kavanagh also; that Mr. Eiffe's application to set aside the originating notice should have been acceded to, and must now be granted; and therefore, that the order appealed from should be reversed with costs.

SULLIVAN, M.R.—I agree with the Lord Chancellor. Giving any separate judgment of my own would only be repeating what he has said.

DEASY, L.J.—I concur, also, in the judgment which has been delivered. This is the first appeal which we have had from the Land Commissioners, and I suppose it will not be the last, and as we differ from the Court below I will state some of my reasons for so differing. If this were a controversy as to fact, with evidence on both sides, I would be unwilling to differ from the conclusion arrived at by the learned Judges, who had more experience, even for their short tenure of office, in disputes between landlord and tenant than I have had. But, this is not a question of disputed facts at all. With the single exception of an uncontroverted statement in an affidavit, it rests on documents and letters produced by the tenants themselves. I do not express any opinion as to whether there was a tenancy from year to year, but I am not to be taken as coming to the conclusion that there was. The scope and policy of the Land Law Act is to deal with tenancies from year to year, which in their inception were not limited in duration by the contract of the parties, and I judge of the policy of an Act only from the words contained in it. On the whole, I have come to the conclusion that the defendant's tenancy, if it existed at all, was only for a temporary purpose, and is therefore expressly exempted from the operation of the Act by the 58th section.

FITZGERBON, L.J.—I agree also. It is, to my mind, proved that, whatever the legal character of Charles Kavanagh's occupation might have been after the expiration of his lease, neither he nor Mr. Eiffe at any time believed or intended that it should be regarded as under a settled or permanent letting. The continuance in occupation originated in the tenant's desire to take the benefit of his manure, and in the landlord's willingness (possibly, in order to avoid liability to compensation) to permit him to do so, pending some definite arrangement, while waiting some more profitable disposition

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of the land. Upon the construction as well of the Act of 1870 as of the Act of 1881 it is further, to my mind, clear that the temporary convenience or temporary necessity which excludes a tenant's claim may be existing "for a time" compatible not only with a tenancy at will, or a tenancy less than a tenancy from year to year, under section 69 of the former Act, but also under both Acts, subject to the restriction as to written evidence, with a tenancy from year to year or for life or lives. This appears at once on our applying the definition of "holding" in the former Act to its use in section 15, sub-section 4, and on tracing the meaning of the expressions "tenant of any present tenancy" in section 8, sub-section 1, and "holding let to the tenant," in section 53, sub-section 7, of the Act of 1881, through the chain of dependent interpretations given in section 57, of "present tenancy," "tenancy," "holding," "tenant," and "contract of tenancy," which by their ultimate effect restrict the benefits of the statute to tenants for terms of years, or for lives, or for lives and years, or from year to year. The provisions of the late Act in reference to the resumption of a holding for a reasonable and sufficient purpose, having relation to the good of the holding, seem opposed at least to the spirit of the decision appealed from here by which 5 acres of land in the vicinity of Rathmines might be practically stereotyped as an agricultural holding, because the landlord had permitted the tenant to take in specie the benefit of some manure which happened to be unexhausted at the expiration of the last of a series of leases. These provisions seem to me further to indicate that a temporary arrangement made even with an agricultural or pastoral tenant for a tenancy from year to year of land ultimately, though at an indefinite period, intended to be taken up for other purposes beneficial to the estate, might be an arrangement for temporary convenience within the meaning of the Act. Of course such arrangement, when alleged, must in all cases be clearly proved, and as to future transactions the necessity for writing will tend to preclude evasions of the statute, while the tenant from year to year cannot be deprived of his right to compensation under the Act of 1870. Upon the evidence in the present case, whether I hold Kavanagh to have been a tenant from year to year or not, I am not to avoid the further conclusion that the letter to him, was within the meaning of the Act, one for the temporary convenience of both landlord and tenant.

I am, however, not satisfied upon the documents and affidavits that either Kavanagh or his executors attained the status of tenants from year to year at all after the expiration of the lease. To test the status of the tenant, if in answer to any of the landlord's letters the tenant had said, "I will not take the land, nor will I occupy it any longer on your terms," and had left the place, I think, as at present advised, that the landlord must have been nonsuited. Had he sued for subsequent rent as assignee of a tenancy from year to year, such a tenancy could not be imposed upon or imputed to one party only, and the true position of Kavanagh and of his executors would seem to be that of tenants at will pending negotiation, holding conditionally upon some definite arrangement, to be ultimately arrived at, not liable to pay rent *de anno in annum*, but subject to a liability, well explained by Mr. De Moleyns, at page 149 of his book—namely, that "in the absence of express agreement the implication will arise whenever a person, by permission, has occupied the land of another: the law, with homely sense, assuming that he has agreed to pay what his beneficial occupation may be reasonably worth."

Tenants in this position, if not holding for merely a temporary purpose, would be protected under section 69 of the Act of 1870 to the extent of being entitled to notice to quit and to compensation, but they are not therefore to be permitted to claim the further advantages which under the Act of 1881 are reserved to tenants of the permanent and defined classes. No doubt, circum-

stances are shown which, if unexplained or unqualified by the other facts, might afford presumptive evidence of a tenancy from year to year; but they are in my opinion so explained and qualified, and upon the whole case as it now stands I can find no sufficient evidence to sustain the finding that a tenancy from year to year existed in the holding. For the reasons given by the other members of the Court, however, I base my judgment on the temporary character of the occupation. Mr. Sergeant Hemphill called upon us not to overrule the unanimous decision of the Land Commission, because it was a question of fact; at least, unless the appellant could show us irresistibly that the opinion of the Court below upon the question of fact was not only wrong but entirely erroneous. Though unable, with every respect for the high authority quoted, to appreciate the distinction, and though prepared in any view to accept the full responsibility of allowing the appeal in the present case, I do not think the principle is applicable here. This Court expressly refused to apply it in the late apposite case of *Montgomery v. Montgomery*, 14 Ir. L. T. Rep. 9, and the House of Lords affirmed its decision.\* We have before us the same materials which were submitted to the Land Commission. The conclusion depends largely on legal considerations, and we are, in my judgment, bound independently to rehear the case and to form and pronounce our own opinion upon it.

As to costs, the course taken by the respondent in avoiding any definite arrangement with the appellant as to the amount payable for its occupation as land out of lease, taking a receipt upon the explicit terms of the appellant's letter asking him, apparently as a favour, to recognise them as his tenants from year to year, and upon his refusal to do so, suddenly serving him with the originating notice, based upon the assumption that such a tenancy had long previously existed, seems to me one not to be favoured. I think the notice should be set aside and the appeal allowed, with the costs before the Land Commission and the costs of the appeal.

*Appeal allowed.*

Solicitor for appellant: R. C. Vance.

Solicitors for respondent: James Plunkett & Son.

## HIGH COURT OF JUSTICE.

### EXCHEQUER DIVISION.

Reported by HANS AYLMER, Barrister-at-Law.

(Before PALLES, C.B., FITZGERALD and DOWSE, BB.)

FERGUSON v. THE GUARDIANS OF THE POOR OF THE BALLINA UNION.

Feb. 14, 16, 1882.—*Seed Supply (Ir.) Act, 1880—Poor Law Guardians—Liability of, to purchasers of seed under the Act—Sale—Implied Warranty.*

*No action lies against Poor Law Guardians in their corporate capacity for damage by reason of the inferior quality of seed supplied by them under the provisions of the Seed Supply (Ireland) Act, 1880, and merely in carrying out same, there being no evidence of fraud or negligence.*

Special case stated by Fitzgibbon, L.J., one of the justices of Assize of Mayo at the Summer Assizes, 1881. The plaintiff brought his action against the defendants for £3 damages for loss sustained by him by reason of the inferior quality of seed potatoes sold and delivered to him by the defendants under the provisions of the Seed Supply (Ir.) Act, 1880. The guardians in March, 1880, being duly authorised under that Act to supply seed potatoes to occupiers of land in the electoral

\* And see *Adams v. Dunceath*, ante, p. 20, and cases there cited in notes.—[E. N. B., Ed.]

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[Ex.]

division of Kilgarvin, for that purpose entered into contracts with several wholesale merchants for the purchase of large quantities of imported "Champion Seed Potatoes," in bags of 2 cwt. each. In the selection of the merchants, in the price they paid, and in all their dealings with the seed purchased, in their proceedings to distribute to purchasers the best quality of Champion seed potatoes, and of those only, the guardians and their officers and servants used all reasonable precautions. Champion seed potatoes were a specific and well-known species of seed potatoes commanding a higher price, and being for the purposes of seed of a much higher value than ordinary potatoes, but they were not capable of being distinguished by the exercise of ordinary observation from ordinary potatoes either by the guardians, their officers, and servants, or by the plaintiff. On March 20, 1881, the plaintiff, being a duly qualified occupant within the said electoral division, obtained from one of the guardians an order for delivery of "6 cwt. potatoes." He took the order to the proper officer and asked for "6 cwt. of Champions," and accordingly three bags, each containing 2 cwt. of potatoes, in the same condition in which they had been received from the merchants, were delivered by the defendants' officer to the plaintiff. Save as hereinbefore stated, there was no reference to the quality of the seed potatoes, but the price charged therefor was the market price of imported "Champion Seed Potatoes"—i.e., about four times as much as for ordinary potatoes. The defendants believed that they delivered, and the plaintiff that he received, and he asked for, Champion potatoes, and those only; but there was no warranty, representation, or express contract save as before stated. Two of the bags contained imported "Champion Seed Potatoes," but the third bag contained other potatoes, not Champions, of an inferior quality, useless as seed in resisting disease, though of a merchantable appearance—facts ascertainable by the merchant, but not by the purchaser till they had almost reached maturity. The plaintiff sustained damage to the amount of £3 by reason of their inferior quality, and the County Court Judge made a decree for that amount and costs. An appeal was taken; and on the hearing thereof Fitzgibbon, L.J., was of opinion in favour of the decree; but *M'Kenna v. Guardians of Monaghan Union* (15 Ir. L. T. Rep. 42) to the contrary, being cited, and it having been mentioned that other cases depended on the decision, he directed a special case to be stated for one of the Common Law Divisions of the High Court of Justice.

The questions for the Court were, (1) whether, upon the above facts, the defendants were legally capable of making any contract or incurring any liability to the plaintiff for the loss and damage he had sustained; and (2) if so, whether, on the above facts, the defendants made any contract upon which they ought to be held liable to the plaintiff for the said loss and damage.

*Trench*, for plaintiff.—The guardians are given by the Act (43 Vic., c. 1) powers to purchase seed. If they have been supplied with inferior seed they have their remedy against the merchants who supplied them, or they can recover against the rates. Under s. 6 (3) they cannot sell for less than the price they paid, but they may sell for more and they may make a profit; and therefore, they are subject to the ordinary liabilities of vendors. If the Legislature had intended to take away the ordinary liability from the guardians, it would have done so in express terms. On the other hand, it is not necessary that the Legislature should expressly confer on

us a right of action against them; it should, in terms, take it away from us in order to prevent us exercising our common law right. The guardians expressly contracted to give us a particular article, and this is no mere implied warranty.

He cited *Coe v. Wise*, L. R. 1 Q. B. 711; *Kendall v. King*, 17 C. B. 483; *Livingstone v. Guardians of Lurgan Union*, 2 Ir. L. T. 210, I. R. 2 C. L. 202.

*Dillon* (with him *Beytagh*, Q.C.), *contra*.—No action lies against the guardians. The Act is mandatory on them. The particular way the sale is to be carried out is prescribed in sec. 6, and the price to be paid.

[*PALLES*, C.B.—Though the word "sale" is used throughout the Act, is there anything in it showing that the transaction is anything more than an equitable distribution of the seed to the farmers of the district?] No; and the payment to the guardians is not as in a common sale (sec. 7). Clearly the Act is to be considered a part of the Poor Law code (sec. 14). Negligence is here out of the question, for it is found that all reasonable precautions were taken. In the written contract there is no mention of Champion potatoes, and there is no warranty.

[*PALLES*, C.B.—Would the guardians have power to levy a rate to pay the expenses of this action?]

We think they have no such powers. The case is completely governed by *M'Kenna v. Monaghan Union*, 151 L. T. Rep. 42, which is in reference to the very same Act. The plaintiff is not without remedy; he can appeal against the rates.

They cited *Julius v. Bishop of Oxford*, 5 Ap. Ca. 214; *Smart v. West Ham Union*, 10 Ex. R. 867; 11 *id.*, 867; *Hammond v. St. Pancras Union*, L. R. 9 C. P. 316; *Brennan v. Limerick Union*, 12 Ir. L. T. Rep. 33, 2 L. R. Ir. 42.

*Trench*, in reply.—Besides the word "sale" being used in the Act, the transaction has all the characters of a sale, and though payment may be in a special way it may be in the ordinary way also.

*PALLES*, C.B.—We limit our decision to the exact question in the case. There is a finding that there was no negligence on the part of the guardians, and therefore we say nothing as to what the law may be if negligence, fraud, or deceit be introduced as an element in the sale. Also, we say nothing as to the question of the liability of persons actually engaged personally in the sale, as distinguished from persons acting together in a corporate capacity. Divested of these considerations, was there a breach of contract express or implied? The questions put to us in the special case are not those on which the liability or non-liability depends. The true question is, whether in a sale such as this—and we hold it to be a sale—there was a contract under a warranty that the goods sold were Champion seed potatoes. We think there was no such contract or warranty. As the goods were there and in *ess* it would more properly be called a warranty. I think this case depends entirely on the construction of the Act; and it is on the construction of the whole Act, and not of any particular section of it, I found my opinion. By section 3 the guardians are given power to borrow money. The Legislature did not contemplate or authorise that money borrowed being applied to any purpose other than those named. Under section 6 they are authorised to apply it in purchasing seed and defraying expenses for carriage, storage, or otherwise, in providing such seed for sale; and then in mandatory terms they are told to what is called "sell" that seed. No doubt it is called a sale, and it is strictly a sale in its incidents—such as transfer of possession and consideration. But it is one thing to say it is a sale and another to say it is a sale carrying a warranty. Terms are made part of



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the sale. It is to be for "not less than the net price paid by the guardians for it, including all the expenses incurred for the carriage, storage, or otherwise, in providing such seed for sale." These words are nearly identical with the purpose for which the guardians are authorised to borrow. Then in section 8 there are provisions for superintending and inspecting the land sown by the purchaser with the seed, to see he has done so properly. If plaintiff were correct in his contention, the guardians would have been unable to sell what they were by the Act bound to sell, under the description under which they bought, without entering into the liability which the Legislature never intended to impose upon them. We therefore hold that, though called a sale, and containing the common law incidents, it is not a sale which carries a warranty. We express no opinion whether the plaintiff has an appeal against the rates; but we think this action does not lie against the guardians, under the provisions of the Act of Parliament, for they were acting merely as trustees for the public good. We reverse the decree and dismiss the process; but the case being one of public importance, and the Judge of Assize being evidently inclined in favour of the plaintiff, we give no costs of the appeal or of this special case.

FITZGERALD and DOWSE, B.B., concurred.

*Order accordingly.*

Solicitor for plaintiff: *Mr. J. Kelly.*

Solicitors for defendant: *Messrs. MacAndrew & San.*

#### LAND COMMISSION.

*Reported by* GEORGE M'DERMOT, Barrister-at-Law.

(Before O'HAGAN, J., LITTON, Q.C., and J. E. VERNON, Esq.)

#### FALCONER v. CRAMSIE.

Dec. 17, 19, 1881.—*Practice—Originating Notice—Service on land-agent's clerk—Office of agent—Personal service—Rules 24, 27, 28, 29—Appeal, right of—Land Law Act, 1881, s. 48.*

*Service of a notice on a landlord's land-agent to whom the tenants' rent has been usually paid, under Rule 28, need not be effected by serving him in person, but may be effected by leaving a copy for him with any of such persons, including his clerk, as are specified in Rule 27.*

*The Court will not, in the exercise of its discretion, set aside proceedings on the ground that a party has not been personally served with an originating notice unless it is distinctly shown that it has not reached his hands.*

*The question as to what constitutes due service pursuant to the Rules of the Court is one of practice and procedure, not of law such as is contemplated by the 48th section of the Land Law Act, 1881, as being the subject-matter of appeal to the Court of Appeal.*

Motion, on behalf of the landlord, to set aside the originating notice on the ground that it had been served on the clerk of the land agent in his office instead of being served on the agent personally.

*Monroe, Q.C., for the landlord.*

*John Ross, for the tenant, contra.*

*Judgment reserved.*

O'HAGAN, J.—An application has been made for an order that the originating notice served in this case be set aside, and the abstract thereof erased from the books of the Land Commission, inasmuch as the case is not properly in court for hearing, and no notice has been served on the landlord, as provided by the Land Law

(Ireland) Act, 1881, and the rules made thereunder. The originating notice is one to fix a fair rent. The landlord is a Mr. Cramsie, who resides at Portsmouth, in England, and his agent is a Mr. Douglas of Pool, Ballintra, in the County of Antrim. The affidavit of service of the originating notice was made by a person named Thomas M'Laughlin, who deposes that on the 8th of November he served Mr. Douglas, the known agent and receiver of the landlord, to whom the tenant's rent was paid, with the originating notice, by leaving a true copy of it with the clerk of Mr. Douglas, at Mr. Douglas's office in Kincoboy in the County of Antrim. This is the service which the landlord impeaches; and the ground is that under our rules, if the landlord were served through his agent, the agent should be personally served. Now, in the first place, I have to observe that no affidavit whatever has been sworn by or on behalf of the landlord. It has been laid down in several cases, among which I shall only refer to *Emerson v. Brown*, 8 Scott's N. R. 219, that the court will not set aside proceedings on the ground that the defendant has not been personally served with process, unless it be distinctly shown that it has not come to his hands. On this ground we should, as a matter of discretion, refuse this motion. But we should be sorry to decide it upon any ground so narrow, inasmuch as we are of opinion that the service was perfectly good service within the meaning of our rules. The mode of service prescribed by the 27th rule follows, with some verbal variations to make the sense more clear, the mode of service prescribed by the Civil Bill Act of 1851 for the service of civil bills—that is to say, service is to be either personal or by leaving a copy of the notice with a relative or servant of the person to be served. But inasmuch as in the case of landlords who receive their rents through agents, those agents are really the persons with whom the tenants have to deal, we permitted the agent to whom the tenants' rents were paid to be served in place of the landlord. We, therefore, provided by the 28th rule that when the person intended to be served was the landlord service on the agent to whom the rent was usually paid shall be deemed sufficient service on the landlord. But what is service on the agent? It is contended that it must mean personal service alone. We say it means service, as we have defined service in the preceding rule. It is substantially to the same effect as the 7th of the judges' rules under the Act of 1870, which prescribes that the service of notice of claim on any landlord, or in his absence on his known agent, shall be effected as now by law prescribed for the service of ordinary civil bill processes, with the difference that we do not require the landlord to be absent to make service on the agent sufficient. Accordingly, in the 29th rule we deal with service by registered letter, directed to the landlord or his agent, and in our Forms—Form 7, Form 9, and a number of others—the signature is directed to be by the landlord or his agent. In truth we have, so far as was in our power, made the agent the landlord's representative for the purposes of the Act. It has been said by Mr. Monroe that when an order is made by one of the Superior Courts directing substitution of service that the service must be personal on the person directed to be served. But this is not a question of substitution of service, it is a question what mode of service has been prescribed by our rules. We have no doubt that the service was good, and that this motion must be refused with costs.

We have been asked for leave to appeal. We are desirous in every case to enable parties aggrieved by our decision to bring their cases before the Court of Appeal. But I have sought in vain for a single case in which the decision of a Superior Court as to what constitutes due service of process, pursuant to its rules, was brought for review before a Court of Appeal. This is not a question of law such as is contemplated by the 48th section of the Act; it is a question of practice and procedure which the Court of Appeal would hear opened with amazement.

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They would, in my opinion, say that the judges of the Court of the Land Commission were the best interpreters of the meaning of the rules which they themselves had framed. We have no doubt whatever on the question, and we think it is no case for an appeal.\*

*Motion refused.*

Solicitor for the tenant: *W. G. Murphy.*  
Solicitors for the landlord: *Cramsie & Grier.*

(Before O'HAGAN, J., and J. E. VERNON, Esq.)

RUTLEDGE v. FARRELL.

Jan. 4, 1882.—*Originating Notice to fix judicial rent—Motion to dismiss—Agreement for lease not signed—Specific performance—Commencement uncertain—Date omitted.*

Where there is a dispute between the landlord and tenant as to the terms of a parol agreement for a lease, alleged to be followed by part performance, the court will not dismiss the originating notice to fix a judicial rent, but will adjourn the application, in order to enable the landlord to enforce specific performance of the agreement, with liberty to either party to apply subsequently.

Application, on behalf of the landlord, to have the originating notice, served by the tenant to have a judicial rent fixed, set aside, on the ground that he held under an agreement for a lease. It was stated in the affidavit of the landlord that in December, 1853, the tenant agreed to take a lease for 61 years, or the life of his son, at a rent of £135. No agreement, however, had been signed. In 1861 in answer to an application, made by Mr. Nolan, the landlord's solicitor, for particulars of the agreement, the tenant wrote the following:—"The terms of the agreement between me and Mr. Farrell are as follows: I have promised to pay for the lands containing 110a. 3r. 5p. £135, and Mr. Farrell has promised me a lease for my son's life or 61 years."

*Bewley*, for the landlord.—This letter discloses all the terms of the agreement.

[O'HAGAN, J.—The Court of Appeal in England overruled a decision of Mr. Justice Fry, which I always considered sound law. They have held that the date of the commencement of the tenancy should be stated in the agreement.†]

The facts of that decision have not yet been made public. In 1863 Mr. Rutledge surrendered part of the lands, and the agent apportioned the rent for the remainder. In 1880 Rutledge reminded the agent that he had promised him a lease, to which Mr. Nolan replied, "Certainly." The case made by the tenant in his affidavit is that there was never any final agreement as to the conditions of the lease. In 1863 he agreed to give up the whole of the land, but that afterwards he decided to keep the house and part of the land about it, and that he had always believed that from that date a yearly tenancy alone existed. There is no doubt that an agreement for a lease has been entered into. The tenant's letter of 1861 shows it fully, and that agreement still subsisted.

*J. B. Murphy*, Q.C., for the tenant, *contra*.—There never was an agreement that could be enforced by any court, and even if there were such an agreement, that the occurrence which took place in 1863 rescinded it, and that ever since the tenant held as tenant from year to year.

\* See 15 Ir. L. T. 322.—[E. N. B., Ed.]

† See *Marshall v. Berridge*, 45 L. T. N. S. 599.—[E. N. B., Ed.]

O'HAGAN, J.—I have a strong opinion in point of law against the landlord's contention—the first ground being the decision of the Court of Appeal in England in the case already referred to; the second being that if it should appear the property was put in settlement subsequently to the agreement, that as the trustees had not notice of an unregistered instrument they would not be bound by it.

We shall make the following rule:—Let the motion stand for three weeks, for the purpose of enabling the landlord to take proceedings to enforce specific performance of the agreement for a lease, either party to be at liberty to apply at the end of three weeks.

BROE v. MAUNSELL.

Jan. 4, 1882.—*Originating Notice to fix judicial rent—Motion to dismiss—Parol agreement for lease—Part performance—Conflicting affidavits—Specific performance.*

Where the affidavits of the landlord and tenant, as to the existence of a parol agreement for a lease and part performance of the agreement, are of a substantially conflicting character, the Court will not assume the jurisdiction of deciding that there was such parol agreement, followed by part performance, as would oust the tenant from his *prima facie* right to be considered a tenant from year to year, but will adjourn the case for such time as will enable the party to take steps to enforce specific performance of the agreement.

Motion, on behalf of the landlord, that the originating notice to fix a judicial rent should be struck out, on the ground that the premises mentioned in it were held under an agreement for a lease for 31 years. The holding in question contained 201 statute acres, the yearly rent being £281 16s. 6d., and the Poor Law valuation, including the valuation of the houses, being £203. It appeared from the affidavit of the landlord, Mr. John Maunsell, that the tenants predecessor in title had allowed arrears of rent to accumulate prior to 1876. The rent had been fixed in 1830, and from that period remained unchanged until 1876. Before 1874 and in that year the tenant applied to the landlord for a lease, and on one occasion, in 1874, he asked him had he any objection to his getting married, to which the landlord replied he had not the slightest objection. The tenant then asked for a lease, and Mr. Maunsell promised to give him one for 31 years, but that he could not give it at the rent he had been previously paying. Finally, after a number of applications, the landlord instructed his brother, who acted as his agent, to write to the tenant informing him of the terms on which the lease for 31 years would be given—namely, 45s. an acre in the event of his giving up a small portion of his farm. The tenant, however, preferred to retain the whole of the farm, with slight modifications, at 45s. an acre, and although no lease was made he continued to pay the rent as secured under the new agreement.

The tenant in reply had made an affidavit denying that there was any definite agreement for a tenancy, or that he ever paid rent under the alleged agreement.

*Holmes*, Q.C., in support of the application.

[O'HAGAN, J.—It is an unsatisfactory position for a landlord having a parol agreement for a lease followed by part performance not to enforce it, because time runs against him. A court of equity in granting relief in such cases will consider the time a party rested on his

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rights a most material element.\* The question is—Are we in a case of such importance to decide off-hand the rights of the parties instead of consigning them to a court of equity.]

*Nolan*, for the tenant, *contra*.—The whole of the terms of the agreement are vague and indefinite. There is a special covenant as to a right of way, but there is no certainty with regard to it. It does not appear from what date the lease was to run. In fact there was nothing more than treaty and negotiations, which never came to a definite issue. The case is governed by *Rutledge v. Farrell* previously decided by the Court.

O'HAGAN, J.—This is a case of some importance. It is alleged by the landlord that it does not come within the 21st section, as the tenant holds under a binding agreement for a lease. By the payment of rent a tenancy from year to year is impliedly created, but that can be rebutted by showing that he holds under another kind of agreement. There is a very considerable controversy between the parties, and where the affidavits of the landlord and tenant as to the existence of a parol agreement for a lease are of such a conflicting character, it would be very difficult indeed to show any case in which we ought to assume the jurisdiction of deciding that there was such parol agreement, followed by such part performance as would, in our opinion, amount to a binding agreement ousting the tenant from his *prima facie* right of being considered a tenant from year to year. If part performance be relied upon—that is, where we are asked to say that although there is not a binding contract within the Statute of Frauds, there is a binding parol agreement because of part performance—we must be satisfied that the agreement to which the part performance is referable is a clear and specific one—that there can be no doubt of its existence and of its terms. But whenever there is a dispute I do not think it would be proper for the Court, clothed with its peculiar jurisdiction, to assume the jurisdiction of a court of equity, to enforce specific performance of a parol agreement followed by part performance, as it would be practically doing if it took upon itself the decision of a question of so much importance as that which arises here. If Mr. Mannsell's case be well founded—and I do not question its correctness—he ought at once to take steps to enforce the agreement in a court of equity. The order we shall make in this case will be similar to that made in the last (*Rutledge v. Farrell*, *ante*)—namely, “Let the case stand for five weeks to enable the landlord to enforce specific performance of the agreement—either party to be at liberty to apply at the end of that time. The question of costs to be reserved.”

(Before O'HAGAN, J., LITTON, Q.C., and J. E. VERNON, Esq.)

BLIGH v. KIRWAN.

Dec. 8, 1881.—*Lease—Covenants, unfair or unreasonable—Yearly tenancy—Threat of eviction, or undue influence—Evidence—Jurisdiction—Land Law Act, 1881, s. 21.*

The landlord of a tenant from year to year, holding at a rent of £40 per annum, having informed him that he should take a lease at an increased rent of £30 per annum, the tenant, after refusing at first so to do, assented, as he was informed by the landlord that others were offering as much rent, or more, and that he would take advantage thereof. The lease, executed accordingly, contained covenants against keeping dogs on the farm, and requiring the

See *Lydon v. Lydon*, 8 Ir. L. T. Rep. 85.—[E. N. B., Ed.]

tenant to preserve the game from being poached upon, with a proviso for forfeiture on breach, or that the landlord might exact an increased rent of £1 per acre:

Held (without deciding whether a great increase of rent would bring the case within the Land Law Act, 1881, s. 21), that the lease should not be declared void, as it contained, within the meaning of the enactment, no unfair or unreasonable covenants, nor was it procured by threats of eviction or undue influence.

Application, on behalf of the tenant, to have a lease declared void, as having been executed by him under threat of eviction, and because it contained covenants which, at the time of its acceptance, were unreasonable or unfair to him, having regard to the provisions of the L. & T. Act, 1870.

The lease in question was made in April, 1872, of lands in the Co. Galway. The rent had been raised from £40 a year to £70 a year; and the applicant further deposed that his father had built a house on the farm, had walled and fenced it in, and had drained and otherwise improved the land. He also stated that up to the end of the year, 1871, the lands were held from year to year, but in March of the following year the landlord, after giving the applicant a receipt for the half year's rent due up to the 1st November, 1871, informed him that there should be a new arrangement as his land was let too low; and that he should take a lease at an increased rent of £30 a year. The tenant refused to agree to the proposal, and said he would prefer to remain on as tenant from year to year. He was, however, compelled to take a lease, as he was informed by the landlord that other persons had offered as much as he was asking or even more, and that he would take these offers. The lease, which was accepted under those circumstances, contained a covenant against keeping dogs on the farm, and one requiring the tenant to preserve the game from being poached upon, together with a proviso that in case of a breach of any covenant a forfeiture would be worked, or the landlord at his option might increase the rent by £1 the acre. It appeared from the evidence, on behalf of the landlord, that the land had been held from 1823 to 1869 by lease; and that the tenant had surrendered the lease of 1823, and obtained a promise of a lease for 21 years from 1848. The books produced by the landlord showed an entry to that effect, which as an entry against interest by a deceased person—the late landlord—the Court held to be evidence, which would have enabled the tenant to enforce specific performance.

*Nolan*, for the tenant, cited *Ormond v. Anderson*, 2 B. & Beat, 363.

*Holmes*, Q.C., for the landlord.

O'HAGAN, J.—As I have already observed in two previous cases the jurisdiction of the Court is bound by the terms of the Act of Parliament, and we can in no way go outside them. In order to break a lease we must find that the applicant was a tenant from year to year at the time of the acceptance of the lease; that the lease contained conditions that were unreasonable or unfair, having regard to the provisions of the Act of 1870; and that it was obtained by threat of eviction or undue influence. Unless all these matters concur, we are debarred by the statute from granting the application. In order to arrive at a right conclusion we examined the books of the agent, and I must say that they were kept in a manner worthy of imitation by every gentleman similarly engaged in Ireland. They contained a record of everything that occurred between landlord and tenant on the estate, and have been of

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great assistance to the Court. I am not going to offer an opinion on the abstract question as to whether a great increase of rent would not bring the case within the operation of the section. All I need say is that we are unanimous in holding that the applicant has failed to show that he could be considered a tenant from year to year; that the lease contained unfair or unreasonable covenants; or that threats of eviction or undue influence had been employed to coerce him into an acceptance of it.

*Application refused, with costs.*

Solicitor for the tenant: *Henderson.*

Solicitor for the landlord: *Conway.*

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Dec. 2, 24, 1881.—*Jurisdiction—Enlargement of time for redemption of tenancy evicted for non-payment—Delay of sale—“First occasion” on which Court sits—Orders enlarging period embraced in such “occasion,” validity of—Land Law Act, 1881, ss. 13 (1) (2), 43, 50 (1), 60.*

*Where a tenant has been evicted for non-payment of rent, the Court has no jurisdiction, under the 13th section of the Land Law Act, 1881, to enlarge his time for redemption save as ancillary to a proceeding by him for a sale of his tenancy.*

*Where a tenant has been evicted for non-payment of rent, prior to the passing of the Land Law Act, 1881, an application made by him to the Court to extend his time for redemption, after the six months allowed by the Landlord and Tenant Act, 1860, have expired, is made in sufficient time through the combined operation of sections 13 and 60 of the former Act, if made between the 20th of October and the 12th of November, 1881—the periods fixed for the first session of the Court, under the Orders of October 19, 27, 1881; and in defining the “first occasion” of the sitting of the Court, so as to extend beyond merely the first day of its sitting, those Orders are not ultra vires.*

Applications to have the originating notices to fix judicial rents set aside, erased from the record of the proceedings of the Court, and withdrawn from the different Sub-Commissions to which they had been sent. The circumstances are sufficiently explained in the judgment.

*Hugh Holmes, Q.C., Morphy, and Weir* appeared for different landlords, in support of the application.

*Cuming, J. Roche, Donnell, and G. M'Dermot* for the tenants, *contra.*

*Whittaker v. Wisbey*, 16 Jur. O. S. 411, was cited (by *Cuming*) as to the meaning of the phrase “occasion of the first sitting.”

*Judgment reserved.*

O'HAGAN, J.—In the case in which John Barrett is tenant and Lord Ventry is landlord, a judgment in ejectment for non-payment of rent had been obtained by the landlord, which was executed, and possession taken on the 6th of May, 1881, the tenant being left in possession pending redemption. On the 2th of November, 1881, a notice of motion (by mistake dated the 19th of November) was served by the tenant of an application to this court to extend the time during which the tenant might exercise his power of sale and redeem the tenancy, on the ground that the sale of the tenancy was delayed pending an application to have a judicial rent fixed.

An originating notice to have a judicial rent fixed for his holding was served on the 10th of November. The

motion was originally moved before us on the 12th of November. The hearing of it was then adjourned, owing to the pressure of other business, and stood adjourned from time to time for the convenience of the parties, and was at length fully argued on the 2nd of December. The question is whether we have jurisdiction to make any order on this motion.

The 70th section of the Landlord and Tenant Act, 1860, which in this respect is but a re-enactment of the provisions of an earlier statute, gives six months after the execution of the *habere* for the tenant to redeem in the manner provided by the statute, in default of which redemption he is debarred from all relief at law or in equity. Therefore, on the 6th of November, 1881, the tenant's right of redemption was gone unless we had the power of extending the time for redemption under the Act of 1881. It was the tenant's contention that we had, in fact, this power, and he called upon us to exercise it in his favour. His counsel urged, firstly, that under the 18th section we had the power for any reasonable cause to extend the period during which the tenant might, in case of ejectment for non-payment of rent, redeem the tenancy irrespective of intention to sell; secondly, that even if our power did not extend so far, but only entitled us to extend the time for redeeming the tenancy when the sale of the tenancy is delayed by reason of any application being made to a court, or for any other reasonable cause, yet that in this case the sale of the tenancy was in fact delayed by reason of the application to fix a judicial rent, and that being so delayed the tenant was entitled to have the time for redemption extended, in order to a sale being had. And in answer to the objection on the part of the landlord that even if the tenant's propositions could in any case be tenable, yet in this case the tenant came into court altogether too late, his time for redemption having expired on the 6th of November, and no step of any kind having been taken by him until the 10th of November, the tenant replied that the time was saved for him by force of the 60th section of the Act; that he applied to the court on the occasion of its first sitting after the passing of the Act, and that, therefore, his application was to be taken as if it had been made on the 23rd of August, the day on which the Act received the Royal assent. Those were the tenant's legal propositions. On the other hand the landlord asserted, firstly, that no power to extend the time for redemption is conferred upon the court, save as ancillary to the extension of time for sale of the tenancy; secondly, that the time for the sale of the tenancy being by the preceding part of the section confined to the period of six months from the execution of the writ or decree for possession in an ejectment for non-payment of rent, some step must have been taken within that period of six months to effect a sale, and it must be shown that the sale thus initiated within the prescribed period was in fact delayed by reason of application having been made to the court, or for some other reasonable cause, and that if no step were taken within that period the jurisdiction of this court absolutely failed. And with regard to the effect of the 60th section he contended that the time when the application was made to the court—namely, the 10th of November—could not legally be held to have been made on the first occasion of the sitting of the court. The issues of law thus knit were argued on both sides with great ability and ingenuity; and we now proceed to consider them *seriatim.*

First—Has this court a power under the 18th section to extend the time for redemption irrespective of delay of sale. Our *prima facie* view, to which I gave expression very early in the sitting of the court, was in the negative of this proposition; and to this view, after very full consideration, we adhere. But, I am bound to say that I was considerably impressed, if not shaken, by the argument on the point addressed to us on behalf of the tenant, and I can well conceive that a different interpretation might commend itself to another mind.

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The 13th section is as follows. [His lordship, having read the section, proceeded]:—Counsel for the tenant urged that the words “for any other reasonable cause” applied not to the delay of the sale, but to the grounds of the action of the court—that in fact it was to be read as if it ran thus: “The court may, when a sale is delayed by reason of an application to the court, or for any other reasonable cause, extend the time for sale or in case of an ejectment for non-payment of rent, extend the time to redeem the tenancy.” He urged that the word “for” would never have been introduced, and the sentence beginning with the words “by reason of” would have been simply carried on without a new preposition if nothing but the reason of delay of sale were contemplated. But he chiefly relied on the alternative word “or” at the end of the clause. The power, he argued, was a disjunctive one. The power to extend the time for sale was given, he said, in any case of eviction, whether in case of ejectment for overholding or in case of ejectment for non-payment of rent; but in the latter case a separate power in the disjunctive is conferred—namely, an independent power to extend the time for redemption. The force of this latter argument I do not disguise from myself; and I feel that, in order to give the clause a meaning which confines it to delay of sale, we must read the word “or” as if it meant “and”—a construction only open to us if we are convinced that no other interpretation will make the clause consistent and coherent with itself. Yet to this conclusion, in my opinion, we are compelled. The sub-section opens with the words “when the sale of any tenancy is delayed;” and as the sub-section consists of but one sentence we must hold that those words govern the entire of it, and that all the powers conferred upon the court are dependent upon that circumstance. The 1st sub-section is conversant altogether with the power of sale, and the 2nd sub-section is as if it were engrafted upon it, showing the cases in which the power of sale may be extended, and, as a necessary auxiliary to that extension, the time for redeeming the tenancy when the ejectment was for non-payment of rent should be extended also. The startling consequences of the tenant’s proposition must also be considered—for it must amount to this, that in every case of ejectment for non-payment of rent, whether in the Civil Bill Court or in the Supreme Court of Judicature, this court, wholly irrespective of any proceedings being pending here, would have power for what it might deem reasonable cause, to extend the time for redemption. Against such a construction the 3rd sub-section giving power, not to this court, but, to the court where the proceedings are pending, to suspend such proceedings in cases in which an application is made here to fix a judicial rent, afford to me an argument of enormous weight. Upon this point we feel ourselves bound to decide with the landlord.

The next point is whether the tenant has made his application to extend the time for sale in sufficient time. Apart from the 60th section he plainly has not. The 60th section is as follows. [His lordship read the section, and proceeded]:—Upon this section the tenant contends that his application was, in fact, made to the court on the first occasion on which it sat; and that being so made, the court had all the power to give him relief which it would have had if it had sat on the 22nd of August, the day of the passing of the Act. The landlord, on the other hand, asserts that the application was not made on the occasion of the first sitting of the court; and that even if it were, the lapse of the six months without a step being taken by the tenant towards effecting a sale was fatal to him. These questions we have now to consider.

On the 19th of October we made and promulgated the following Order. [His lordship read the Order of that date, fixing the period of the first sitting of the Court up to and including Saturday, the 29th of October.] And on the 27th of October we made the following further Order. [His lordship read the further

Order, extending the time of the first sitting to Saturday, the 12th November.] It was contended that those Orders were *ultra vires*\* and void; that we had no power given to us to fix any particular period on the first occasion on which the court sat. Mr. Weir insisted that “first occasion” must mean the first day. Mr. Holmes did not go so far—he said it meant the first time. As I understood him, he did not mean to deny the power of the court to adjourn *de die in diem* until all the applications were disposed of; but as I understood him, he contended that the parties should have taken some steps towards making the application on or before the 20th of October, the first day of the sitting, although he admitted that if, from the pressure of the number of applications, the court could not dispose of them all at once, it might sit daily till they were finished. So I understood his argument.

Now, I have to state that, as regards our sittings, the Act of Parliament leaves us entirely free. The sittings of the court are not defined by statute, as the sittings of the Supreme Court or the sittings of the Courts of Quarter Sessions, within certain bounds, are. The power of making rules conferred on us is of the very widest character. It embraces any matter or thing in respect to which it may seem expedient to the Land Commission to make rules for carrying the Act into effect. Have we not, therefore, power to define what time the first session of the court should embrace? And if, in view of what turned out to be the case—namely, the very great number of applications which would be made on the first occasion of our sitting—we determined that that sitting should be for a certain lengthened period, how can it be said that such an Order is *ultra vires*? It is to be observed that the word “Court” does not mean our court alone. It embraces, and, indeed, according to the Act primarily means, the Civil Bill Court. I asked one of the learned counsel who argued the case whether he contended that an application to the Civil Bill Court under the 60th section must be made on the first day of its sitting after the passing of the Act. He answered that he would so contend. I can only say that such a contention appears to us wholly untenable, and a virtual abrogation of the 60th section. The first occasion of the sittings of the Civil Bill Court means, in our opinion, the first session of that court after the passing of the Act; and we consider that the application might be made on any day of such first session of the Civil Bill Court; and that it might be made on any day of the sittings which we constituted our first session.

But even so, Mr. Holmes further contended that our power was gone, inasmuch as no step towards a sale had been taken within the six months. The consideration of the 60th section, in our opinion, displaces that argument. The tenant came in, as we hold, on the first occasion on which the Court sat, and applied, in pursuance of an originating notice served by him, to have a judicial rent fixed for his tenancy. That application he had a right to make under the combined effect of the 13th and 60th sections. We recorded that application as made by him on the first occasion of the sitting of the Court, and adjourned its further hearing until it should be heard by a Sub-Commission duly delegated by us to deal with it. He further applied to extend the time for sale of his tenancy, inasmuch as the sale would be delayed pending the application to fix a judicial rent. Now, if we were sitting on the 22nd of August, would not these applications have been perfectly in time under the 13th section? And does not the 60th section oblige us to deal with them as if we were sitting on that day? See what Mr. Holmes’ conclusion would lead to. The sale must be a sale pursuant to the Act, and made in the prescribed manner. Our rules, though we used the utmost despatch, necessarily took some time to prepare,

\* See *Att.-Gen. v. Silem*, 10 H. L. 704.—[E. N. B., Ed.]

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and were not, in fact, promulgated till the 1st of October. Until that time, therefore, the prescribed manner did not exist. Is it to be contended that every tenant whose time for redemption and sale had expired before that date was debarred from his right to sell under the statute, though he could not know what the mode of sale under the statute was. It was precisely in view of possibilities of this kind that, in our opinion, the 60th section was passed; and we would contemplate with dismay a result which would be, as nearly as possible, a repeal of it. The motion thus made on the first occasion of the sitting of the Court stood adjourned for the concurrence of all parties. We now make an order upon it, extending the time for sale of the tenancy until the 20th of May, and we extend the time for redemption until the same period. This order will, under the 60th section, have the same effect as if made on the 22nd of August, and the order to fix a fair rent will speak as if made on the same day.

Mr. LITTON, Q.C.—The first question for the Court to consider in this case is, whether it has power to extend the time to enable a tenant to redeem his tenancy, irrespective of a proceeding by him to sell. The second, whether, through the combined operation of the 13th and 60th sections, an application made after the six months have actually expired, if made between the 20th October and the 12th November inclusive—the period limited as the first occasion on which the Court shall sit—is made in sufficient time. Regarding the dates in the present case, the application would be late if the above question is answered in the negative.

Now, as regards the jurisdiction of the Court to extend the time of redemption, irrespective of a sale, I am of opinion that the time can only be extended as ancillary to a sale by the evicted tenant of his tenancy. The Act of 1881 confers on the tenant evicted for non-payment the right to sell his tenancy within the time limited, whether the eviction takes place before or after the passing of the Act. This is a general provision applicable to all cases. The section then proceeds to confer a further right—but limited to cases where the eviction has taken place before the Act—namely, it enables the tenant in such a case (but still within the six months) to apply to the Court to have a fair rent fixed. This provision is confined to evictions before the Act, for this reason, as it appears to me, that no opportunity of fixing a fair rent existed for those already evicted, who were out of occupation, and therefore the special provision referred to was inserted. The position then under the 1st sub-section is this: the tenant evicted for non-payment of rent before the Act may sell his tenancy within the six months, and likewise apply to have the fair rent fixed. It is to be observed that the tenant's right of redemption is left precisely in the same position as it stood before—unaffected and unaltered. What the sub-section does is to give a right to sell the tenancy. Now, the right of sale conferred by the 1st section of the Act is a right which may be exercised without application to the Court. The necessity of an application to the Court only exists where a controversy arises between the landlord and the tenant in relation to the sale, and may arise at different stages of the proceeding. Again, even without any such controversy as I refer to, the tenant evicted before the 22nd August might desire to have the rent fixed so as to enable him to sell, as he might imagine, on more favourable terms; and thus a reference to the Court would become necessary. Either proceeding must occupy time beyond the control of the tenant, and it would have been idle to confer on the evicted tenant the right of sale if the limit of six months was absolute. The tenant would have been completely in the power of the landlord, who, by objecting to the purchaser, or by some other step, could render it impossible for the tenant to complete the sale within the time; or he might perhaps compel the tenant to forego some right conferred on him by the statute rather than allow the six

months to elapse, and with it lose his right of sale altogether. In order to prevent this result some such provision as is contained in the 2nd sub-section was absolutely necessary, and it was, I cannot doubt, introduced simply with the object of effectuating what alone was aimed at in the 1st sub-section—namely, the sale of the tenancy. It provides that when the sale is delayed by reason of an application to the Court, or any other reasonable cause, the Court should have power to relax the limit of time specified in the 1st sub-section; but, as I apprehend, clearly for the purpose of that which was indicated in the 1st sub-section—a sale. The application to the Court has reference, not alone to an application to fix the rent, but to any dispute which required the intervention of the Court in the course of sale under section 1 of the Act; and further, to any reasonable cause which, without default of the tenant, might by reason of lapse of time defeat his right. In such case the Court is given power to extend the time. The sub-section adds: "or the time during which the tenant may redeem his holding." It has been argued that this confers a right to extend the time for redemption, for the purpose of redemption only. In my opinion, this is not the true construction of the sub-section. Sub-section 2 covers the two branches of the 1st sub-section, which deals with the respective classes of ejectments therein mentioned. The language, therefore, of sub-section 2 is disjunctive; but the single purpose of the 1st sub-section is that of sale alone. It does not affect to alter the time for redemption, but leaves that as it found it; and it appears to me the power to extend the time within which the tenant might redeem was for the purpose of effectuating the sale, and for that purpose alone.

I have now to consider the 60th section, as it affects the present case. I think the aim and object of that section is plain. The Act was passed on the 22nd August. It was thought reasonable, and no one can doubt that it was reasonable, that during the period required to enable the Commission to prepare its Rules and make provision for its sittings, rights should not be lost by reason of events which the party could not control. The 60th section provided, therefore, that any application made to the Court on the first occasion of the sitting should be regarded as made on the 22nd August, and that the person should be in the same position and have the same rights in respect of his tenancy as he would have been in and would have had if the application had been made on the day on which the Act came into force. The first day the Court sat was the 20th October. If the "occasion" means the first day, the present application is late. It seems to me impossible to contend that the first occasion should be held to be the first day of the first occasion. If the Civil Bill Court was the Court to which the tenant applied, surely an application made at any time during the October Sessions would be sufficient. If the first "day" had been intended, nothing would have been more easy than to have said so; and the fact that "occasion" and not "day" has been used satisfies me that it was not intended to limit the time within which the application should be made to the first day of the sitting. If this be so, the Court of necessity, must have the power to determine how many days the sitting shall last. It is said that the Court, in defining "occasion," has assumed legislative functions. I do not think so. We have but interpreted the phrase as we would be bound to do any other phrase not defined, and have simply appointed days for the commencement and termination of the sitting, which becomes a necessity the moment you conclude that the "first occasion" cannot be read the first day. We have then an application to extend the time with a view to sell, and an application to fix a fair rent, in effect made on the 22nd August. The tenant on that day had ever two months to serve notice of intention to sell, independently of any order the Court

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might make on his application. I apprehend it would have been quite enough, upon the application being made on the 22nd August, for the tenant to have stated that he intended to sell, and to have given an undertaking to serve the notice within a limited time, and that it was not necessary he should at the time have already served the notice as a condition precedent. We may make the order now, which we would have then made if we arrived at the conclusion on the 22nd August that a sale could not be effected within the prescribed period, having regard to the fact that a fair rent had to be fixed, and that such could not be done within the six months. By no other construction could a tenant evicted on the 23rd February obtain relief, although such a tenant had, on the 22nd August, well-defused rights confirmed by the statute. I do not entertain any doubt that the judgment of the Court is right.

*Order accordingly.*

Solicitor for the landlord: *Stephen Huggard.*

Solicitor for tenant: *J. P. Broderick.*

### HIGH COURT OF JUSTICE.

#### COMMON PLEAS DIVISION.

*Reported by J. P. BRETT, Barrister-at-Law.*

(Before MORRIS, C.J., LAWSON, and HARRISON, JJ.)

#### HARTFORD v. MAHER.

Jan. 25, 1882.—*Practice—Leave to sign final judgment—Landlord and Tenant—Writ of summons claiming for use and occupation—Plaintiff's affidavit relying on defendant's covenant in lease—O. XIII., r. 1.*

*Where the writ of summons was specially indorsed, claiming two half-years' gales of rent due to the plaintiff for the use and occupation of the lands, and the plaintiff, in his affidavit in support of a motion for leave to sign final judgment under O. XIII., r. 1, alleged the existence of a lease of the said lands made by him to the defendant and executed by the defendant, in which the defendant covenanted to pay the said rent, and the plaintiff claimed the rent as due under said lease:*

*Held, that the motion should be refused.*

Motion for leave to sign final judgment under O. XIII., r. 1.

The writ of summons, specially indorsed, claimed the recovery of £42, being the amount of one year's rent due by the defendant to the plaintiff for the use and occupation of part of the lands of Upper Grange, County Kilkenny, particularised as follows:—

1st May, 1881.—Half-year's rent, £21	
1st Nov., " " " " " 21	
	£42

The plaintiff, in his affidavit in support of the motion, deposed that the amount claimed was one year's rent due by the defendant out of the said lands, held by the defendant under a lease dated 28th January, 1878, made by the plaintiff to the defendant for 99 years; and verified the cause of action. The defendant, in his affidavit, admitted that he signed the said lease; but denied that he ever went into possession of the lands, farmed or otherwise used or enjoyed them; and denied that he ever paid rent. The plaintiff replied in an affidavit that the defendant gave possession to a man named Brennan, but that neither he nor the defendant resided on the farm; and that the rent was regularly paid, and referred to a letter of the defendant dated

22nd Nov., 1880, sending a cheque for £23 10s., being the amount of half-year's rent, and £2 10s. costs of writ of summons.

*Lyster*, for the plaintiff, in support of the motion.

*Houston and Counsel, contra.*—This action is not brought on the lease produced. An action for use and occupation cannot be maintained unless the defendant is shown to be in actual occupation of the lands.

[LAWSON, J.—All those distinctions are now abolished.]

The very form of the special indorsement given in Appendix A (Jud. Act) shows how carefully these things are provided for.

[HARRISON, J.—Your affidavit is that you do not use and occupy the lands.]

If the plaintiff wanted to pursue the defendant by this summary application, he should have sued on the lease. It is not for a person who made a lease to a tenant to say to him, you do not hold under that lease at all, and then come into court and say, you do hold under that lease. The defendant swears he never was in occupation of the lands.

LAWSON, J.—It appears to me that this motion cannot be maintained. It should have been stated in the writ that the action was brought on the covenant in the lease.

MORRIS, C.J., and HARRISON, J., concurred.

*Motion refused.*

Solicitor for the plaintiff: *J. O'N. Geoghegan.*

Solicitor for the defendant: *J. B. Mulhall.*

(Before LAWSON and HARRISON, JJ.)

#### OGILBY v. O'DONNELL.

Feb. 16, 1882.—*Practice—Specially indorsed writ—No rule on motion to sign final judgment—Leave to defend—Time for delivery of defence—O. XIII., r. 1—O. XXI., r. 3.*

*Where, on a motion for leave to sign final judgment on a specially indorsed writ, under O. XIII., r. 1, no rule is pronounced, leave to defend is thereby impliedly given, and the defendant is not entitled to a statement of claim, though demanded, but must deliver a statement of defence within eight days from the date of the order. Rae v. Langford, 15 Ir. L. T. Rep. 105, followed.*

Motion, on behalf of the defendant, to set aside a judgment on the ground of surprise and irregularity.

The writ of summons, issued the 5th July, 1881, claimed the recovery of £50, one year's rent, due by the defendant out of his holding as tenant to the plaintiff, the particulars of which were indorsed on the writ. The appearance was entered on the 25th October, and a statement of claim demanded on the 23rd November. A motion, on behalf of the plaintiff, to mark final judgment for the sum claimed was made, on which the Court pronounced no rule. No statement of claim or notice in lieu thereof was delivered by the plaintiff. On the 27th January, 1882, judgment was entered; and a consent to set aside the judgment was subsequently tendered for signature, but was not complied with.

*Shannon*, in support of the motion.—Where no rule has been made on a motion to enter final judgment, leave to defend is thereby impliedly given: *Rae v. Langford*, 15 Ir. L. T. Rep. 105; *Murgate Pier and Harbour Co. v. Perry*, W. N. 1876, 52; *Atkins v. Taylor*, W. N. 1876, 11. The plaintiff is bound to

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deliver a statement of claim unless it be specifically dispensed with: O. XX., r. 1; or in the case of a specially indorsed writ, a notice in lieu of statement of claim: r. 2. Leave to defend a specially indorsed writ may be given on such terms as the Court thinks fit: O. XIII., r. 6. Where leave has been given to defend, the defendant must deliver his defence within such time as is limited by the order, and within eight days if no time has been limited: O. XXI., r. 3; Eiffe, Jud. Act, 330. But where the defendant has demanded a statement of claim, the plaintiff was bound to deliver it or a notice in lieu thereof.

*Cathrew, contra.*—O. XXI., r. 3, is perfectly plain. It has been expressly decided in *Margate Pier and Harbour Co. v. Perry* (*ubi supra*) that in such a case the plaintiff can enter judgment after the expiration of eight days though no statement of claim or notice in lieu thereof be delivered.

LAWSON, J.—We shall follow the decision in England. When no rule is pronounced on a motion to enter final judgment, it is equivalent to leave to defend. Mr. Shannon may take the case to a higher tribunal; but we decide it according to the settled practice of the Exchequer Division, shown by *Rae v. Langford*, 15 Ir. L. T. Rep. 105.

HARRISON, J., concurred.

*Motion refused, with costs.*

Solicitor for the plaintiff: *N. Goddard.*

Solicitor for the defendant: *M'Gough & Fowler.*

DEVITT v. FAUNT AND WIFE.

Feb. 23, 1882.—*Practice—Action against husband and wife—Separate estate—No appearance—Statement of claim—Motion to charge separate estate—Service of notice of motion—O. XVIII., r. 21—O. XXIX., r. 4.*

*In an action against husband and wife, the plaintiff, claiming that the separate estate of the wife should be declared well charged with the amount of the plaintiff's claim, and no appearance having been filed, delivered a statement of claim, and filed a notice of motion with the proper officer of the Division to apply to the Court for an order to declare the separate estate of the married woman well charged with the amount of the plaintiff's claim and costs, but same was not served:*

*Held, that the notice of motion should have been served.*

Motion, on behalf of the plaintiff, for an order that the proper officer of the Division do make up an order previously made by the court declaring that the separate estate of the married woman was well charged with the amount of the plaintiff's claim and costs, which the officer had declined to do without the production of an affidavit of service of the notice of motion.

The writ of summons was issued on the 4th October, 1881, by which the plaintiff claimed, as public officer of the National Bank, Limited, against the separate estate of the defendant S. A. Faunt, who, at the time of making the promissory note hereinafter mentioned, was the wife of the defendant T. L. Faunt, and was then and still continued entitled to property to her separate use, and against the said T. L. Faunt as her husband. The following particulars were endorsed:—“Joint and several promissory note for £30 15s. 6d., 17th May, 1877, made by the said S. A. Faunt and one

C. H. Faunt to the National Bank or order, payable two months after date:

“Principal, - - - - £30 15 6

“Interest up to 31st May, 1881, - 7 3 0”

And the plaintiff claimed (1) that it be declared that the separate estate of the said S. A. Faunt, vested in her or in any other person in trust for her, be chargeable with the payment of the said sum of £30 15s. 6d., and interest; (2) payment of the said sum of £30 15s. 6d., and interest; (3) if the said defendant S. A. Faunt shall not admit possession of separate estate sufficient to answer same, an inquiry of what the defendant's separate estate consists at the present time, and for payment thereof of the said sum of £30 15s. 6d., and interest; and (4) further and other relief. There was no appearance filed. The statement of claim, delivered the 17th November, 1881, alleged (1) that the plaintiff was a public officer of the National Bank, Limited; (2) that S. A. Faunt was, at the time of making the said promissory note, the wife of T. L. Faunt, and was and still is possessed of separate estate; (3) that on the 17th May, 1877, the said S. A. Faunt and one C. H. Faunt made their joint and several promissory note to the said National Bank for £30 15s. 6d., at two months after date; (4) that note became due on the 20th July, 1877, and £7 3s. interest up to 31st May, 1881, no part of which has been paid. The plaintiff claimed (1) that it be declared that the separate estate of the said S. A. Faunt, vested in her or in any other person in trust for her, is chargeable with payment of £30 15s. 6d., and interest; (2) payment of £30 15s. 6d., and interest; (3) an inquiry of what the separate estate of the said S. A. Faunt consists; and (4) further relief. The plaintiff moved in pursuance to notice, and obtained an order declaring that the separate estate of the said S. A. Faunt, vested in her or in any other person in trust for her, well charged with the sum of £30 15s. 6d., interest, and costs; and that it be referred to the Master of the Division to inquire and report of what such separate estate consisted, and in whom same is vested. The notice of motion on which that order was granted was not served, but merely filed. The officer declined to make up the order except on production of an affidavit of service of the notice of motion.

*O'Connor*, in support of the motion.—When a defendant does not enter an appearance any pleading or document shall be deemed to be delivered by being filed in the proper office: O. XVIII., r. 21; O. XXIX., r. 4. A notice of motion is a document which may be delivered by filing it with the proper officer when proceeding against a defendant who has not appeared: *Dymonds v. Croft*, 3 Ch. D. 512, 24 W. R. 700.

[LAWSON, J.—Why should you not serve notice of motion? We cannot have proceedings taken behind the backs of defendants.]

It was decided by Jessel, M.R., in *Dymonds v. Croft*, *supra*, which was a similar case, that delivery was not necessary. In actions of this kind it is the practice of the Common Law Divisions to follow the practice of the Equity Division.

[HARRISON, J.—How does it appear that the defendant has any separate estate?]

It does not appear until after the Master makes up his report.

LAWSON J.—I do not approve of this way of appearing in a motion of this kind; you must serve notice.

HARRISON, J., concurred.

*Motion refused.*

Solicitor for the plaintiff: *John Barry.*



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KEARNEY v. HANNON.

[C. P.]

(Before MORRIS, C.J., and HARRISON, J.)

KEARNEY v. HANNON.

Jan. 13, 1882.—Costs—Action for slander—Judgment entered for defendant—Defendant deprived of costs—Motion to vary judge's order—Discretion of trial judge—Jud. Act, s. 53.

In an action claiming damages for slander, where the defendant set up a plea of privilege, practically tantamount to a justification, which he was unable to substantiate at the trial, and the jury found a verdict for the plaintiff for the sum of 10s. lodged in court, the judge entered judgment for the defendant, and certified that he was not to be entitled to costs. On an application to vary the judge's order as to costs:

Held, that the Court would not interfere with the discretion exercised by the trial judge, on a consideration of all the facts and circumstances of the case disclosed in the evidence before him, on which he was in a position to form a better opinion.

Motion, on behalf of the defendant, to vary the judge's order, made at the trial of the action at Armagh Summer Assizes, 1881, depriving the defendant of his costs. The statement of claim alleged—paragraph (1) that the plaintiff was a publican in Crossmaglen, county Monaghan; (2) that the defendant falsely and maliciously spoke and published of and concerning the plaintiff, as such publican, and in relation to his conduct in such trade and business the words, "He keeps no one but highwaymen;" "it" (plaintiff's public-house) "is a den of infamy and of thieves and prostitutes; no one would go into it who had any respect for themselves" (meaning thereby that the plaintiff had conducted his said business in a disorderly and improper manner, and permitted his place of business to be used as a resort of thieves and prostitutes); (3) as a further cause of action, repeating the allegations in the preceding paragraphs, omitting the innuendo at the end of the 2nd; and (4) as a further cause of action the plaintiff complained that defendant falsely and maliciously spoke and published of and concerning the plaintiff the words, "He" (plaintiff) "keeps no one but highwaymen;" "it" (plaintiff's public-house) "is a den of infamy and of thieves and prostitutes, and no one would go into it who had any respect for themselves" (meaning that the plaintiff kept and was the keeper of a house which was a common nuisance, and was guilty of an indictable offence). Plaintiff claimed £500 damages.

The statement of defence (1) traversed the speaking and publishing of the words in the 2nd and 3rd paragraphs of the statement of claim; (2) admitting, for the purpose of the defence, the speaking and publishing of the words, traversed the allegation that they were spoken of the plaintiff as a publican; (3) traversed the defamatory sense alleged in the 2nd paragraph of the statement of claim; (4) traversed the speaking and publishing of the words in the 4th paragraph complained of; (5) traversed the defamatory sense alleged in the 4th paragraph; (6) as a further defence, averred that at the time of the speaking and publishing of the words complained of the defendant was a resident ratepayer in Crossmaglen and the plaintiff was a licensed publican, carrying on his business in the house next door to that of the defendant; that as such resident ratepayer the defendant was directly interested in the proper and orderly conduct

of the plaintiff's business as a publican; that, upon the occasion of the speaking of the words complained of, a person named E. Malone left the plaintiff's licensed house in a state of intoxication, and coming over to the house of the defendant behaved towards him in a most disorderly and violent way, so that the defendant was obliged to send for the constabulary, who upon their arrival followed the said E. Malone into the house of the plaintiff, to which he had returned, and there arrested him; that the defendant, who had on other occasions been annoyed by the disorderly conduct of persons when leaving the plaintiff's licensed house, did thereupon, in the belief that the plaintiff was conducting his business in a disorderly manner, and in contravention of the licensing laws, and also for the purpose of securing himself from similar scenes of disturbance, complain to the constabulary, who were the proper authorities constituted by law to receive such complaint and to redress the grievance complained of; that the defendant made such complaint *bona fide* and without malice, and believing it to be true, and in making such complaint he spoke and published the words in the 2nd, 3rd, and 4th paragraphs of the statement of claim mentioned; and (7) the defendant lodged 10s. in court. By consent the 6th paragraph of the defence was amended by stating the words following:—"In making such complaint he spoke and published the words in the 2nd, 3rd, and 4th paragraphs of the statement of defence referred to."

The action was tried in Armagh, at the Summer Assizes, 1881, before Palles, C.B., and a jury, who found a verdict for the plaintiff generally, and that the sum of 10s. lodged in court was sufficient damages. The Lord Chief Baron entered judgment for the defendant, but certified that, in consequence of the verdict on the defendant's pleas in bar being found for the plaintiff, the defendant should not be entitled to costs.

*The Solicitor-General, Porter, Q.C.* (with him *J. H. Campbell*), in support of the application.—The costs generally follow the event, and where judgment was entered up for the defendant in an action of slander he is entitled to the costs, unless for special cause shown; and the divisional court is empowered to vary the order of the judge who tried the case: Jud. Act, s. 53. The English and Irish orders as to costs are different. Before depriving the defendant of his costs special cause should have been shown to the contrary.

*Monroe, Q.C.* (with him *T. L. O'Shaughnessy*), for the plaintiff, *contra*.—An application to interfere with the order of the judge at trial acting in his discretion, never yet succeeded: *Harnett v. Vise*, 5 Exch. D. 307. The defendant could not prove his plea of privilege at the trial. O. XLV. (Eng.) is stronger than s. 53 (Ir. Jud. Act, 1877). The judge at the trial has full power to order that costs shall not follow the event: *Turner v. Heyland*, 4 C. P. D. 432.

MORRIS, C.J.—I am called on to decide such a case for the first time. An application to vary the order of the judge at the trial may be made to the judge or to the divisional court. This is an application by way of appeal from the judge at the trial. It is an appeal from the order of the judge who is well acquainted with the facts of the case. The Lord Chief Baron put the costs on the defendant on account of his failure to prove his plea of privilege. Practically, privilege and justification are dealt with in the same way; but this is something in the nature of a plea of justification. The Lord Chief Baron thought, on the facts of the case, that the costs should be put on the defendant. The judge at the trial can form a better opinion of the circumstances

[Ex.]

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[Ex.]

of the case after hearing the evidence than the divisional court can, and his discretion ought not to be interfered with.

HARRISON, J., concurred.

*Motion refused.*

Solicitor for plaintiff: *W. R. Corr.*

Solicitor for defendant: *J. F. Small.*

*EXCHEQUER DIVISION.*

*Reported by HANS AYLMER, Barrister-at-Law.*

(Before PALLES, C.B., FITZGERALD, and DOWSE, BB.)

FITZGERALD v. BRENNAN.

Feb. 23, 1882.—*Action to recover lands on the title—Staying proceedings pending application to Land Commission to fix judicial rent—Land Law Act, 1881, ss. 8, 13 (sub-s. 3), ss. 21, 58 (sub-s. 7).*

*Where a tenant applies to stay ejectment proceedings pending an application to the Land Commission to fix a judicial rent, the Court will not, on such an interlocutory application, determine whether the tenancy is one to which the Act applies. Boyd v. Hodson, 15 Ir. L. T. Rep. 120, followed.*

*Semble, per PALLES, C.B.—A tenancy under a written agreement for a year certain, existing at the date of the passing of the Act, is one to which section 21 applies.*

Motion, under the Land Law Act, 1881, s. 13, sub-s. 3, for a stay of proceedings pending an application to the Land Commission to have a judicial rent fixed. The action was brought to recover possession of portion of the lands of Geraldine, in the Barony of Athy and County of Kildare. The lands were held by the defendant under a written agreement dated February 17, 1881, by which he became tenant of the said lands from the first day of January, 1881, till the first day of January, 1882. The agreement further provided that the letting, being one for the temporary convenience of both the landlord and tenant, the tenant was to be debarred from any right or claim for compensation for disturbance or improvements under the Land Act of 1870.

The action was commenced January 5, and notice of trial had been served for March 1.

*Moriarty*, in support of motion.—The defendant is a "present tenant" within the meaning of sec. 8 of the Act; for sec. 21 enacts that those who hold under "leases or other contracts of tenancy existing at the date of the passing of this Act, except yearly tenancies and tenancies less than yearly tenancies," shall, at the expiration of same, become present ordinary tenants. At the date of the passing of the Act this was an existing "other contract of tenancy."

[PALLES, C.B.—Surely, the way to try the question whether this tenant is entitled to apply to the Land Commission or not, is before a jury, and if you object to their verdict, it can then come before us in the ordinary way.]

*Hamilton, contra*, was not called on.

PALLES, C.B.—In my opinion this motion should be refused with costs. [His Lordship read s. 13 (3).] Before we can, under this section, suspend the proceedings we should have to decide judicially that the applicant is a present tenant. This has already been decided in the Common Pleas Division in *Boyd v. Hodson*, 15 Ir. L. T. Rep. 120. Subject to what Mr. Hamilton might have to say, I am of opinion that if the case rested on section 21 the tenant would

be the tenant of a present tenancy. He held under a written agreement, which expired on January 1st, 1882. [His Lordship read section 21.] If, therefore, this was a tenancy to which the Act applied, it would appear that Mr. Moriarty has brought himself within that clause which entitles him to apply to this Court. But the answer to this is that s. 58, sub-s. (7), states that the Act is not to apply to any holding let to the tenant for the temporary convenience, or to meet a temporary necessity, either of the landlord or tenant. Therefore, before we held that defendant had the status which entitled him to make this application, we should decide that these lands were not let for the temporary convenience of either landlord or tenant.\* A written document is produced here in court which expressly declares, on the face of it, that the letting was a letting for that purpose. Without saying that this is an estoppel against the defendant, we think it is a question of fact that must be tried in the ordinary way by a jury. The motion must, therefore, be refused with costs.

FITZGERALD and DOWSE, BB., concurred.

*Order accordingly.*

Solicitor for defendant: *P. C. M'Gough.*

CRONIN v. PAUL AND OTHERS

Feb. 13, 1882.—*Practice—Inspection of documents—O. XXXI., r. 17.*

*On an application under O. XXXI., r. 17, the Court will not grant an order for inspection of documents, though some of them are referred to in the pleadings of the opposite party, if the documents are not in the possession or power of that party.*

Summons, on behalf of the plaintiff, for an order that defendants should produce to the plaintiff for his inspection, and permit him to take extracts from and copies of the several documents mentioned in the affidavit of John Egan. The action was brought against the defendants, as five members of a committee of merchants of Cork, to try the legality of their dealings in relation to the butter market of that city. An order for discovery of documents which are or have been in the possession or control of the defendants had been obtained, June 23rd, 1881. On July 30 the defendants filed an affidavit in the usual form denying that they have or had any such documents, and alleging that all documents connected with the Cork butter exchange were in the possession of the committee of merchants, and referring to an affidavit of John Egan, the secretary and treasurer of the said committee. The affidavit of Egan set forth in a Schedule the documents in the possession of the deponent, who objected to produce same unless ordered to do so by the said committee or the court. On Nov. 3 a notice was served on defendants to produce, for the inspection of plaintiff, the documents scheduled in Egan's affidavit, which had not been complied with, hence the present summons. An affidavit of the plaintiff filed in support of the motion stated that it was material and necessary for him to inspect and copy a number of documents comprising five letters from plaintiff to the committee of merchants, between Feb., 1877, and March, 1880, the books containing the minutes of the meetings of the said committee from 1877 to 1881, and all their rules and regulations for the same period, and several other documents. All of them were included with others in the schedule to Egan's affidavit, and some of them were referred to in the statement of defence of the defend-

\* See *Eiffe v. M'Kenna*, ante p. 39.—[E. N. B., Ed.]

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[L. C.]

ants. In answer to this affidavit the defendants filed another which alleged that the committee of merchants consisted of twenty-one members, and that three of the five defendants had not been members thereof since May 4, 1881. They believed the documents referred to in plaintiff's affidavit were in the possession of Egan, but they had no authority over him to order him to produce any documents in his custody, and that all orders given to him must be by resolution passed at a meeting of the said committee.

*O'Riordan, Q.C.*, in support of motion.—We earmark the documents we want in plaintiff's affidavit, and they are all included in Egan's affidavit. We are entitled to inspect all the documents incorporated in the pleadings.

*Sugrue (with him J. Murphy, Q.C.)*.—Any documents referred to in the pleadings the plaintiff is entitled to see, but this is an application under the order for discovery already made in the cause. Plaintiff should have applied under O. XXXI, r. 13. If he will do so now we will comply. But on this motion the court has no jurisdiction to compel Egan to produce these documents.

The following were cited:—*Tay. on Evid. 1502; Wigr. on Disc. 210; Penny v. Goode, 1 Dr. 474; Hadley v. M'Dougall, 7 Ch. Ap. 312; Wilson v. Raffal-witch, 7 Q. B. D. 553.*

*FITZGERALD, B.*—We pronounce no rule on the motion; no costs. The defendants might have got their costs if they had not insisted on a notice being served on them to produce documents which they were bound to produce as being referred to in their pleadings.

*FALLES, C.B.*, and *DOWSE, B.*, concurred.

*Order accordingly.*

Solicitor for the plaintiff: *B. Franklin.*

Solicitors for the defendants: *J. & J. Bennett.*

#### LAND COMMISSION.

*Reported by G. M'DERMOT, Barrister-at-Law.*

(Before *LITTON, Q.C.*)

*GILL v. MANLY.*

Jan. 14, 1882. —*Lease for life—Presumption of death—Tenancy from year to year—Originating Notice to fix judicial rent.*

In April, 1842, a lease was made for 21 years, and during the life of Bryan Gill, then aged 21, or 24. In 1856 Bryan Gill went to Steevens's Hospital, Dublin, suffering from an affection in his eyes; and a short time afterwards some members of his family called, but could hear nothing of him. It was deposed that he had left this country in that year; and it was stated that, when leaving home, he had got £5 from his relatives. It did not appear that he had subsequently asked for any assistance from them; and William Gill, his brother, had not heard from him since, and stated his belief that his other brothers and sisters had not heard from him. But the other brothers and sisters made no affidavit; nor did it appear what inquiries were instituted to discover his whereabouts; and it was sworn that a bailiff had been informed that Bryan Gill was a mate on board an American vessel in March, 1875. During Bryan Gill's absence rent had been paid by William Gill, and received by the lessor, but not, so far as appeared, with knowledge that, as alleged, Bryan Gill was dead. William Gill (whose elder brother would have been

entitled to the land, if Bryan Gill was still alive), claiming to be a "present tenant," under a tenancy from year to year, having served an originating notice to fix a judicial rent, under the Land Law Act, 1881:

Held, that the evidence was insufficient to warrant a presumption that Bryan Gill was dead; and that, even if he were to be so presumed, no circumstances were shown such as would create a tenancy from year to year between the lessor and William Gill; and, therefore, that the originating notice could not be sustained.

Application on behalf of the landlord to set aside an originating notice to fix a judicial rent, on the ground that of an area of 29a. 3r. 20p., which it included, 25a. 1r. 37p. were held, not from year to year, but under a lease made on the 27th of April, 1842, and which was still subsisting, and that the originating notice inaccurately described the lands as one holding instead of two. The lease had been made for a term of 21 years and the life of Bryan Gill, who, it was deposed, had left this country about the year 1856. It was stated, in an affidavit filed on behalf of the landlord, that a bailiff on the property had been informed that Bryan Gill, in March, 1875, was a mate on board an American vessel. The affidavit filed on behalf of the tenant, William Gill, stated that Bryan Gill went to Steevens's Hospital in Dublin in the year 1856, as he was suffering from an affection of the eyes; that a member of the family called some very short time after to the hospital, but could learn nothing about him. There were other brothers and sisters, and none of them, it was believed, had ever heard from him since.

*Bewley*, for the landlord.—The party relying on the fact of death having taken place must show it by some evidence. It must be shown that the death took place at a particular time. The applicant is not entitled if the life is in being, as he was an elder brother. He must, also, show when the death took place, because if it only took place a day or two before the passing of the Act he would not be a present tenant. If it took place since the passing of the Act he might be deemed to be a present tenant. If the death took place before the passing of the Act, and rent were paid subsequently to the death, he might be a tenant from year to year; but we do not know whether this is the case or not. The evidence in an ejectionment under 7 Wm. III, c. 8, must be of the most exhaustive character before the presumption created by the statute can be allowed; but in this case there are other members of the family alive, and they do not state that they have not heard from him. On every ground the motion must be granted.

*G. M'Dermot*, for the tenant.—At the end of a period of seven years, when a party has not been heard of, it is presumed that he is dead. That period has several times passed since Bryan Gill was heard of. It is, therefore, not necessary for us to show the time of his death. We admit that there is no presumption that he died at a particular time; but, if the presumption is that at the end of the first seven years he is dead, it must be presumed that he died before the commencement of the second seven years. The bailiff's statement is not evidence; it is the hearsay of a person who does not even make an affidavit.\*

[*LITTON, Q.C.*—Why not get affidavits from the other members of the family?]

\* See *Prudential Assurance Co. v. Edmunds*, 2 Ap. Ca.—[E. N. B., Ed.]

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That is a matter for the Sub-Commission. They will go into the case fully. It is enough for us to show a right to come in as a tenant from year to year. The landlord may, when the case comes before the Sub-Commission, require us to give the most satisfactory evidence in aid of the presumption of death; but he is not entitled, on a summary motion of this sort, to have a case, in which the controversy is one of fact, disposed of. The presumption here is not one of law, it is one of fact: *Lapley v. Grierson*, 1 H. L. C. 498. It is so far in our favour, for the Court has decided that cases in which the controversy is one of fact shall go before the Sub-Commissions.\* Bryan Gill was evidently a delicate person; the first thing we hear about him is that he went to a hospital. On inquiry at the hospital a very short time after there is no account of him.

[LITTON, Q.C.—That would lead me to infer that he left perfectly cured.]

Hardly; but even so, it is plain he was dependent on his family, for he got £5 on leaving home, and he would have been likely to have wanted money after leaving the hospital; and the fact of his not applying for money, where the probabilities are so strong that he would have applied if he were alive, is evidence of his death: *In re Henderson's Trusts*, cited in Roscoe's N. P. at p. 44. There is a very strong case where a person born in 1829 went to America in 1853, and had frequently written home till August, 1858, when he wrote from on board an American warship, but from that time nothing was heard of him except that he was entered on the books of the American navy as having deserted on the 16th of June, 1860, while on leave; and Gifford, L.J., refused to presume that he was alive on the 6th of January, 1861: *In re Phene's Trusts*, L. R. 5 Ch. 139.

[LITTON, Q.C.—That only shows there is no presumption either way.]

There is no presumption that the person was alive in January, 1861, although entered as having deserted in the preceding June. The presumption from that case is that Bryan Gill is not alive; and the general presumption from the fact of his not having been heard of for seven years is that he is dead. There is a twofold presumption against life, and in favour of death.

[LITTON, Q.C.—It must be shown that he died either before the 22nd August, 1861, and that a tenancy from year to year was created, by the payment and receipt of rent under circumstances which would lead a jury to say there was a tenancy from year to year created, or that he died after the Act, so as to bring you within the 21st section.]

There is the strongest authority for holding the presumption of death right in this case. By statute 19 Charles II., c. 6, s. 2, in actions by lessor or reversioner for the recovery of lands granted or leased for lives, or for years determinable on lives, the *cestui que vie* shall be accounted to be naturally dead if they shall remain beyond the seas or elsewhere absent themselves within the realm by the space of seven years together, and no sufficient or evident proof be made of the lives of such persons.

[LITTON, Q.C.—What do you say to the evidence required under the statute of William III. ?]

It is the corresponding statute in Ireland, and it does not, so far as we see, affect our argument. If we ask that death should be presumed, by giving evidence that no member of the family has heard from him for a period of seven years, we should be allowed to do so

\* See *Moore v. Lawler*, 15 Ir. L. T. Rep. 65; *Farrelly v. Doughty*, *ib.* 100.—[E. N. B., Ed.]

before the Sub-Commission. This is not the place to decide the question.

LITTON, Q.C.—In this case, part of the lands are held under a lease which I must regard as subsisting, unless I am bound to presume, on the evidence before me, that Bryan Gill, the life in the lease, has died. It appears that when the lease was made he was a young man, according to one statement, of twenty-one years of age, and according to another, of twenty-four; so that he would now if alive be about sixty years of age. It is, therefore, quite within the probabilities of human existence that he might be alive and well at this moment. If he be alive, the tenant has no claim to the land comprised in the lease, for his elder brother would then be the party entitled to the land. I think the evidence produced on behalf of the tenant wholly insufficient to justify me in saying Bryan Gill must be presumed to have died. While it is stated in the affidavit of William Gill that there are brothers and sisters living, no affidavit has been made by the members of the family referred to; nor does it appear what inquiries were instituted to discover the whereabouts of Gill. On the other hand, it is stated that in March, 1875, he was mate in a sailing vessel from New York. But, even if I was prepared to now presume the death of Bryan Gill on the very insufficient evidence I have referred to, the mere payment of rent by William Gill, the tenant, and receipt by the landlord, in ignorance of the fact that the life had dropped, would not create a tenancy from year to year between the parties. Under those circumstances the originating notice should be dismissed; but as Gill is admittedly tenant from year to year of 4a. 2r. 8p., with the consent of the landlord, I shall make the following order:—The landlord so consenting, let the tenant amend his originating notice by striking out of it the 25a. 1r. 37p. mentioned in the lease; and also, amend the particulars as to the rent and valuation of the residus of the lands.

Order accordingly.\*

Solicitors for the tenant: *W. Kelly & Son.*  
Solicitor for the landlord: *West.*

#### LAND SUB-COMMISSION.

(Before ULICK BOURKE, Barrister-at-Law, E. W. O'BRIEN and W. DAVIDSON, Esqrs.)

CUTHERBERT v. YOUNG.

Jan. 16, 17, 1882.—Application to fix judicial rent—Agreement for a lease—*Land Law, Ireland, Act (1881).*

A tenant, who alleged that he held from year to year, applied to have a judicial rent fixed. An agreement signed by both parties to pay an increased rent, and that there should not be a revaluation for 21 years, was produced:

Held, that the tenancy continued to be a yearly one, and that the case should be heard.

Application to fix a judicial rent. The holding consisted of 104a. 2r. 2p., near the city of Londonderry. The rent was £132 0s. 9d., and the Government valuation £105. It appeared that the tenant held under the following (stamped) agreement:—

“Coolkeeragh, 27th December, 1873.

“SIR,—I agree to give you up the field called Gatesburn, containing 31a. 0r. 6p. statute, and also the Woodfield, containing 6a. 3r. 20p. statute measure, on 1st November, 1873, without receiving any compensation from you.

\* See Com., by the present writer (E. N. B.), 16 Ir. L. T. 101, *et seq.*, and cases there collected.—[Ed.]

[A.P.]

ADAMS v. DUNSEATH.

[A.P.]

"I also agree to give you an advance of £30 (thirty pounds) on my present holding under you.

"And an advance of £5 per annum on Warnock's farm, this increase to commence on 1st May, 1874, with the understanding that there will be no new valuation for 21 years from 1st November 1873 (three).

"I am, dear sir,

"Your obedient servant,

"(Signed) DAVID CUTHBERT.

"W. J. CUTHBERT.

"Witness—GEORGE HANNA.

"I agree to the above.

"(Signed) R. J. C. YOUNG.

"Witness—GEORGE HANNA."

*Colquhoun, Q.C.*, for the landlord, applied to dismiss the case on the ground that the tenant held under an agreement for a lease.

*R. H. Todd*, solicitor, for the tenant, submitted that the agreement was merely one not to raise the rent during 21 years, and that the landlord could at any time during this period have sustained an ejectment founded on a notice to quit.

#### Decision deferred.

*Mr. Bourke*.—The first farm is not described in the agreement any further than "my present holding," and the rent is only stated as "an advance of £30 per annum on my present rent." The second farm is called Warnock's farm, and the rent is stated as "an advance of £5 on Warnock's farm." It is also difficult, from the dates, to know whether the letting was to commence on the 1st May, 1874; or the 1st November, 1873. I am clearly of opinion that at the time of making this agreement it was not the intention of either party to create a tenancy for 21 years, but that this agreement was solely made to prevent the landlord increasing the rent during the term of 21 years, from 1st November, 1873. I do not think a court of equity could force either party to execute a lease on such an agreement as this. There is no sufficient description of the property demised; there is no absolute certainty as to the time at which the demise was to commence; there is no fixed rent to be paid, and no mention of any covenants to be inserted; and, from the wording of the agreement, neither party, at the time it was made, considered it to be an agreement for a 21 years' lease. I, therefore, decide that the agreement of the 27th December, 1873, is not an agreement for a lease, but is only an agreement binding on Captain Young, in consideration of his having got Gateshurn and Woodfield, not to raise the rent on certain other farms belonging to Captain Young, in the possession of David Cuthbert at the time of the agreement. And the only way, in my opinion, that Captain Young is bound by the agreement is that he will not raise David Cuthbert's rent for 21 years from the 1st November, 1873. I, therefore, decide that we can hear this case.\*

Solicitor for the tenant: *R. H. Todd*.

Solicitor for the landlord: *T. Chambers*.

### SUPREME COURT OF JUDICATURE.

#### COURT OF APPEAL.

(Before *LAW, C.*, *MAY, C.J.*, *SIR E. SULLIVAN, M.R.*, *MORRIS, C.J.*, *PALLES, C.B.*, *DEASY*, and *FITZGIBBON, L.JJ.*)

#### ADAMS v. DUNSEATH.

Feb. 10, 11, 15, 28, 1882.—*Judicial Rent, determination of—Improvements—Predecessor in title—Lessee*

\* But see *Rutledge v. Farrell*, and *Bros v. Maunsell*, 16 Ir L. T. Rep. 48.—[*E. N. B., Ed.*]

*continuing in occupation from year to year—Compensation by Landlord—True value—Fair rent—Appeal—Statute, construction of—Retroactive operation—L. & T. Act, 1870, s. 4—L. L. Act, 1881, ss. 7, 8 (9), 57.*

The term "improvements" in the 9th sub-section of section 8 of the Land Law Act, 1881 (44 & 45 Vic., c. 49), has the same meaning as in section 70 of the Landlord and Tenant Act, 1870 (33 & 34 Vic., c. 46).

The terms "tenant or his predecessors in title" in section 8, sub-section 9, of the Act of 1881, have the same meaning as in the 7th section: *dis. MAY, C.J.*, *MORRIS, C.J.*, and *DEASY, L.J.*

The provisions of the final paragraph of the 4th section of the Act of 1870, as to improvements made before the passing of that Act, are applicable to such improvements in determining fair rent under the 8th section of the Act of 1881: *dis. LAW, C.*

The enjoyment, during the currency of a lease, of improvements made by a tenant during its sub-existence does not constitute a compensation by the landlord, within the meaning of section 8, sub-section 9, of the Act of 1881.

A lease made before the passing of the Act of 1870, demising lands, together with all houses, edifices, and buildings, and appurtenances thereunto belonging, and containing the usual covenants, precludes the tenant from being regarded as having any interest in respect of improvements made (e.g., a house built) before its execution, in determining what is the fair rent of the holding, under the 8th section of the Act of 1881: *dis. LAW, C.*, *SIR E. SULLIVAN, M.R.*, and *PALLES, C.B.*

*Per LAW, C.*:—"Improvements" simply mean suitable and ameliorative works executed or done upon the holding; and no rent is to be imposed or made payable in respect of the yearly value of such actual improvement-works themselves; but, the increased letting value of the land beyond that, subsequently accruing to the land in consequence of the execution of such works, may be taken into account as entitling the landlord to benefit in the determination of the rent. "Predecessors in title" denote a series of tenants who have transmitted from one to the other their respective tenancies or titles to the possession of a holding, whatever those tenancies or titles may be, or whatever changes they have undergone. In estimating the "interest of the tenant," when determining fair rent under the 8th section of the Act of 1881, not merely his right to claim compensation under the 4th section of the Act of 1870 should be taken into account, but his right to sell his tenancy as it stands, improvements and all, whether executed before or after the Act of 1870, for the best price that can be got for the same, under section 1 of the Act of 1881; while, if the landlord seeks to exercise his right of pre-emption, he must pay, as the "true value" of the holding, what it would bona fide bring in the open market, if sold to an unobjectionable purchaser.

*Per MAY, C.J.*:—"Predecessor in title," within the meaning of the Act of 1881, does not mean an antecedent occupier, but a previous tenant from whom the existing tenant derives his title to the tenancy. Upon an appeal from the decision of a sub-commissioner to the Land Commissioners they should form their own independent judg-

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ment upon the evidence, which may not be confined to that which was adduced in the court below, as the appeal should be regarded as a re-hearing.

Per SIR E. SULLIVAN, M.R.:—"Improvements," within the meaning of the Act of 1881, section 9 (8), does not refer to the increased letting value of the holding caused by the making of the improvements, but simply the works which have caused that increase, or rather the interest of the tenant who made them, measured by the money expended on them, as declared and limited by the Acts of 1870 and 1881. The right of sale given by the Act of 1881 does not give an absolute right to sell all the improvements as they stand, and the "true value" which the landlord must pay, when exercising his right of pre-emption, is not the market value, but what, having regard to the interest of landlord and tenant respectively under the code, would be the true estimate of price as between "them."

Per MORRIS, C.J.: While the tenant is entitled to the benefit of improvements which add to the letting value of the holding, the inherent qualities and capacity of the land for such works should be taken into consideration in favour of the landlord, when determining a fair rent. The interest of the landlord is the plenary interest in the holding, save so far as the tenant establishes, in diminution, claims under the Acts of 1870 and 1881, which constitute his interest. The mere abstention by the landlord from availing himself of his legal rights, and allowing the tenant to enjoy what, if the landlord chose, he himself might enjoy, amounts to a "compensation" by the landlord, within the meaning of the Act of 1881, section 8 (9), irrespective of threat or statement to that effect.

Per FALLON, C.B.: "Improvements," within the contemplation of the Act of 1881, section 8 (9), mean works which, being suitable to the holding, add to its letting value, as distinguished from the increased letting value itself; and the enjoyment by the tenant of improvements executed before the passing of the Act of 1870 cannot be excluded from consideration in determining fair rent.

Per DEASY, L.J.: With respect to the fixing of a fair rent and the ascertainment of compensation for improvements to the tenant, the Land Commission has an unlimited discretion, and no general rule or principle should be laid down by the Court of Appeal that could or ought to bind the exercise of that discretion.

Per FITZGIBBON, L.J.: The words "paid or otherwise compensated by the landlord or his predecessors in title," in the Act of 1881, section 8 (9), include every form of recoupment which the tenant receives, at the hands of the landlord, whether by way of cash payment or out of the landlord's estate, as an equivalent for the tenant's improvements; so, if a landlord gives over to an improving tenant, because he is such, the soil with all its natural powers, at a price so far below the letting value of the landlord's interest as to recoup the tenant for his improvements. The determination of fair rent is not such a mere question of fact as should not form the subject of appeal: *Montgomery v. Montgomery*, 14 Ir. L. T. Rep. 9, applied, and contrasted with *Grey v. Turnbull*, L. R. 1 H. L. 53.

*Holt v. Harberton*, 6 Ir. L. T. Rep. 1, discussed.

Case stated by the Land Commission, the judgments of which Court are reported *ante*, p. 15:—

On the 17th of October, 1881, the tenant in this case served the landlord with an originating notice of an application to the Court of the Land Commission to fix a fair rent for his holding; we refer to this notice, which bears date the 14th of October, 1881. It describes the lands as the lands of Kildowney, in the county of Antrim, and Poor Law Union of Ballymena. The other particulars as to the holding stated in the originating notice are as follows:—

Area in statute measure, . . . . . 42a. 1r. 5p.  
Rent of holding, . . . . . £36 10s. 0d.  
Gross Poor Law Valuation, . . . . . £24 10s. 0d.

2. The application came on to be heard before a Sub-Commission sitting at Ballymena, and duly delegated and authorised to decide the case. The Sub-Commission made an order bearing date the 19th day of November, 1881, to which we refer, fixing the judicial rent at the sum of £30 15s. 0d., and directing the landlord to pay to the tenant the costs of the case.

3. By notice bearing date the 2nd of December, 1881, to which we refer, the landlord stated he was aggrieved by the above order, and required the case to be re-heard before the three Land Commissioners sitting together. Accordingly the case was re-heard before us, the three Land Commissioners, sitting together in Belfast on the 9th day of January, 1882, and we by our order, to which we refer, varied the order of the Sub-Commissioners so far as regards costs, directing that the parties respectively should abide their own costs of the hearing, but affirmed the order of the Sub-Commission as regards the judicial rent of £30 15s., and directed that the parties respectively should bear their own costs. The facts are as follows:—In and prior to the year 1842, the greater portion of the holding in this case, consisting of 20a. 2r. 21p. Irish plantation measure, equivalent to 33a. 1r. 25p. statute measure, or thereabouts, was in the occupation of a tenant named James M'Kee, who held them as tenant under the Earl of Mountcashel, but at what rent does not appear. In the year 1842, the Earl of Mountcashel caused the lands to be valued. They were valued accordingly by valuers appointed by him, at the yearly sum of £26 11s. 6d. From the time of the valuation the rent £26 11s. 6d. was paid by James M'Kee for said 20a. 2r. 21p. Irish, for the term of thirty years from the 1st Nov., 1845, at the yearly rent of £26 11s. 6d. We refer to this lease, which was given in evidence. James M'Kee built a house on the holding, using in some degree for that purpose the materials of an older house previously existing. It did not appear clearly from the evidence at what time M'Kee erected the house. By consent and admission of the parties, we state that the house was built two years before the existence of the lease; but the agent appears verbally to have offered a lease prior to the building, and M'Kee understood that he could have a lease if he liked. No improvements other than the building of the house were alleged to have been made prior to the execution of the lease. By deed dated October, 1846, in consideration of the sum of £240, James M'Kee granted and assigned all his estate and interest in the premises comprised in the lease to John Adams, the father of David Adams the present tenant. We refer to this assignment. John Adams died about thirteen years ago, and on his death the holding devolved on David Adams. It did not appear in what legal manner the holding so devolved; but no question was raised on this point, and it was admitted

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that all the estate and interest of John Adams in the holding became upon his death legally vested in David Adams. By deed of conveyance of 30th April, 1857, the Commissioners of Incumbered Estates in Ireland conveyed to William Dunseath, deceased, the husband of the above-named Jane Dunseath, his heirs and assigns, the lands of Kildowney, subject amongst other tenancies to the tenancy created by the said lease of the 2nd March, 1846. There is another lease of the same date and between the same parties mentioned in the schedule to the conveyance, comprising between five and six statute acres; but this case is not conversant with the latter lease. William Dunseath died in the year 1869, and upon his death all his estate and interest in the lands of Kildowney became vested in Jane Dunseath. John Adams erected buildings upon the lands in addition to those previously existing. The buildings so erected by John Adams consist of a boiling-house and shed. John Adams also effected improvements by reclamation of waste lands, by making fences and drains and a farm road. After the death of John Adams, and during the currency of the lease, David Adams effected improvements on the lands by reclamation of waste lands, and by making fences and drains. David Adams, from time to time during the currency of the lease, took as tenant from year to year under Mrs. Dunseath certain pieces of bog, amounting together to about nine acres, statute measure, at rents amounting in the aggregate to £4 10s. He was in possession of these pieces of bog at the termination of the lease. He also effected improvements by reclamation of a portion of these pieces of bog. The lease expired on the 1st of November, 1875. After its expiration Mrs. Dunseath caused the premises comprised in it to be re-valued, with a view to the re-adjustment of the rent. They were accordingly re-valued at the annual rent of £31 17s. 6d. The valuer was Mr. Raphel, who had taken part in the previous valuation of 1842, and he was examined as a witness before us. He stated that in valuing the land he took no improvements into consideration, but kept the improvements out. The sum of £31 17s. 6d. thus ascertained, and the annual sum of £4 10s., paid for the pieces, made together £36 7s. 6d., which rent accordingly was paid from the 1st November, 1875.

We do not think it necessary to state the conflicting evidence as to the value, inasmuch as this case is conversant solely with questions of law.

Mr. Holmes, on the conclusion of this and some other cases of Mrs. Dunseath's, which were also reheard before us, submitted to us in writing certain requisitions in point of law, to which we refer. The case therein mentioned as No. 1 is the case of David Adams tenant, Jane Dunseath landlord, with which we are now dealing. As applied to the present case, his contentions were:—"1. That the landlord is entitled to rent in respect of all improvements made previous to the expiration on the 1st of November, 1875, of the lease of 1846, inasmuch as such improvements were not made by the tenant or his predecessor in title; or, if the Court should refuse to act on this view, then—2. That the landlord is entitled to rent in respect of all improvements made during the currency of the lease, except those made by the present tenant himself, inasmuch as his predecessors in occupancy were not his predecessors in title; 3. If the Court declined to accede to requisitions 1 and 2, then [a] that the landlord is entitled to rent in respect of all improvements made prior to the making of the lease of 1846; and [b] that the landlord is entitled to some

rent in respect of improvements made during the currency of the lease, on the ground that (1) under the final clause of section 4 of the Landlord and Tenant (Ireland) Act, 1870, some deduction *must* be made in ascertaining the tenant's interest in such improvements from the value thereof: and upon the further ground (2), that by holding under lease he has been, if not altogether, to some extent 'compensated' for his improvements."

We declined to accede to the requisitions of Mr. Holmes, or to any of them; but on his application we agreed to state the present case for consideration and decision of her Majesty's Court of Appeal in Ireland.

The questions submitted for such consideration and decision are—

1. Whether in fixing a fair rent for the holding, the landlord should be allowed rent in respect of all improvements made previous to the expiration of the lease of the 2nd of March, 1846?

2. Whether in fixing such fair rent the landlord should be allowed rent in respect of all improvements made during the currency of the lease, except those made by the present tenant himself?

3. Whether in fixing such fair rent the landlord should be allowed any rent in respect of all improvements made prior to the making of the lease of 2nd March, 1846?

4. Whether in fixing such fair rent the landlord should be allowed any rent in respect of improvements made during the currency of the lease of 2nd March, 1846, on the ground that under the 1st clause of the 9th section of the Landlord and Tenant (Ireland) Act, 1870, some deductions must be made in ascertaining the tenant's interest in such improvements from the value thereof?

5. Whether in fixing such fair rent the landlord should be allowed some rent in respect of improvements made during the currency of the lease, on the ground that the tenant by holding under lease has been (if not altogether) to some extent compensated for his improvements?

*The Macdermot, Q.C., Holmes, Q.C., and Orr, for the landlord.\**

*Sergeant Hemphill, Q.C., Piers White, Q.C., and Dodd, for the tenant.\**

*Cur. adv. vult.*

Law, C.—This is a case stated by the Land Commission in respect of certain questions of law arising in a proceeding before it for fixing the fair rent of a tenant's holding, under the 8th section of the Land Law (Ireland) Act, 1881. The facts of the case as stated by the Land Commission are as follows:—The holding consists of about 42 acres of the lands of Kildowney, in the county of Antrim, originally part of the estate of Lord Mountcashel, but now by purchase and subsequent devolution become the property of a Mrs. Dunseath. In 1842, some 33 acres, statute measure, of the present farm were held by one James M'Kee, but how or at what rent does not appear. In that year, however, (1842), Lord Mountcashel had the lands revalued, and

\* Reporter regrets that he was unable to be present during the arguments. Neither was he present during the delivery of the first portion of the judgment of the Lord Chancellor; but through the kindness of his lordship in directing that his written judgment should be communicated to Reporter, the notes taken have been supplemented and the judgment is now published *in extenso*; and to the Lord Chancellor, and the other learned judges, who enabled this report to be made fully authentic. Reporter begs to return the most grateful acknowledgments on his own behalf, as well as on that of another gentleman on the staff of the IRISH LAW TIMES who, though unable himself to supply a full report, kindly rendered much assistance.

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the rent fixed at £26 11s. 6d., which rent was thenceforward paid by the tenant. It is stated that a lease was verbally promised to M'Kee; and accordingly, on the 2nd March, 1846, a lease was executed to him of his farm, at the rent already arranged in 1842; similar leases being executed on the same day to nine other tenants on this same townland, all alike for the same term of thirty years from the 1st November, 1845. In the interim, however, between the revaluation or arrangement of the new rent in 1842 and the actual execution of the lease on the 2nd March, 1846, M'Kee re-built the dwelling-house; and this particular "improvement" raises one of the questions in the present case. M'Kee having got the lease in March, sold the farm to John Adams in the following October for £240, the assignment being dated the 27th October, 1846. John Adams, having thus bought the farm, proceeded to make further improvements thereon. He erected certain buildings, reclaimed waste land, made fences and drains, and also a farm road. He died about the year 1869, and the farm then vested in his son David Adams, the present tenant. Meanwhile, in the year 1851, the Mountcashel estate was sold by the Commissioners for the Sale of Incumbered Estates, and the townland of Kildowney being purchased by a Mr. Dunseath was conveyed to him by a deed dated the 30th April, 1851, subject, of course, to the existing leases and tenancies as specified in the schedule; turning to which we find a number of leases dated the 2nd March, 1846, and amongst them this particular lease, referred to as then vested in the representative of James M'Kee. Mr. Dunseath died in 1869, and the property so purchased by him thereupon vested in his widow, Mrs. Dunseath. David Adams, who about the same time succeeded his father in the leasehold, made further improvements on the farm. These improvements consisted of reclamation, and the making of new fences and drains. He also, from time to time before the expiration of the lease, took from Mrs. Dunseath, as yearly tenant, some pieces of bog adjoining, I suppose, his leasehold, the quantity being in all about nine statute acres, and the rents amounting in the aggregate to £4 10s. Some parts of this bog land also he is stated to have reclaimed. The lease expired on the 1st November, 1875; and thereupon Mrs. Dunseath had the lands comprised in it revalued, and a rent of £31 17s. 6d. assessed on it. This, added to the £4 10s., the rent of the bog, made the rent of the whole amount to £36 7s. 6d., which the tenant has hitherto paid accordingly, but now seeks to have reduced, as not being a fair rent under all the circumstances of the case.

The case was heard by three Assistant Commissioners, who, by their order of the 19th of November, 1881, determined that the fair rent of the holding was £30 15s. From this decision both tenant and landlord appealed to the Land Commission itself, who reheard the case on the 9th of January. On the occasion of this rehearing, Mr. Holmes, as counsel for the landlord, submitted certain requisitions to the Commission, calling on them to decide as matters of law:—"1. That the landlord is entitled to rent in respect of all improvements made previous to the expiration on the 1st of November, 1875, of the lease of 1846, inasmuch as such improvements were not made by the tenant or his predecessor in title; or, if the Court should refuse to act on this view, then, 2. That the landlord is entitled to rent in respect of all improvements made during the currency of the lease, except those made by the present tenant himself, inasmuch as his predecessors in occupancy were not his predecessors in title. 3. If the Court declined to accede to requisitions 1 and 2, then [a] that the landlord is entitled to rent in respect of all improvements made prior to the making of the lease of 1846; and [b] that the landlord is entitled to some rent in respect of improvements made during the currency of the lease, on the ground that (1) under the final clause of section 4 of the Landlord and Tenant (Ireland) Act, 1870, some

deduction must be made in ascertaining the tenant's interest in such improvements from the value thereof; and upon the further ground (2), that by holding under lease he has been, if not altogether, to some extent 'compensated' for his improvements." The Commissioners declined to accede to these requisitions, or any of them; but on the application of Mr. Holmes, as counsel for the landlord, they agreed to state the facts of the case and submit his propositions for the consideration and decision of this Court. The questions, accordingly, with which the present case concludes are merely Mr. Holmes' requisitions in an interrogative form. Now, however well adapted the requisitions were for their original purpose, they are exceedingly difficult, if not practically impossible, to answer clearly when thus turned into questions. Some of them propose a single legal question as applied to different states of facts; and in short any precise answer to them would require so many qualifications and distinctions, that we have thought it better on the whole to extract for ourselves and answer the purely legal questions which arise in the case as stated, leaving the Land Commission to apply our answers to the facts as they have already been, or may hereafter be, found by them.

The questions of law, then, which appear to be presented by the case are these:—

I. What is the meaning of the word "improvements" in the 9th sub-section of section 8 of the Land Law Act, 1881?

II. Has the expression "his predecessors in title," as applied to the tenant in that sub-section, the same meaning as in the 7th section of the Act?

III. Are the provisions of the final paragraph of the 4th section of the Land Act of 1870 (as to a tenant claiming compensation for improvements made before the passing of that Act) applicable to such improvements in determining what is a "fair rent" under the 8th section of the Act of 1881?

IV. Where a tenant, holding by lease, makes improvements, is enjoyment thereof by him or his successors during the residue of the lease "compensation by the landlord," within the meaning of the 9th sub-section of section 8 of the Act of 1881?

V. Does the lease of the 2nd March, 1846 (Lord Mountcashel to James M'Kee), preclude the tenant from being regarded as having any interest in respect of the improvements made (that is, the house built) before the execution of that lease, in determining what is the fair rent of the holding, under the 8th section of the Act of 1881?

We think that distinct answers to these several questions will practically solve all the legal difficulties presented by the case. Before proceeding, however, to answer the questions, it is necessary to notice one important matter:—The case does not state that the holding of David Adams is subject to the Ulster Tenant-right custom; and therefore we must, for our purposes, assume that the tenant is not entitled to the benefit of that custom. This, indeed, is substantially implied, as well by the questions originally proposed to us, as by those which we have framed for ourselves; for the doctrine of *Holl v. Harborton* (6 Ir. L. T. Rep. 1, Ir. R. R. & L. App. 12), and that class of cases, has never caused any difficulty with respect to an Ulster Tenant-right holding. The tenant of such a holding has always had the right to sell it as it stood, with its improvements on it, and never thought of claiming compensation for them from the landlord under section 4 of the Act of 1870. On the other hand, any landlord insisting on rent in respect of improvements made not by himself, but by the tenants for the time being, whether holding under one continuous tenancy, or under distinct successive tenancies transmitted from one tenant to another, has always, I apprehend, been dealt with as infringing on the custom by thus demanding what was unreasonable and unfair. Our answers, therefore, to the questions in this case must



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not be taken as applicable to an Ulster Tenant-right holding, but only to one subject to the general law.

The questions I shall now endeavour to answer as clearly as I can:—As to the first—viz., the meaning of the word “improvements,” in the 9th sub-section of section 8 of the Land Law Act (Ireland), 1881, there is I apprehend, little room for controversy. The Act of 1881, provides (section 57) that any words or expressions not defined by that Act, but which are defined in the Land Act of 1870, shall have the same meaning as in the latter. Now the word “improvements” is not defined in the Act of 1881, but is in the Land Act of 1870. Accordingly, turning to the Act of 1870, we find it there declared (section 70) that “improvements” shall mean “(1), Any work which, being executed, adds to the letting value of the holding, on which it is executed, and is suitable to such holding;” also (2), “Tillage, manures, or other like farming works, the benefit of which is unexhausted at the time of the tenant quitting his holding.” In the Act of 1881, therefore, as well as in the Act of 1870, we must interpret the word “improvements” as meaning simply suitable and ameliorative works executed or done upon the holding. Being suitable and ameliorative, they of course increase its letting value; but the works are one thing and the increased letting value another. The works executed by the tenant are wholly his, and are to be completely protected and secured against confiscation whether by imposition of rent on them or otherwise. But so far as those works may have brought out latent powers and capacities of the land, and so increased its letting value, that increased value does not necessarily belong to the tenant. I say necessarily, because whilst there are many cases in which the increased yearly value would be no more than a fair return for the tenant's outlay in effecting the improvement, as in the case of permanent buildings, and in many kinds of reclamation, there may still be cases (as mentioned by Mr. Butt in his Treatise on the Act of 1870, at p. 128), in which the increase of yearly value is so greatly in excess of the most liberal allowance to the tenant in respect of his improvement-works that the landlord, in the ascertainment of a fair rent, is justly entitled to have some share of that increased yearly value. In my opinion, therefore, the negative provision contained in sub-section 9 of the fair rent clause (section 9) of the Act of 1881, that “No rent shall be allowed or made payable in respect of tenants' improvements,” secures against the imposition of any rent only the improvement-works, that is, their yearly value, leaving any increased yearly value beyond that to be dealt with under the earlier part of section 8, as may under all the circumstances of the case be considered just and fair between the parties. For it should be observed that though the absolute prohibition of charging rent contained in this 9th sub-section is thus limited, it by no means follows that the rent is to be charged on all outside the scope of the prohibition. That is a matter for the Commissioners in the exercise of their discretion, and having regard to what may appear to them to be just and right.

As to the second question, that is to say, What is the meaning of the expression “tenant, or his predecessor in title” as used in the 9th sub-section, I concur with Mr. Justice O'Hagan in holding that its meaning is the same there as in the preceding section 7. That section plainly was inserted to remedy the mischief and injustice often caused by the strict interpretation of those words, which require not merely that one tenant should derive title from another, but that the title or tenancy itself should remain identically the same throughout; the necessary consequence being that on any change whatever of the tenancy, the tenant's property in his improvements, whether made by himself or by those from whom he derived his original interest, was, in effect, transferred to the landlord, without any consideration being given for it, and in fact without any such

result being contemplated or desired by either party. The 7th section of the Act of 1881 removes this technical objection to a tenant's claim to compensation for improvements made before the supposed change in the tenancy, leaving it to the Court, in adjudicating on the claim, to take into consideration all the circumstances under which the change of tenancy or tenants took place, and admit, reduce, or disallow the claim, as it may deem just. This is the substantial effect of the clause. But for our present purpose it is even more important to observe the language by which this is done. [His Lordship here read the 1st paragraph of section 7]. It will thus be seen that the preceding tenants who are supposed to have made improvements under determined and extinct tenancies are called by the statute “the predecessors in title” of the actual tenant, holding by a new tenancy since created. The expression, therefore, being used to describe these preceding tenants who held not by the now existing title, but by other titles since determined, and replaced by the new title of the actual tenant, it is manifest that in this section the old, strict, technical interpretation, requiring the “predecessor in title” to be predecessor in the same title, must be rejected, and the expression be taken to be here used by the legislature in a less technical and wider sense, as simply denoting a series of tenants who have transmitted from one to the other their respective tenancies or titles to the possession of a holding, whatever those tenancies or titles may be, or whatever changes they may have undergone. So that the legislature not only remedies the evil caused by the former technical and strict construction of the expression in the 4th and 6th sections of the Act of 1870, but itself gives an illustration of how it means the expression to be interpreted, at all events in this Act of 1881, by using the words predecessors *in title* to describe a line of tenants preceding each other in the same farm, though by different titles or tenancies. Such then being the plainly declared meaning of the expression “predecessors in title” in this 7th section, it follows, I think, according to the well-settled rules of interpretation, that we ought to regard it as having the same meaning in the few other places where it occurs in this statute. “It is a sound rule of construction,” to borrow the language of one of the Judges of the English Court of Exchequer in *Courtauld v. Leys* (L. R. 4 Ex. 130), “to give the same meaning to the same words occurring in different parts of an Act of Parliament or other document.” “I do not consider,” says Turner, L.J., in *Re National Savings Banks Association* (1 Ch. App. 549) “that it would be at all consistent with the law, or with the course of the Court, to put a different construction upon the same word in different parts of an Act of Parliament, without finding some very clear reason for doing so.” “We disclaim altogether,” says Lord Denman (*Reg. v. Poor Law Commissioners*, 6 Ad. & E. 68), “the assumption of any right to assign different meanings to the same words in an Act of Parliament, on the ground of a supposed general intention in the Act. We find it necessary to give a fair and reasonable construction to the language used by the legislature; but we are not to assume the unwarrantable liberty of varying that construction for the purpose of making the Act consistent with any views of our own.”

Now, it is to be observed that throughout this long statute, consisting of 62 sections, the expression “predecessors in title” occurs in only six places, and that in all but one of these it is used in connexion with the ownership of “improvements” on a holding, and nothing else. It occurs twice in the 1st section, which gives the general right of sale—viz., in the 6th and 8th sub-sections. It is used, as we have seen, in the 7th section, and it is used again in the 8th (or fair rent) section, viz., in sub-sections 4, 9, and 10, and in all alike, as I have said, except the last, in a similar connexion. Why then is it not to be understood in the same untechnical and popular sense throughout? and

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especially why are we to interpret it in the 9th sub-section of the 8th clause differently from what we necessarily do in the preceding section, both of which are plainly intended to secure the tenant's interest in his improvements? It appears to me that not only would this be to act in disregard of the settled rules of construction to which I have referred, but also contrary to the plain object of this enactment, and the simple justice of the case. The tenant's right to improvements, whether made by himself, or purchased or otherwise acquired by him, being admittedly preserved and secured by the 7th section, notwithstanding any such change of tenancy or tenants as there described, it seems but a mere corollary to provide that this right shall not be eaten away by any imposition of rent on those improvements. Besides, for the purposes of this sub-section, what distinction can be fairly made between the case of improvements transmitted through a series of "predecessors in the same title," and those transmitted through "predecessors in different titles," but secured to the present tenant by section 7? But there are, as it appears to me, other and strong reasons for reading the words in their untechnical and popular sense. In whatever way we interpret them as applied to the tenant, we must, I apprehend, interpret them in a similar way as applied to the landlord. If the words in the tenant's case include only those who preceded him in his present estate or tenancy, how can a deceased landlord tenant for life be, with any propriety or consistency, regarded as the predecessor *in title* of the remainderman? Or take the case of a property settled, as is very generally the case, subject to a mortgage. The tenant for life of the equity of redemption being in possession, pays the occupying tenant for his improvements, and dies. The mortgagee then forecloses the equity of redemption and sells through the Court, or sells under his power of sale. Is the purchaser entitled to treat the equitable tenant for life, who paid for the improvements, but whose estate is since determined, as his predecessor in title? How can he be so, if we insist on the old technical interpretation of the same words as applied to the tenant in the previous line of the same sub-section? Again, let us turn to one of the earlier places in which we find this expression. Sub-section 8 of the first clause makes provision for cases in which permanent improvements have been made by the landlord or his predecessors in title (solely or by him or them) jointly with the tenant or his predecessors in title. Now, suppose a landlord tenant for life of a settled estate, and his tenant lessee for years, join in executing some permanent improvement on the holding. The landlord tenant for life dies. The tenant's lease expires; but the landlord's successor, seeing the tenant an industrious and thriving man, lets him remain on in his holding as before, or perhaps gives him an additional piece of land, throwing all into one tenancy, at, of course, an increased rent. The tenant then dies, leaving everything on the farm to his son, who proceeds to sell. Assuming the sub-section to be brought into operation, and all interests in the improvements to be sold, is the landlord remainderman to be held entitled to their entire proceeds, on the ground that the deceased tenant for life, who joined the then occupying tenant in making the improvements, was his, the remainderman's predecessor, but that the occupying tenant who joined that tenant for life in making them was not the predecessor of his son to whom he left the farm? Surely, we cannot rightly construe an Act of Parliament in this fashion. All these difficulties, however—and more might be suggested—will be at once avoided if we take the expression "predecessor in title" as applied to both tenant and landlord alike, to be used in an untechnical and popular sense, as not necessarily involving the idea of one single estate continuing unbroken and undetermined, throughout the whole line of succession, but as denoting in one case the substantial devolution of title

to the reversion, and in the other the substantial devolution of title to the possession from predecessor to successor. These, however, I refer to only as subsidiary or confirmatory arguments. I base my decision mainly on the implied declaration of the legislature in the 7th section of this statute, that it uses the expression not in the sense in which it was interpreted in *Holt v. Herberton*, and other cases, but in the untechnical and wider sense I have indicated; and having thus once ascertained the meaning of the expression from the Act itself, I read it in the same sense throughout: in the 1st and 8th sections, as well as in the 7th—doing so all the more readily because I thus have the satisfaction of knowing that such construction renders the Act consistent with itself and with justice, and that at all events I am not interpreting the same words, when repeated in the same clause, as meaning one thing for the landlord, and another for the tenant.

As to the 3rd question—viz., whether the provisions of the final paragraph of the 4th section of the Act of 1870, as to a tenant claiming compensation for improvements made before the Act, are now applicable in determining what is a "fair rent" under the 8th section of the Act of 1881, I am of opinion that they are not so applicable, and that on two grounds. In the first place, it appears to me that to treat these provisions as applicable to this process of fixing a fair rent, and allow to the landlord any rent in respect of improvements made by the tenant before the 1st of August, 1870, is directly and explicitly prohibited by the 9th sub-section of the 8th clause. It is said that, in having regard to the interests of the landlord and tenant respectively, as directed by the 1st sub-section of the clause, the landlord should be credited with the abatement from the actual present value of these improvements; to which the tenant would have to submit, if he were proceeding against the landlord under the 4th section of the Act of 1870. But this is not a proceeding under that enactment; and moreover, this general direction that the Court, in fixing fair rent, shall have "regard to the interest of the landlord and tenant respectively, and consider all the circumstances of the case," is, it seems to me, designedly controlled and explained by the specific provision of the 9th sub-section, which enacts that no rent shall be allowed or made payable in respect of any improvements whatever belonging to the tenant. If it had been intended that some rent might be allowed in respect of improvements made before the passing of the Act of 1870, there would certainly have been an exception or qualification to that effect introduced into this sweeping prohibition. Expressed, however, as it is, I find it impossible to give it any construction which would allow of rent being charged in respect of these any more than other improvements. But there is another reason, also, which weighs with me. I have already observed, when referring to the case of an Ulster Tenant-right holding, that the Ulster tenant with his custom had nothing to do with the 4th section of the Act of 1870, or any of its qualifications. His right was to sell his holding, improvements and all, and that for his own absolute use. It was never, as far as I know, contended with respect to such a holding, that the landlord could fairly ask for increased rent in respect of improvements made before 1870, and subsequently enjoyed, on the ground that if the tenant had been claiming compensation from him under section 4 of the Act of 1870 (which he never did), the landlord could have insisted on having some abatement from the real value of those improvements, because of the tenant's enjoyment of them. Now, it appears to me that by the 1st clause of the Act of 1881, all tenants throughout Ireland are in this respect placed in practically the same position as the Ulster tenant. By that clause it is enacted that "the tenant for the time being of every holding may sell his tenancy for the best price that can be got for the same;" that is, may sell his tenancy as it stands, improvements in-

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cluded, insisting on the landlord accepting the purchaser as tenant, if not open to any reasonable objection, and put the purchase-money into his pocket. The landlord, indeed, has a right of pre-emption, just as in Ulster; but he has no right to get the tenancy for less than its real value. If he cannot agree with the tenant as to the price, he must pay "such sum as may be ascertained by the Court to be the true value thereof." That is to say, if the landlord wants the holding, he must pay for it what it would *bona fide* bring in the open market, if sold to an unobjectionable purchaser. He has no right to get it for less than this, for if so he would get it for less than its value, and the enactment is that he shall pay the "true value thereof." It cannot, I think, be maintained that, in ascertaining the price which in such cases the landlord is to pay, he is to be credited in reduction of the "true value" of the tenancy with an abatement in respect of the enjoyment of improvements made before 1870, such as he would be entitled to if the tenant were claiming compensation from him under section 4 of the Act of 1870. Besides that this would be forcing the tenant to take less than the "true value" of his tenancy, which the Act of 1881 says he is to have, it would also, I think, be inconsistent with the 11th sub-section, which broadly distinguishes between these two rights—viz., the right of sale and the right to claim compensation for improvements; and, as it seems to me, forbids their being thus confounded or mixed up together. [His Lordship read sub-section 11.] It would be rather hard, I venture to think, upon the tenant thus selling his tenancy, forcibly to debit him in favour of the landlord-purchaser with an abatement from its "true value," as if he were merely claiming for his improvements under the Act of 1870, when this same free-sale section declares that on such occasion he shall not be entitled to make any claim for compensation at all; the plain reason being that, by exercising his right of sale he is getting paid for his improvements, as included in the price of the tenancy. For just as by the Act of 1870 the Ulster tenant, claiming the benefit of his custom under section 1, and thereby getting payment for his improvements, as included in the value of his tenancy, is expressly debarred from claiming compensation under section 4 of the Act, so now by the 1st clause of the Act of 1881, a tenant availing himself of the new right of sale thus conferred upon him is for the same reason precluded from making a separate claim to be paid compensation for his improvements. It will be observed, too, that this view does not in the least interfere with the right of the landlord to have a "fair rent" fixed for the holding. Whether in Ulster or elsewhere, the sale of the tenancy is subject to this right, which the purchaser of course takes into account. But when the question of what is a fair rent comes to be determined, and the present intrinsic value of the tenant's "improvement-works" is ascertained, it appears to me that, in estimating the tenant's interest in his holding, he should be credited with the entire of the present value of his "improvement-works" so ascertained, whether those works were executed before or since the 1st of August, 1870; because this is no more than what he would get by selling the tenancy as he may wish those "improvement-works" upon it; and that the landlord is not entitled to have any part of this actual present value of those works struck off or credited to him as against the tenant's enjoyment of them, as might have been the case if the tenant had had no right of sale, and no power of thereby getting the full market value of those "improvement-works," but had been limited to a mere claim of compensation from the landlord under the 4th section of the Act of 1870, with all its exceptions and qualifications. For the right thus conferred by the Act of 1881 enables the tenant, I apprehend, to realise the full present value of his improvements, even though they be of a class for which, if he were quitting, he could not claim compensation from the landlord under section

4 of the Act of 1870. At all events it must, I think, be admitted that when the tenant sells he will get back the then fair market value of the improvements, wholly irrespective of whether they were made before or after the 1st of August, 1870, and without any reference to his enjoyment of them, save so far as this may possibly be represented by their deterioration, which is, of course, taken into account in arriving at their existing value. It seems, therefore, to me to be a fallacy to disregard and ignore this new right conferred on the tenant by the Act of 1881, and to estimate his interest in his holding as if it had no existence. Just as the Ulster tenant never resorted to a claim for compensation under the 4th section of the Act of 1870 (or the 3rd), unless he had lost his right to sell the tenancy in the open market, so now, I apprehend, no tenant in Ireland will, except under some peculiar circumstances, make any claim upon his landlord to be paid for his improvements under the Act of 1870, but will sell his tenancy improved as it stands, and thus get, as included in the price, whatever is the fair present value of his improvements. Accordingly, it seems to me that, even putting out of consideration the 9th sub-section of clause 8, with its express prohibition of charging any rent whatever for improvements, we ought, in estimating the "interest of the tenant" under the general words of the beginning of the 8th (or fair rent) clause, to take into account not merely his old right to claim compensation from his landlord under the 4th section of the Act of 1870, but also his much larger right—viz., the right to sell his tenancy as it stands, improvements and all, as the statute says, "for the best price that can be got for the same." In other words, I think the tenant's interest is to be measured by the maximum and not by the minimum of his rights. For these reasons I think no rent should be allowed or made payable in respect of improvements, whether made before the 1st of August, 1870, or after that date.

As to the 4th question—viz., when a tenant holding by lease makes improvements and enjoys them till the end of his lease, can such enjoyment be deemed "compensation by the landlord" within the meaning of the 9th sub-section of section 8 of the Act of 1881?—this question, I think, almost answers itself. What in such a case has the tenant got from the landlord for his improvements? Simply nothing. The lessee purchased from the landlord for a certain term the possession and use of the land with all its capacities of improvement. For this he pays the stipulated price—viz., the yearly rent. Whether he executes improvements or not, he has a right to hold the land for the term; and so long as he pays the instalments of his purchase-money, known in this case as rent, the landlord cannot interfere with him. The right to hold for the term was thus purchased before the improvements are supposed to have been made; and how the enjoyment of that right for which the tenant pays the stipulated price, and to which he is alike entitled whether he makes improvements or not, can be regarded as not only compensation for these improvements, but also compensation for them by the landlord, is, I confess, beyond my comprehension. This question, therefore, as between lessor and lessee, with which alone we are here concerned, must, I think, be answered in the negative.

Lastly, I come to the 5th question, as to the effect of the lease of the 2nd March, 1846, of itself to preclude the tenant from being regarded as having any interest in the house built before its execution. In my opinion there is nothing in this instrument to bar the tenant's claim in that respect. It is, no doubt, a demise of all the farm or parcel of land, "together with all houses, edifices, and buildings, and appurtenances thereunto belonging;" but so, in effect, is every demise, whether by instrument under seal or by mere word of mouth. That it was a new letting is, of course, admitted; but whether it made mention of "houses" or demised the land simply, which would carry the houses and every-

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thing else upon it, seems to me wholly unimportant; the maxim being that *expressio eorum que tacite insunt nihil operatur*. Unless the buildings were to be excepted out of the demise and taken from the tenant, they must be demised to him, and whether they be so demised *nominatim*, or as included in the word *land*, is not, in my opinion, of the least importance. The same objection would lie to every case in which an improving tenant has bought an adjoining holding with the consent of his landlord, and united both farms into one holding at a single rent. This, as it seems to me, is simply the technical objection which was meant to be met, and as I think has been effectually met, by the 7th section of the Act of 1881. The mere surrender of a prior tenancy from year to year, and acceptance of the new tenancy, without anything more, is not, the statute says, to prejudice the tenant's right in respect of improvements made under the surrendered tenancy. Whether the transaction ought to be differently viewed depends now on its substance, not, as before, upon its mere form; and in this case, if the Court, after due investigation and full consideration of all the circumstances under which this particular change of tenancy took place, came to the conclusion that the lease was in fact given in consideration of and as compensation for the building of the new dwelling-house, then of course the present tenant should not be regarded as having any claim in respect of it, or as entitled to object to rent being allowed for it. This, however, is a matter of fact for the Commission to deal with, and not one of law, on which we can pronounce any definite opinion beyond this—that there is nothing in the lease, as I conceive, to exclude the application of section 7 to the house built before its execution. It may be suggested that the land being here demised “with all houses, &c., thereunto belonging,” the demise in that form amounts to an express exclusion of the right to compensation in respect of such houses, within the 2nd proviso subjoined to section 4 of the Land Act, 1870, which bars the tenant's right to compensation for any improvement “his right to which compensation is expressly excluded by such lease or contract.” But this view cannot, I think, be maintained. From the year 1845, when the Devon Commission recommended that a measure should be passed giving tenants a right to claim compensation for their improvements, it was plain that this reform was certain to be sooner or later adopted. Lord Derby proposed it in 1847; Sir Joseph Napier proposed it in 1852; and almost every Session of Parliament up to 1870 saw similar enactments attempted. Under these circumstances it became by no means unusual for landlords to insert in their leases covenants expressly providing that no such claim should under any circumstances be admissible (an example of which, if desired, may be seen in the reported case of *Stevenson v. Leitrim*, 7 Ir. L. T. Rep. 84, Ir. R. R. & L. App. 121); and it was to meet cases of this kind, in which leases or written contracts of tenancy had been previously made, containing clauses expressly excluding any claim to compensation for improvements, that the proviso in question was inserted in the 4th section of the Act of 1870. Besides this the mere demise of the farm with all houses, &c., on it cannot, I apprehend, be fairly construed as an express exclusion of the right to compensation for those houses; especially when we remember that even an express covenant to give up the holding at the end of the term, with all houses, buildings, &c., thereon, does not amount to an express exclusion of the right to compensation within the meaning of this exception. On the whole, therefore, I am of opinion that the lease of 1846 of itself does not preclude the tenant's claim to compensation in respect of the house built before its execution, and therefore that the landlord is not necessarily entitled to rent in respect of it. Whether he is so or not depends, I think, on what the Land Commission may find to have been the substance of the transaction of the 2nd March, 1846, and the change of tenancy which then took place.

MAY, C.J.—As to the meaning of the word “improvements,” used in the 9th sub-section to the 8th section of the Act of 1881, I think it clear that the definition in the Act of 1870 must be followed, and that the word must be taken to mean an actual work executed at a definite period of time, not any increased value subsequently accruing to the lands in consequence of the execution of such work. The term being impressed with this definite meaning, it seems to me that the operation of this 9th sub-section will be confined within somewhat narrow limits. The sub-section enacts that no rent shall be allowed or payable in respect of any improvement executed by the tenant or his predecessors in title. In the case of the erection of a house, or any structure having an existence separate from the lands, this language is of easy application, and seems simply to mean that the holding shall be valued irrespective of such structures. But in the case of drains and other works of reclamation, or improvement of that nature, it would seem that the language of the sub-section is not appropriate. It seems that rent could hardly be claimed in respect of a drain, or in respect of an embankment made for the purpose of reclamation, or any similar work. The improvement-work in such cases possesses in itself little or no annual value, and the increased value which it may confer on the adjoining land is not an improvement in its statutory sense. Nor does it appear to me that the expenditure of money or labour in the construction of such a work can be regarded as an “improvement.” Such expenditure or labour could not be registered under the 6th section of the Act of 1870. It appears to me that improvements of this class do not fall within the operation of this 9th sub-section; but this result would not be prejudicial to the tenant. Such expenditure would, I think, constitute one of the circumstances of the case to be considered by the Commissioners in fixing a fair rent. But in what manner such a circumstance should be had regard to, or by what process the rights or interests of the landlord and tenant respectively in the holding should be ascertained, is not, I think, a matter of law on which this Court is called upon to express any opinion, but rather a matter of valuation to be considered elsewhere.

As to the meaning of the term “predecessor in title,” I consider this Court and every member of it is bound by the decision of the Court in *Holt v. Herberton*. But independently of the conclusive authority of that case, it seems to me plain that in the Act of 1881 this term does not mean an antecedent occupier, but a previous tenant from whom the existing tenant derived his title to his tenancy. Any other construction might operate to the prejudice of the existing tenant. Thus, under the 3rd and 4th sections of the Act of 1870 it is provided that from moneys payable to a tenant for disturbance, or by way of compensation for improvements, there shall be deducted all sums due to the landlord from the tenant or his predecessors in title for arrears of rent, or for damages for deterioration of the holding; and these enactments cannot apply to all previous occupiers, some of whose interests may have been determined by notice to quit, or by eviction for non-payment of rent, but must be limited to persons from whom the tenant derived his title and interest; otherwise, the compensation payable to the tenant might be absorbed in liquidating the obligations of prior insolvent occupiers. But, it has been contended that the 7th section of the Act of 1881 has had the effect of enlarging the meaning of the term when used in that Act, and therefore, also, I presume in the Act of 1870, as the Acts are to be read as one Act. This 7th section of the Act of 1881 is the last clause in the first part of the Act, and is headed “Amendment of law as to compensation for improvements;” and it provides that a tenant, on quitting the holding of which he is tenant, shall not be deprived of his right to receive compensation under the Act of 1870 by reason only of the determination, by surrender or otherwise, of the tenancy subsisting at

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the time when such improvements were made by the tenant or his predecessor in title, and the acceptance by him or them of a new tenancy. The clause seems to me to be intended to apply to cases where a tenancy has been transmitted not by assignment in the proper sense of the word, but by a surrender of the outgoing tenant, and acceptance by the incoming tenant of the same tenancy—a view which would seem to derive support from the next succeeding passage in reference to tracing title. Supposing lands to be evicted for non-payment of rent, or for forfeiture incurred by violation of covenants or otherwise, and the landlord to resume possession and make a new letting to another tenant, it does not seem to me that such tenant could claim compensation for improvements made by the evicted tenant as his predecessor in title; so that the clause would not apply, in my opinion, in every case of the determination of a tenancy of one tenant, and the acceptance of a new tenancy by another person. In my opinion, the operation of the 7th section is limited, by the express language used, to the case of a tenant who is quitting his holding and is claiming compensation for improvements, and does not apply to the case of a tenant who is not disturbed, who has no intention of quitting his holding, but on the contrary is taking steps to perpetuate his tenancy, and to have his rent ascertained. It has been contended that the operation of the 7th section should be extended by construction so as to operate on the second part of the Act and change the legal meaning of the term "predecessor in title," used in that second part, and particularly in the 9th sub-section of the 8th clause. Now, what is the effect of the 9th section? The doctrine of common law was well established that, subject to some exceptions, a tenant's structural improvements by which foreign matter was fixed to the freehold, subject to the interest of the tenant under his tenancy, vested in the landlord. And of course, such is still the law in this country as to all lands other than those falling within the operation of these Land Acts. As to town-parks, demesne, and pasture lands, residential villas, and buildings in towns the ancient law is unchanged. The 9th sub-section is simply intended to transfer the beneficial interest in the improvements coming within its operation from the landlord to the tenant and his successors; the landlord's interest being converted, virtually for ever, into a dry unprofitable reversion. I conceive that the old principle applies here, that where a modern statute innovates and encroaches on the common law, such a construction of the enactment should be adopted as would confine this innovation within limits as narrow as are consistent with the giving effect to the modern Act. The Act of 1881 does not affect to give any new definition of the term "predecessor in title." The 9th section does not do so, whether expressly or by implication. That section merely provides, as I read it, that where a title to a tenancy is traced from a tenant through his predecessors in title—that is, predecessors in the proper and legal sense of the term—and a gap or solution of continuity of a particular kind is found to have taken place, the present tenant, claiming compensation for improvements on quitting his holding, shall not be prejudiced by such interruption in the regular chain of the title. I do not think that the proper meaning of this term is thereby altered. But even if it should be deemed to be so altered, for the limited purpose of that section, I should not extend this alteration to a different and separate part of the Act, or extend its meaning. I shall give the legal and logical meaning to the terms of this Act of Parliament, which, so far at least as the landlords are concerned, seems to me not of a remedial nature. In my opinion, therefore, this term "predecessor in title" continues to bear the meaning which the case *Holt v. Harborton* ascribed to it.

With respect to the operation of the final clause in the 4th section of the Act of 1870, it would seem that such deductions and allowances as are there spoken of

should be considered in fixing a fair rent, so far as they can be regarded as elements of compensation by the landlord within the meaning of the 9th sub-section. Questions of this nature involve matters of fact rather than matters of law, and can be satisfactorily determined only when the proper elements are submitted to the constituted tribunal; nor am I able to form a satisfactory opinion on this point in the abstract. It seems to me clear that improvements made during a lease cannot be deemed to be compensated by the landlord merely because they have been enjoyed during the lease. During his term the tenant is entitled to make the utmost profit out of the lands demised, including all their capabilities, consistently with the observance of his obligations as tenant; and he enjoys the benefit of his improvements not by the favour of his landlord, but in his own right as limited owner.

This case as to the house cannot, I think, be distinguished from *Holt v. Harborton*, which, as I have already said, is still an authority binding on this Court, notwithstanding the 7th section of the Act of 1881. But supposing that *Holt v. Harborton* does not apply, the case, on the question of compensation, is open to a different consideration. It is not to be supposed that the tenant expended money upon this holding—the house was built about two years before the granting of the lease in 1846—while merely a tenant from year to year, unless upon the understanding that if he built such a house he should get a lease for a considerable term of years. The landlord gave this lease for thirty years to the tenant, at a rent ascertained irrespectively of the house, and before it was contemplated. The inference, to my mind, is that the tenant built the house, reckoning that his enjoyment during this term would compensate him for the expenditure; and in any view of the case it seems to me that the lease then granted ought to be regarded as compensation wholly or partially for the house built before its commencement. In 1842 the then landlord, Lord Mountcashel, caused the premises to be revalued, and they were valued at £26 11s. 6d.; and in 1846 the lease was granted at a rent equal to that valuation. But at the termination of the lease of 1846 the subject-matter of the tenancy was changed by other premises being added, the holdings then combined being let at a single rent; so that the case seems to me to be much stronger than *Holt v. Harborton*.

The tenant also occupied from 1875 till 1881 as tenant from year to year, and at a rent calculated irrespectively of all improvements. This enjoyment also, as it seems, should have been considered on the question of compensation by the landlord. I do not consider that it should have been expressly shown that such occupation was permitted "with direct regard to the antecedent improvements, and for the purpose of compensation," to use the language of Mr. Commissioner Litton. During these years the landlord apparently permitted the tenant to enjoy these improvements free from all rent; and in my view this was a benefit to the tenant, for which allowance would have been made under the final clause of the 4th section of the Act of 1870, and which should have been regarded *pro tanto* as compensation under the 9th sub-section in question. The words of the final clause of the 4th section of the Act of 1870 are—"The Court . . . shall . . . take into consideration the time during which the tenant may have enjoyed the advantage of such improvements, also the rent at which such holding has been held, and any benefits which such tenant may have received from his landlord in consideration, expressly or impliedly, of the improvements so made." Furthermore, Judge O'Hagan's view of the Commissioners' function upon an appeal from the decision of the Sub-Commissioners does not meet with my concurrence. This is not an appeal to a Superior Court to be heard upon the same evidence as was before the Court below; it is a re-hearing upon which the whole case is open and fresh evidence may be adduced; and it seems to me the duty of the tribunal of appeal is

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to form its own independent judgment upon the evidence brought before it. The Commissioners most properly reversed the order by which the Sub-Commissioners ordered the owner to pay the tenant his costs. On what ground they made such an order is not explained; till explained, it must be regarded by all persons who have any acquaintance with judicial proceedings with surprise.

SIR E. SULLIVAN, M.R.—The Lord Chancellor has clearly stated the five questions of law which arise on the case stated for decision. They are all of more or less importance, as they involve matters of general application in the administration of the law under the two Land Acts of 1870 and 1881. The solution of those questions depends altogether on the correct interpretation of the language of those two statutes taken together and construed as one code. The principles of judicial interpretation of statutes are conceded at the Bar, and we are all, I believe, entirely agreed as to those principles. The statutes must be construed according to the fair and reasonable meaning of the language used in them, and everything that such language conveys or enforces must be adopted and carried out totally independently of the policy or impolicy of the results.

As to the first question, my opinion is that the word "improvements" as used in the 9th sub-clause of the 8th section of the Act of 1881, must receive the same, or rather the identical, meaning it has in the Act of 1870; and in the various other parts of that Act and the Act of 1881 where the word occurs, it does not, and cannot, mean the increased letting value of the holding caused by the making of the improvements, but simply the works which have caused that increase, or rather the interest of the tenant who made them, measured by the money expended on them, as declared and limited by the two said Acts. We are not left to speculate on this matter; for the very word is the subject of express definition in the Act of 1870, the 70th section thereof defining improvements as follows:—"Any work which being executed adds to the letting value of the holding on which it is executed, and is suitable to such holding;" and the 57th section of the Act of 1881 directs that Act and the Act of 1870 to be construed together as one Act—which in itself would, I think, be sufficient to show the true meaning of the word improvement in the 9th sub-section of the 8th section of the Act of 1881; but there is an unambiguous enactment in the Act of 1881 that any words or expressions therein which are not thereby defined, and are defined in the Act of 1870, shall, unless there be something in the context repugnant thereto, have the same meaning as in the Act of 1870, except so far as the same is expressly altered or varied, or is inconsistent therewith. The conclusion on this very important matter which seems to have been adopted by two of the learned Commissioners, Mr. Justice O'Hagan and Mr. Commissioner Litton, is, in my mind, erroneous. An interpretation of the 9th sub-section in question which would make the term improvements therein mean the whole increase of letting value, involves consequences so large and startling that one testing the construction of the statutes is at once disposed to think some error must exist; for as a tenant on quitting his holding would only be entitled at the utmost to the value of the expenditure on the work that caused the increase of letting value, he, remaining in his holding and claiming to have a fair rent determined, would, on such an interpretation, be entitled to have awarded to him as his own property, as against the landlord, the whole increase of letting value caused by his expenditure. For instance, a tenant paying a rent of £100 a year for his holding during his tenancy may spend £500 in executing works in the nature of permanent improvements, causing an increase of the letting value of his holding of £100 a year at the time he quits. The utmost he could get on quitting his holding, under the Act of 1870, even as amended by the Act of 1881, would

be £500, and that sum may be capable of being reduced to a lower point; while though not quitting, and a still abiding tenant, with all the advantages of the judicial term and rent, the Commissioners would have to allow to him the whole £100 a year which has been produced by the joint aid of his money and the soil he has had in tenancy from his landlord. This, I think, cannot be. The two Acts seem to me entirely opposed to such a conclusion. I can find nothing in the statute of 1881 to show that such a change in the position of the tenant and landlord was ever contemplated; on the contrary, the sub-section itself stands strongly opposed to such a construction. By its very language, the test as to whether no rent is to be allowed in respect of improvements is whether they have or have not been paid for or otherwise compensated by the landlord. What is the landlord to pay for or otherwise compensate? Surely, not the whole increased yearly letting value added by the making of the improvements, but at the utmost the amount of money expended by the tenant in making the same. Following this up, the matter will appear still plainer. Supposing the tenant actually awarded compensation under the Act of 1870, the amount not being paid, of course he would under that Act be entitled to hold on or continue as tenant; supposing the landlord not being able to pay the compensation, the tenant comes under the Act of 1881 to have a fair rent fixed. His expenditure was say £500, causing an increased letting value of £100 a year; the awarded compensation for improvements say was £400. What would be his position under the 9th sub-section? Is the fact that his right to compensation for improvements has already been fixed at £400 to be completely thrown aside; or does it constitute the true element for the guidance of the Commissioners? I think it plain that this is so. The 9th sub-section of section 8 of the Act of 1881, giving force to every word of it, can stand well together with the 8th section in all its parts. The mandatory duty cast thereby on the Commissioners is really one to be observed in administering the first part of the 8th section itself; and the meaning of it is this, that though the Commissioners are to consider the interests of landlord and tenant respectively, there is one thing they must do—viz., not fix any rent that is an annual sum in respect of improvements made by the tenant or his predecessors in title, not paid or otherwise compensated for by the landlord. These improvements are the very improvements he would be compensated for if he was leaving his holding, and no others—a view which, independently of the right interpretation of the two statutes as a whole, is made further manifest by the introduction of the 4th sub-section therein, enabling the Commissioners to disallow the application when the improvements had been maintained by the landlord or his predecessors in title. In the illustration I have put, the duty of the Commissioners in determining a fair rent would be not to allow to the tenant the whole increased letting value of £100 a year, but to assess what would be a fair percentage or yearly allowance for his expenditure, checked and qualified by the consideration of what he would get on leaving his holding; and supposing they thought £400 would be the sum payable, and that a percentage of £10 or £12 per annum was to be allowed upon it, they should leave the £40 or £48 for the tenant free from any rent in respect thereof, while the remaining £90 or £52 should be dealt with by the Commissioners under the early part of the 8th section of the Act of 1881, with due regard to the interest of the landlord and tenant respectively. These figures are only used by me to illustrate my meaning. All this would be for the Commissioners, acting under the principles I have indicated, and by which, I think, they are bound.

As to the second question, I agree with the opinion of the Lord Chancellor that "tenant or his predecessors in title" are to be construed as the same terms would be construed under the 7th section of the Act of 1881,

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amending the Act of 1870. I can satisfactorily to my mind, in the language of the two statutes throughout, discover amongst others one paramount object—namely, the preservation of the tenant's right to the value of his improvements; and I think that a tenant on quitting his holding was to be enabled to get compensation in respect of all existing improvements made on the holding by himself or any former occupant thereof, notwithstanding any change of tenancy of the holding, no matter how caused, provided there was nothing else to bar the right to such compensation. In the Act of 1870 the term predecessor in title occurs in two important sections before section 11, the one in section 4 giving the claim for compensation for improvements, the other in section 6 giving the power of registration of improvements. It is plain that the term predecessors in title, as used in the Act of 1870, was deemed unsatisfactory without some explanation of it, inasmuch as in its strict interpretation the term would import only the same tenancy in devolution, and did not cover breaks in that devolution which involved the creation of a new tenancy, making the term predecessors in title inapplicable to the former holder of the premises held under a new tenancy. To remedy, to some extent, this matter, the 11th section of the Act of 1870 was plainly passed, which undoubtedly carried the meaning of the ambiguous term a short way, as the decision in *Holt v. Harborton*, showed. This defective definition was largely extended by the 7th section of the Act of 1881; and by its terms it shows to me that it was meant to meet or counteract the ruling of the Court in that case of *Holt v. Harborton*; and there is thus, by the express language of the statute, a plain indication of intention that each successive occupant of a holding should be entitled to compensation for the improvements thereon made by the tenant for the time being, and that he should not be barred of such compensation by reason only of breaks or interruptions in the tenancy; in other words, that a new tenant of the holding which he got from a former occupant should have the right to compensation untouched, unless in the creation of the new tenancy this right to compensation was bargained for or lost by some arrangement. Now, previously to the 11th section of the Act of 1881, the term tenant or his predecessors in title occurs in three important places, twice in the 6th sub-section of section 1, and once in the 8th sub-section of same section. Before we come to the 9th sub-section of section 8, the terms tenant or predecessors in title occur twice in the 4th sub-section of the same clause, and they occur in a remarkable juncture in the 10th sub-section. They are, for the most part, outside the 9th sub-section of section 8, used in reference to compensation; and this right of compensation is so clearly mixed up with the fixing of a fair rent that I am, by what I conceive to be the plain intendment of the statute as shown by its language, compelled to hold that on its true construction the right to get compensation for improvement is really the basis of the 9th sub-section of the 8th clause in the Act of 1881, and that therefore the term tenant or his predecessors in title must have the same meaning therein as is indicated by the provisions contained in section 7 of the same Act. It further appears to me that predecessors in title, as applied to the landlord, is so loosely used in that sub-section and in the previous parts of the statute where the same term "landlord or his predecessors" occurs, that, independently of what I have stated, a very strong argument could be drawn therefrom so as to prevent the palpable injustice of the construction that payment for or maintenance of improvements by a tenant for life would not enure to a remainderman to whom a tenant for life would not, I think, be strictly a predecessor in title; but I prefer to rest my judgment on the provisions of the two statutes taken together, as indicating that the term in question must have the same meaning all through. It is a fixed sense of construction that a word once defined, or

whose meaning is unquestionably ascertained in an instrument, must have the same meaning throughout; except the context opposes. No doubt, an apparent difficulty occurs here, that the extension of meaning in section 7 of the Act of 1881 is by its language only applied to the case of a tenant quitting his holding; but this, I think, is removed by the consideration that the very extended right thereby given is the very right which gives the extended claim to compensation for improvements, which forms, in my opinion, the basis on which sub-section 9 can only legitimately be rested; the right of the tenant to get compensation for his improvements, and his right to be exempted from rent in respect of them, being, according to my view, almost, if not entirely, correlative. This view has, I think, a very strong argument in its favour; that it makes the construction of the two Acts throughout entirely uniform on the present point.

In reference to the third question, the very considerations I have just stated induce me to think that the positive enactments as to improvements before 1870, as mentioned in the final clause of section 4 of the Act of 1870, must still apply. The two Acts, by the express enactment in the statute of 1881, must be construed as one, that is, as one code. The provisions of the final clause in section 4 of the Act of 1870 are just as mandatory as those of sub-section 9; and in the statute of 1881 there is no declared intention of repealing it. Under such circumstances the rule of construction is, that they must stand together if they can be reconciled. I think they can stand together, and that the exemption as to improvements in the 9th sub-section must operate on improvements made before the passing of the Act of 1870, just as they are defined by the statute of 1870, with all the qualifications attaching thereon. This view again establishes an uniformity of construction throughout, which if it rests on a sound principle of construction, as I think it does, has much to recommend its being adopted. Nothing can be more illusory than a term in a part of a code consisting of several Acts of Parliament being taken in its apparent meaning in any one section of one of the statutes, particularly in the last statute in the series. If one reads the 8th sub-section *per se*, he would at first sight be disposed to give the word improvements a very wide interpretation; but when we find in the very statute in which this word is used a peremptory direction that its meaning shall be taken as in the former Act of 1870, the rule is at once enforced that that interpretation must be abided by, the context not offering any obstacle. And when this is once determined, it seems to me to follow, as I have come to the conclusion, that the right to compensation for improvements is the true basis of the enactment in the 9th sub-section of section 8 of the Act of 1881; that the improvements mentioned in the sub-section must be taken as not merely defined in the Act of 1870, but also with the qualifications attached thereto by that statute, so far as the improvements were made before the passing of the Act of 1870. It appears to me that this view is as well sanctioned as it is strongly supported by all the cases that have arisen on the construction of statutes held to be one code or to be dealt with *in pari materia*. I need only refer to one case of *Eyre v. MacDowell*, 9 H. L. Cas. 619, one of the most remarkable; where the late Lord Chancellor Brady and Lord Justice Blackburn, in a series of decisions, by adhering to the supposed literal meaning of the 7th section of the Judgment Mortgage Act of 1860, 13 & 14 Vict., c. 29, taken by itself, gave the judgment registered as a mortgage force and effect against the previously unregistered deed of the judgment debtor. Now, on the language of that section, *per se*, that was apparently so; but they erroneously disregarded the circumstances that the statute was but part of a code regulating the rights of judgment creditors, and that before the statute the judgment itself, with its general lien, only affected what the debtor at the date of the judgment could

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dispose of, and that the new statute was only intended to affect that very interest in another way, and that therefore the registration could only affect what was so bound, and was as to that, and that alone, to stand as a registered deed for the future. The whole principle of the decision of the House of Lords, in every part of it, seems to me to apply in this very case on the point I am now dealing with. I think it right to add that I cannot agree with the reasoning of the Lord Chancellor, which relies on the right of sale conferred on the tenant by the early sections of the Act of 1881. These sections do not, in my opinion, give an absolute right of sale of all the improvements as they stand; if they did, it would seem to me to follow that the whole increased letting value caused by improvements becomes the absolute property of the tenant. The right of sale is by the express enactment a restricted one; the landlord can intervene, and then the Court must fix the true value. This value cannot be the market value, but what, having regard to the interest of landlord and tenant respectively under this code, would be the true estimate of price between them.

As to whether a tenant having made improvements during the currency of a lease, and enjoying them during that period, gets compensation thereby from the landlord, I am clearly of opinion that he does not. When a man takes a lease, he is a purchaser for the whole extent of the term granted, provided he fulfils his obligations under the lease. If he makes improvements which he can lawfully do under the terms of his lease, he has the same right to enjoy them during the term as to make them. He buys the right to enjoy and make use of them during the term, as much as he buys the legitimate use of the land; and it is impossible to say that in such a state of facts he is "otherwise compensated for such improvements" by a user or enjoyment while the lease lasts. The same consequences would follow under any other tenancy during which the improvements are made, and whilst it remains unaltered; on every break in the tenancy a state of things may undoubtedly occur which the Land Commissioners would have to consider, as to whether it amounted to a compensation for the improvements otherwise than by payment. This state of things may mount up to a case where the new tenancy is granted and accepted expressly in consideration of the improvements being made, and descend to a case where nothing whatever is said between the landlord and tenant on the subject; but where from the terms of the new tenancy it can and ought to be reasonably inferred that the new tenancy has been granted upon terms which fairly imply that the improvements were, either to the entire or partial extent, the moving cause to the landlord giving the new tenancy, no contract is, in my mind, in any way necessary towards getting at a "compensation otherwise than payment" under the section—much less is a threat or menace of eviction on the part of the landlord. The facts or circumstances surrounding each change of tenancy of the holding, on which improvements have been made, must in the end rule each case. Now, as an instance where, independently of any contract, I would regard this question of "otherwise compensated" as one which should be considered by the Commissioners, I will take this one: A tenant holds under a lease at a moderate rent; he, being an improving tenant, has executed permanent improvements within the statutes, which much enhance the letting value of the holding when the lease ends. The landlord at the end of the lease enters on the premises, and having viewed the premises, says to the tenant, "I see you have improved this holding; go on from year to year. I will let you hold at the old rent you paid under the terminated lease." The tenant so holds on—say for ten or twenty years. It seems to me that in that case, at the end of either of these periods, the Land Commissioners, in fixing a rent as between the landlord and the tenant,

should take into consideration a letting so made as an element in coming to the conclusion whether the improvements made were wholly or partially compensated for.

As to the operation of the lease of 1846, this is unquestionably a point of much practical moment. It has, of course, all the recommendation of a new and safe starting-point as between landlord and tenant; but, I must confess I cannot think that by itself it bars the tenant's claim. I see no difference between a lease describing the subject-matter of demise and the same subject-matter demised by parol, say from year to year. The statement in the lease that the house is part of the demised premises is no more than what would happen if the landlord let the holding and tenant took it. To bar the tenant conclusively, on a change of tenancy, of his right to compensation for improvements, or of the benefit of the 9th sub-section, I think there should be a clear dealing, either express or implied, involving an abandonment of such right or benefit. When this does not exist, the Land Commissioners must, I admit, carefully review the whole state of things accompanying the change of tenancy, and rule upon it. It would, of course, be of the utmost moment to get a starting-point, but this must and should be one clear and safe beyond any doubt. I would be apprehensive that a decision, holding that a lease in the terms of that of 1846 was a bar to the subsequent occupant of the holding claiming compensation or the benefit of the 9th sub-section, would to a great degree involve the conclusion that each change of tenancy would bar all claim to improvements made before it, which I think it was the most decisive object of the statute to prevent. I think that in the present case there was nothing in any of the changes of tenancy to bar the claim to compensation for improvements, or the rights of the last occupying tenant in respect thereof.

Such are my answers, and the reasons for them, to the questions which we all agree are necessary to be answered, so as to determine the legal points arising on the case submitted to us. I have, perhaps, stated my reasons at too much length; but as there is a considerable difference of opinion amongst the members of this Court, for whom I entertain supreme respect, I have thought it better to state those reasons fully.

MORRIS, C.J.—The learned Judicial Commissioner, in his judgment, states that he expects this Court may determine, in regard to important questions arising in this case, principles by which the Land Commissioners' future action should be regulated. We do so, after much consideration and lengthened conference, but, I regret, in some instances with more or less difference of opinion. The five questions which directly arise on the case have been stated by the Lord Chancellor. First, with respect to the word "improvements." It appears to have been used and dealt with as of the same signification as "the increased letting value" caused by the improvements. The word is defined in the Act of 1870 as "any work which being executed adds to the letting value of the holding, &c.," but the addition to the letting value is caused by the work plus the inherent qualities and capacity for such work of the holding; the latter is the landlord's, while the former is the tenant's. The absence of any consideration of the inherent capacity of the soil, in the consideration of increased letting value caused by improvements or work done by the tenant, appears to pervade the judgments; it might in many cases be the most important factor, while in other cases it might not. This is well put by Mr. Butt, at page 128 of his work on the Act of 1870. He says:—"If, for instance, the letting value of the farm was increased by £10 a year, it may be urged that this value is created by the industry and expenditure of the tenant, and that therefore he is entitled to regard the property he has so created as his own;" but he proceeds to say, "the additional value is not the creation solely of the tenant—it is the creation partly



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of the expenditure and skill of the tenant, and partly of the inherent capabilities of the soil."

The second question is as to the meaning of "predecessors in title." We are all of opinion that the distinction sought to be drawn between this case and *Holt v. Harborton* by the learned Judicial Commissioner is untenable. It was not decided on any such assumption as he appears to think—viz., "that the new lease was granted in consideration of the circumstance of the dwelling-house having been erected." The Master of the Rolls, Lord Justice Deasy, and I myself were three of the judges who decided *Holt v. Harborton*; and the ratio of the case was that "predecessor in occupancy" was not "predecessor in title." The Judicial Commissioner refers, in support of his view of *Holt v. Harborton*, to the judgment of the then Lord Chief Baron, who did not concur fully in the grounds of the judgment of the other judges pronounced by Lord Chancellor O'Hagan, and, therefore gave his own grounds; but the point of the judgment of the Court is emphasised by the judgment of the one judge who was not satisfied to rest his judgment on the same grounds as was the judgment of the Court. But then arises the question whether the 7th section of the Act of 1881 affects the construction of the words "predecessors in title" in section 8, sub-section 9. I am of opinion that it does not. The legal meaning of "predecessors in title" was settled by *Holt v. Harborton*. The meaning is not purported to be altered by section 7, but by that section it is declared that a tenant, under certain circumstances (the leading one being when quitting his holding), shall not be deprived of the right to compensation by reason of certain other circumstances set forth, and that in such case a former tenant shall be deemed to be a predecessor in title to him, when, according to legal interpretation of the words, he would be deprived, and would not be a successor in title. I cannot concur in the argument which carries that legislative accretion, under certain circumstances, to the words "predecessors in title" in section 7 to another section dealing with another set of circumstances, where the words "predecessors in title" are simply used, and no accretion of meaning attached to them; and I cannot concur in the judgment of the learned Judicial Commissioner that the legal meaning of the words—their plain, ordinary meaning—is a strict technical meaning. Neither can I accept the argument that, because in one section and under peculiar circumstances, a word is declared to have a signification different to its legal one, ergo the same word, when used in another section, is also to have a different signification from its legal sense—*e contra*, "*expressio unius exclusio alterius*."

As to the third question, the Commissioners, in order to determine a fair rent under the 8th section, have to regard the interest of the landlord and tenant respectively. The interest of the former is the plenary interest in the holding, save so far as the tenant establishes, in diminution, claims under the Acts of 1870 or 1881. These claims constitute the tenant's interest. What is the tenant's claim under the Act of 1870 in respect of improvements made before the passing of that Act? [His lordship read section 4 of the Act of 1870.] The tenant's claim is, by the final paragraph, limited as to improvements made before the passing of the Act by the period of enjoyment, that is to the extent the tenant has been repaid by enjoyment. The Act of 1870 was so administered by all tribunals. When the Act of 1881 passed, the tenant's interest in respect of improvements made before 1870 was not, in name or substance, a claim to have them recognised as his, or a claim to their full value, but a claim to be compensated so far as he had not been compensated by enjoyment in the various degrees of time, &c., as set forth in section 4. Such legislatively compensated for improvements could not, in the teeth of the Act of 1870 (incorporated with the Act of 1881), be part of the tenant's interest within the meaning of section 8; and if not, they are part of the landlord's interest—to be so regarded in

fixing a fair rent. But is this altered by sub-s. 9? In my opinion, "no." That sub-section, in that respect, only reaffirms in more special language that the tenant's improvements are not to be assessed in rent; it does not purport to repeal section 4 of the Act of 1870, by which improvements made by a tenant or his predecessor in title before the Act were, under the circumstances and with the measures set forth respectively, declared compensated for, and were consequently not to become, but to remain, the property of the landlord, and as such part of his interest in ascertaining his fair rent; and, being the landlord's property, what part of sub-section 9 takes them from him, the Act of 1870 *non obstante*? Similar considerations may apply to provisos of section 4, such as proviso (a) and proviso 3, whereby a thirty-one years' lease, enjoyed by a tenant, was deemed full compensation with certain exceptions.

Question four, I consider, necessarily calls for a consideration of the meaning of the 9th sub-section, as to what is meant by "otherwise compensated by the landlord or his predecessors in title." It was argued here, on the part of the tenant, that it should be compensation *ejusdem generis* as "paid." It appears to me to be the contrary. "Otherwise" signifies "by any other means," which, so far from being *ejusdem generis*, might be of the most opposite character. "Compensated," the word so often used in the Act of 1870, signifies "indemnified from loss." The section so interpreted would read thus:—"No rent shall be allowed for improvements made by the tenant or his predecessors in title for which the tenant, &c., has not been paid, or by any other means been indemnified by the landlord or his predecessors in title"—that is out of the property of the landlord. The learned Judicial Commissioner says:—"Under the Act of 1881 the compensation must emanate from the landlord. In order to enable him to claim rent in respect of the tenant's improvements, he must, so to speak, have bought them from the tenant, paid him for them, or otherwise compensated him. What amounts to such compensation? It may take a hundred forms, which it would be impossible to enumerate. But it must, I conceive, be something given, or done, or foregone by the landlord as an equivalent for the improvements. We are not called on to decide whether a lease given at a low rent, in order to enable the tenant to improve, might not in some cases be held to be compensation, nor whether, in the case of a tenancy from year to year, the landlord's abstention for a considerable period from the exercise of his legal right to evict the tenant or enforce a larger rent from him by menace of eviction might not, in some cases, be deemed compensation by him. Every case of that kind would, I conceive, be governed by its own special circumstances." I do not much differ from this reading of the section, with the following modifications: firstly, the use of the ambiguous word "emanate"—if by that he means that there must be some active giving by the landlord it is, in my opinion, a mistaken view. Again he says, by way of illustration—"We are not called on to decide whether a lease given at a lower rent, in order to enable the tenant to improve, might not in some cases be held to be a compensation." I should say such a case could admit of no doubt but that "it might." Again he says, "in the case of tenancies from year to year, the landlord's abstention for a considerable period from the exercise of his legal right to evict or enforce a larger rent by menace of eviction might in some cases be a compensation." Here again, the words "menace of eviction" introduce the false element of any action, whether actual or by threat, on the part of the landlord. The mere abstention by the landlord from availing himself of his legal rights and allowing the tenant to enjoy what, if the landlord chose, he might enjoy himself, must, in my opinion, be a compensation by the landlord, irrespective of threat or statement to that effect. Mr. Commissioner Litton cuts the Gordian knot by elaborating a com-

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pendious formula, and proceeds to state it thus:—"The question is, to what extent has the letting value been increased by improvements, if at all;" deducting the latter from what he has described as the commercial value of the holding, he adds, "we get the fair rent." What we have decided as to the true meaning of the word "improvements"—viz., that it is not the same, as the increase of the letting value, destroys this formula at its outset. Passing on further to the consideration of the words "otherwise compensated," the same learned Commissioner lays down thus—"The words, 'paid or otherwise compensated by the landlord' must mean either actual payment or some positive and direct consideration moving from the landlord to the tenant, and not the enjoyment of occupation which has no reference to the improvements." During the argument of this case this proposition was described by the Lord Chief Baron as placing the enjoyment on the basis of contract, express or implied, when he asked the leading counsel for the tenant whether he so argued. I have already in effect stated what appears to me fairly clear—viz., that the enjoyment by the tenant is not necessarily to rest on the basis of contract between him and his landlord. It rests on the basis of compensation in fact obtained by him out of the landlord's property, irrespective of whether the landlord actively or passively permitted or knew of the enjoyment—considerations, in my opinion, outside the real one—viz., "indemnification" by the tenant out of the landlord's property—e.g., enjoyment at a low rent for a long time. The construction contended for by the tenant requires us to interpret the sub-section as if it ordained in express words that the time of enjoyment should not be held to be compensation. I could not, however, apply the principle of compensation out of the landlord's property to improvements made during the currency of this lease, and of which the only enjoyment was the period that the lease lasted. In the restricted sense of the word "improvements," which we decide is its legal signification, what enjoyment is there during the lease out of the landlord's property? If in the present case Mrs. Dunseath had not raised the rent on the expiration of the lease, there would be from that period clear enjoyment by the tenant out of the property *pro tanto*. When the stipulated term had determined during which the landlord could not disturb the tenant's possession, or raise his rent, or impose any fresh terms, the aspect changed; a parol tenancy from year to year sprang up; the tenant would be left in the enjoyment of improvements with which it was competent for the landlord to interfere by raising the rent. The subsequent enjoyment by the tenant of the whole unshared benefit of the improved holding, including its developed and realised capability, would amount *pro tanto* to compensation by the landlord; and I know of no form of compensation more advantageous to the tenant. It furnished the distinction between landlords who left the tenant the entire profit of his improvements, and those who insisted upon sharing in the advantages derived by them from increase of rent.

As to the 5th question, I am of opinion that Mrs. Dunseath is entitled to rent for the house. The house being on the land when James M'Kee took his lease in 1846, by whomsoever built, he took it as the landlord's property. This result follows necessarily from the opinion I have formed on the question of "predecessor in title," as this case, in respect of the house, would be not alone in principle, but almost in fact, the same as *Holt v. Harberton*.

It becomes unnecessary to decide whether on another ground, suggested in argument, the same result should not be arrived at. The widow Dunseath's husband bought, with other property, the reversion expectant on the lease to M'Kee in the Incumbered Estates Court in 1851, and the conveyance was executed to him by the judges of that Court. That conveyance by indefeasible title conveyed to the purchaser the estate as then

improved, subject only to the lease of 1846 and any rights flowing from it—I say emphatically *from it*; but with no reservation of any rights, real or imaginary, that flow or might be supposed to flow from anything done at an earlier period than the date of the lease. What reduces the purchaser under the Incumbered Estates Court title from being the grantee of an improved estate—i.e., of an estate with its then improvements—to the position of grantee of an estate practically minus the improvement? The question remains whether the general words in the 9th subsection relate back not alone to tenancies existing at the time of the passing of the Act of 1881, but to tenancies and to improvements made during past tenancies by the tenant and his predecessors in title, and thus, getting behind the conveyance, attach improvements to a past tenancy which, even if it had existed in 1851, would be destroyed by the Incumbered Estates Court conveyance—propositions it might be difficult to establish.

In arriving at these conclusions on those questions I have endeavoured to loyally obey and give effect to the meaning of the statute where its meaning is clear and plain, irrespective of any individual opinion of its policy or impolicy, or what injury it may entail on individuals. But where the terms are obscure or ambiguous—I use the words of an eminent judge—"the Court should not lose sight of the principle that a party is not to be stripped of his undoubted property or rights by ambiguous terms of an Act of Parliament."

Finally, I desire to acknowledge the assistance I have derived from the full and able judgments of the learned Commissioners, though I am on some points unable to arrive at the same conclusions they have—conclusions which, in the terse but pregnant judgment of the lay Commissioner, appeared to him to lay down principles and to lead to results which were never contemplated by the Legislature.

Here my intended judgment concluded; but, I make this remark on the Lord Chancellor's reference in his judgment to the Ulster custom as affecting this case—No reference is made to it in the case stated for our judgment; none in the judgment of the learned Commissioners; none was made during the argument before us; and none, so far as appears, during the argument before the learned Commissioners at Belfast. I must, therefore, decline a legal exhortation on assumptions not put before us, and for aught I know non-existent.

PALLES, C.B.—All the questions stated by the Lord Chancellor, as those upon which this Court is to pronounce its opinion, arise upon the construction of the 8th section of the Act of 1881. That statute and the Act of 1870 must, as well upon the ordinary principles of construction of Acts *in pari materia*, as by the express legislative declaration contained in the 57th section of the later Act, be construed together as one code. In considering these two Acts, I shall limit myself to the enactments material to the question before us—viz., to so much of the Act of 1870 as provides compensation for improvements; and such portions of the Act of 1881 as, firstly, amend those provisions, and secondly, entitle a tenant to hold on for the statutory term. In these portions of the Acts I find two distinct objects: firstly, that a tenant on *quitting* his holding shall be entitled to certain compensation for improvements; secondly, that a tenant of a certain class shall not be bound to quit his holding at all, but shall be entitled to hold on for a term of fifteen years practically renewable for ever, for successive terms of fifteen years. When, as in the present case, a tenant who is so entitled avails himself of his right to obtain a statutory term, there is not, and cannot be, a *quitting*, within the meaning of the Act of 1870; and the main question we have to decide is, what in that event is his right in respect of improvements?

Improvements are defined by the 70th section of the Act of 1870 to be works which increase the letting value of the holding, and are suitable to it; and the 4th

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section of that Act provides that a tenant may, on quitting his holding, claim compensation, to be paid by his landlord, in respect of *all* improvements on his holding, made by him or his predecessors in title. The general words of this enactment are, however, at once cut down by the first proviso, which describes five classes of improvements in respect of which it enacts "a tenant shall *not* be entitled to claim any compensation." The first of these classes is "improvements made before the passing of this Act, and twenty years before the claim of such compensation shall have been made, except permanent buildings and reclamation of waste lands." The second proviso further limits the class of improvements in respect of which a tenant can claim compensation. The third proviso is to the effect that when a holding is under lease for a term certain of not less than thirty-one years, the tenant shall not (in the absence of special provision in the lease) be entitled to compensation in respect of any improvements, except permanent buildings, reclamation of waste lands, tillages, and manures. The fourth proviso uses the expression "his" (the tenant's) "interest in his improvements"; and the final clause enacts that in awarding compensation in respect of improvements made before the Act, the Court shall, in reduction of the claim of the tenant, take into consideration (1) the time during which the tenant shall have enjoyed the advantage of such improvements, (2) the rent at which such holding has been held, and (3) any benefits which such tenant may have received from his landlord in consideration, expressly or impliedly, of the improvements so made. Those provisos show that works which add to the letting value of, and are suitable to, a holding (and therefore improvements within the 70th section) are not, although made by the tenant or his predecessors in title, necessarily improvements in respect of which the tenant has a right to receive compensation. That he may have this right in respect of them, the works must in addition be outside the 1st, 2nd, and 3rd provisos, and the amount of compensation he had a right to receive in respect of such works is liable to reduction in respect of the matters mentioned in the final clause of the 4th section.

The expression "predecessors in title" was, in my opinion, rightly construed by the majority of the Court for Land Cases Reserved, in *Holt v. Harberton*. If, therefore, the present case were governed by the Act of 1870 alone, the tenant Adams, were he now quitting, would have been disentitled to claim compensation for any of the improvements executed before 1875, as the continuity of title had been broken by the new tenancy created in that year. He would, further, have been disentitled (even if the continuity had not been broken), to claim for any works, except the house and reclamation of waste lands (if any), executed before 1862. This state of the law was, however, amended by the 7th section of the Act of 1881. The subject-matter of the first clause of this section (the portion which is material here) is the "right" of the tenant to receive compensation under the Act of 1870; and the subject-matter of the second clause (which is *in pari materia* with the first), although expressed in different terms, is in fact the same, as a title for the purpose of obtaining compensation for improvements can exist only in respect of works for which the tenant had a right to obtain compensation. Were it not for the third clause, which imposes upon the Court, in adjudicating upon any claim falling within the prior portions of the section, a duty, not prescribed by the Act of 1870, of taking into consideration all the circumstances under which the change of tenancy took place, and admitting, reducing, or altogether disallowing the claim accordingly, I should have thought it open to argument that the second clause of this section was declaratory of the construction of the Act of 1870. Such a construction is, however, in my opinion, rendered impossible by the latter clause; but I confess that, in reference to the question

now under consideration, I think it of little importance whether the section be or be not to a certain extent declaratory, for, whatever be its nature, it seems to me clear that its wording renders it impossible to give the extended construction to the expression "tenant or his predecessors in title," except where these words are read in reference to the class of improvements to which alone they are applied in the 7th section. The cases to which the extended construction applies are, therefore, *prima facie* subject to, and restricted by two (but as far as I can see by only two) limitations—one, a limitation involving the procedure by which effect is to be given to the tenant's right to compensation—*viz.*, upon a claim on the tenant quitting his holding; the second, and in my mind the most important one, a limitation involving the subject-matter in reference to which the extended construction can apply—*viz.*, not improvements generally, but improvements (to revert again to the words at the commencement of the 7th section) in respect of which the tenant had a "right to receive compensation." I now turn to the provisions of the Act of 1881, in reference to the statutory term. Section 8, sub-section 3, enacts—"Where the judicial rent of any present tenancy has been fixed by the Court, then, until the expiration of a term of fifteen years, such present tenancy shall (if it so long continue to subsist) be deemed to be a tenancy subject to statutory conditions." Section 5 provides that a tenant of such tenancy shall not be compelled to quit his holding, except in consequence of the breach of some one or more of the statutory conditions. The 8th section in sub-section 1 empowers a tenant of a present tenancy desirous of obtaining this tenure, to apply to the Court to fix a fair rent, and the Court, "having regard to the interests of the landlord and tenant respectively," is to determine what is such fair rent. I pause here to repeat what I have already observed, that the tenant by entitling himself to hold on for fifteen years, has postponed for that, and possibly for a much longer period, the quitting upon which he would have been entitled under the Act of 1870, to claim for the improvements in respect of which he had a right to receive compensation. He has not, however, thereby lost his interest in those improvements. If, therefore, his interest in improvements is to be at all considered in settling a fair rent, it must be so considered although there has not been a quitting; and therefore although a claim under the 4th section of the Act of 1870 could not be sustained. This 8th section, accordingly, in its 9th sub-section, enacts—"No rent shall be allowed or made payable in any proceedings under this Act in respect of improvements made by the tenant or his predecessors in title, and for which in the opinion of the Court the tenant or his predecessors in title shall not have been paid or otherwise compensated by the landlord or his predecessors in title." Were the class of improvement within the sub-section a larger one, than that to which "predecessors in title" is, by the 7th section applied in its extended sense, I would agree with the Lord Chief Justice and the Lord Chief Justice of the Common Pleas, that the extended construction could not prevail in this sub-section, because that would be to apply that construction to a subject-matter to which there is no intention on the face of the Act that it should be applied. But, on the other hand, if the improvements referred to in the sub-section are identical with those within the 7th section, then one of the two difficulties of the application of the extended construction does not exist. What then, upon the true construction of the sub-section, are the improvements contemplated by it? In order to determine this, I must read this 9th sub-section as part of, and in connection with the other provisions of the 8th section. So reading it, I am of opinion that it was not contradictory to, but in explanation and enforcement of the principle contained in the 1st sub-section, which, in my opinion, contains the key to the entire section—*viz.*, that in fixing the fair rent regard should be had to the

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interest of the landlord and tenant respectively. In my view, it was not intended by this sub-section to provide that the Court should not have regard to the interest of the landlord or to transfer to the tenant any part of that interest, either in the holding or in the improvements thereon. Even were the context doubtful, a construction involving such a consequence could not obtain. But the context is, in my opinion, not doubtful. The improvements in respect of which rent is not to be payable are restricted by the words, "and for which, in the opinion of the Court, the tenant or his predecessor in title shall not have been paid or otherwise compensated by the landlord or his predecessors in title," and these words demonstrate an affirmative intention that the landlord's interest in the improvements should not be transferred to the tenant. Compensation may be partial as well as complete, and may be partial even in respect of one indivisible work. Therefore, the words I have last mentioned must define not only the class of works, but the extent of the interest or property in these works, in respect of which rent is not to be payable. If I be right in the conclusions at which I have arrived—viz., first, that the tenant had an interest in improvements made by himself or his predecessors in title, as used in the wider signification; secondly, that there is in the 9th sub-section an intention not to transfer property in improvements from landlord to tenant—what remains to satisfy the expression in the 9th sub-section, "improvements made by the tenant or predecessors in title, and for which in the opinion of the Court the tenant or his predecessors in title have not been paid or otherwise compensated by the landlord or his predecessors in title?" I answer, that which can alone remain, unless some part of the property of the landlord in the improvements be transferred to the tenant—the interest of the tenant in the improvements; and this interest he can have in such improvements only as he had a right to receive compensation for. These are the improvements, and in my opinion the only improvements, within the section; and the property in this class of improvements is cut down by the words, "and for which the tenant or his predecessors in title shall not have been paid or otherwise compensated by the landlord or his predecessors in title," to the interest of the tenant therein which has been uncompensated by the landlord. This interest, although vested and existing, was one the money value of which depended upon a future and contingent event—upon his quitting his holding; and, in my opinion, the operation of this sub-section is to give effect in *presenti* to that interest by exempting it from rent. Reading the sub-section in this sense, an effect is given to it which is consistent with every other provision of the section, and is in furtherance of the essential principle of that section, that "regard shall be had to the interests of the landlord and tenant respectively." But, the improvements in which the tenant has this interest include those made by his predecessors in title in the wider sense mentioned in the 7th section. I, therefore, have (1) that regard is to be had to the interest of the tenant; (2) that that interest includes interest in improvements in respect of which he has a right to claim compensation, that is, improvements made by himself or his predecessors in title as used in the wider sense; (3) a direction in the 9th sub-section that no rent shall be allowed in respect of the interest of the tenant in improvements made by him or his predecessors in title in respect of which he has a right to claim compensation. It seems to me to follow that the expression "predecessors in title," in the 9th sub-section, must, in order to make the interest of the tenant, which was intended to be protected, co-extensive with the interest which he in fact had, and to which regard is directed to be given, be read in its extended meaning, unless there be something in the context of the clause giving this wider meaning, which absolutely prohibits such an application. This brings us back to the 7th section

to inquire whether it contains this absolute prohibition. I revert to the two limitations which I endeavoured to show restricted—and were the only limitations which restricted—the extended construction. As to the first, which involves the procedure, it is rendered inapplicable by the express legislation of the 9th sub-section. That section substantially directs the consideration, upon an application to fix a fair rent (without a claim for compensation, and although there is no quitting), of improvements which under the previous legislation could be considered only upon such claim, and after such event. As to the second, the construction which I have given to the words "improvements made by the tenant or his predecessors in title" renders it identical with the subject-matter as to which, and to which alone, I have shown the words "tenant or his predecessors in title" can obtain their extended construction. In result, then, I am of opinion that the suggested difficulties of giving the extended meaning to "his predecessors in title" in the 9th sub-section do not in fact exist, and that the intention gathered from the 8th section requiring these words to be read in that sub-section in that extended meaning must prevail. These considerations enable me to answer the 1st, 2nd, and 3rd questions.

As to the 1st, I am of opinion that the word "improvements" in the 9th sub-section means works which, being suitable to the holding, add to its letting value, as distinguished from the increased letting value itself. It is in this sense "improvements" are defined by the 70th section of the Act of 1870; and the 57th section of the Act of 1881 enacts that expressions in that Act which are not thereby defined, and are defined by the Act of 1870, shall, unless there is something in the context repugnant thereto, have the same meaning as in the last-mentioned Act.

In answer to the 2nd question, I am of opinion that "predecessors in title" in the expression "the tenant or his predecessors in title," in the 9th sub-section, mean predecessors in title in the extended sense in which that expression is used in the 7th section.

As to the 3rd question, being of opinion that that which has been exempted from rent is not the entire work, but the uncompensated interest of the tenant in that work, it necessarily follows that I am of opinion that enjoyment by the tenant of improvements executed before the passing of the Act of 1870, which, by the express terms of the 4th section of the Act of 1870, is to be taken into consideration in reduction of the tenant's interest in such work, cannot be excluded from consideration in determining fair rent. As I understand the judgment of the Lord Chancellor, who has arrived at a conclusion upon the 3rd question different from mine, the point of divergence between us is the extent of the interest of the tenant under the 8th section in respect of improvements. The Lord Chancellor is of opinion that, as the tenant is entitled under section 1, sub-section 2, to sell his holding in the open market, subject to a right of pre-emption in the landlord to purchase, at the true value, the interest of the tenant in the improvements is the difference between what would be the selling value of the farm in its unimproved state and its actual selling value when improved. This construction subjects this holding (which is not in fact subject to the Ulster custom), and subjects also every other holding to which the Act applies, to a right analogous or similar to the Ulster custom. The effect of this would be to give to the tenant, under the word improvements, the entire of the increased letting value caused by such improvements—a result disclaimed by the Lord Chancellor. Irrespective, however, of what the result may be, I cannot agree either in the conclusion of the Lord Chancellor or in the reasoning on which it is founded. The tenant has, no doubt, a right to acquire a term of fifteen years, with a right of renewal from fifteen years to fifteen years; but that right has not yet been acquired. We

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are not now determining the right which the tenant may have at the end of a term of fifteen years in reference to improvements executed after the Act, and when he had practically a perpetual interest in his holding. The question we have here deals with the conditions upon which the tenant is entitled to acquire his first statutory term. Until he acquires this term, he has nothing more to sell than a tenancy from year to year—a tenancy which he was entitled to sell before the Act of 1881. The conditions upon which he is entitled to acquire the fifteen years' term include payment of a fair rent, and the question is, subject to what fair rent shall he acquire his statutory term? Were there no express provision in the Act as to the interest of the landlord, you could not, as a condition precedent to determining what rent he should pay for a term of fifteen years, assume that he already had an interest practically perpetual, and deduct out of the amount which would otherwise be a fair rent the annual equivalent of a perpetual interest in improvements. But, the 8th section is express, that the Court is to "have regard to the interest of the landlord and tenant respectively"—that is, to the interest which these parties have at the time the rent is being ascertained, and before the period arrives at which the tenant acquires his statutory term. Were the statute read in the view of the Lord Chancellor, its effect would be to transfer to the tenant all the property of the landlord in improvements which had been effected by the tenant, notwithstanding that some of such improvements had, under the provisoes of the 4th section of the Act of 1870, become parcel of the holding, without liability upon the landlord to pay any compensation in respect of them, and that the amount of compensation payable in respect of others had been materially reduced by enjoyment. I have searched the Act in vain for words which indicate such an intention. To liken the case to one of Ulster custom is to assume that the only essential element of that custom is the right of sale in the tenant, whereas, in fact, the foundation of the Ulster tenant-right is the liability, on the part of the landlord, to pay the full value of the holding upon an eviction in breach of the custom. The right of sale existed in all common law tenancies from year to year; it was a right which the Ulster custom could not extend, but with which, in many instances, it materially interfered.

The 4th question is, "Whether the enjoyment, during the currency of a lease, of improvements made by the tenant during such lease, but after the passing of the Act of 1870, is a compensation by the landlord within the meaning of the 9th sub-section of section 8 of the Act of 1881?" By "improvements," in this question, I, of course, understand suitable works which add to the letting value of the holding, not the increase of such value. Reading the question in this sense, I am of opinion that, upon the true construction of the sub-section, this enjoyment is not compensation by the landlord. As the question is limited to improvements made after the Act of 1870, the final proviso in the 4th section of that statute does not apply; and we must therefore inquire whether, irrespective of the statute, such enjoyment may amount to compensation. To be compensation under the 4th section, it must be compensation "by the landlord or his predecessors in title"—words which, in my opinion, include the estate of such landlord or predecessors in title. The increased letting value caused by the improvements is, no doubt, not the creation solely of the tenant: it is the result partly of the expenditure and skill of the tenant, and partly of the inherent capabilities of the soil. Of these two elements, however, the first is supplied solely by the tenant, and the second, the inherent capabilities of the soil, is portion of that which has been let to him by the landlord for the term of his lease. Those capabilities, although unused at the time of the lease, and capable if used of producing a profit perhaps not in the contemplation of the parties at the

date of the lease, are portions of the thing which the tenant has acquired by his contract, and which he is entitled to utilise in every reasonable mode not contrary to that contract. It is impossible to hold that this increased letting value during the tenancy has been produced by the landlord, or by his estate, or can be deemed compensation by him within the meaning of the section. No doubt it may be said, in one sense, that the landlord's "estate" contributes to the result; but in that sense "estate" is used in its popular signification, meaning the land of which a particular proprietor is the landlord, and not his reversion or legal interest in the land. The increased value during the lease is no more contributed to by the landlord than he contributes to the growth of grass on the pasture-land which he has demised as such to his tenant. This view is sustained by the 5th sub-section of the same 8th section, which requires the landlord, on exercising his right of pre-emption on sale of his tenant's holding, to pay the specified value for the tenancy, together with the value of any improvements made by the tenant since such specified value was fixed. Value of improvements here must mean true value, and excludes reduction by reason of their enjoyment. I, however, offer no opinion whether possession after the termination of a lease, whether under a new contract or not, or possession under a tenancy from year to year, which a landlord might have, but in fact has not, determined, may not amount to compensation within the meaning of the 9th sub-section.

The 5th and last question is, "Whether the lease of 1846 excludes the tenant from any interest in respect of the house built before the execution of that lease, in the ascertainment of the fair rent of his holding?" The facts material to the question appear to be as follows:—Prior to 1842 the lands in question were in the possession of one James M'Kee as tenant under the Earl of Mountcashel, but at what rent does not appear. In 1842 the lands were valued by valuers appointed by the Earl, at the yearly rent of £26 11s. 6d. From the time of the valuation in 1842 this rent of £26 11s. 6d. was paid by James M'Kee. M'Kee, being thus tenant, at some time about the year 1844 erected a house, using in some degree for that purpose the materials of an older house previously existing. Prior to the building of this house the agent verbally offered M'Kee a lease; and, as I understand the case, offered it at the rent of £26 11s. 6d. M'Kee at the time of the erection of the house understood that he could have a lease if he desired. No actual contract for the lease was, however, made prior to the building of the house; but on 2nd March, 1846, being after the completion of the house, the Earl leased the premises to M'Kee for thirty years from 1st November, 1845, at the same rent, £26 11s. 6d., which M'Kee had previously paid. Upon the 27th October, 1846, M'Kee assigned to John Adams, who died about 1869, and it is admitted that the estate and interest of John Adams in the holding became upon his death legally vested in David Adams, the present tenant. The lease expired on 1st November, 1875. Those are the only facts in relation to this question found by the case, and it is to be remembered that by the section of the statute under which this case is stated, our jurisdiction is to determine questions of law only. We are not at liberty to assume facts, or even to draw an inference of fact from facts stated in the case. The opinion I have expressed upon the 2nd question shows that, in my view, the question whether this lease excludes the tenant from any interest in respect of the house in the ascertainment of the fair rent of his holding, is identical with another, "whether the lease excludes the tenant from compensation (in respect of the building of the house) under the 4th section of the Act of 1870, as amended by the 7th section of the Act of 1881." The decision in *Holt v. Harberton*, as expounded by the reasons expressed for their judgment by the majority of the Court, coerces

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us to hold that, were the case governed by the Act of 1870 alone, the tenant would be so excluded. The question, then, must rest upon the 7th section of the Act of 1881—"a tenant on quitting his holding shall not be deprived of his right to receive compensation for improvements under the Act of 1870, by reason only of the determination, by surrender or otherwise, of the tenancy subsisting at the time when such improvements were made by such tenant or his predecessors in title, and the acceptance by him or them of a new tenancy." Now first, it is said by Mr. Holmes that the section does not apply in the present case, as the lease expired in 1875, and the law then regulating rights to compensation was the Act of 1870, under which it is conceded the tenant would have had no right to compensation had he then quit. He cannot, it is said, have been deprived by that lease of that which he never had—a right of compensation. In my opinion, this argument is unsustainable. This section amends the Act of 1870. That Act in its 4th section deals with claims for compensation for improvements on a tenant quitting his holding, and the 7th section (the amending enactment) must, from the date of the passing of the Act of 1881, be read into, and incorporated with the 4th section of the prior Act, and the section so amended is applicable to every claim in respect of a quitting after the passing of the Act of 1881. Had the old tenancy of 1842 not been determined by the acceptance of the lease of 1846, the tenant, if now quitting, would, under the Act of 1870, have had a right to compensation for the house, and in my opinion the effect of the legislation of 1881 is to prevent the determination of that old tenancy, and the acceptance of the lease of 1846, depriving the tenant of that right. I pass now from this question of time, and shall consider the case as if the 7th section had been a substantive enactment in the Act of 1870. The mode in which the argument in favour of the extinguishment of the tenant's rights is put is, as I understand it, thus:—By the lease of 1846 the tenant took a demise, not only of the land, but of the house which was upon the land, and even of the house in express terms. By the acceptance of this lease, he is at common law estopped from denying that the house, of which he so took a lease from the Earl of Mountcashel, was the property of the Earl, and his present claim to compensation for the building of that house is an assertion of fact contrary to his estoppel. Let me test this argument: a similar estoppel would arise although the house were not specifically mentioned in the parcels of the lease. The house would have passed as part of the demised premises, whether mentioned or not. Again, although this lease is by indenture, a similar estoppel would arise in every case of a letting even by parol. The effect, therefore, of this reasoning, if pressed to its legitimate limits, would be, that a tenant holding over, after the expiration of his lease, and accepting a new tenancy from his landlord, would by such acceptance estop himself from denying that everything upon the land, including improvements made by himself, were the property of the landlord, and would therefore extinguish his claim to compensation.\* If this be right, what is the scope or

\* In giving judgment on April 1, 1882, at Lifford, Mr. Bourke (Sub-Com.), said: On Mr. Ferguson's estate the farms we had to view were situate about two miles beyond Carndonagh. In these cases we were not given any evidence of value by the landlord, and we only had the valuation of Mr. Doherty for the tenants to assist us. This property appears to have been held under an old lease, dated in 1790. The property, on the expiration of this old lease, was relet by lease dated 1840, for a term of thirty-one years, and the tenants have since held at the same rents as tenants from year to year. Mr. M'Cay has asked me to hold that, in accordance with the decision given in *Adams v. Dunseath*, the houses and buildings erected on the lands previous to the execution of the lease are the property of the landlord; but, I think from the lease which was handed in to me that these leases differ from the lease of the 2nd March,

effect of the 7th section? Such an argument, if sustainable, would simply repeal it. In answer to this, it is said that although the legal effect of the lease would, before the Act of 1881, have been the same whether the house were or were not mentioned in the parcels, yet the fact of its having been so mentioned has become material since the Act, because it shows that the subject-matter of the lease was something different from the subject-matter of the old tenancy; and this, it is said, establishes a new relation between the landlord and tenant, and notwithstanding the Act of 1881 constitutes a new *terminus a quo* in respect of improvements. I confess myself unable to see that the subject-matter of the old tenancy when it was determined was anything different from the subject-matter of the new lease. The house, having been built during the old tenancy, became part of the land, the subject-matter of that old tenancy, and the rent reserved upon that old tenancy issued as well out of the house (after it had been built) as out of any other part of the land. It may not, therefore, be strictly necessary to consider whether the circumstances of the subject-matter of the new tenancy not being altogether identical with that of the old would necessarily exclude the application of the 7th section. Nevertheless, I do not wish that any misapprehension should exist as to my opinion on the question. That section does not limit the new tenancy (the acceptance of which, is not *per se* to extinguish the tenant's right) to a tenancy at the same rent, for the same terms, or upon the same conditions as the old. It is most general in its terms, "the acceptance of a new tenancy." No doubt, the section itself shows that the new tenancy must include part of the old holding, because the improvements to which the claim is to be preserved are improvements on the old holding, but I cannot be party to a construction which would determine that the incorporation in the new holding of a parcel of land not in the old, or the consolidation into one of two previously separate holdings, would not be within the protection of the section. The reasoning of my learned predecessor in *Holt v. Herberton*, where he relied upon the dealing of the parties having created a new relation, and given rise to a new subject-matter, was applied to the Act of 1870 alone, not to that Act as amended by the statute of 1881. It must, of course, be admitted that there may be a determination of a tenancy, and the acceptance by the tenant of a new tenancy of such a character, and under such circumstances as to extinguish the claim for compensation for prior improvements, and, in my opinion, this Court cannot satisfactorily base their answer to the 5th question upon any principle, without determining what is the essential element in the new tenancy, or what the circumstances attending it, which will work such extinguishment. This question is, in my mind, capable of an easy answer. That which by the former law effected the extinguishment was the passing of the interest of the tenant, by surrender or otherwise, into the landlord, not the acceptance of the new tenancy. The acceptance of the new tenancy was of value only because it was it which worked the surrender; but the extinguishment itself was caused by the surrender, and not by the acceptance of the new tenancy, if that acceptance were separate and distinct from the surrender of the old. The terms, therefore, of the new tenancy were immaterial upon the question of extinguishment. Now, the legislature having declared that the determination of an old, and the acceptance of a new tenancy, shall not

1864, on which the judgment in *Adams v. Dunseath* was given; for in that lease the lands were demised with all houses and buildings thereunto belonging, and the lease now before me only demises "all that and those that part or parcel of the town and lands of Carrickafodden as now in the possession of him the said lessee," and does not in any way purport to demise the house.

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of itself extinguish the claim, it in my opinion necessarily follows that, in order to work that extinguishment, there must be that in the transaction which under the old law would have had that effect without a change of tenancy. I am not aware of any mode by which, under such circumstances, this could have been accomplished save by contract. In my opinion, therefore, the real question in every such case is now one of contract. Did the landlord grant the new tenancy in consideration of the improvements, and did the tenant accept such new tenancy in satisfaction of such improvements? In other words, the tribunal charged with determining the question has not to deal with what was in the landlord's mind, uncommunicated to the tenant, nor with the proposal of the landlord, unaccepted by the tenant; but ought upon a review of all the facts to determine whether the transaction in itself amounted to an accord and satisfaction—an agreement to accept in satisfaction, and a giving and accepting in satisfaction, in pursuance of that agreement. This, at all events, has the merit of putting the question upon the plain and intelligible ground, of (once the surrender and acceptance of a new tenancy has been declared by the legislature insufficient) requiring the existence of that which, at common law, without surrender or new tenancy, would work an extinguishment. It may be said, and I have no doubt will be said, that in this construction I am giving no effect to the word "only" in the section—"the tenant shall not be deprived of his right by reason *only* of the determination of the tenancy." I answer, that effect may and ought to be given to the surrender of the new tenancy, but only as one of several circumstances all material upon the question of accord and satisfaction. Viewing the case in this light, I must answer this 5th question in the negative. I have no authority to determine, as a matter of fact, whether the tenant did or did not accept this lease in satisfaction of any claim which he might have in respect of the house. Considering that in 1846 the tenant had no legal ground to claim compensation for his house, it might not be an unreasonable inference that he willingly accepted a lease of it for thirty-one years, as such compensation; but it might, upon the other hand, be said that this lease was offered at the same rent before the house was built, and that it does not appear that the offer was made upon the condition, or with the intention, that the house should be built. But these are matters of fact, which I decline to discuss. We have nothing further before us than the determination of one tenancy, and the acceptance of another; and, in my opinion, these two circumstances are in themselves insufficient to exclude the tenant's claim for prior improvements. I wish it, however, to be distinctly understood that I give no affirmative opinion that the tenant is entitled to compensation for the house. Before doing so I should have the determination of the Commissioners upon the matter of fact that the lease had not been executed in satisfaction of the claim.

I have but one word to add. It is in reference to the new tenancy created in 1875. To this the reasoning in respect of the transaction of 1846 equally applies. There is no finding of fact as to whether the new letting was or was not accepted in satisfaction of the tenant's claim for improvements. It is stated that after the expiration of the lease the premises were re-valued with a view to a re-adjustment of the rent, that the amount of the re-valuation was £31 17s. 6d., and that Mr. Raphael, the valuer, said that in valuing the lands he took no improvements into consideration. There is, however, absent from the case, in reference to this letting, any statement that the new tenancy was accepted in satisfaction of the tenant's claim.

In result, therefore, I concur with Mr. Justice O'Hagan and Mr. Commissioner Litton as to the meaning of "tenant and his predecessors in title" in the 8th section; but, I have found myself coerced to arrive at a

conclusion different from theirs as to the applicability of the final clause of the 4th section of the Act of 1870 in the determination of the fair rent under the 8th section of the Act of 1881. In a case, however, of this importance, I think it right to guard myself against expressing an opinion upon any of the questions discussed in their very clear and able judgments, other than those which have now been made the subject of our express decision.

DEASY, L.J.—I shall now state the views I have formed respecting the questions before the Court, and I do so entirely in deference to the opinions of my brethren on the bench. I should say, in the first place, that I have had very grave doubts as to whether this was a proceeding at all within the Act of Parliament. The Act of Parliament says, in the 48th section, that the Land Commissioners may state a case in respect to any questions of law arising on such proceedings for the consideration and opinion of the Court of Appeal. In this matter we stand here in the same relation to the Land Commission as do the English judges when called in to the House of Lords. The judges of the Court below were bound to state to us a question of law, and to preface that by a finding on facts by which we are bound, and from which we have no right to deviate. I have met with a case which went before the House of Lords, where the English judges refused to answer questions put to them by the House of Lords, because they involved more than questions of law, and the House of Lords yielded to that. On reading the present case stated, I was at first of opinion that we ought to send it back to the Commissioners in order that they might recast it, and comply exactly with the statute as to stating the facts, and state the question of law upon which they wished the opinion of the Court.\* But other and wiser counsels prevailed, and the majority of the judges were of opinion—wisely of opinion—that it would be better to endeavour, in the interest and alleged importance of the case, to dispose of it in some way. Accordingly, five questions have been evolved from the documents submitted to us by the Commissioners, only one of which was stated by the Commissioners themselves. Even the way in which the case came before us was very embarrassing. In the course of the discussion, when counsel stated a fact, I remarked that it was not found in the case. "No," I was told, "but it was implied in one of the submitted questions." Again, on another occasion, I met with an answer that a certain fact was not stated in the case, but was to be found in the judgments of one of the Commissioners. That was not complying with the provisions of the Act. Whether the Court below will derive very material assistance from what has passed now, it was for them to say. For the future I hope they will not submit a case for the opinion of the Court unless they comply with the plain directions of the Act—to give a plain statement of facts: otherwise, we may refuse to answer.

Now, the first question evolved by the Master of the Rolls from the case sent to us by the Land Court is—What is the true meaning of the word "improvements" in the 8th sub-section of section 8 of the Land Act of 1881? Thinking that, in deference to the opinions of the other members of the Court, I ought to answer it, though it is not one of the questions put to us by the Court, nor, as I think, necessarily implied in any of those questions, my answer to it is, that the word

\* See *Pardon v. Earl of Longford*, 11 Ir. L. T. Rep. 141, where a petition of appeal, not having in compliance with 3 G. O. 1871, stated the material facts of the case, and the grounds upon which the order appealed from was sought to be set aside, the Court of Appeal in Chancery declined to hear the appeal, but allowed the appellants to file an amended petition. And as to the statement of technical evidence, see 16 Ir. L. T. & S. J. 86.—[E. N. B.]

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"improvements," in the sub-section referred to, must be construed as having the same meaning as that which it has in the Act of 1870, because section 57 of the Act of 1881 enacts that any words or expressions in this Act which are not thereby defined, and are defined in the Act of 1870, shall, unless there is something in the context repugnant thereto, have the same meaning as in that Act; and the Act of 1870, except so far as it is expressly varied or altered by this Act, or is inconsistent therewith, and this Act shall be construed as one Act. There is no definition of the word "improvements" in the Act of 1881, and therefore I must refer to the definition of that word in the Act of 1870; and there I find that section 70 says:—"The term 'improvements' shall mean, in relation to a holding—1. Any work which being executed adds to the letting value of the holding on which it is executed, and is suitable to such holding; also, 2. Tillages, manures, or other like farming works, the benefit of which is unexhausted at the time of the tenant quitting his holding." I find nothing in the sub-section referred to which is inconsistent with or repugnant to the application to it of the definition which is contained in the Act of 1870.

Then we have to consider how the improvements stated to have been made in the present case are to be dealt with. There are four classes of improvements, as to three of which questions have been put by the Land Court: (1.) The house built by James M'Kee before the lease of 2nd March, 1846. (2.) Improvements made by John Adams, the father of David, after the assignment of the lease. (3.) Improvements made by David Adams after the death of John, and during currency of lease. (4.) Improvements by David Adams on a piece of bog which he took during currency of lease, and which, after expiration of lease, he continued to hold with the demised premises, at one rent, £36 7s. 6d. No question is asked as to the improvements made by the present tenant, except so far as they are involved in questions 4 and 5, which relate to improvements made during the currency of the lease of 1846.

As to the house, I think the case is governed by the decision in *Holt v. Harberton*, where it was decided by eleven judges that a tenant who built a house, under circumstances precisely similar to those in the present, was not entitled to compensation in respect of it at the expiration of the lease granted subsequently to its erection, but that the house would become then the absolute property of the landlord, discharged of any claim by the tenant. In that case, as in this, the tenant held as a yearly tenant, and while so holding built on the lands so held the house for which he claimed to be entitled to compensation. He afterwards took a lease of those and other adjoining lands, and undoubtedly the building of the house was the inducement which led to the granting of the subsequent lease; but there was no contract that, in consideration of the tenant's building the house, the landlord should grant the lease. The granting of the lease was a purely voluntary act on the part of the landlord, and the word "consideration," referred to and relied on by O'Hagan, J., was used in its popular, and not in its legal sense. That is precisely the case here; and we did decide, and intended to decide, the precise question here involved. There Lord O'Hagan says: "Two things are plain; first, that when the house was built the tenant had no legal right to compensation, and, secondly, that the lease of 1844 worked as a surrender by operation of law of the antecedent tenancy, estopping the lessee who accepted it from any denial of the lessor's right to make it, and giving him a title new, and changed in all respects as to the quantity of his land, the rent to be paid by him, and the condition of his tenancy. This being so, the question is whether, under such circumstances, it is possible under the 6th section of the Land Act to allow the claim to register the house as an improvement." All former title to the lands and improvement upon

them was surrendered and done away with by the acceptance of that lease, and there is no other title to which he can be deemed a successor but the title under it. Before 1844, the father held other premises at another rent by another tenure. His title to them did not and could not devolve on his son, because he consented to its destruction. What did devolve on the appellant was the new title substituted for the old under the lease, and we cannot go behind it and declare him to have succeeded to a title which was extinguished. The circumstances here are precisely the same as in that case, except that here there was no additional land demised; and, therefore, I think that the present case is governed by that decision. O'Hagan, J., relies on the judgment of Chief Baron Pigot in that case. But he arrived at the same conclusion as the other ten, though for different reasons, not expressing any dissent from their judgment. Surely that does not impair the authority of the other ten, but on the contrary gives it greater force. He says, also, I am bound to say, it seems not to have decided the abstract principle contended for. Unquestionably, under the circumstances of this case, all former title had been surrendered and done away with, it being taken as assumed that the new lease was granted in consideration of the circumstance of the dwelling-house having been erected. But the passages from the judgment which I have read show that ten of the judges did decide the abstract principle that the lease destroyed the claim for compensation. At the time the Act of 1881 was passed, this house, therefore, was unquestionably the landlord's property, and the tenant had no right to claim compensation in respect of it. I can see nothing in that Act which has taken away that property from the landlord, and transferred it to the tenant. Reliance is placed on the 1st clause of section 7, as having that effect; but that clause only deals with tenants who had a right to compensation under the Act of 1870. A tenant, on quitting his holding, shall not be "deprived" of his right to receive compensation for improvements under the Act of 1870 by reason only of the determination by surrender or otherwise of the tenancy subsisting at the time when such improvements were made by such tenant or his predecessors in title, and the acceptance by him or them of a new tenancy. But here there never was a right to claim compensation for this house existing in the present tenant, or in his predecessors in title, and he was not deprived of anything in respect of this house by "reason only" of the determination of the tenancy subsisting at the time when such improvements—that is, improvements for which he might otherwise have got compensation under the Act of 1870—were made that Act had nothing to do with that house, and never gave him any claim in respect of it.

With respect to improvements made during the currency of the lease of 1846, by the father of David Adams, they became at its termination the property of the landlord. That was undoubtedly so at common law; and the Act of 1870 only altered the law to this extent, that it gave to the tenant on quitting his holding a right to get from his landlord compensation for all such improvements made by him or his predecessors in title, as were suitable to the holding and increased its letting value. But it had been held that where there had been a change of tenancy after the improvements had been made, by the acceptance by the tenant or his predecessors in title of a new tenancy, all right to compensation for improvements made previously to such change of tenancy was at an end. It was to remedy this that clause 7 was introduced into the Act of 1881; and it provides for that case in express terms, and it is confined to that case, and deals only with tenants quitting their holdings and claiming compensation for improvements. Whether this tenant would come within its provisions it is not necessary to decide. That would depend (1) on the question whether the sec-



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tion is retrospective;" (2) on the effect to be given to the words "determination by surrender or otherwise," in the 1st clause of section 7, which is the only part of it applicable to this case. The rule is that enactments altering procedure are retrospective in their operation, but those interfering with vested rights are not so in default of specific legislation. [His Lordship referred to *M'Arsey v. Hannan*, 13 Ir. C. L. Rep. 70, stating that it was held in the Exchequer Chamber in that case that s. 8 of the L. & T. Act, 1860, was not retrospective.] That question was not argued, however, in the present case. As to whether the words "by surrender or otherwise" apply at all to a case where the lease expires by efflux of time, the very addition of those words after the word "determination" may be taken to point to the negative conclusion; why not stop with "surrender?" But, I express no opinion upon either of those questions, as it is not necessary to do so. Assuming that section 7 does apply, that would not change the property in the improvements. The right to claim compensation for improvements, and the obligation to pay, assume, and proceed on the assumption, that the improvements to be compensated for have become the property of the landlord, subject to the right of the tenant to compensation for them at the end of the tenancy. All that section 7 gives to the tenant is a right on quitting his holding to receive compensation for improvements made by his predecessors in title, and relief in asserting such right from the previous consequences of acceptance of a new tenancy after the improvements were made. But the tenant here is not quitting his holding. He is seeking to get a new lease of it for fifteen years, renewable *toties quoties* at a rent to be fixed by the Court. How can that contingent and future right, which may never be exercised, avail him to deprive the landlord of rent which he would otherwise be entitled to? It ought to be taken into account, under the 1st clause of section 8, as forming part of "the interest of the tenant" in the land in question. But it would be difficult to put any pecuniary value on it.

The Commissioners have not put any question to us as to the meaning of the words "predecessors in title" in section 9 of clause 8. But it has been considered as involved in this case, and therefore is put to us directly in one of the five questions submitted to us, and it has become necessary for me to state my opinion respecting it. I consider that those words should receive their ordinary legal interpretation. This sub-section involves the transfer of a large amount of property from landlords to tenants. Previously to the Act of 1881, all improvements made by the tenant or his predecessors in title became on the termination of the tenancy the property of the landlord, subject to the right of the tenant to get compensation for them. By this section the tenant gets the right to enjoy them for the statutable period without being charged any rent for them. That may be politic, wise and just, and I do not question its policy, its wisdom, or its justice. But I think that such a great change in the law, involving such serious consequences, ought not to be extended by construction beyond the legal signification of the words used by the legislature in effecting it. It ought not to be extended to cases not included in its terms, merely by inferences from another clause dealing with another subject-matter, and which is not referred to in it directly or indirectly. It is a rule in the construction of statutes that words of known legal import are to be considered as having been used in their technical sense or according to their strict interpretation, unless there appears a manifest intention of using them in their popular sense: *Dwarris*, p. 578; *Poole v. Poole*, 3 B. & P. 620; *Jesson v. Wright*, 2 Bligh, 56. As Lord Redesdale observes: "It is dangerous where words have a fixed legal effect, to suffer them to be controlled without some clear expres-

sion, or necessary implication." "It is a very safe rule of construction to adhere to the words of an Act according to their grammatical and natural sense, unless it appears clearly from the context they were intended to be used in some other sense:" *per Parke, J.*, in *Rex v. Ditchet*, 9 B. & C. 186. The construction contended for must greatly extend the area of litigation between landlord and tenant; for it will, as O'Hagan, J., says, make the limit of the right of the tenant to improvements extend as far back as human testimony can be got, and will therefore give rise to increased litigation. The intention to effect this ought not to be lightly ascribed to the legislature by a strained construction of these words; I can only gather their intention from their words, and I cannot construe the words predecessors in title as if they were "predecessors in occupancy."

And now, with respect to the fixing of a fair rent and the ascertainment of compensation for improvements to the tenant, I think we cannot and ought not to lay down any rule, or enunciate any principle which can or ought to bind the Court in the exercise of the unlimited discretion as to both subjects vested in them by Parliament. By the final clause of section 8 (1) they are empowered and directed, "After hearing the parties, and having regard to the interests of the landlord and tenant respectively, and considering all the circumstances of the case, holding, and district, to determine what is the fair rent that should be paid." It is impossible to frame words giving a larger discretionary power. What authority have we to limit the Commissioners in the exercise of that power without which the Act could not be carried into practical operation? In the same way, by sub-section 9 they are invested with unlimited power to decide what amounts to compensation for improvements made by the tenant or his predecessors in title. They are to say in each case whether the tenant or his predecessors has or have "in their opinion," been compensated for improvements made by him or them. There also, as in ascertaining what is a fair rent, it is impossible to lay down any rule, or enunciate any principle as to what are to be elements which should enter into the formation of their opinion as to what is compensation. They may not state any principle, but their "opinion" on the matter is conclusive. The Court is an exceptional tribunal created by Parliament, and invested by it with the unlimited discretionary powers to which I have referred, in order to carry out the great objects of public policy which Parliament had in view, and for the effectuating of which it was necessary that the Judges of the new Court should possess those powers. The present Commissioners have been appointed by Parliament, and they have been provided with a numerous official staff to assist them in the discharge of their arduous duties. They are provided with Sub-Commissioners, whose duty is to go into the different localities, hear evidence on the spot, and inspect the holdings which are the subject of controversy. In cases of appeal, they can report the evidence taken before them to the Commissioners, who can take additional evidence. They have, besides, two official valuers, who make confidential reports to them respecting any holding which may be the subject of an appeal. Notwithstanding all that assistance, their duties are arduous and responsible. They have, as it were, to mediate between conflicting classes. But I am confident that they will discharge their duties with zeal, industry, and impartiality, actuated only by an anxious desire to do justice between landlord and tenant in all cases that may come before them.

FRIZGIBBON, L.J.—In consequence of observations which the Lord Chancellor has thought it necessary to make, I wish to state, at the outset, that my judgment and all my remarks in this case proceed upon the assumption that the holding in question was not proved to be subject to any usage capable of affecting the ascertainment of a fair rent. I make this assumption

\* Cf. *Smith v. Colley*, 16 Ir. L. T. Rep. 8; *Kearney v. Cahill*, 15 Ir. L. T. 518, and cases there noted.—[E. N. B.]

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because no such usage is mentioned in the special case, nor during three days' argument has it been referred to at the bar, and also because question No. 4 upon the case is founded upon the applicability of part of the 4th section of the Act of 1870, which in terms relates only to those tenants who are not entitled to compensation under the tenant-right sections 1 and 2, or who do not make any claim under either of those sections. If, therefore, the holding of David Adams be subject to any usage regulating or affecting the determination of its fair rent, the case has been stated under a misapprehension of the law applicable to it, or in the attempt, always difficult and dangerous, to obtain a decision of abstract principles for general application upon the facts of a single case, special rights of the individual litigants have been ignored. It may be that, owing to the lease or otherwise, no usage affected this holding, or it may be that no substantial difference of rights is involved in the distinction; and I am not aware that any variety of the Ulster custom excludes or affects the right of the landlord to a fairly valued rent, ascertainable from time to time upon principles at least analogous to those guiding the determination of a fair rent under the Act of 1881.

Upon the first question of law which we have eliminated from the case, I have to declare my concurrence in the unanimous judgment of this Court upon the error which seems to pervade the whole decision of the Land Commission, arising from the confusion of the term "improvements" with the increase of letting value consequent upon them, and to emphasise my own opinion of the practical importance of observing the distinction which the majority of the Commissioners have hitherto overlooked. The existence of the mistake appears most plainly upon the judgment of Mr. Litton, who states the matter as a definite problem in subtraction. He says: "The competition value, less by the good-will arising from actual occupation, I call the commercial value of the holding." "From the result thus ascertained must be deducted the amount which the improvements of the tenant or his predecessors in title have contributed to the present letting value." "The question is, to what extent has the letting value been increased by the improvement, if at all? Deducting the latter, when ascertained, from the former, we get a result which ought to represent a fair rent." This result he calls "the commercial value, reduced by the value of the tenant's interest in his improvements." In justice to Mr. Litton, it is to be observed that he seems to have fallen into this mistake by adopting the language of the parliamentary paper which he quotes; but though the Judicial Commissioner does not refer to the same guide for the interpretation of the statute, Mr. Justice O'Hagan distinctly adopted Mr. Litton's conclusion. He says: "Let us take the case of two neighbouring tenants holding under lease for the same term and at the same rent, say £80 a year each. One tenant, by industry and outlay, effects improvements which make the holding worth £60 a year; the other does not improve at all, and his holding remains worth £80. At the end of the lease is the landlord, under this Act, to be entitled to assess the improving man at the full letting value of his holding, on the plea that he had compensated him? It seems to me that this would simply be a judicial repeal of the clause. In this view Mr. Litton concurs; but I regret to say that our colleague Mr. Vernon does not take the same view, and thinks that our construction would work great injustice and hardship upon landlords." I am very far indeed from holding that a landlord could, in the case put, be entitled to assess the improving tenant at the full letting value of his holding, or in any ordinary case at any rent nearly approaching it; but the construction which Mr. Litton has stated, and in which the Judicial Commissioner has concurred, would give to the tenant in the case put the whole increase of letting value consequent upon his improvements, namely, £80 a year,

wholly irrespective of their cost or value. The injustice and hardship of such a construction, which was not only apparent to Mr. Vernon, but was pointed out by Mr. Butt, especially in paragraphs 147, 193, and 194 of his remarkable work, may be easily illustrated by one or two examples:—Every improvement must to some extent, greater or less, depend for its return upon the holding on which the improving work is executed; but the contribution from the holding, as distinguished from that from the work, may, according to circumstances, vary from almost nothing to the largest part of the profit. In the case of a house, the building is generally almost the whole source of the increased letting value; yet, even there the landlord is entitled to so much of the rent of the house as is derived from its site; and as similar houses in different situations bring in, by reason of their situations, different returns upon the outlay incurred in building them, even in such cases the proportion of such return which is justly attributable to the landlord's interest may largely vary. But take other classes of improvements. Two tenants holding at the same rent expend each the same amount of industry, skill and money upon drainage or reclamation. The letting value of the one holding—poor, thankless soil, or disadvantageously circumstanced—is increased by £50 a year; while in the other case the land, from its inherent qualities, or its more favourable circumstances, returns three or four times as much. The capital invested by the tenant in the improvement is in each case the same; the difference of return arises from the utilisation of advantages, or the development of resources, in which the landlord has the largest if not the whole interest. As a matter of fact, such advantages and resources are not paid for in advance; but when they are utilised and developed the landlord becomes entitled to his fair share of the return from them; yet, the decision before us would stereotype the maximum interest of the landlord in his property as its letting value at the worst point to which evidence could carry back the description of its condition. It is not for us to determine the amount of rent in any case, but we may direct attention to the large proportion of the letting value which in the present instance seems to be affected by the erroneous principle of the judgment, and to the large proportion of the rental which may be involved in its correction. Mr. Justice O'Hagan tells us that, according to the evidence of the tenant's valuers, §22 2s. 8d. only was the letting value, excluding the improvements, of the lands which, if in the hands of the landlord, might be worth §44, while the official valuers fixed the setting value of the land as it stood (excluding the buildings altogether) at £87 10s., and in the opinion of the learned Judge an allowance for such only of the improvements as were made during the lease would reduce the rent of £87 10s. at the least to the "judicial rent" of £30 15s. The proportion of value attributable to the improvements, therefore, varies from nearly 50 per cent. to over 20 per cent. (excluding the house) of the gross letting value of the holding. It will, of course, be understood that before any part of this difference is allowed to the landlord, the Land Commission should estimate the present value of the improving works, or, as Mr. Butt well expresses it, should ascertain what would it cost the landlord to put the farm into its present condition, supposing the improvements had never been executed, and upon that amount the improving tenant is entitled to a just and, I would add, a liberal return, while (except in respect of considerations of reduction and compensation) the landlord should not be allowed any rent whatever. In respect of the full present value of the additional capital which his improvements have added to the holding, the tenant should be scrupulously protected in the enjoyment of a just and even of an ample return, but, after this has been provided for, the landlord is equally entitled to the return derived from the more active and profitable use of his interest in the holding.

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I guard myself, as the Master of the Rolls has done, from saying that the whole surplus profit belongs to the landlord, as I do not desire to prejudge the question which is not now before us, but which may hereafter arise, whether the tenant under the Acts of 1870 and 1881 has not an interest in the holding over and above his statutory tenure and his rights to compensation. Thus far, however, our unanimous statement of the rule appears to me to lead—the landlord is entitled, as part of the fair rent of the holding, to so much of any increase of letting value consequent upon improvements, after making a fair return to the tenant upon the value of the improving works, as is derived from the utilisation of the landlord's interest in the inherent qualities, advantages, and resources of the holding. Of course, I have hitherto discussed the landlord's right independently of any additional allowance to which he may be entitled under the provisions as to compensation, and of any reduction of the tenant's right by reason of enjoyment, under the provisions applicable to particular classes of improvements.

Upon the next question, namely, Whether the terms "tenant or his predecessors in title," in section 8, sub-section 9, have the same meaning as in section 7 of the Act of 1881, I concur in result with the Master of the Rolls and the Chief Baron, upon considerations also applicable to the 3rd question, "Whether the provisions of the final paragraph of the Act of 1870, section 4, are applicable to such improvements in determining fair rent under the Act of 1881, section 8?" The statutes of 1870 and 1881 are not merely *in pari materia*; they are, under section 57 of the latter Act, "to be construed together as one Act," except where inconsistent. Wherever the amount of fair rent is to be determined, the first duty imposed upon the Court is to "have regard to the interests of the landlord and tenant respectively." I cannot proceed to ascertain those interests while a tenancy continues, upon any other principles than those which are to regulate them if the tenant quits his holding. No other interest of the tenant anywhere appears upon the Acts than that for which he should receive compensation, or the true value of which should be ascertained, if he were quitting his holding or selling his tenancy under the landlord's power of pre-emption. What under his power of sale he can sell is only what he possesses himself; and this, upon quitting his holding, he must give to his landlord, upon the terms of receiving the judicially ascertained "true value," or the statutory compensation. Though the compensation on quitting is limited in certain cases where the true value ascertainable on sale is not, yet, in all events, whether the tenant quits his holding, or keeps it in his own hands, or sells to his landlord, or to a purchaser in the open market, I cannot see that the tenant's interest in the holding must not be valued and considered as subject either to a fair rent, payable at the time, or to the liability to have the present rent altered at any moment to a fair rent; and the first element of the value of the holding must be the amount of the rent to which it is fairly liable. Therefore, I cannot understand how the true value of that interest can be ascertained otherwise than by determining the fair rent, and valuing the tenancy as practically charged with the amount of that fair rent. If, and as far as, any improvements may have ceased to be the subject of compensation on quitting, or to be included in the property for which the landlord must pay the true value if he exercises his power of pre-emption, so far also must they be, as it seems to me, treated as having ceased to be included in that "interest of the tenant" to which, in ascertaining the fair rent, the court is directed to have regard; and so far, as a necessary consequence, must regard be had to them as part of the landlord's interest, and as *pro tanto* a source of fair rent. Thus, as it seems to me, without express words, but by necessary implication, we are obliged to read

the provisions of section 4 of the Act of 1870 as incorporated with section 7 of the Act of 1881, and both as included in the elements of the respective interests of the landlord and tenant, to which, in fixing a fair rent under section 8, the Court must have regard. The impossibility of consistently divorcing the elements of fair rent from those of compensation, or of construing the terms "tenant or his predecessors in title," differently in section 7 and in section 8, sub-section 9, was, to my mind, demonstrated by the cross-arguments into which counsel at both sides were driven upon the two sections, by the attempt to construe each section in the sense most favourable to their respective clients. Sergeant Hemphill was compelled to contend that a tenant, so long as he held his tenancy, was entitled to appropriate for nothing the value of improvements for which, if he were quitting his holding, he could not claim any compensation; while Mr. Holmes was forced to argue that the landlord was entitled, during the tenancy, to rent upon the value of improvements for which, if the tenancy were determined, he must pay full compensation to the tenant. In truth, the fair rent, and the allowance as against that rent for improvements, are, as it seems to me, but the annual equivalents, calculated with regard to present value and future enjoyment, for the capital values of the interests of the landlord and tenant respectively, which, upon the severance of their interests would be ascertained in fixing compensation. But in addition to these considerations, I think, as a matter of verbal construction, that in the 1st paragraph of section 7, in the mention of the "tenancy subsisting at the time when such improvements were made by such tenant or his predecessors in title," the term "predecessors in title" must mean those who held the tenancy before such a determination of a subsisting tenancy, and such an acceptance of a new tenancy as is dealt with by the section; and I cannot think that the same words, when used without any apparent reason for discarding the effect of section 7 in the subsequent provision, section 8, sub-section 9, of the same statute can be construed as unaffected by the previous clause. It is quite a different matter, upon which I am sorry to say I must more fully explain myself hereafter, what is the effect of section 7, what is the nature of the break in the title which is within its operation, and what is the continuity of title which, notwithstanding its provisions, must still subsist to satisfy the other provisions of both the Acts. For the present, I hold that section 7 regulates the effect to be given to the terms "tenant or his predecessors in title" as used in section 8, sub-section 9, but at the same time I stop far short of the conclusion that section 7 practically abolishes the necessity for tracing title, renders continuity of title in a defined tenancy immaterial, or reduces the meaning of succession in title to mere succession of occupancy in the capacity of tenant. I, also, hold that the term "tenant" is used throughout the Acts not to designate merely the same person, but a person who at the different periods in question fulfils the character of tenant of the same holding under such a title as the Acts deem continuous. No one could, under any circumstances, in my opinion, claim, as "tenant" for works done by himself for which, if the holding had passed to a successor, such successor could not claim. Suppose, for example, A. B. executed works upon a holding and was evicted, or surrendered, and the holding was afterwards relet to C. D. under a new contract of tenancy, A. B. could not, on becoming C. D.'s successor in the new tenancy, claim to have any benefit under section 8, sub-section 9, to which C. D. was not entitled, nor call for a disallowance of rent on the ground that the improvements had been executed by himself as tenant at a former time.

The third question is little more than a corollary to the second question, upon what I will call the principle of uniform and consistent interpretation applied to

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both Acts. The final clause of section 4 of the Act of 1870 is not repealed; section 7 of the Act of 1881 expressly deals with rights to compensation under the Act of 1870, and no such right could escape the operation of that clause; therefore, a provision which confers no new right, but in terms only saves the tenant from the deprivation of a right otherwise conferred, cannot exclude restrictions which were concomitant upon that right from its origin. Then if the prohibition to allow rent in respect of improvements must, as I think it must, apply only to the tenant's interest in those improvements, and if that interest is for the purpose of fixing a fair rent to be ascertained by reference to the amount which would compensate the tenant for it if he were quitting his holding, it follows that the third question must be answered in the affirmative.

The fourth question eliminated by us is substantially the same as the fifth question stated in the special case, abstracting considerations of fact, and adding the important words "by the landlord," which were omitted from the case. Upon this question I entertain a clear and unqualified opinion in favour of the tenant. The question is, "Whether the enjoyment, during the currency of a lease, of improvements made by a tenant during such lease is a compensation for such improvements by the landlord within the meaning of section 8, sub-section 9, of the Act of 1881?" The question does not apply to reductions of the tenant's claim under the final clause of section 4 of the Act of 1870, nor to cases in which improvements made during a lease are in whole or in part brought within the consideration of the contract for making the lease; and otherwise I hold it impossible that the tenant's title to the protection of the sub-section can be in anywise diminished by his enjoyment of all the profits which, by improvements or otherwise, he can lawfully make out of his leasehold, or that such enjoyment can be regarded as in any degree compensation by the landlord. When the landlord makes the lease, he wholly parts, in consideration of the rent and covenants, with all his interest during the term, as well in any capacity for improvement which the holding may possess as in all the other incidents of its use and occupation. Whatever the tenant during his term can lawfully derive from his holding is his own, and though the profits of his improvements may more than compensate him for his outlay, yet this compensation is only the reward of his own industry, skill, or capital applied to property which for the term of the demise is his own; and I think their full enjoyment so long as the lease lasts cannot be regarded as in any degree a compensation by the landlord. Though the Land Commission has not asked the much more important question which the facts of the case raised—whether the same principle must apply after the lease expires, the judgments of Mr. Justice O'Hagan and of Mr. Litton contain statements upon that subject so inconsistent with my view of the law, that, in order to prevent my answer to the question put from being misapplied or misunderstood, I feel bound to make some observations by way of caution, on a subject with which the Master of the Rolls and Chief Justice Morris have already dealt. In my judgment, the words "paid or otherwise compensated by the landlord or his predecessors in title," in their plain sense and in justice, include payment with the landlord's money, or compensation out of the landlord's property. A cash payment is contrasted with compensation by other means, and I think the terms include every form and manner of recoupment which the tenant receives, at the hands of his landlord, out of his landlord's pocket, or out of his landlord's estate, as an equivalent for his improvements. When the landlord, not being bound to do so by the terms of the tenancy or otherwise, permits an improving tenant to enjoy his holding at a rent below the fair letting value, and such permission is, under all the circumstances, referable to the tenant's improvements, it is justly to be regarded as *pro tanto* a compensation by

the landlord for the tenant's improvements—always, however, safeguarding in the first instance to the tenant a fair return for the value of those improvements, as part of the tenant's capital added to the holding. I agree that the Court may or may not infer, from the acts of the parties and the circumstances of any particular case, that the tenant's enjoyment is or is not to be regarded as compensation, but I dissent from the principle that the words "paid or otherwise compensated by the landlord" must mean "either actual payment, or some positive and direct consideration moving from the landlord to the tenant;" or that "occupation as tenant from year to year, after the expiration of a lease, cannot be deemed compensation, unless it be expressly shown that such occupation was permitted with direct regard to the antecedent improvements, and for the purpose of compensation." The question whether the tenant has been "compensated by the landlord" is in the very terms of the section one to be determined by "the opinion of the Court"—an elastic expression which seems to me inapplicable to the determination of a question of actual payment or of definite contract, but to be quite apposite to a matter resting upon the result of "considering all the circumstances of the case." The tenant must receive "something given or done or foregone" by the landlord as an equivalent for the improvements; but, I can conceive no reason for declining to find adequate evidence of compensation in the act of a landlord who gives over to an improving tenant, because he is an improving tenant, the soil with all its natural powers, at a price so far below its fair letting value of the landlord's interest as to recoup the tenant for his improvements. I cannot agree with Mr. Justice O'Hagan that the tenant under this rule would be "worse off under the Act of 1881 than he was under the Act of 1870." Under the final clause of the 4th section of the Act of 1870, as regards improvements made before the passing of the Act (to which improvements alone the clause applies), the Court must, in reduction of the tenant's claim, take into consideration the time during which he may have enjoyed the advantages of the improvements, whether enjoyed under a lease or other tenancy at a fixed rent or not; whereas, under the Act of 1881, the question of compensation can only arise in respect of advantages derived by the tenant from the landlord's voluntary permission to hold the lands at a rent so far below the fair letting value of the landlord's own interest therein as to afford to the tenant an equivalent for his improvements, which rent it is in the power of the landlord to increase.

There remains the question to which I am obliged to give the most ample consideration, on account of my position with respect to the differences of opinion existing upon it, viz., "Whether the lease of the 2nd of March, 1846, excludes the tenant from any interest in respect of the improvements made before the execution of that lease, in the ascertainment of the fair rent of the holding under the Act of 1881?" The principle upon which three members of the Court are enabled to construe the words "predecessors in title" in section 8, sub-section 9, as unaffected by section 7 of the Act of 1881 for them answers this question in the affirmative, independently of the special circumstances of the particular case, as the decision in *Holt v. Harberton* rules the point directly, unless the 7th section takes effect. The decision in which six members of the Court concur, and by which the final clause of section 4 of the Act of 1870 is applied to, and must in any case reduce any claim of the tenant, and confer upon the landlord a right to some rent in respect of the improvements made before the lease, now nearly forty years ago, brings down the amount dependent upon this question, as between David Adams and Jane Dunseath, at most, to some paltry figure. I farther understand the Master of the Rolls and the Lord Chief Baron to concur in the

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view which I am about to state, to this extent, that they hold that if the Land Commission should agree in my conclusions of fact, the lease should be treated as the *terminus* from which the tenant's rights must be taken to commence; and that the landlord must in that case be allowed a full and fair rent upon the present value of the house built in 1844. The difference which I understand to exist between them and me upon this question is, that upon the facts stated in this special case I feel bound to draw, or rather I find drawn, an inference of fact as to the nature and effect of the transactions connected with the granting of the lease, which, while not indicating any opinion that it should not be drawn, they think that the Land Commission, which has the exclusive jurisdiction to decide questions of fact, has not decided upon the case, nor do they think that facts enough have been stated to reduce it to a question of law. With all the doubt and deference with which I must at any time put forward an opinion of my own differing from that entertained by my respected colleagues, I am driven to the opinion that a very serious question of principle is at stake, on which I cannot concur with their conclusion. Section 7 is, in my opinion, a provision of limited and defined operation. I think that it does not, either for its own purposes or in its reflex effect upon section 8, sub-section 9, require us to disregard continuity of title, or to dispense with the necessity of tracing title altogether, except only in the case of defined, limited, and mainly technical or formal breaks arising from changes of tenancy or of tenants, not amounting to the creation of new holdings or tenancies in freshly defined subject-matter actually contemplated as such. The 1st paragraph of section 7 deals with the case where the same tenant holds in succession what are no doubt legally different tenancies. The 2nd paragraph deals with the case where different persons have, in like manner, in succession held legally different tenancies. The 3rd paragraph provides that in both cases the Court shall consider all the circumstances, and shall thereupon admit, reduce, or disallow altogether the tenant's claim, as to the Court may seem just; and it describes the events dealt with in both the previous paragraphs, and with which alone the section is conversant, as "such change of tenancy or of tenants." It seems to me that the key to the whole section must be found in limiting its operations to changes of tenancy or of tenants in subject-matter, that is to say, in holdings, which are really continuous, and which remain substantially and in the contemplation of the parties the same. The definitions of "holding," "contract of tenancy," "tenancy," and "tenant" are relative and dependent upon each other, and their connexion depends, in my opinion, upon the *identity* in reality and substance, of the *holding*. Every "holding" as the subject-matter of a "tenancy," must, for the purposes of the Act, in my opinion, have some definite commencement, and this must be found in a transaction by which its identity is ascertained or declared by the contract, or according to the contemplation of the parties. Whatever works exist upon a holding must, whenever that holding in its existing state is defined as the subject-matter of a new tenancy, cease to be any longer regarded as "improvements." An "improvement" is defined as a work "which adds to the letting value of the holding on which it is executed;" and it would be a contradiction in terms to hold that a work was an improvement of a holding which was at any time incorporated with that holding as an integral part of the holding itself. Now, in the present case what are the facts stated? Before 1842, 20a. 2r. 21p. of land were in the occupation of James M'Kee, who held as tenant under the Earl of Mountcashel, but at what rent did not appear, and under what tenure is not stated. In 1842 these lands were valued at £26 11s. 6d., which sum was paid by M'Kee from the time of the valuation, and he therefore appears to have been tenant from year to year at that

rent from 1842 to the commencement of his lease. About 1844 the house was built, partly with the materials of an older house previously existing on the holding (a fact which alone would show that the total disallowance of rent to the landlord in respect of the building is erroneous). Prior to the building, the agent offered a lease to M'Kee, who "understood that he could have the lease if he liked." On that understanding he built the house; and Mr. Justice O'Hagan in his judgment tells us that it is admitted that when he did so "the lease was contemplated." Thereupon, on this understanding, and after completing the house, M'Kee took and executed a lease for thirty years from November 1st, 1845, in express terms demising the farm "with all houses and buildings thereunto belonging, as then in his actual occupation," with the usual covenant to keep and yield up the buildings in repair. I can give no other meaning to this transaction than that it was a complete and definite creation of a new tenancy in a holding which was then by contract, and in the actual contemplation of both parties at the time, expressly identified as comprising the house as an integral part of its subject-matter. Even taken it for granted (for the moment only) that section 7 would be otherwise applicable, could M'Kee, if he were now tenant under a tenancy from year to year arising on the expiration of that lease, claim to go behind the lease itself under the language of the 1st paragraph of section 7? I am of opinion that he could not, and it follows that his successor under the lease cannot do so either. The language of the paragraph is strictly negative:—The tenant "shall not be deprived of his right to receive compensation for improvements by reason *only* of the determination of the tenancy subsisting at the time when such improvements were made, and the acceptance by him of a new tenancy." I hold that M'Kee could have no right to receive compensation for works as improvements which, by the terms of the instrument creating his tenancy and in his own actual contemplation, were an integral part of the holding itself, and included in its original definition. It seems to me to be in itself a sufficient answer to the attempt to apply the 7th section to the case of the improvements made before the lease, that M'Kee never had any right in respect of them, and therefore neither he nor his successors could be aided by an enactment that he should not be deprived of any right which he possessed. But even assuming the right to exist, the tenant seems to me to be met by another insuperable obstacle, for upon the facts stated he would be deprived of that right not "by reason *only* of the determination of the tenancy subsisting when the improvements were made, and the acceptance of a new tenancy," but by the express terms and essential elements of that new tenancy itself as evidenced by the lease creating it, which expressly declares the existing house to be part of the subject-matter of the demise, at least when coupled with the fact that the granting of the lease and the inclusion of the house in the holding was actually "contemplated" before the house was built. I wish to guard myself against resting my opinion either on the terms of the lease alone or only on the contemplation of the building by the parties when the lease was granted, but both these elements concurring, seem to me conclusive as well as to the form as also as to the substance of the transaction creating the leasehold tenancy in 1846, and mark the lease as the *terminus* of all the tenant's rights in this case. That the 7th section was not intended to apply to cases where any real ascertainment of, or any essential alteration in, the holding has taken place, seems to me further demonstrated by the 2nd paragraph of the section. There the language is as qualified and as negative as in the 1st: "Where, in tracing a title, it appears that an outgoing tenant has surrendered his tenancy in order that some other person may be accepted as tenant *in his place*, and such other person is so accepted as tenant, the outgoing tenant shall not be precluded

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from being deemed the predecessor in title of the incoming tenant by reason *only* of such surrender of tenancy by him." This provision is conversant expressly with the tracing of a title, thus implying some definite origin and some ascertained subject-matter, and it merely protects the incoming tenant from being precluded by reason only of the fact that the tenancy of which the title is so traced has, in the course of its devolution, been momentarily and formally surrendered to the landlord, for the mere purpose of enabling one person to take the place of another in the position of tenant under a tenancy substantially the same. I have neither the jurisdiction nor the intention to discuss the nature or extent of the changes, such for example as variations of rent, additions of one holding to another, or the like, which may be justly brought within the operation of the section. What I do hold is that it was not intended to enable, and that it does not enable, a tenant who has accepted a definite and settled tenancy upon the terms of an express written letting describing his holding, as he understood and contemplated it to be, afterwards to go behind the instrument creating his tenancy, and to say that part of the subject-matter of the letting was no part of it at all, but on the contrary was "an improvement" executed upon it, giving him a right to receive compensation from his landlord on quitting, with a concurrent right to hold the property in the meantime free of rent. But there is, also, an express provision of the Act of 1870 which seems to me to answer the contention of the tenant upon this lease. Those of us who hold that the final clause of section 4 operates to control the Act of 1881 must also hold the other provisions of the same section, where applicable, to have a like operation. Now, section 4, proviso 2, excludes a tenant of a holding under a lease or written contract, made before the passing of the Act, from compensation in respect of any improvement his right to which compensation is expressly excluded by such lease or contract. This provision cannot be restricted to an express exclusion of rights *under the Act*, for, as it applies only to leases made before the passing of the Act, except prophetically such rights could not be excluded. It must, therefore, extend to every case in which the claim to compensation is inconsistent with the express terms of the written instrument. Now, in my opinion, the declaration contained in this lease that the house is part of the holding, and is included in the subject-matter of demise, and the covenant to give up the house at the end of the term, is an express declaration that it is not to be regarded as an improvement, and therefore I think this lease is inconsistent with a claim for compensation going behind its date and terms. It is notable that even if the lease had expired after the Act of 1881 had come into force, the same argument would apply, under section 21 of that Act, which provides that "any leases or other contracts of tenancy existing at the date of the passing of this Act shall remain in force to the same extent as if this Act had not passed, and holdings subject to such existing leases shall be regulated by the lawful provisions contained in the said leases, and not by the provisions relating to tenancies in that behalf contained in this Act." It seems to me an impossible construction which would, because this lease expired between 1870 and 1881, disallow the landlord's claim to rent upon the house, though the lawful provisions of the lease would regulate his right, in exclusion of the statute, if it had lasted until the Act of 1881 had been passed. There is another observation which I do not wish to be supposed to have overlooked, though I do not rest my judgment on it. It is not clear to me that section 7 of the Act of 1881 ought to be treated as retrospective, not only in *preserving* rights which might have accrued under the Act of 1870 after its passing, but also in *creating* rights, at earlier dates, which otherwise could not have arisen, or that we ought to carry back the provisions of the statute as amended to the

most remote periods of time from which evidence can be brought down, as if it had never taken effect in its original form. It would require further argument than the matter has yet received to satisfy me that, upon the principles applicable to such legislation, we are justified in giving any further *ex post facto* operation to a statute transferring rights from one person to another, beyond that which a strict fulfilment of its literal terms requires. I am confirmed in my view of the effect of section 7 by a reference to the judicial decision which led to its enactment. The judgment of the majority of the Court in *Holt v. Harberton*, in the language of Lord O'Hagan, who delivered it, was at least wide enough to cover the principle that any formal determination of a subsisting tenancy, though followed by the acceptance by the same person, or by another person in his place, of a new tenancy substantially the same, regardless of the absence of intention to entail any change either in the subject-matter of the tenancy or in the rights of the parties, would amount to an extinguishment of the title, and a destruction of all rights annexed to it. But in truth the facts of *Holt v. Harberton* necessitated the adoption of no such sweeping principle. I have before me the original case stated, upon which it appears that the lease there in question comprised about ninety-two acres of additional land, of which the family of the lessee had not been previously in possession, and that the rent reserved by the lease was considerably less than the combined rents previously paid for all the lands, as well the original holding as the additional lands. The evidence stated on the case as to the circumstances under which the lease was granted is most material. After the house was built the agent went over it, told the tenant that he would endeavour to get him a lease from Lord Harberton on account of the house, and said that "he would get him a lease in consequence of having built the house, at the then present rent." The agent afterwards "asked Lord Harberton would he not give the tenant a lease in consideration of this house;" "he represented the house as finished, and urged on Lord Harberton to give him a lease, and Lord Harberton then consented to give him a lease." This oral evidence is set out in terms on the special case, and followed by this paragraph:—"The several matters stated in the foregoing evidence are for the purposes of this case to be assumed to be true." The questions reserved are, "Whether the existing lease is the *terminus* from which the improvements claimed by the appellant are to be allowed or disallowed?" and "Whether the appellant, upon the facts and the law, is disallowed from claiming compensation under the statute for the building of the dwelling-house on the lands demised?" One member of the Court, the Lord Chief Baron, while concurring in the general judgment, based his decision, as upon this point I am now doing, on "the transactions by which the lease was obtained." I am satisfied that the same considerations which weighed with him in *Holt v. Harberton* must still be taken into account under the 7th section of the Act of 1881, and that that section was not intended to create or save rights to compensation displaced by the principles of substance and of justice enunciated by the Chief Baron (Pigot), and not merely by the general principle sanctioned by the majority of the Court. With scarcely an alteration I apply Chief Baron Pigot's language to this case, and adopt it as my judgment upon the question now under consideration. I rest my judgment mainly on the transactions by which the lease was obtained. I think we are entitled to look into those transactions, because we are entitled to ascertain what was the subject-matter of the new contract of tenancy created by that lease. I am satisfied that in the present case these transactions created a perfectly new relation between the parties, lessor and lessee, by creating a subject-matter of a perfectly new contract in 1846. I think it precluded the person who took that lease, and all deriving under him by that title, from setting up

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any claim for any benefit resulting from the building of the house which formed part of the subject-matter of the new lease. I think that to permit the lessee, or anyone succeeding him in title, to claim any further benefit from the building of that house would be inconsistent with the transactions and contract, and in effect would work a fraud upon the transaction and contract by which the entire holding, including this house, was demised by the lease, and is now enjoyed by the claimant.

In the interpretation of those statutes we cannot act, with the same confidence as in most other cases, upon the rule which is usually a safe guide—namely, that vested rights and vested property ought not to be disturbed, but at least we ought not to divest such rights or property unless the language of the statute plainly directs or necessarily implies that this shall be done. Mr. Litton defines the duty of the Court, in reference to the ascertainment of fair rent, in language which I find it hard to reconcile with his decision, but which commends itself to me as applicable to our own duty, and descriptive of the principle which ought to guide us to our decision. "To act otherwise," he says, "would be to transfer the property, or a portion of the property of one class to the other class, and to no extent ought this to be done. If it is our duty to recognise the tenant's interest, it is equally our duty to recognise that of the landlord, and we are bound by the highest consideration of duty to administer an Act which was intended to secure right in such a manner as that it may not become in our hands the instrument of wrong." So far as the Act clearly leads me, I neither criticise its policy, hesitate to follow its directions, nor regard its consequences; but where I find the language involved negative and doubtful, I am bound, in seeking its true meaning, to consider the consequences of the opposing constructions, and to prefer that which leads to apparent justice as the true meaning of the legislature. For this purpose only, let us see the practical result of holding that the lease of 1846 did not define, as from a new starting-point, the subject-matter of M'Kee's tenancy. Having built the house, and got the lease for a term of thirty years from the 1st of November, 1846, M'Kee, on the 27th of October, 1846, with the approbation of the landlord, sold, and once and for all assigned away all his interest in the holding to John Adams for the agreed sum of £240. For that sum, subject to the rent and covenants, Adams acquired the house and holding for the residue of the term, but not as the law then stood for a day longer, nor in fixing his price did he buy or pay for any right or title whatsoever lasting beyond the 1st of November, 1875. On the 13th of April, 1851, William Dunseath on the other hand, under judicial sanction, and through a Parliamentary conveyance, purchased for £6,000 all the freehold interest for ever in the holding, subject during its term to the lease. In this price he paid for, and under that conveyance he acquired, the absolute interest in the house from and after the 1st of November, 1875. Any answer other than that which I have given to the question now under consideration would, at the least, place it in the power of the Land Commission to give this house for ever free of rent to a tenant who never bought it, and to disallow to the landlord for ever all title to rent from it, though thirty years ago he bought and paid for it at its full value, and had it conveyed to him by a Court under the sanction of a statute, and though after the passing of the Act of 1870 he fixed the terms of a new tenancy under a law which, under the then settled judicial interpretation of the statute, precluded the tenant from then claiming it as an improvement. Even with the palliative of the final clause of the 4th section of the Act of 1870, this is the result of the judgments which, while I am forced to differ from them, are most near to my own conclusion. But the judgment of the Lord Chancellor, as I understand it, and the decision of the Judicial Commissioner and

Mr. Litton, would leave no discretion in the matter, but would hold that this momentous transfer of vested property has been absolutely made by section 8, sub-section 9. In my opinion, the statute did not contemplate and does not effectuate such a result; and even if there were less room for doubt, I should hold it my duty, against everything except such plain words as might easily have been used to preclude questions, so to read the law as to avoid the result I mention.

In this case the amount involved is small, but (in the way I have indicated) we should see the consequences of admitting the principle of the decision. Mr. Justice O'Hagan meets the argument that his construction "would sweep away from the landlord's rent all improvements that, from time immemorial, have been executed on the soil, and leave nothing subject to rent but the waste and unimproved value of the land itself," by saying that "such an apprehension appears to me chimerical." "In the first place," he says, "the fact of the improvements themselves requires to be proved." Dealing as we are, with buildings, I apprehend those buildings, however old, will prove themselves, and so remove that difficulty. "In the next place," he says, "as regards all improvements made before the 1st of August, 1870, there are distinct limits placed to the presumption that such improvements were made by the tenant or his predecessor in title, and everything outside the statutory presumption must be proved; and although a formal surrender and acceptance of a new tenancy would no longer form a break in the title, yet the title must in reality and substance be traced from the tenant who executed the improvements to the tenant who claims in respect of them." As to the latter portion of this sentence, I need not again explain that in terms I concur with this statement of the law, and that the difference between Mr. Justice O'Hagan and myself is in our estimate of what is "a formal surrender and acceptance of a new tenancy" and what is "in reality and substance" the creation of a new title. My present concern is with the effect of relying on presumption to meet the consequences of the doctrine that a lease in terms defining the subject-matter of a demise, admitted to be contemplated as such by both parties at the time, is not the *terminus* from which all claims for compensation must commence. Presumption will arise only in the absence of evidence. The humble and illiterate tenant from year to year, not improbably the successor of generations of tenants occupying the same holding, under substantially the same tenancy, will be met and will be defeated by the presumption, so far as he cannot overcome it by the oral testimony of the oldest witnesses whom he can produce, though the facts, if capable of proof, might lay a just ground for a legal claim. But, what is to be done in the case of the great number of most valuable holdings which, throughout Ireland, have for long periods of years (extending, even in cases within my own experience, to centuries) been held under leases immediately succeeding each other, whether under powers of renewal at the tenant's option or otherwise, without any break in occupancy? If the present occupant under the last of a series of such leases were, at its expiration, to decline to take another, and to call upon the Land Commission to fix a fair rent for his holding, the successive leases would negative occupation by the landlord, and would afford evidence of continuous occupation by a tenant for the time being throughout the whole period. The existence of the buildings, their apparent age, and their present value, could be proved at once, and then Mr. Litton's rule of deducting that present value from the commercial value of the holding, as defined by him, being applied, I apprehend that the result would logically follow, leaving no room for presumption, that the transactions of ages must be disregarded, and the rent must be fixed upon the assumption that the tenant who held a "present tenancy" at the passing of the Act of 1881 is entitled to hold all the

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buildings on his holding absolutely rent free for ever, though none of his predecessors (including those who had erected those buildings) had ever enjoyed any such advantage. I think the construction of the statute leading to such a result ought not to be adopted unless unambiguously prescribed. I may remark that Mr. Litton, with Mr. Justice O'Hagan, refers only to the effect of "presumption from lapse of time," as moderating this effect of the statute of 1881. "When actual proof is given" (as, in the case I put, it would be by the documents of title), he says, "no length of time precludes the tenant from insisting that no rent shall be charged in respect of them."

It has been said by the Lord Chief Baron that the construction I adopt should equally exclude the tenant from the benefit of section 8, sub-section 9, in respect of the improvements made during the lease, as in respect of those made before its execution, on the ground that a second break in the title occurred in 1875, when the lease was succeeded by a tenancy from year to year at a different rent. My answer is that here (even apart from the considerations arising on the written instrument of 1846) the facts are not found, and it is for the Land Commission to decide whether there was, or was not, in 1875 any substantial consideration by both parties of their position and of their rights, or any new definition of the subject-matter of the holding, such as the transactions ending in the granting of the lease constituted in 1846, or whether there was anything more than a continuation of substantially the same tenancy, in the same hands, with a mere re-adjustment of rent, but with no consideration of rights or contemplation of their alteration or surrender. In 1875 the tenant had a vested right to compensation for his improvements made during the currency of the lease. Though the lands were valued, and the valuer stated to the Commissioners that, "he took no improvements into consideration, but kept the improvements out," the case does not authorise us (as that in *Holt v. Harborton* did) to assume that this evidence is true, while the exclusion of the improvements from rent might have been counterbalanced by the increase of the amount of rent from £26 11s. 6d. to £31 17s. 6d. I have, therefore, no means of determining whether in 1875 there was or was not that deliberate contemplation and determination by the landlord and tenant of their respective interests, or that actual and substantial creation of a new tenancy which would constitute the commencement of the tenancy from year to year in 1875 as the root of a new and distinct title or as a *terminus* from which the tenant's present rights and claims must take their origin. For the reasons I have already given, I think the granting of the lease of 1846 was such a *terminus* and origin, and therefore I answer the last question in the negative; but as to the transactions of 1875 I can draw no conclusion.

While remitting the case with our answers to the Court of the Land Commission, I think it necessary (lest I should be taken to accept the observations of Mr. Justice O'Hagan on the subject) to say that I can in no sense regard the determination of a fair rent as a "question of fact," within the meaning of Lord Chelmsford's *dictum* in *Gray v. Turnbull*, L. R. 2 H. L. 53. In the report of that case it appears that the matter in dispute was a part and parcel question, about an angle of ground described in the evidence as "only eight square yards in extent, and not worth five shillings intrinsically." This Court, in *Montgomery v. Montgomery*, 14 Ir. L. T. Rep. 9,\* refused to apply that *dictum* even to an important question arising upon the contradictory evidence of witnesses, and the House of Lords (*ib.*) affirmed the decision; but, I cannot admit the application of such a principle to the question of fair rent, which is eminently a question of judgment and of judicial discretion, and as to which Mr. Litton truly says, "The

estimate of a fair rent is within certain limits as uncertain as the character of the man to whose judgment the question is submitted." Even where the Land Commission have, in the words of the 43rd section, thought it "expedient" to "delegate" the consideration of the matter in the first instance to a Sub-Commission, any person aggrieved is entitled to require his case to be reheard by the Commissioners themselves, and to have their judgment independently exercised upon it as a question calling for the exercise of their highest qualifications. I am confident that upon that question, as between the present parties and all others affected by like considerations, the judgment, and the only judgment, to which the law has confided its final settlement, viz., the judgment of the Court of the Land Commission, will henceforth be exercised with due regard to the statements of the law which it has been our duty now to pronounce, but in all other respects upon its own responsibility.

Order:—"The Court, considering that the questions as presented cannot be treated solely as questions of law, but being of opinion that the following questions of law arise on the Case Stated, viz. :—(1) What is the meaning of the term "improvements" in the 9th sub-section of section 8 of the L. L. (Ir.) Act, 1881? (2) Whether the terms "tenant or his predecessors in title," in the same sub-section, have the same meaning respectively as in the 7th section of the same Act? (3) Whether the provisions of the final paragraph of the 4th section of the L. & T. (Ir.) Act, 1870, as to improvements made before the passing of that Act, are applicable to such improvements in determining fair rent under the 8th section of the L. L. (Ir.) Act, 1881? (4) Whether the enjoyment, during the currency of a lease, of improvements made by a tenant during such lease is a compensation by the landlord within the meaning of the 9th sub-section of section 8 of the L. L. (Ir.) Act, 1881? (5) Whether the lease of the 2nd of March, 1846, excludes the tenant from any interest in respect of the house built before the execution of that lease, in the ascertainment of the fair rent of the holding under the L. L. (Ir.) Act, 1881? It is considered and hereby declared, in answer to the 1st of the questions next hereinbefore mentioned, that the meaning of the term "improvements" is the same as in the L. & T. (Ir.) Act, 1870, section 70; and as to the 2nd, 3rd, and 5th of the said questions, that they should respectively be answered in the affirmative; and that the 4th of the said questions should be answered in the negative."

Solicitors for the tenant: *Caruth & Currie.*

Solicitors for the landlord: *H. & A. Orr.*

\* In *Collier v. Lord Fitzwilliam* (Carlow, March 29, 1882), the following judgment was given by

Mr. WYLLIE:—"This case was heard at Tinahely on the 6th of February last, and in consequence of Mr. Gibson, for the landlord, having submitted to me certain propositions of law which were then pending for decision by the Court of Appeal in the case of *Adams v. Dunseath*, I thought it better for the parties that we should reserve our judgment. I have had the advantage of hearing the judgments of the Appeal Court in that case, and I also carefully read the newspaper reports of those judgments, and there appeared to me such a diversity of opinion among the judges on almost every question raised in the case that I felt very considerable difficulty in applying those judgments to the present case, and I have delayed giving judgment until now in the hope that I might have an opportunity of perusing a full and authoritative report of the judgments, and of seeing how they would be applied by the Land Commissioners in that particular case. As this is our last sitting before Easter, and as we are not certain either as to our future circuits or even as to the composition of the several Sub-Commissions, we think it better not to delay our decision further. I regret being compelled to give our judgment now, because a fuller knowledge of the judgments in *Adams v. Dunseath* and of their effect upon the ultimate decision in that case might have enabled us to have arrived at an unanimous judgment; and this I am sorry to say, is not the case now, and

\* And see *Eiffe v. M'Kenna*, 16 Ir. L. T. Rep. 45.—[*E. N. B.*]



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the judgment which I am about to give is only that of Mr. Kenny and myself. I have endeavoured to understand the steps by which Mr. Barry reaches his ultimate decision, but I have been unable to do so, and I must let him speak for himself. The holding in this case was formerly held in two separate portions by two different tenants. One portion consists of 19a. Or. 5p. Irish plantation measure, demised by Lord Fitzwilliam to Thomas Morton, by lease dated the 30th August, 1824, for one life, with a concurrent term of 21 years, at the yearly rent of £11; the other portion, consisting of 11a. 3r. 4p. Irish plantation measure, was demised by Lord Fitzwilliam to Francis Morton, by lease of same date for another life with a similar term of years concurrent, at the yearly rent of £6 10s. In February, 1841, Thomas Morton, in consideration of £250, assigned his lease to Robert Collier, father of the present tenant, and by two assignments, in 1846 and 1848 respectively, Francis Morton's portion was also assigned to Robert Collier in consideration of £84. There were, also, other sums admitted to have been paid in order to get rid of some cottier tenants, which brings the purchase-money of both leases up to £400. It was admitted that the leases expired some time before 1859, and that during their currency the rents had been reduced on account of tithe rent-charge, or some other outgoings, from £17 10s. to £16 11s. 10d. In 1859 it was arranged that Robert Collier should continue as tenant from year to year at the rent of rent of £17. The present tenant knows nothing himself of the terms of this arrangement, but admitted that his father told him something about the smallness of the advance being in consequence of his improvements. The rent-book for 1859 was produced on behalf of the landlord, containing, below the entry of the two holdings in the name of the Mortons, the following memorandum, in the handwriting of Mr. Lawrenson, who was in the office at the time:—"Robert Collier inserted for both at three half-years' rent to Michaelmas, 1860, with a nominal advance of 12s. 3d. for the present, in consequence of the large improvements made by him in buildings and in the land, viz., 8s. 2d. a year." In May, 1862, Robert Collier assigned to his son, the present tenant, the whole of this holding, with the good will of the business and certain chattels, in consideration of an annuity of £17, to be paid by the tenant to his father during his life. It did not appear clearly whether this assignment was ever known to the agent, but the father and son having some disputes in 1853, a notice to quit was served, determinable in March, 1864. It was then arranged, between the father, the son, and the agent, that the son should become tenant, and that in addition to the rent of £17 he should pay to his father an annuity of £20 during his life, the payment of which was to be secured by having it paid into the office as part of the rent. This sum of £20 was regularly paid by the tenant to his father, through the office, in the way I have mentioned, up to his death in 1876. Notwithstanding the father's death, which was never mentioned or referred to by either party, the tenant continued to pay, and the office to receive, this sum of £20 ever since, and when the tenant now complains of this the reply given is that he never made any objection to its continuance. A great deal of evidence was given, on behalf of the tenant, as to the condition and value of the holding when Collier first got it, its present condition and value, and the extent and nature of the improvements; and I shall mention hereafter what we consider to be the effect of that evidence. Such being the principal facts in the case, Mr. Gibson submitted to me three propositions of law, which I am required to make a ruling upon, and I give them in his own words:—First, "That the rent to be calculated or fixed should not be reduced by reason of any improvements made by Collier, senior, during the leases, or either of them, inasmuch as a wholly new letting was made of the entire holding in the year 1859, and the new rent then fixed (£17) was much less than the true value (admitted by the tenant to be £31); that this low rent was fixed in consequence of the tenant's improvements, and that the case is directly within *Holt v. Harborton*." It appears to me that that is a very compound, and in some respects an ambiguous, proposition, and before ruling upon it I must divide it, and explain what I understand by it. If it mean that the new letting itself, apart from the amount of the rent, caused a breach in the chain of title within the meaning of the decision in *Holt v. Harborton*, so as to preclude the tenant from claiming credit for prior improvements as being made by a predecessor in title, then, I think, it is immaterial whether the case is, in this respect, similar to *Holt v. Harborton* or not, as, in my opinion, this case falls within section 7 of the Act of 1881, and the case of *Holt v. Harborton* is, so far, overruled by *Adams v. Dunseath*. If, again, Mr. Gibson's first proposition mean that the new letting made in 1859, at what is termed a low rent, was made in consideration of, and as compensation

for the prior improvements, so that the tenant holding under the new letting, if it had continued unchanged, could not now go behind it and claim credit for such improvements, then the proposition is, in our opinion, not sustainable. In *Holt v. Harborton* a tenant from year to year built a substantial house, and afterwards took from his landlord a long lease of the same land and 91 acres in addition, at a less rent than he had been paying for the original portion, the lease having been admittedly granted in consideration of the buildings; and the lessee's successor claiming, under the Act of 1870, to register as improvements against the landlord the very buildings in consideration of which the lease was granted, it was held that he could not go behind the lease. Now, what occurred in this case in 1859? Robert Collier and his predecessors in title having been in possession of this holding from 1824, under two leases, at the yearly rent of £16 11s. 10d., and having, during those leases, made large improvements, both in buildings and on the land, at the expiration of those leases Collier was allowed to continue on as tenant from year to year at a nominal increase of rent, put on for the purpose of squaring it up to £17. That new tenancy might have been determined at the end of the next twelve months, and as a matter of fact was determined five years after; and whatever may be the effect of that new letting upon the amount of deductions now to be made in respect of improvements, having regard to the question of compensation otherwise than by agreement, there is, in our opinion, nothing in that new letting, apart from such question of compensation, which precludes the tenant from claiming a deduction in respect of prior improvements. Any other point which may be involved in the first proposition beyond those to which I have referred falls, I think, within the third proposition, and will be dealt with under it. Mr. Gibson's second proposition is, "That the rent to be fixed should not be reduced by any improvements made by the father or son previous to the determination of the tenancy by notice to quit in 1864, and the creation of a new tenancy direct with the son." Now, what was the position of the parties prior to 1864? The tenant's father being in possession of this holding as tenant from year to year under the new letting in 1859, assigned his interest to his son in May, 1862; and, though it is doubtful whether this assignment was known to the agent, the tenancy passed by the assignment to the son, and it is remarkable that the notice to quit was actually served on the son, though it was said to be intended for the father, but their names being the same it applied to either, and would no doubt have been held to determine the tenancy in either. At any rate, the son accepted the new tenancy in 1864, and the prior tenancy was determined either by the notice to quit or by surrender by operation of law. In either view of the case I think it comes clearly within sect. 7 of the Act of 1881; and, according to the interpretation put upon that section and sec. 8, sub-sec. 9, of the same Act by the Court of Appeal in *Adams v. Dunseath*, I think that, notwithstanding the change which occurred in 1864, both the father and son were in possession prior to that time as predecessors in title to the present tenant; and therefore, in my opinion, the second proposition is also unsustainable. Mr. Gibson's third proposition is, "That the new letting of 1859 at the low rent was in any event, upon the evidence in this case, a compensation within the meaning of section 8, sub-section 9, of the Act of 1881, so far as related to improvements, up to that date." This appears to me to be by far the most difficult of the three propositions to deal with; and it was specially with reference to the question raised here that I was anxious to have a careful perusal of the different judgments in *Adams v. Dunseath*, before giving our decision. So far as I have been able to gather the effect of those judgments, from hearing them delivered and from the newspaper reports, I cannot say that they have made our path more easy; and in dealing with this proposition, which was not decided in that case, but in reference to which qualified opinions were thrown out by the judges, we must only apply those opinions to it as best we can, in accordance with what we consider, in the light of them, to be the meaning and intention of the Act. In order to relieve the proposition from any ambiguity, and to prevent any misconception as to our decision, it is necessary for us to distinguish between two very different senses in which the expression "low rent" may be used, and also to decide one or two questions of fact, which must, in our opinion, form the basis of our decision upon this third proposition, and will therefore materially affect our ultimate decision as to the fair rent. The words "low rent" may mean either a rent that is below the fair letting value of the land including all improvements upon it at the time such rent is fixed, or they may mean a rent that is below the fair letting value of the land apart from the tenant's improvements, or, putting a gloss upon the word improvements in

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accordance with the decision of the Court of Appeal in *Adams v. Dunseath*, a "low rent" in the second sense means a rent which is below the fair letting value, after giving the tenant credit for so much of the increase in letting value arising from his improvements as he is entitled to have deducted in respect of such improvements. If the expression "low rent" contained in this third proposition be used in this second sense, I think we would be justified in affirming even a wider principle of compensation than the proposition contains, because it appears to me that where a tenant from year to year is allowed to continue in possession at such a low rent, he is every year receiving some compensation for past improvements, at whatever time effected. This being our view as to the principle to be applied, it follows that we must decide, as a matter of fact, whether the rent of £17, paid since 1859 for this holding, was then or has become since a low rent as understood in the second sense; and in order to ascertain this we must decide whether, having regard to the evidence in the case, as to the character of the land and the tenant's outlay, the excess of the full letting value including improvements over the rent of £17 was in 1859, or has been since, more than what the tenant was fairly entitled to as a return for his labour and expense. As I have already stated, the holding was originally let in two portions by two separate leases to Thomas and Francis Morton in 1824 at rents amounting together to £16 11s. 10d. Collier, senior, purchased Thomas's portion in 1841 for £250 and that of Francis a few years later for £84. Thomas's holding adjoined the public road, and for some time prior to the purchase Thomas was engaged in building a shop upon his holding. Collier was at the same time living at the opposite side of the road, and had a grocer's shop there. After his purchase he completed the shop commenced by Thomas and erected other buildings at the cost of £600, and transferred his business to the new buildings, where he has carried it on ever since. After purchasing the holding of Francis Morton for £84, he had to pay other sums to get rid of some cottier tenants, making a total of £150 for this holding, and a total of £400 for both; and the fact of his having given such a large sum for these holdings was relied on by Mr. Gibson as showing that the rents were low, but we think the facts I have stated show a sufficient reason for the price without our drawing any such inference as to the rents, more especially as the rest of the evidence seems to us to rebut such an inference. In 1859 when the leases were out, and both landlord and tenant were legally free to arrange whatever rent they pleased for the future, the tenant asked to have it reduced to £16, but the agent refused, and it was increased by a nominal sum to £17. The entry which I have referred to in the rent-book states that the nominal increase was in consequence of the large improvements made by Collier in buildings and in the land. What is the natural and reasonable inference to be drawn from that transaction? Is it that the land was being let at a low rent, in the second sense which we have attached to the words, for the purpose of compensating the tenant for improvements to which he had then not the shadow of a claim? or is it that the agent was acting in the way in which you would expect a nobleman in Lord Fitzwilliam's position or his agent to act—viz., abstaining from charging an improving tenant rent on his own improvements, and putting on what he considered a fair rent for the land without encroaching on the tenant's improvements? We have no hesitation in accepting the latter inference as the correct interpretation of the intention and motives of the parties at the time. But passing by these inferences from facts, which I have only noticed because contrary inferences may be drawn by others from the same facts, and coming to the facts proved by the witnesses—what are they? Collier and his brother proved that, besides the £600 spent in buildings, they expended on the land since 1842 over £2,000 in reclamation, drainage, and in blasting, removing, and sinking boulders. They also proved the condition and value of the land when Collier got it, and their evidence on this point was fully sustained by several witnesses who were familiar with the land at the time. This evidence was also corroborated by reference to the Ordnance map, which shows a considerable portion of the land marked as rough and unclaimed, also by the entry in the rent-book of 1859 in which the agent even then speaks of the large improvements made by Collier in buildings and in the land; and lastly, we have what is to us perhaps the most satisfactory corroboration of all, the evidence of our own senses. The condition of this land and the adjoining land, as we saw it, and the immense fences of stones, dividing field from field, satisfy us that the tenant has expended upon this holding an amount of labour and expense for which he will never reap an adequate return. On the whole case, therefore, we have come to the conclusion that the whole increase in the letting value of the holding at any time

over and above the sum of £17 was solely due to the tenant's improvements, and that that increase did not at any time give the tenant a return of more than two or three per cent. on his expenditure, on account of the unimprovable nature of the land. In our opinion, therefore, this holding was not let to, or ever since held by, the tenant at a low rent, in the second sense of the expression; and therefore Mr. Gibson's third proposition, using the words in this sense, would not apply to this case. But there can be no question, upon the tenant's own evidence, that the sum of £17 was a low rent for this holding in 1859, using the words in the first sense referred to, because he admitted that at that time the holding, including buildings and improvements, would have been worth £81 a year to an incoming tenant; and this rent of £81 the landlord would at that time have been entitled in point of law to have charged the tenant. The important question then arises, whether the mere abstention of the landlord from exercising his legal right, prior to the Land Acts, of charging the tenant rent upon his own improvements, is a compensation by the landlord for those improvements within the meaning of section 8, sub-section 9, of the Act of 1881? One would think that such a proposition required only to be stated to be dismissed. At all events, I shall not be the first to affirm it, but shall leave that duty to some other, or higher authority. What would be the effect of affirming such a proposition? Simply compelling indirectly, by legal process under an Act passed for the benefit of tenants, a good landlord to do the very acts for which other landlords have been condemned, and on account of which the very Act we are administering was passed. A landlord who, by an increase of rent, compels a tenant to pay him interest upon the money spent by such tenant in improvements is condemned by all just men, and because a good landlord has permitted the tenant for a number of years to receive that interest himself, are we now called upon, under this remedial Act, to hand over the whole principal to the landlord, and compel the tenant to pay him interest upon it from this time forth? That is not a course which commends itself to our judgment, and, therefore, Mr. Gibson's third proposition—if it is to be understood in this sense—we think entirely unsustainable. We are, therefore, of opinion that there is nothing in this case which can be considered as compensation by the landlord for any of the tenant's improvements, and the tenant is consequently entitled to have deducted from the present letting value of the holding such sum as would represent the present increase in letting value arising from such improvements. Where the improvements consist of buildings, our course has always been, and we see no reason to change it, to value the holding irrespective of such buildings. In the case of improvements on the land, we must first value the land as it now stands, including improvements, and endeavour to ascertain as best we can from the whole evidence, how much of that value is due to tenant's improvements. According to the evidence in this case, the present letting value of the land is about £38 or £39, and, in our opinion, considerably more than half that value is due to tenant's improvements. The Poor Law valuation of the land is £24, and of the buildings £11; and the rent, since 1864, has been nominally £37, but in reality £17, and this we think is a fair rent for Collier to pay, and we accordingly fix £17 as the judicial rent.

In *Brenan v. Latouche* (Sub-Com., NASS, May 22, 1882), where it appeared that the tenant, about 1841, erected certain "permanent buildings" (within the L. & T. Act, 1870, s. 4, sub-s. a), and that in March, 1858, his father, the then tenant, had accepted a lease of the holding for 21 years, containing the usual covenants to keep and give up the premises in repair, Mr. KAUSE said:—"In my opinion, we are bound by the decision of the majority of the Court of Appeal in *Adams v. Dunseath*. I hold that the acceptance of that lease would destroy the right to compensation under the Act of 1870 for an improvement made before its date, and therefore excluded such improvements from the prohibition to have rent charged in respect of them, contained in s. 8 (9) of the Act of 1881. But I adopt the words of the Lord Chancellor in *Adams v. Dunseath* [quoting the two last sentences at end of 1st paragraph, col. 1, p. 63]. In my opinion, although we in this case do not come under the prohibition contained in s. 8 (9), we are not under a correlative obligation to charge the fullest rent upon all that we are not prohibited from putting any rent upon. [Introduction to s. 8 quoted.] . . . In my opinion, therefore, we are at liberty to consider, having regard to all the circumstances of the case, whether it is just and fair that any, and if so what, deduction should be made from the present full letting value of the lands, in respect of the moneys so laid out in improvements by the father of the present tenant."

[Q. B.]

THE QUEEN (REYNOLDS) v. THE JUSTICES OF THE COUNTY CORK.

[Q. B.]

HIGH COURT OF JUSTICE.  
QUEEN'S BENCH DIVISION.Reported by S. N. ELLINGTON, Barrister-at-Law.  
(Before MAY, C. J., and BARRY, J.)

## THE QUEEN (REYNOLDS) v. THE JUSTICES OF THE COUNTY CORK.

Jan. 19, 21, 1892.—*Certiorari*.—*Justice of the Peace*.—*Jurisdiction*.—*Sureties to be of good behaviour*.—*Inviting tenant not to pay rent*.—34 Ed. 3, c. 1.—*Practice*.—*Supplemental affidavits*.

While the society styled the Irish National Land League were alleged to be acting in unlawful combination, for the purpose of inducing tenants not to pay their rents, the following words were addressed by H. R., in the presence of a crowd, including a tenant against whom a writ of *habere* for non-payment of rent was then being executed:—  
"Pay no rent to the landlord. We will make you right about the land. We will build you a house at any expense, and make you comfortable during the winter." The district had been proscribed under the Act for the better Protection of Person and Property in Ireland (44 & 45 Vic., c. 4); and on the occasion in question the sheriff and his officers were accompanied by an armed force of police for their protection, under the command of a magistrate. H. R. appeared to have been entirely unconnected with the tenant, and to have come there, accompanied by an attendant crowd, for the seeming purpose of interrupting the legal proceedings, and apparently as the emissary or agent of a plurality of persons in possession of funds applicable to the fulfilment of the promises held out to the tenant. On informations sworn accordingly, a summons was issued calling on H. R. to show cause why she should not be bound over to be of good behaviour, on the hearing of which she was ordered by the justices at petty sessions to find bail for that purpose, or in default to be imprisoned for six months. She refused to give bail, and on application for a writ of *certiorari*, to quash the order:

Held, that sufficient reasons existed to warrant the justices in inferring that, when so exhorting or encouraging the tenant to pay no rent, H. R. was acting in unlawful concert and combination with an association, and in concluding that the repetition of such conduct should be prevented; and that, while the court would interfere with the exercise of such jurisdiction only in a strong and clear case of misused authority, the order made was justified, on the ground of probable suspicion that a crime was intended or likely to happen which should be so prevented, and having regard to 34 Edw. 3, c. 1, empowering justices of the peace to bind over to be of good behaviour all that be "not of good fame."

On showing cause against a conditional order for a writ of *certiorari*, it would be contrary to the practice, confining parties to the evidence given before the justices, to allow it to be supplemented by affidavit.

*Certiorari*.—The circumstances are sufficiently explained in the judgment. Against making absolute the conditional order which had been obtained:

The Attorney-General (Johnson, Q.C.), J. Murphy, Q.C., and E. Sullivan, showed cause, contending that the justices had jurisdiction in the matter, originating with

their commission; and that the facts justified the exercise of that jurisdiction, putting a reasonable construction on the words used, and holding a conspiracy among tenants not to pay their rents to be unlawful.\*

*O'Riordan, Q.C., and White, contra*.—This complaint is not by an individual who has been injured by the act alleged, or who was apprehensive of a breach of the peace and made informations for its prevention. It does not come within 34 Ed. 3, c. 1, under which the summons may be taken out by anyone, for "evil fame" therein must be such as is recognised by law. Nor does it come under the jurisdiction given by the commission of the peace. The political opinions of proposed sureties do not constitute a ground for refusing bail. There should have been an adjudication on the charge of meeting not to pay rent. But, in fact, it is not shown that rent was due, or that there was an eviction in consequence, nor was there evidence of any tenancy. To induce persons to leave their employment is not criminal; † and the director not to pay rent, if criminal, should be given to the tenant. If any offence there was, it would be under 38 & 39 Vic., c. 86, s. 7. The order complained of amounted to an adjudication, but was made without sufficient evidence; and the discretion vested in the magistrate must be a legal discretion, to be exercised only on sufficient grounds. But, if not within the statute 34 Ed. 3, c. 1, the conviction cannot be sustained; and here no grounds are shown on which it can be supported.

The following cases, &c., were cited: *Willes v. Bridger*, 2 B. & Ald. 278; *Loat v. Hutton*, 45 L. J. M. C. 95; *Haylock v. Sparke*, 1 E. & B. 471; *R. v. Tregarthen*, 5 B. & Ad. 678; *R. v. Badger*, 1 D. & M. 375; *Lumley v. Gye*, † 2 E. & B. 216; *R. v. Dunn*, 12 Ad. & E. 599; *Hale, P. C.*, 6th ed., 261-2; 5 Burn. J. P., 754, et seq., 760-4, 1219; *Lev., J. P.*, 249; *Dalton, J. P.*, 723, 295; *Steph., Dig. C. L.*, 86; *Paley, Conv.* 169; † *Hawk. P. C.*, 262; † *Hayes, C. L.* 838.

*Cur. adv. vult.*

MAY, C. J.—This case came before the Court upon motion to show cause against the making absolute a conditional order which had been obtained for a writ of *certiorari* to bring up and quash an order of the 23rd December, 1891, made by Mr. E. B. Warburton, a magistrate of the County of Cork. By that order, which recites a complaint that Hannah Reynolds had unlawfully incited Catherine Murphy, a tenant of the Earl of Bantry, to refuse to pay rent due by her to the said landlord, it was ordered that the said Hannah Reynolds should be bound to her good behaviour for six months, herself in £50, and two sureties in £25 each, or in default should be imprisoned for one month. This order was made by the magistrate upon sworn informations, and also upon oral evidence of witnesses who were examined before him and cross-examined on the part of the defendant, Hannah Reynolds. The material facts and circumstances, as they appeared upon such information and evidence, were substantially as follows:—On the 1st December, 1891, the sheriff proceeded to execute writs of *habere* which had issued against two tenants of the Earl of Bantry residing in the parish

\* They sought to read an affidavit which had been made by Mr. Warburton, in reference to what had occurred on the occasion, as he had been present, and as the conditional order was granted on the ground, amongst others, that there was no evidence to justify the order he had made. But, the Court were of opinion that to allow the affidavit to be used would be inconvenient, and contrary to the practice, which confines parties to the evidence before the magistrates. (*See, cf. R. v. Justices of Limerick*, 7 Ir. L. T. 55.)

† See cases collated, by the present writer, 15 Ir. L. T. 339, 353; *Alderson v. Maddison*, 45 L. T. N. S. 334; *Dickson v. Dickson*, 13 Rep. (Amer.) 556.—[E. N. B., Ed.]

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of Killoatherine, in the county of Cork, in actions of ejectment for nonpayment of rent. The sheriff and his officers were accompanied by an armed force for their protection, and also by the same magistrate Mr. E. B. Warburton, whose presence was considered necessary in order to assist in keeping the peace in case of disturbance. It appears that on the 4th March, 1881, the district in question had been prescribed under the Act for the better Protection of Person and Property in Ireland, which circumstance serves to account for the precautions thus taken. The officers of the law executed the writ in the case of one of the tenants without disturbance, the respondent Hannah Reynolds being present. They then proceeded towards the holding of the other tenant, the said Catherine Murphy; but it appears that the respondent, accompanied by a crowd of men, women, and children, arrived at the farm of the second tenant before the officers of the law, and then upon their arrival, in the presence of the magistrate and the legal officials, addressed a crowd which was there assembled and which included the tenant Catherine Murphy, her son, and other persons, some of them the wives of neighbouring farmers, to the following effect: "Pay no rent to the landlord. We will make you right about the land. We will build you a house at any expense and make you comfortable during the winter." To understand and appreciate the meaning and tendency of language such as this, it is proper to consider some of the circumstances which preceded and surrounded the occasion. It is perfectly well known, and this court in particular has judicial notice, that for a considerable time there had existed in Ireland a certain society called the Irish National Land League; and it had been alleged that such society consisted of a number of persons acting in combination for the purpose of inducing tenants in this country not to pay either wholly or partially to their landlords rent which they had contracted to pay, such tenants at the same time retaining their holdings. The judges of this court who presided at the recent trial of *Reg. v. Parnell* laid it down as clear and undoubted law that persons confederating together for such a purpose were guilty of a criminal conspiracy; that exposition of the law was scarcely questioned by the traversers or their counsel, and I apprehend that no doubt exists in the mind of any lawyer on the authorities both in England and Ireland that the law was so correctly stated. It appears that on the 20th Oct., 1881, a proclamation was issued by his Excellency the Lord Lieutenant of this country which, after stating to the effect that an association calling itself the Irish National Land League had existed for some time assuming to interfere with the Queen's subjects in the free exercise of their lawful rights, and especially to control the relations of landlords and tenants in Ireland, among other things seeking to deter the Queen's subjects from fulfilling their contracts, and that the said association had avowed its purpose to be to prevent the payment of all rent, contained a warning to all persons that such association was illegal, and that they should disconnect themselves from the same, and a declaration that the resources of Government would be employed to enforce the fulfilment of all lawful obligations, and all loyal and well-affected subjects were thereby called upon to aid the Crown in maintaining and upholding the authority of the law. This proclamation could not have the effect of establishing propositions of law or the existence of matters of fact, but it certainly did convey such a warning as ought to have induced well-disposed and loyal persons to refrain from engaging in conduct such as was therein characterised and treated as illegal; and such an injunction as it would be the duty of all magistrates and persons in legal authority to obey. Under these circumstances the officers of the law being engaged in the execution of legal process to enforce the payment of rent, the respondent thought fit in the presence of the magistrate to address the tenant

and a mixed crowd of persons to the effect above described. She appears to have been entirely unconnected with the tenant, and apparently came to the spot, accompanied by the crowd which attended her, for the sole purpose of interrupting the legal proceedings which was taking place; she came apparently as the emissary and agent of a plurality of persons in possession of funds applicable to the fulfilment of the promises she held out to the tenant. The language "We will make you right about the land and we will build you a house" pointed, I think, tolerably clearly to the existence of some body of persons whose representative she was. The magistrate by whom such language was heard, or who was satisfied upon proper evidence that it had been used, had, in my judgment, cogent reasons for inferring that the respondent, in thus exhorting and encouraging the tenant to pay no rent, was acting in unlawful concert and combination with some association of persons, and in concluding that it was his duty by all legal means to prevent the repetition by her of similar conduct.

Now, with respect to the legal aspect of this case, and the jurisdiction of magistrates to make orders to give security for good behaviour, I do not think it necessary to refer at length to the comments of Hawkins, Dalton, Bacon's Abridgment, Burn's Justice of the Peace, and other books on the subject. Upon an elementary matter of this nature, it is, I think, abundantly sufficient to refer to Blackstone, who discusses the subject in the 4th book and 18th chapter of the old editions. "Preventive justice," he there tells us, "consists in obliging those persons whom there is probable ground to suspect of future misbehaviour to stipulate with and give full assurance to the public that such offence as is apprehended shall not happen by finding pledges or securities for keeping the peace or for their good behaviour." This requisition of sureties must be understood rather as a caution against the repetition of the offence than any immediate pain or punishment. This caution is such as is intended merely for prevention without any crime actually committed by the party, but arising only from a probable suspicion that some crime is intended or likely to happen, and consequently it is not meant as any degree of punishment, except, perhaps, for a man's imprudence in giving just ground for apprehension. By the statute of 84 Ed. 3. c. 1, justices are empowered to bind over to good behaviour all that be "not of good fame;" and the legal authorities show that a very wide and liberal interpretation has been given to this language, various instances of which are given in the books, many of them comparatively innocent when contrasted with the conduct of this respondent brought under our notice. Having regard to all the circumstances of the case—to what was established in evidence before the magistrate, and which evidences that gentleman, having been an eye witness of the transaction, was well able to appreciate—I think the justice had ample grounds for concluding that Miss Reynolds was engaged in an illegal course of conduct, and that he was well warranted in restraining or endeavouring to restrain a continuance or recurrence of such acts on her part. It is scarcely necessary to say that, if it clearly appeared that any subject, under such an order, has been deprived of liberty without sufficient grounds, this Court would interfere, though considering the very wide discretion given to the justice in the exercise of this salutary jurisdiction, it should, I think, only interfere in a strong and clear case of misused magisterial authority. In this case, I think, it is, on the contrary, clear that abundant grounds have been shown to have existed for the order made, that it was a perfectly proper order, made in the exercise of the jurisdiction of the justice, and that the cause shown must be allowed.

BARRY, J., concurred.

Solicitors: Lane Joynt; M'Gough & Fowler.

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THE QUEEN (M'CORMICK) v. THE JUSTICES OF THE COUNTY CLARE.

[Q. B.]

(Before MAY, C.J., FITZGERALD, and BARRY, JJ.)

## THE QUEEN (M'CORMICK) v. THE JUSTICES OF THE COUNTY CLARE.

Feb. 9, 1882.—*Certiorari—Justice of the Peace—Sureties to be of good behaviour—Inciting tenants not to pay rent—Jurisdiction—Summons or warrant—34 Ed. 3, c. 1.*

On an information having been made by a police officer, that he had reason to believe, and did believe that M'C. was a member of the "Ladies Land League," a stranger to the locality, and had been visiting various persons therein who had been served with writs for rent, and had advised them rather to submit to eviction than pay rent, while outrages followed immediately after her visits to a disturbed district, a warrant was issued against her, and she was arrested at a Land League meeting, and brought to the police barrack and thence to the petty sessions court. The presiding magistrate then read over to her the information made by the police officer, whom she declined to cross-examine, but admitted the truth of said allegations, and avowed that she was a member of the "Ladies Land League" and was carrying out its objects, declining to give any other explanation, or satisfactory account of herself. Accordingly, the magistrate made an order binding her over to be of good behaviour, or in default directing her to be imprisoned for three months. She refused to give bail; and on application for a writ of certiorari, to quash the order:

Held, that the magistrate had jurisdiction, and was bound to act in the matter; and, on the information made and what took place subsequently in court, was justified in making the order, having just ground for suspecting that she had entered, or was likely to enter upon a course likely to lead to crime, and having regard to 34 Edw. 3, c. 1, empowering justices of the peace to bind over to be of good behaviour all that be "not of good fame."

*Certiorari.*—It appeared that on Jan. 19, 1882, an information was sworn by Hubert Crean, sub-inspector Royal Irish Constabulary, before C. D. Clifford Lloyd, resident magistrate, of Tulla, county Limerick, setting forth that the defendant, Anne M'Cormick, arrived in his district about the 11th of the month, and he had reason to believe, and did believe, that she was a member of the Ladies Land League, a stranger to the locality, and had been visiting persons in various parts of the district, in the baronies of Upper and Lower Tulla, upon whom writs had been served for nonpayment of rent, urging them to stand to Land League principles, and submit to eviction sooner than pay their rents; that she was at that time engaged in holding a Land League meeting; that she was going about the district creating discord and dissension amongst her Majesty's subjects, and with that object she had been visiting various persons and localities; that the baronies of Upper and Lower Tulla were in a very disturbed state, and defendant had visited the northern part of the Upper barony, where outrages immediately followed.

A warrant, founded on the foregoing information, was issued by the magistrate (Major Lloyd) on the same day, and the defendant was arrested and brought before him, whereupon he read over to her the warrant and the information sworn by the sub-inspector. He

(Lloyd) then informed her of the charge preferred against her; he asked her whether she wished to put any questions to the sub-inspector, and she replied that she did not, but admitted the truth of the statements in the information and the charge in the warrant, with the exception of "creating discord amongst her Majesty's subjects." She added that she was proud to say she was a member of the Ladies Land League in Dublin, and had been going about the localities in the interest of the League. She was throughout the entire of the proceedings accompanied by the Rev. Father Kenny, who had been president of the Scariff Branch of the Land League. He interposed, and said he supposed she had been travelling for charitable purposes only; but, she in reply said she would not say so, as she was travelling in the interest of the League. Major Lloyd called upon defendant to give a satisfactory account of herself, in order to enable him to discharge her, but she declined to do so. He then told her there was nothing left him but to direct her to find bail for her good behaviour; and, having admitted the charge and declined to give a satisfactory account of herself, he (Lloyd) made the order, which, having recited the foregoing facts, bound her over to be of good behaviour for three months, or in default directed that she should be imprisoned for that period, or until the recognisances be sooner entered into. The arrest of defendant led to a riot in the town of Tulla, and certain of the rioters were brought before him, and he made in their cases similar orders to that made in the case of Miss M'Cormick.

Miss M'Cormick made an affidavit, stating that when she was arrested no warrant for her apprehension was produced, and no explanation was given of the reasons of her arrest beyond the statement that Mr. Lloyd would brook no delay; that when brought before him a paper was read to her by him, in which the charges against her were made, but no evidence was given against her, and when the information was read she was ordered to find bail; that she did not stir up any discontent, and the charges against her were fictitious, and put forward as a pretext for depriving her of her liberty; and that she was detained in the police barracks till nine at night, and then conveyed to the county jail at Ennis.

Against making absolute the conditional order, which had been obtained to bring up and quash the order made by the magistrate:

*James Murphy, Q.C., and Peter O'Brien, Q.C.* (with them *Gerrard*), showed cause.

*O'Riordan, Q.C.* (with him), *D. B. Sullivan*, contra.

The following cases, &c., were cited: *Willes v. Bridger*, 2 B. & Ald. 278; *E. v. Dunn*, 12 Ad. & E. 599; *Haylock v. Sparke*, 22 L. J. M. C. 67; *Loat v. Hutton*, 45 ib. 98; *R. v. Wilkes*, 2 Wils. 150; *Prickett v. Gratex*, 8 Ad. & E. 1028; *R. v. Justices of Co. Cork* (since reported, ante, p. 89); *Sir W. Bronker's case*, Styles, 16; *Rudyard's case*, 2 Vent. 23; *Dalton, J. P.* 295; 5 Burn, J. P. 760; 2 Hayes, C. L. 839; 6 Bac. Abr. 442; 1 Nun & Walsh, J. P. 456; 34 Ed. 3, c. 1.

*FITZGERALD, J.*—The Court does not require to hear counsel in reply for the Crown. I have been asked by my Lord Chief Justice to pronounce the judgment of the Court, and I may first say that having now for the first time heard part of the judgment of the Lord Chief Justice in the case of Miss Reynolds, I concur in it, so far as I have heard it. The application now before us is to make absolute the conditional order which was obtained on two grounds—first, that the magistrate acted without, and in excess of, jurisdiction; second,

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that the order made by the magistrate was not founded on any legal procedure sufficient to justify him in making such order. Upon those grounds the Court has to deal with this case, and I must guard myself against going into any other question which is not open to us. There are two points for our consideration—the excess of jurisdiction, and the absence of legal procedure to justify the magistrate in making the order. Some other questions have been debated before us, but I confine my observations to those two. Upon the information of Sub-Inspector Crean, we must pause to consider whether the magistrate had jurisdiction to act as he has done. From this information it appears, *inter alia*, that it was stated that a stranger had been seen some days before in the neighbourhood, going about from place to place, and he (the Sub-Inspector) had reason to believe, and he did believe, that she had been visiting all the persons who had been served with writs for rent, and that she had advised them rather to submit to eviction than pay rent; and the information further states that she had been visiting various persons and localities in the County, in the Barony of Upper and Lower Tulla, and visited the northern parts of the County, where outrages immediately followed. Upon this information we are called upon to consider whether the magistrate had jurisdiction to act.

There is no doubt that under the Statute of Edward the Third, on information, reliable information, coming not from a private individual, but from one who is charged with the duty of watching over and protecting the public peace, the magistrate had not only jurisdiction, but was bound to act in the matter. He might have issued a summons or a warrant, and it is not necessary for us to consider whether the more expedient course would not have been to have issued a summons; but the magistrate has issued a warrant only, and probably the exigencies of the times required that there should be speedy action taken in the case, for had he acted by summons, possibly a week, a fortnight, or a month would have elapsed before any adjudication could have been made. We have nothing to do with the earlier stages of the procedure, but come at once to the time when the lady was brought before the magistrate. We have to consider merely the course pursued by the justice. The police officer goes to a place of meeting, described as a Land League meeting, and he insists that Miss M'Cormick, whom he sees there, shall attend before a magistrate. It is really unimportant whether her attendance was compulsory or voluntary. Major Lloyd, it appears, read over to Miss M'Cormick the sub-inspector's information, the witness being then present. All this occurred upon the same day—making the affidavit, seeking for the lady, bringing her to the Sessions Court, and the final order requiring her to give security to keep the peace, did not occupy more than a couple of hours. The lady attends in the court, and the magistrate reads over to her the entire of the information from beginning to end, with the object that she should have an opportunity of cross-examining the witness or offering any observations she might choose to make. A person charged upon suspicion as being an evil-doer or disturber of the peace or other crime, is brought to the Court, the reason being to give the person an opportunity of giving any explanation to the magistrate which can be given by her. This is one of the reasons for bringing a party accused before a magistrate. The lady declines to give any explanation, but admitted that all the matters of fact charged on belief were well founded; that she had been going about the country as an emissary, and was a member of the Ladies' Land League, advising persons who were served with law process rather to submit to eviction than pay their rents; in other words, she admitted to be true all the facts set forth in the information on belief. There was another incident in the case which has made me regret that I cannot pronounce an order in her favour, and that is, when Father Kenny interfered and sug-

gested that what she meant was she had come down there on a charitable mission only, she declined to say so. She had the courage at any rate to defend her opinions openly, and she said—"It was not for that purpose I am here. I glory in being a member of the Ladies' Land League in Dublin, and I am here to carry out the objects of that body." Such was the nature of evidence before Major Lloyd. What was he to do? He was charged with the preservation of the public peace, and he finds placed before him a person obviously intending to disseminate opinions dangerous to the public peace, and to carry them out, to incite people to do that which is a crime—to incite the tenants to conspire together not to pay rent to their landlords. This was a much stronger case, on the facts, as I have interpreted them, than the case of Miss Reynolds, for I do not recollect in that case a charge of having incited the tenants not to pay rent, but only a particular tenant. These facts, as they finally appeared before the justice, present a much stronger case than that of Miss Reynolds. There may have been irregularity in the proceedings, but nobody can doubt—no lawyer can doubt—that Major Lloyd had jurisdiction to entertain the case. This disposes of the first ground.

As to the second ground—that the order of the magistrate had not been made on any legal procedure sufficient to justify it—it is not easy to see what exactly is meant. The Court is of opinion that the magistrate had before him a body of evidence quite persuasive, which, in our judgment, called upon him to require the person to give an explanation or to enter into security for future good conduct. She is called upon to explain—to tell what was her mission in the country; she refuses to disclose—she has nothing more to say, she gave no explanation then, she gives no explanation now, she is a wanderer in a locality where she was a stranger. Let us see what is the position of a justice of the peace. It is our province and duty to examine the case, upon the grounds which have been deliberately brought before us, with extreme caution and great jealousy, as the magistrate was exercising an extraordinary summary authority involving personal liberty. If we find that the magistrate had no jurisdiction, or that his order was founded on no legal procedure, it will be our duty to pronounce in favour of the lady, and have the proceedings brought up to be quashed. But see the position of a justice. He has all the powers of a conservator of the peace at common law, and his first and primary duty to the community is to have regard to the preservation of the public peace. The statute law confers upon him large powers for the repression and punishment of crime, and gives him to a certain extent repressive and preventive authority, the object being to give him that authority to a considerable extent for the public good, and the preservation of the public peace. There is no difference in the law in this respect in England or Ireland. The statute of 54th Edward the Third, chapter 1, is an English Act, but is in force in this country, and confers on the justice wide discretionary powers to be exercised for the public good and the preservation of the public peace, but subject to the jealous supervision and control of this Court, where individual liberty is concerned. In the case of *Haylock v. Sparke*, Lord Campbell, C.J., in 1 Ell. & Bl. 486, thus says—"The law upon this subject begins with statute 54th Edward the Third, chapter 1, by which justices of the peace were first appointed. This statute, entrusting these magistrates with a wide discretion, authorises them to take of all them that be not of good fame, where they shall be found, sufficient surety and mainprise of their good behaviour towards the King and his people." In 4 Inst. 181, Lord Coke, remarking upon this clause, says that "the offences against the peace after they are done having been provided for, now followeth an express authority given to the justices, for the prevention of such offences before they be done—viz., and to take of all them that

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be not of good fame (that is, that he defamed, and justly suspected that they intend to break the peace), where they shall be found, sufficient surety and main-prize of their good behaviour towards the King and his people (which must concern the King's peace, as is also provided by the word subsequent, to the intent that the people be not by such rioters troubled or indamaged, nor the peace blemished, &c.)” This is Lord Coke's explanation of the statute, and, I apprehend, that it is quite in accordance with the present law. In *Strange v. Hyde* (2 Roll.), one question was—whether calling another a knave was a breach of a recognizance of good behaviour. The Court held that it was not, and a case is cited there where a person having been committed for not finding sureties for good behaviour for calling an alderman a knave was discharged, such a word alone not being sufficient. It appears from these and other cases, turning upon similar words that aggravated defamation, was a ground for requiring sureties for good behaviour, although rash words of anger were not sufficient. In 2nd Hawk, P. Cr. 14 (7th Ed. B. 1, c. 61, ss. 3, 4), the learned author says:—“It seems the better opinion that no one ought to be bound to the good behaviour for any rash, quarrelsome, or unmannerly words unless they either directly tend to a breach of the peace or to scandalize the Government. However, I am inclined to think that he (the magistrate) has a discretionary power to take such surety of all those whom he shall have just cause to suspect to be dangerous, quarrelsome, or scandalous.” So in *Comyn's Digest* (Forcible Entry, D. 25), it is said that sureties for good behaviour may be required of all not of good fame “if he does that which tends to a breach of the peace.” Upon the whole, it appears to us that the justice of the peace has the jurisdiction to require sureties, &c. Although the main point in the case of *Haylock v. Sparke* does not touch the point in the present case, it is clear if a magistrate has just ground for suspecting a particular person as likely to enter, or has entered, upon a course likely to lead to crime, he may, in the exercise of his discretion, require sureties for his good behaviour.

We are of opinion that there were reasonable grounds for the magistrate, upon which he exercised his discretion. It is not for us to say on the present motion whether he acted wisely or with regularity; but were I asked to give an opinion on the subject, I would say, he exercised that discretion wisely. The magistrate asked the defendant to tell him what she was about in visiting the neighbourhood, but she declined to answer or to give any explanation, yet admitted that she was an emissary of some association, and was there inciting and advising the tenants not to pay rent. Then the magistrate said to her, “If you give no explanation I must take the facts as proved, and I require you to find sureties for your good behaviour.” It was not unreasonable to require that sureties should be procured, and I can have no doubt in saying, in discharging the conditional order, that the magistrate had jurisdiction to entertain the case brought before him, and that the procedure before him was sufficient to sustain the order which he made. We, therefore, are of opinion that the conditional order should be discharged, and I desire to add that, so far as I have heard, the judgment in the case of *Miss Reynolds* was well founded, and governs the case now before the Court.

BARRY, J.—I entirely concur in the propositions that fell from Mr. Sullivan in his very moderate and well-reasoned argument, that this is an abstract question of law which should be decided upon well-established principles, and it has been so decided. Mr. O'Riordan has suggested that a different kind of law should not be laid down in this from that laid down in any other case. I am not aware that a different kind of law is being laid down in this case. I am of opinion that the decision is in accordance with rules that have been well established in England and Ireland for, at all events, the last 200 years, from the interpretation

and administration of the law under the ancient statute of Edward.

MAY, C.J., concurred.

Solicitors for magistrate: *Anderson & Bland.*  
Solicitors for defendant: *M'Gough & Fowler.*

(Before SIR E. SULLIVAN, M.R.)

FERGUSON v. BURROWS.

March 10, 1882.—*Practice*—*Remittal of action*—*County not specified in notice of motion*—*C. L. P. A. Act, 1870.*

Where the notice of motion sought to have the action remitted “to the County Court Judge, at the next ensuing Civil Bill Sessions to be held at Belfast, for the Division of Belfast, in said county,” but did not specify what county:

Held, that the motion should be refused.

SHIRT, for the defendant, moved that this case be remitted to the County Court Judge of Antrim, at the next ensuing Civil Bill Sessions to be held at Belfast.

SAVELEY, contra, objecting in limine.—The Act, and the forms in use under it, contemplate that the notice of motion should show to what county the action was to be remitted; but here the notice does not specify any county, and only asks “that it should be remitted to the County Court Judge at the next ensuing Civil Bill Sessions to be held at Belfast, for the Division of Belfast, in said county” (not specified).

THE MASTER OF THE ROLL.—The objection is a fatal one. The least a party seeking to remit may do is to inform his opponent where the action is to be remitted to. I must refuse the motion.

Motion refused.\*

COMMON PLEAS DIVISION.

Reported by J. P. BRETT, Barrister-at-Law.

(Before LAWSON, J.)

KANE v. STONEYFORD RIVER DRAINAGE CO.

April 25, 1882.—*Practice*—*Application for leave to plead and demur to defence*—*Summons—O. XXVII., r. 5.*

When a plaintiff applies for liberty to reply and demur to a paragraph of the defendant's statement of defence, the application must be made on summons.

Ex parte motion, on behalf of the plaintiff, for liberty to reply and demur to a paragraph of the statement of defence.

JOYCE, in support of the motion, cited: *O. XXVII., r. 5*; *Eiffe, Jnd. Act, 352*; and *Comyn v. The Liverpool, London, and Globe Insurance Co., 12 Ir. L. T. 109.*

LAWSON, J.—We require those applications to be made on summons.

Solicitors for plaintiff: *Chomley & St. George.*

(Before LAWSON and HARRISON, JJ.)

REIDY v. CASEY.

April 27, 1882.—*Practice*—*Attachment of debt*—*Money due to debtor on deposit receipt*—*Conditional order to attach—O. XLIV., r. 2—C. L. P. Act, 1856, s. 63—Debt due but not payable.*

\* Cf. *Moloney v. Duane*, 10 Ir. L. T. 73, where the wrong county was named.—[E. N. B., Ed.]

[Ex.]

CREATON v. MIDLAND GREAT WESTERN OF IRELAND RAILWAY CO.

[Ex.]

*Money due on a bank deposit receipt, payable in futuro, is attachable under a garnishee order; and on the ex parte application of the plaintiff, who has obtained judgment against the defendant, the Court will make a conditional order to attach, but not to pay.*

*Ex parte* motion, on behalf of the plaintiff, for a garnishee order to attach £190 due to the defendant on deposit receipt in the Bank of Ireland.

The plaintiff obtained judgment on the 17th April, 1882, against the defendant for £21 17s. and £9 2s. 6d. costs, with interest at 4 per cent. per annum since the date of the judgment. The plaintiff alleged that the defendant had no goods or chattels out of which the judgment could be realised, and that the defendant had £190 to his credit in the Eunis Branch of the Bank of Ireland on deposit receipt. The money was not drawn out, the conditions of the deposit receipt requiring ten days' notice.

*Brett*, in support of the motion.—The Court can grant a conditional order to attach the amount of the deposit receipt, which is a debt due to the defendant, but not payable till a future time: *O. XLIV., r. 2*; *Eiffe*, Jud. Act, 483; *Payne v. French*, 10 Ir. Jur. N. S. 52; *Bewley and Naish*, C. L. P. Acts, 398.

*LAWSON, J.*—We shall grant a conditional order to attach the amount of the deposit receipt, but no order to pay.

Solicitor for the plaintiff: *G. Walton.*

#### EXCHEQUER DIVISION.

*Reported by HANS AYLMER, Barrister-at-Law.*

(Before *PALLES, C.B., FITZGERALD, and DOWSE, BB.*)  
CREATON v. MIDLAND GREAT WESTERN OF IRELAND RAILWAY CO.

Feb. 15.—*Practice—Amendment—Adding co-defendant—Agency—Two causes of action—Breach in respect of one out of the jurisdiction—Jud. Act, sch. r. 19—O. XV., rr. 3, 4.*

*Where, in an action against a railway company for breach of contract in not carrying the plaintiff's pigs safely from a station in Ireland to Liverpool, and for wrongful conversion, the defendants, by answers to interrogatories, showed that the alleged conversion took place wholly in England, and was committed by another railway company without their sanction, leave was granted to the plaintiff to add the latter company as co-defendants.*

Summons, on behalf of plaintiff, for an order to add the London and North Western Railway Company as co-defendants in the action, which was brought to recover £207 14s. damages for negligence in carrying 41 pigs of the plaintiff from Ballaghaderreen to Liverpool, and for conversion of part of the said goods. It appeared that the pigs were to have been delivered at Liverpool in time for a certain market. They missed the said market, and 17 of them were sold in Manchester, and one, which had died, in London, by the London and North Western Railway Company, for £71 14s. Interrogatories were delivered by the plaintiff, which, by consent, it was agreed should be answered by *W. G. Skipworth*, the agent in Dublin of the London and North Western Railway Company. In answer to a question whether such sale had been effected by the London and North Western Railway Company as agents for the defendants, the said agent answered the

sale was effected by the said company without any communication having been made to or received from the defendants in reference thereto, and the 17 pigs were tendered to the plaintiff as he was informed and believed, and he refused to accept same alleging he had missed the market. They were then, as he was informed and believed, by arrangement with the plaintiff, sent to Manchester as aforesaid. The answer being deemed unsatisfactory and ambiguous, *Mr. Skipworth* was directed to file a further answer. The further answer was that the London and North Western Railway Company sold the pigs, not as the agents of the Midland Great Western Company, and they sold them in the interest of the plaintiff, and at the best price obtainable.

The motion was heard by *Dowse, B.*, in chambers, and was by him adjourned into court.

*Dillon*, in support of motion.—The Jud. Act, sch. r. 19, allows a defendant to be added at any stage of the proceedings, and *O. XV., rr. 3, 4*, shows that our applying to have the London and North Western Railway Company added as defendants in no way involves our having no action against the Midland Great Western Railway Company: *Edward v. Louther*, 45 L. J. C. P. 417.

[*FITZGERALD, B.*—But in that case both parties were originally liable, and equally liable, and might have been sued together in the beginning].

The London and North Western Railway Company acquired the possession of the pigs, either as the agents of the defendants or not; if not there has been a tortious conversion, and they are liable. There is, in any case, a liability on the defendants; in one case on the London and North Western Railway Company.

*The Macdermot, Q.C.*, for the defendants, *contra*—If the London and North Western Railway Company were agents they should not be joined at all. The alleged breach of contract by us is in Ireland; the alleged conversion was in England. The conversion took place without our sanction; and if we are not liable for it the amendment should not be allowed, as it would involve us in the trial of matters in which we are not concerned. Even supposing that the London and North Western Railway Company might have been joined originally, they should not be added at the present stage of the proceedings, upon the facts in evidence. And besides, the whole cause of action in reference to them arose out of the jurisdiction.

*PALLES, C.B.*—I think this order should be granted. It appears that the plaintiff entrusted a number of pigs to the Midland Great Western Railway Company to be delivered in Liverpool, and *prima facie* he is not interested in the question what agents they employed or in what way they performed the contract, provided the mode adopted was consistent with their contract. As a matter of fact they performed it in part by carrying the pigs to Dublin in their own vans, and then handing them over to the London and North Western Railway Company to carry to Liverpool. I have no doubt, then, that for the purposes of carriage and delivery they must be treated as the agents of the Midland Great Western Railway Company. The sale of the pigs, however, was so carried out by the London and North Western Railway Company, according to the answers to the interrogatories, that they could not be held to be the agents of the Midland Great Western Railway Company for that sale. As against the defendants I assume that the statement so made by them is true. The London and North Western Railway Company have, therefore, so intervened in the performance of the contract of carriage that there is reason to believe that complete justice in reference to this performance—which is the



Q. B.]

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[Q. B.]

matter in dispute—cannot be done in their absence. We should have before us both those liable for the carriage and also those liable for the sale. There can be no doubt it would be very convenient, and we have full jurisdiction to bring them before us, under Sch. r. 19, and it is not necessary that both of them should be interested as to all the relief sought. In my opinion it is impossible that the London and North Western Railway Company, had they originally been made defendants, could have been struck out afterwards. It is an Irish transaction, and, consequently, one over which we have full jurisdiction, and this being so we should exercise it with all the necessary parties before us. It would also be more convenient that it should be settled in one action, and that it should not be necessary to institute two actions.

Dowax, B.—I have very considerable doubts as to the propriety of making this order; but they are not strong enough to induce me to dissent from the judgment delivered by the Lord Chief Baron, the more especially as I am clearly of opinion we have the jurisdiction to make the order; though in the exercise of the discretion vested in us I do not think I would have made the order on this occasion. Mr. Dillon must admit, if he joins the London and North Western Railway Company as defendants, he had no right of action against the Midland Great Western Railway Company for conversion—a barrier, so to speak, is raised between the two causes of action. If defendants were bound by the tortious act of the London and North Western Railway Company, the plaintiff has his remedy on the record as it stands; while if they are not so bound the London and North Western Railway Company are brought into the action on independent grounds, and in a case in which the cause of action, if any, arose in England.

FITZGERALD, B., withdrew his opinion.

*Motion granted; costs of defendants costs in the cause.*

Solicitors for plaintiff: V. B. Dillon & Co.  
Solicitor for defendant: A. Cullen.

#### QUEEN'S BENCH DIVISION.

(Before O'BRIEN, J., in Chambers.)

QUINN v. M'ARDLE.

Sept. 29, 1882.—*Arrears of Rent Act, 1882, ss. 1 (3), 13—Suspension of proceedings—Motion after judgment signed, and execution issued—“Antecedent arrears” —“Usual day of payment.”*

*The plaintiff having sued to recover one and a half years' rent, payable in respect of a holding of land up to May, 1882, the defendant, who had paid a year's rent in June, 1881, offered to pay the November rent of 1881, and applied, after final judgment and execution issued, to postpone or suspend the proceedings, under section 13 of the Arrears of Rent (Ir.) Act, 1882 (45 & 46 Vic., c. 47), on the ground that the payment in June, 1881, was applicable, in part, to the May rent of that year, that arrears prior to 1881 thereby became and still were due, and that the case came within the purview of the Act:*

*Held that, as the May rent was usually paid in December following, the payment in June was not applicable thereto, that the May rent was still due and no antecedent arrears had become due; and that the application should be refused accordingly.*

*Motion, by defendant, under the Arrears of Rent Act, 1882, s. 13, for an order postponing or suspending the proceedings in this action, which had been brought by the plaintiff for the recovery of one and a half*

*years' arrears of rent up to May 1st, 1882, of certain lands in Maghera, Kilocranny, Co. Armagh, the Poor Law valuation of which was £28 per annum.*

*In support of the motion an affidavit was made by the tenant, that he owed one and a half years' arrears of rent of his holding; that an execution issued in this action for the amount was in the hands of the Sheriff of Armagh; that he was unable to pay same without deprivation of the holding, or of the means for cultivating same; that he had, on the 20th of June, 1881, paid one year's rent, half of which he claimed should, by virtue of the Arrears of Rent Act, be applied and appropriated in payment of the half-year's rent which had accrued due on May 1st, 1881; and that he had before this motion tendered the November rent of 1881.*

*On the other hand, an affidavit was made by Mr. Ephraim Fullerton, land agent of the plaintiff, averring that the May rent of each year was usually paid along with the November rent in the December of the year in which the rent accrued due; and that the tenant had, as he believed, ample means to pay the rent now sued for.*

*Staveley, in support of the motion, contended that under the Arrears of Rent Act, section 13, the Court could stay an action for the rent of a holding falling within the Act—namely, an agricultural holding valued under £30—even though the action did not include any arrears due before 1881; but that, at all events, here, under section 1, sub-section 3, half of the payment made in June, 1881, “should be deemed to have been made on account of the rent payable in respect of the year expiring at the last gale day of the year 1881,” which had accrued due before June 20, 1881—namely, the May rent of 1881; and that, the May rent of 1881 being thus wiped out, the rent now due would consist of—(1) the November rent of 1881, (2) the May rent of 1882, and (3) a half-year of the rent which had accrued due prior to 1881; and that the tenant would, under the Act, be entitled to be relieved from that prior arrear. Similar orders had repeatedly been made to stay sales under executions for rent.*

*Cuming, contra, without admitting the power of this Court to restrain proceedings after judgment, contended that section 13 of the Arrears of Rent Act only gave the Court power to restrain “proceedings on account of the rent in respect of the year expiring at the last gale day of 1881, and antecedent arrears,” and that the very exceptional powers given by the section were never intended to apply to a case where the landlord sued merely for the rent of 1881 alone. He, also, contended that the payment made on June 20, 1881, could not be applied to the rent which fell due in May, 1881, since sub-section 3, of section 1, provides that “where it appears that, according to the ordinary course of dealing between a landlord and tenant of a holding, the rent has been usually paid on a day subsequent to the day on which it became due, the usual day of payment shall be deemed for purposes of this sub-section the time at which the rent accrued due.” Consequently, the tenant could not apply the payment made in June to the May rent, which was usually paid in the following December. Both the May and November rent of 1881 were therefore due, and no prior arrears were due, and the tenant could obtain no benefit from the Arrears Act whatever.*

*O'BRIEN, J., held that the payment in June could not be appropriated to the rent falling due in May, but usually paid in December, and refused the motion, stating that if the May rent had been usually paid before June 20th the payment on June 20th would have been applicable to it, and that he could have then*

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[Ex.]

restrained the action, because, by virtue of the third sub-section of section 1, it would then have become an action for rent of 1881 and antecedent arrears. He had already decided in several cases that applications could be made under section 18 after final judgment had been marked and execution issued.

*Motion refused.*

Solicitor for the plaintiff: *W. A. Simpson.*  
Solicitor for the defendant: *J. E. Peel.*

#### EXCHEQUER DIVISION.

*Reported by HANS AYLMEY, Barrister-at-Law.*

(Before PALLES, C.B., and FITZGERALD, B.)

COLE v. DAWSON.

June 29, July 1, 1882.—*Solicitor and Client—Charging lien—“Property recovered or preserved”—Decree or judgment—Parties not before the Court—Delay in application—39 & 40 Vict., c. 44, s. 3.*

*C. having bequeathed a chattel interest in land to his widow so long as she continued unmarried, the widow married D., and died intestate. E. C. the eldest son of C., took out administration to C.'s will, and brought an action to recover possession of the land against D. and his two brothers, to which D. alone took defence. The trial was listed for hearing on Dec. 15, 1881, when the plaintiff's solicitor was informed that the action had been settled by an agreement; and the case was struck out accordingly. By this agreement, signed by the plaintiff and defendants, the plaintiff was to abandon his claim, receiving from the defendants £120 and a promissory note for £20, each party paying his own costs. A few days before this compromise one of D.'s brothers had, as a legatee, instituted a civil bill suit to administer the assets of C. The solicitor of the plaintiff applied to him, without success, for payment of the costs; and the plaintiff afterwards went to America; and on March 2, 1882, the solicitor applied for payment to D., but alike unsuccessfully. On June 29, 1882, the solicitor having moved for an order that he be declared entitled to a charge on the lands, as being property recovered or preserved through his instrumentality, under 39 & 40 Vic., c. 44, s. 3, or for an order that D. should pay the costs, the £120 having been paid in his own wrong:*

*The COURT, being divided in opinion, pronounced “no rule.”*

*Motion, on behalf of Charles Henegan, solicitor, for the plaintiff, that he be declared entitled to a charge upon the lands of Ardristan, and the interest therein of the plaintiff as administrator of the late Patrick Cole, being the property recovered or preserved in this action through the instrumentality of the said Charles Henegan, for the costs, charges and expenses of the proceedings; and for orders for taxation and payment of the same, or for an order that Daniel Dawson, the defendant, do pay to the said Charles Henegan the said costs, charges and expenses, &c.*

The action was instituted to recover possession of the lands of Ardristan in the County of Carlow. The plaintiff, Edward Cole, was the eldest son of Patrick Cole, who died in 1860, having previously made his will, by which he bequeathed £100 to each of his three

sons, who were then very young, and the residue of his property (which included his chattel interest in the said farm of Ardristan) to his widow so long as she continued unmarried. His widow was appointed executrix of said will, which she never proved; and she shortly afterwards married the defendant Daniel Dawson, and died intestate in 1881. The plaintiff only became aware of the existence of the said will in 1880, and he obtained letters of administration *cum test. annexo*, after her death. The only property of the testator now remaining was this farm containing about 50 Irish acres and the stock thereon. Dawson had been, and still continued, in possession of the said lands; and the plaintiff, as administrator, instructed Mr. Henegan, as his solicitor, to institute the proceedings for the recovery of the same. The case was listed for hearing on December 15, 1881, and on that day, when briefs had been delivered to counsel, Mr. Henegan was informed that the action had been arranged, and the solicitor for the defendant handed him the agreement hereinafter mentioned, and accordingly, he had to allow the case to be struck out of the list. The agreement, dated December 13, 1881, Tullow, County Carlow, was signed by plaintiff and defendant, and by Thomas and Patrick Cole, two brothers of the plaintiff who were co-defendants, but who had not taken defence. It stated that by consent of four men whose names were given, Edward Cole, the plaintiff, agreed to receive from the three defendants the sum of £120 sterling and £20 on promissory note of the defendants, payable June 13, 1883, each party paying their own costs, and the plaintiff to abandon his claim. The costs of Mr. Henegan in the action including the costs of administration less by £8 10s. he had obtained from the plaintiff, amounted to £73 7s. 9d. He had applied to the plaintiff without success; and on March 2, 1882, he sent a registered letter to defendant requesting payment, but the latter refused to receive the letter, which was returned to him through the General Post Office. The plaintiff had since gone to America, and there was no other property off which the said costs could be realised. The applicant swore that the compromise was entered into without his knowledge or consent and with a view to defeat his claim. Affidavits of the defendant and one of the arbitrators denied there was any fraud or attempt to deprive him of his costs, and alleged that one of the brothers had caused an equity civil bill action to be instituted against the plaintiff, a few days before the compromise, to administer the assets of the deceased.

*Macmahon, Q.C., and Shortt* for the applicant, Charles Henegan.—We are entitled to a charge on the lands in the possession of defendant; he had notice of the action, and that amounts to notice of the solicitor's costs: *Faithfull v. Ewen*, 7 Ch. D. 495. Also, he evidently knew of the actual claim by refusing the registered letter. This claim binds a purchaser, being in the nature of a salvage claim: *Haymes v. Cooper*, 33 Beav. 431. The property was “preserved” within the meaning of 39 & 40 Vict., c. 44, s. 3, on which statute we find no Irish cases, but it corresponds to 23 & 24 Vict., c. 127, s. 28. The costs of probate and administration were ancillary and necessarily incurred to give plaintiff title in the action.

[FITZGERALD, B.—Is the release of a disputed claim equivalent to a sale of the estate?]

It is not necessary that a judgment or verdict recovering or preserving the property should have been obtained—a compromise is within the authorities: *Jones v. Frost*, 7 Ch. Ap. 773; *Twynam v. Porter*, 11 Eq. 181. The defendant has no title except under the compromise. In the alternative we are entitled to an

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[Ex.]

order on the defendant for payment, the £120 being money paid by him in his own wrong: *White v. Pearse*, 7 Hare, 276.

They also cited *Früchard v. Roberts*, 17 Eq. 222; *Bailey v. Birchall*, 2 Hem. and Mil. 371.

*Eiffe*, for the defendant, *contra*.—The charge of fraud is made, and no evidence given to substantiate it. The application is unprecedented, being made against one of three defendants, and the plaintiff is not here, and there is not a case in the books where such an order has been made in his absence. A great lapse of time occurred before application was made to defendant for payment.

He cited *In re Sullivan*, L. R. 4 Q. B. 153; *Berrie v. Hewitt*, 9 Eq. 1.

PALLEs, C.B.—I am sorry to say we are unable to agree in this case; the result being that we make no rule upon the motion. I think the motion is right, and I will say why I think so. The only question is whether it comes within 39 & 40 Vic., c. 44, s. 8. I take it to be clear it is not absolutely necessary there should be a decree or judgment, though that would be a very material circumstance. This appears from *Jones v. Frost* and other cases cited. If a suit has been once instituted and properly recovered or preserved that is sufficient. Has there been such in this case? That turns upon the true meaning of this transaction, which resulted in the signing of this agreement. Was it an admission of plaintiff's legal title to the land, and a purchase of his equitable interest therein? Dawson's case is that he caused an equity civil bill action to be instituted previous to the signing of this agreement against the plaintiff in this action for administration of the assets of the testator, which are alleged to include the farm in question, but it was brought in the name of one of the legatees, showing the defendant had no title, and it was a claim which could not exist against land which was not assets in the hands of the administrator. Therefore I think the plaintiff sold his interest by this transaction. It is a case quite as strong as *Jones v. Frost*. You cannot by the purchase deprive the solicitor of his costs out of the property, which he is declared by the Act to have a charge on, and right to payment out of. Thus would the case stand if everything were done as it should be; but it is quite otherwise. The parties are not all before the Court. The co-defendants are not here. In my opinion, the right course would be to serve a conditional order upon them. The plaintiff himself is not here, which is more inconvenient. There has also been great delay in application to defendant. This has pressed upon me; and, if it were a matter of discretion, it is a case in which I think I would not exercise it. But it is a right, and the time that has elapsed has not been sufficient to disentitle the applicant.

FITZGERALD, B.—I do not say that it is always necessary that the case should be prosecuted to judgment; but I cannot see that the right of the plaintiff was established by this transaction.

*No rule.\**

Solicitor for applicant: *C. Henegan*.

Solicitor for defendant: *W. G. Toomey*.

\* On appeal (Nov. 8, 6, before Law, C., Morris, C.J., Deasy and Fitzgibbon, L.J.J.), it was held (1) that the circumstances did not show a "property recovered or preserved," and (2) that, so far as it was sought to induce the court to exert its general equitable and controlling jurisdiction to prevent fraud and collusion, the delay was too great. Morris, C.J., added that he did not think there was anything in the compromise of an irregular or fraudulent nature. See papers by the present writer in 16 Ir. L. T. 331, 345, and cases there collected, including a previous Irish decision on the construction of the statute, *McAleavy v. McAleavy*, 9 L. R. Ir. 165.—[E. N. B., Ed.]

(Before PALLEs, C.B., FITZGERALD and DOWSE, BB.)

WHITE v. WORKMAN AND ANOTHER.

Feb. 23, 1882.—Practice—Amendment—Adding co-defendant—Joint liability—Jud. Act, Sch. r. 19—O. XV., r. 17.

*On an application by a defendant, under the Jud. Act, Sch. r. 19, to compel the plaintiff to join other parties as co-defendants in the action on the ground of their joint liability with him, he must establish that joint liability by clear and distinct evidence.*

Motion, on behalf of Workman, one of the defendants, for an order that the plaintiff do join as co-defendants with the present defendants, six other persons in the notice of motion named. The action was for £144 17s. 5d., being the amount of a bill of costs served on the defendants representing services rendered to them by the plaintiff as their solicitor.

An affidavit, filed in support of the motion by the solicitor for the said defendant, alleged that his client being in Edinburgh he had not time to communicate with him for the purpose of procuring him to swear to the facts thereafter deposed to before the time for putting in his defence would expire; that he was instructed by his client and believed that the only bill of costs served upon his said client was one he made an exhibit of; that he was instructed by his client and believed that his only liability (if any) in respect of the subject matter of this action, save as thereafter mentioned, was as a member of a committee of the persons whose names were prefixed to the said bill of costs and now sought to be made co-defendants in this action, and that he was instructed by his client and believed that he had promised to subscribe £5 to a guarantee fund which was being raised for the purpose of meeting the costs, the subject matter of the action, and that he had paid same along with other subscribers, a list of whom he believed was in the plaintiff's own possession. It appeared that the said committee was formed for the purpose of opposing the extension of the borough of Belfast in the Malone district. The bill of costs referred to was headed with the names of eight persons, including the two defendants, and stated that they were indebted to J. White, solicitor.

No affidavit was made by the plaintiff in reply.

*Craig*, in support of the motion.—The only bill of costs served on us was that in respect of which the action is brought, and that document clearly shows that the liability, if any, is a joint one with those other persons whom we wish the plaintiff to make co-defendants. That the liability is joint appears from our affidavit, and must be taken to be admitted, as the plaintiff might have denied it by affidavit if he could.

[PALLEs, C.B.—To make him answer now would be to make him show his hand in a way to which I would not press him.]

Pleas in abatement are abolished by the Jud. Act Rules, but not without substituting another mode of procedure by which the benefit obtained by such pleas may still be secured: O. V., r. 17.

[PALLEs, C.B.—And would not judgment obtained against these two defendants extinguish the right against the other six when the liability is joint and several—a fortiori where the liability is joint only?] The fact of the affidavit not being made by the defendant himself is satisfactorily explained. No doubt all these persons were also served with the same bill of

[Ex.]

WHITE v. WORKMAN AND ANOTHER.—WILSON v. GAHAN.

[CIR. C.]

costs; the plaintiff might at least have sworn that he only served the two defendants, or that if he served the others it was by mistake.

He cited *Kendall v. Hamilton*, 4 Ap. Ca. 504, judgments of Lords Hatherley and Cairns at pp. 515-6, 522. *Weir, Q.C., contra.*—The writ was served October 21, 1881, and this defendant's appearance was entered November 2, 1881, so that there was abundance of time to get the information from Workman himself, especially as this is an application which may be made at "any stage of the proceedings." The whole of the facts are before the Court only on information and belief. Under the old system this would have been a plea in abatement—a technical proceeding, every formality of which had to be complied with, which is not done here. Moreover, if the defendant failed in such a plea the judgment for the plaintiff was final. Again, why should we be compelled to proceed against these six persons at our risk if we think that we can only prove against these two. If the liability is as stated the defendants will be entitled to contribution, and their course is plain—*i.e.*, to proceed to make them parties under O. XV., r. 17. But the last statement in the affidavit shows there is no joint liability at all. Such a proceeding ought to make our writ a better one, but this would make it worse.

PALLES, C.B.—My view of the question is this:—There are two different ways under the Judicature Act by which persons not parties to the record may be made such. There is, first, Sch. r. 19, which is a very wide rule, giving a large discretion to the Court, and one which has been exercised without an application by either party. This rule only applies where the new parties originally "ought to have been joined," or where their presence is necessary for the Court "effectually and completely to adjudicate and settle all the questions involved in the action." There is in the next place O. XV., r. 17, under which the defendant may apply where he claims to be entitled to contribution or indemnity, or any other relief against any other person. The present application is one by the defendant to compel the plaintiff to join other parties as co-defendants—in fact, to impose on him an obligation against his will to establish a right against these parties. Why should he be bound to prove a liability against eight persons, which he may think, perhaps, he cannot, when he is content to prove it against two. Suppose he succeeds in the action against the two, but fails against the other side, he would recover, with costs, against the two, but he would, perhaps, have to pay six other sets of costs. To entitle the defendant in such an application there must be clear and distinct evidence of joint liability. Here the joint liability is not clear. We have only the affidavit of the solicitor of the defendant on information and belief, which contains moreover a very doubtful statement in the last paragraph. It may well be that there is a liability on some other members of this Committee; but we are far from satisfied that the joint liability is established. It is the assertion of the defendant; if he establish it he will be entitled to contribution or indemnity, and a mode of procedure is given to him by O. XV., r. 17; but there is no application before us under that rule, therefore we must refuse the motion, with costs.

DOWSE, B.—In my opinion, it makes no difference whether an affidavit in answer were made or not. The onus of proof lay on the defendant; and he has failed to establish his case.

FITZGERALD, B., concurred.

Order accordingly.

Solicitors for plaintiff: *Cronhelm & Tobias.*

Solicitor for defendant: *J. Dinnen.*

## ASSIZES.

(Before DEASY, L.J.)

WILSON, App., v. GAHAN, Resp.

March 17, 18, 1882.—*Poor rate—Right of action by collector—Recovery of arrears from ratepayer, after payment by collector to Poor Law Guardians—6 & 7 Will. IV., c. 116, s. 153—1 & 2 Vic., c. 56, s. 73.*

*Where, under the obligation of his bond, a poor rate collector has paid the full amount of the rates struck to the Poor Law Guardians, he is not debarred from suing, in his own name, to recover arrears still due by a ratepayer. Boyle, app., v. Lennon, resp., 12 Ir. L. T. 161, distinguished.*

Appeal from a dismiss, pronounced by the County Court judge of Tyrone, on a process brought by a collector of poor rates, the appellant, to recover £1 8s. 6d. due for poor rate by the respondent.

The appellant admitted that he had paid to the Poor Law Guardians the full amount of the rates sued for, having been obliged to pay them the whole amount of the rates struck, under the terms of his bond.

*Mr. H. H. Moore*, solicitor, for the respondent, relied on the collector's admission, and cited *Boyle, app., v. Lennon, resp.*, 12 Ir. L. T. 161, contending that the effect of that decision was that, under such circumstances, the collector had no remedy against the ratepayer unless the latter had specifically authorised him to pay the rates as due.

*Mr. T. C. Dickie*, solicitor, for the appellant, *contra.*—In *Boyle, app., v. Lennon, resp.*, *ubi supra*, the collector only sued for money (county cess) paid for the ratepayer's use and at his request. *Fitzgerald, B.*, said, "if he is to recover an amount from a cesspayer as money paid to his use, he must have the cesspayer's authority for the payment;" "you cannot recover money paid for a person *without his request.*" There no request was proved, and it was held that none was implied, and, accordingly, the dismiss was affirmed because, in order to maintain such a process, "the collector should have had the authority of the cesspayer for the advancement of the money;" but, that case was very far from deciding that no other remedy would be open to the collector. On the contrary, statutory powers are given both to poor rate and county cess collectors to sue for and collect those rates in their own names as collectors: 6 & 7 Will. IV., c. 116, s. 153; 1 & 2 Vic., c. 56, s. 73; and here the process has been rightly brought.

*Judgment deferred.*

DEASY, L.J.—I entertained no doubt on this case myself, but held over my decision on account of the construction which was sought to be put on *Boyle, app., v. Lennon, resp.*, to the effect that when a collector has paid to the Guardians the full amount of his collection he has no remedy against the ratepayer unless the latter had specifically authorised him to pay the rates for him. That did not appear to me to be the effect of that case; and having consulted Baron Fitzgerald, he assured me that such was not the effect of his decision, but merely that, where the process was for money paid for the defendant's use, the plaintiff could not recover it in that form; and he now agrees with me that payment by the collector of the full amount of the collection, under the obligation of his bond, does not absolve the ratepayer in any way from payment of rates legally due by him, nor debar the collector from suing for same in his own name. I shall, therefore, reverse the dismiss, and give a decree for the full amount with costs.

CIR. C.] M'INDOE v. MIDLAND GREAT WESTERN RAILWAY CO.—ATKINSON v. JEFFERS. [Co. Ct.

(Before MAX, C.J.)

M'INDOE v. MIDLAND GREAT WESTERN RAILWAY CO.

March, 1882.—Carrier—Railway Co.—Warranty—Live stock.

A railway company, carrying live animals, are not insurers thereof, and, in the absence of any evidence of negligence or proof of the cause of injury to the animals, will not be liable to damages for such injury.

Appeal from decree made by the County Court Judge of Sligo. The action was brought to recover £10, value of two pigs, which defendants received from the plaintiff to carry from Sligo to Dublin. These pigs, along with 18 others, also belonging to the plaintiff, were delivered by him to the defendants on the 19th September, 1881, to be conveyed to Manchester via Dublin, by the train leaving Sligo at 8 30 p.m. on that day. The pigs were placed in a wagon by themselves, and the train started in due time, and arrived without accident, and in due time, at the Railway Company's premises at the North Wall, Dublin. The plaintiff stated that the pigs were in a healthy condition at the time of delivery. There was no evidence of overcrowding. On the arrival of the train the wagon was opened in order to deliver the 20 pigs to the servants of the Steamboat Company who were to convey them to England, when two of the pigs were found to have died. The County Court Judge on this state of facts gave a decree to the plaintiff for £4, with £3 for witness's expenses; and from this the defendants appealed.

The Macdermot, Q.C., for appellants.

Strutch, for respondent.

MAX, C.J., reversed the decree, stating that the defendants were not insurers of live stock as of goods, and that in the absence of proof of the cause of the death of the pigs, or of any evidence of negligence, they were not liable: *Blower v. Great Western Railway Co.*, L. R. 7 C. P. 655; *Kendall v. London & South Western Railway Co.*, L. R. 7 Ex. 373.\*

Solicitor for appellants: J. P. Davys.

Solicitor for respondent: W. R. Fentim.

## COUNTY COURT.

(Before R. W. GAMBLE, Q.C.)

ATKINSON v. JEFFERS.

Oct. 25, 26, 1882.—*Arrears of Rent (Ir.) Act, 1882, ss. 1, 13—Suspension of proceedings—“Antecedent arrears.”*  
Section 13 of the *Arrears of Rent (Ir.) Act, 1882* (45 & 46 Vic., c. 47), enabling the Court to suspend proceedings for the recovery of rent, or for the recovery of a holding for nonpayment on account of the rent in respect of the year 1881 and antecedent arrears, does not apply unless, in addition to rent due in respect of 1881, arrears antecedent to 1881 be due, and be sued for in such proceedings.

Applications (heard at Armagh) to stay proceedings, under 45 & 46 Vic., c. 47, s. 13. The circumstances are sufficiently explained in the judgment.

Mr. Gallagher, solicitor, for the applicant.

Mr. Wm. Atkinson, for the landlord.

Judgment deferred.

The JUDGE.—In these cases civil bill processes had been brought to recover rent due up to November, 1881.

\* See com., by the present writer, 15 Ir. L. T. 223, 237.—E. N. B., Ed.]

Notices in form “A” had been served upon the landlord of an intended application to the Land Commission under the *Arrears of Rent Act*. Applications have also been made to me, under section 13 of that Act, to stay the proceedings pending the decision of the Land Commission. The question is not directly before me in these cases, whether either of these tenants is entitled to have any of his arrears paid or remitted under the Act. The plaintiff seeks decrees to recover the two gales of rent which legally accrued due on May 1st, 1881, and November 1st, 1881. If I give the decrees that rent may be levied immediately; but the tenants in each case having paid since the 1st May, 1881, sums amounting to a year's rent, they now contend that, under the *Arrears of Rent Act*, these sums should be applied in discharge of the year's rent now sued for, and that therefore I should stay the proceedings until the Land Commission have decided whether the rent of 1881 is to be presumed to have been discharged by the payments made during that year, and since. When the landlord received these payments he, as a matter of course, applied them to the discharge of the antecedent arrears, leaving the tenants clear up to November, 1880. He says that the rent sued for should have been discharged before Christmas, 1881; and that it would be a great injustice to him to delay his recovering it, when there will be another year's rent due in a few days which he has not yet asked for. In these two cases there are no antecedent arrears due—that is, in the words of the statute, no arrears antecedent to 1881. The words of the 13th section of the *Arrears of Rent Act*, as I construe them, save me from difficulty in these two cases; for I hold that unless the tenant, at the time of the application to me, owes both the year's rent of 1881 and antecedent arrears section 13 does not apply. The words of the section, omitting technical and unnecessary words, are as follows:—“When any proceedings for the recovery of rent of a holding, or for the recovery of such holding for nonpayment of rent on account of the rent in respect of the year 1881, and antecedent arrears, have been taken and are pending, the court shall, if the provisions of section 1, sub-section ‘A,’ have been complied with, on such terms as the court may direct, postpone or suspend such proceedings.” It was argued before me that the words “and antecedent arrears” apply only to ejectments, and not to proceedings for the recovery of rent. If such were the true construction, I would be obliged in another case to stay proceedings for the recovery of the rent of 1882, although there was no claim either for the rent of 1881 or for antecedent arrears. The words “and antecedent arrears” could not grammatically be limited in their application to the case of proceedings for the “recovery of the holding” without carrying with them the prior words “on account of rent in respect of the year 1881,” and such a construction would be contrary to the whole intentions of the Act. I, therefore, hold that to these two cases, there being no claim for antecedent arrears—that is, for arrears antecedent to 1881—section 13 does not apply, and I should not stay proceedings. The other case, in which there is a small sum of antecedent arrears, is in a different position. It is, therefore, unnecessary in these two cases for me to consider whether the latter part of section 13, as to the payment or the presumed payment of the rent of 1881, has been complied with. The defendants, if they should succeed before the Land Commission, will suffer no loss by the payment of these decrees; for the money, if they succeed, will then be applied to the discharge of the rent for 1882. It has, also, been argued that the word “holding,” to which the Act applies, includes all holdings, where the money paid was applied to the arrears of 1880, but, under the Act, could be appropriated to 1881, and section 1 of the Act is referred to. But section 1, sub-section (b), makes it one of the necessary circumstances that antecedent arrears are due. I will, however, give a stay of execution till 30th November if a half-year's rent, and costs, be lodged in court.

Orders accordingly.

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ATKINSON v. KERR AND ANOTHER.

[Co. Ct.]

## ATKINSON v. KERR AND ANOTHER.

Oct. 26, 27, 1882.—*Arrears of Rent (Ir.) Act, 1882, ss. 1, 13—Suspension of proceedings—“Usual day of payment” of rent—Deferred payment—Hanging Gale.*

Section 1 (3) of the *Arrears of Rent (Ir.) Act, 1882* (45 & 46 Vic., c. 47), enacts that all payments on account of rent made by the tenant to the landlord in or subsequent to 1881, but before Nov. 30, 1882, shall be deemed to have been made on account of the rent payable in respect of 1881, to the extent to which the rent for that year had at the time of such payment accrued due, provided that where it appears that, according to the ordinary course of dealing between the landlord and tenant of a holding, the rent of such holding has usually been paid on some day after the day on which it became legally due, the usual day of payment shall be deemed to be the time at which the rent accrued due. In construing this enactment, and applying the latter proviso, the usual day of payment by each particular tenant must be ascertained, regardless of what may be usual on the estate; and where the tenant, not paying regularly, has no such usual day, all that can be done is to assume in favour of the tenant, as is implied in the previous part of the enactment, that the question as to the usual day of payment is not to be influenced by the nonpayment of recent years. If payments were previously made regularly, the tenant should be entitled to the benefit of the prior part of the enactment. The last clause,—that the usual day of payment shall be deemed to be the time at which the rent accrued due,—taken in connexion with the preceding words, must be considered, not as a definition of what should be deemed the usual day of payment, but, as defining what should be deemed the time at which the rent accrued due, and thus to declare that it be deemed to be, not the legal, but, the usual day of payment, in order to put a limit on the prior part of the clause.

Where a process was brought to recover £14 14s., being £2 18s. balance of rent to November, 1880, and £11 16s. for one year's rent to November, 1881, it appeared that the tenant had made payments of £6 on May 28th, and £8 on December 24th, 1881. Prior to the accruing of the present arrear, the usual time of payment, a few years since, for both the May and November gales was between Nov. 1st and Christmas each year. The tenant having applied for a suspension of the proceedings, under section 13 of the *Arrears of Rent Act, 1882*:

Held, that the May and November gales should be deemed to have accrued due only after November 1st; that the payment made on May 28th, 1881, could not be applied in discharge of the gale which fell legally due on May 1st, 1881, but that the payment made on December 24th, 1881, should be applied in discharge of so much of the year's rent which legally accrued due on November 1st, 1881, leaving a balance of £5 16s. owing; and that the proceedings should be stayed, on the terms of lodgment in court of said balance and costs.

Applications (heard at Armagh) to stay proceedings, under 45 & 46 Vic., c. 47, s. 13. The circumstances are sufficiently explained in the judgment.

*Judgment deferred.*

The JUDGE.—Several cases are now standing for judgment before me, in which the question has been raised whether the tenants are entitled under section 13 of the *Arrears Act* to have proceedings stayed, and on what terms. Some cases have already been disposed of, in which processes have been brought to recover the single year's rent which became legally due on 1st November, 1881, and not for antecedent arrears, and I have held that the 13th section does not apply to such cases, as there are no antecedent arrears sued for, as required by the words of the section. Some other cases have also been disposed of, in which ejectments have been brought for a year and a half's rent, due up to May, 1882. In the cases at the suit of Henry B. Armstrong in which the same rule would apply, on a year's rent having been paid in December, 1881 (which payment the Land Commission, in any case otherwise within the provisions of section 1, may, by the aid of sub-section 3 of section 1, apply in discharge of the year's rent up to November, 1881), I have deemed it fair to the tenants, on the terms of half a year's rent and costs being lodged before 20th November, to stay the decrees until the sessions of April, 1883. As the Land Commission have no power to remit the half-year's rent due May, 1882, sued for in these ejectments, the lodging of one half-year's rent out of the three half-years' rent sued for cannot affect the decision of the Land Commission as to the other two gales up to November, 1881; and as to them the proceedings are stayed until the Land Commission have time to decide. Sub-section 2 of section 1 shows that it was intended that the decrees should go in this court for the sums legally due, because it gives power to the Land Commission, when they have determined upon the tenants' rights, to set aside all such decrees and judgments. It is now necessary to consider the third class of cases where proceedings are pending for one year's rent of 1881, and antecedent arrears.

This case of *Atkinson v. Kerr* is one of such. It is a process for £14 14s., being £2 18s., balance of rent to November, 1880, and £11 16s. for one year's rent to November, 1881, making £14 14s. The proceedings are brought for the rent of 1881, and antecedent arrears, and are pending. The tenant claims under section 13 to have them stayed until he obtains from the Land Commission the benefit of the Act. I am bound under that section to stay them upon such terms and conditions as shall seem just, provided that the provisions of section 1, sub-section A., have been complied with—that is, if the year's rent for 1881 has been paid or satisfied. It has not, in fact, been paid, for the last payment left £2 18s. of the rent to November, 1880, still due; but sub-section 3 of section 1 provides in substance that all payments made in the year 1881, or subsequent to that year, and before the 30th November, 1882, “shall be deemed to have been paid on account of the gale or gales of rent for 1881, which were due at the time of the respective payments.” This would be clear enough if the section stopped there, and in this case the two payments of £6 on the 28th May, 1881, and £8 on December 24th, 1881, should be deemed to have been made on account of the rent payable in respect to the year 1881 to the extent to which it was then due. But the next clause, known as the “hanging gale clause”—that is, the last clause of sub-section 3, section 1—causes immense difficulty. It seems scarcely capable of a strict grammatical construction, and must only be construed, as nearly as possible in each case, in accordance with the general intention of this sub-section, and of the Act generally. We must first endeavour to ascertain to what cases or class of cases it is intended to apply. Here we are met by language which, upon its strict meaning, would apply to almost every tenant's case. The words at the beginning of the clause are—“Where the rent of such holding has usually been paid upon some day after the day on which it became legally due,” and this is the preface to the clause, upon which all the

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rest follows, and to any ordinary intelligence if you are asked the question in what cases is the rent usually paid on some day after it is due, why, it is in every case except one in a thousand—in every case except where the tenant pays on the very day the rent is due, or before it is due, because in every other case the rent is usually paid on some day after the day it becomes due. Again, the question is not what is usual upon the estate. That is not what is referred to, but the words of the Act, "What is usual between the landlord and the tenant of the holding." And then it goes on to say, "It is the rent of such holding that is to be affected;" and this seems necessarily to require each case to be dealt with separately, regardless of the rule of the estate. But the next difficulty arising from this very shadowy and inartistic language is, to lay down any regular rule for each particular tenant by which to ascertain what is, in the words of the section, "the usual day of payment;" and we are bound to ascertain what is the usual day of payment in each case. If the question was, what is usual on the estate? it would be easily ascertained on most estates; but when you come to what is usual with a tenant—with each particular tenant—all is at large; and I observed that Mr. Gallagher cross-examined Mr. Armstrong and continued to ask the question, was there any usual day of payment? and the tenants were puzzled, for the man who never pays regularly has no "usual day;" and yet, on the wording of the section you cannot go on what is usual on the estate, but only what is usual with that particular tenant. Again, in very many cases we have standing arrears of three or four or five years or more, and then, in strictness of language, "the usual day of payment" for such tenants is four or five years after the rent is legally due. Amid this ambiguity all that can be done is to assume in favour of the tenant, as is implied by the previous part of sub-section 3 that the question as to the usual day of payment is not to be influenced by the nonpayment of recent years; but, if payments were previously regularly made, then the tenant should be entitled to the prior part of sub-section 3. Such is the obscurity concerning the meaning of "usual day of payment," and yet the whole purport of the clause depends upon its meaning. When we come to the end of the clause, the wording is equally involved and equally obscure. The words are these—"The usual day of payment shall be deemed to be the time at which the rent accrued due." Taken grammatically and alone, this would be a legal and arbitrary definition of what was to be considered the "usual day of payment;" but this would be contradictory to the definition of the "usual day of payment" contained in the preceding words—"When it is paid on some day after the day upon which it becomes due." We are absolutely obliged to seek for some other explanation of this last clause. It must be taken, then, as a legal definition of what is to be considered "the time at which the rent accrued due," and thus to declare that, for the purpose of this section, the time at which the rent accrued due is to be deemed to be, not the legal, but the usual day of payment, in order to put a limit on the prior part of the clause. The rent is to be assumed for the purpose of the section to have accrued due not on the legal day, but only on the "usual day of payment," so that if the landlord, through an indulgence to the tenant, was not in the habit of asking for the rent for more than six or more than twelve months after it accrued due such landlord should not be punished by the application to him of sub-section 3, compelling the application of money received by him in 1881 to the discharge of gales of rent which he was not in the habit of receiving or calling for until six months or twelve months after the time the moneys were received by him in 1881. The proof in this case was that prior to the accruing of the present arrear, a few years since, the usual time of payment for both the May and November gales in each year was between 1st November and Christ-

mas of the same year. Therefore, under the clause, the two gales are to be deemed for the purpose of considering the application of sub-section 3, to accrue due only after Nov. 1st. It follows that the payment of £6 made on May 28th, 1881, cannot be applied in discharge of the gale which legally fell due on 1st May, 1881. That gale is under the clause only to be deemed to have accrued on or subsequent to 1st November, such being the usual day of payment. The other £6, which was paid on the 24th December, 1881, will be applied under sub-section 3 to discharge so far the year's rent of £11 16s. which legally accrued due on the 1st of November, 1881. This will leave £5 16s. still due, and under the power given me by section 18 when staying proceedings, to impose terms and conditions which I believe just to both parties, I shall order that £5 16s. and costs should be lodged in court before November 30th. The rule therefore is:—Stay until the 30th November, and if £5 16s. with the costs be then lodged, a further stay until next April sessions. The rule then applied is that where the usual day of payment is six or twelve months after the rent becomes legally due, then the gales of rent for 1881 shall only be deemed to be legally due at such usual time of payment, and, therefore, payments made in 1881 cannot, under the prior part of sub-section 3, be applied absolutely in discharge of the gales of 1881, but only in discharge of such gales as are to be deemed due at the usual day of payment.

The ejection in the case of *H. B. Armstrong v. O. Loughran* is brought for one and a half-year's rent up to May, 1882, at £18 18s. a year, making £28 7s., the gale days being May and November. Until the last two or three years the tenant usually paid the year's rent between November and Christmas. In August, 1871, defendant paid £15, and in April, 1872, he paid £3 18s. According to my ruling the £15 cannot be credited against the rent of 1881, but the £3 18s. may. The defendant since this action was brought tendered £5 10s. 6d. to make up a half-year, but this was not enough. He must lodge £15 to make up with the £3 18s. a year's rent, and must lodge the costs. The decree will therefore be stayed until the 1st December for this lodgment, and if the amount be lodged then a further stay till April sessions, with liberty to apply for a still further stay.

In the case of *H. B. Armstrong v. James Carberry* the yearly rent is £19 8s. 4d., and two years' rent are due up to May, 1882. On December 21, one year's rent was paid, and this must be credited to the year 1881, as the usual time for payment for the year's rent was after November, and both gales had accrued. Defendant must therefore lodge one half-year's rent, £9 19s. 2d. and costs. Like stay as in the last case.

The yearly rent in the case of *H. B. Armstrong v. Margaret Johnston* was proved to be £7 2s. 5d., and the amount due was two and a half-years' rent up to May, 1882, and amounted to the sum of £17 16s. One year was paid on June 15th, 1881. The usual time of payment was after November, and payment was made in the same manner as in the previous case. The amount paid in June, 1881, cannot be applied against rent of 1881. Defendant might be obliged to lodge one and a half-year's rent, but on lodging a half-year's rent and costs in ten days, and another half-year's rent on December 1st, I will grant the same stay as in the previous case.

The yearly rent in the case of *H. B. Armstrong v. Thomas Mallon* was shown to be £20 16s. 6d., and the sum due up to May, 1882, £52 1s. 8d. One year's rent was paid on March 7th, 1882. This is to be applied to rent of 1881. I will grant stay until December 1st, and if a half-year's rent and costs be lodged on that date, a further stay until April sessions.

Orders accordingly.

Solicitors: Messrs. Atkinson, Best, Peel, Monroe, and Gallagher.

L. C.]

BRENNAN v. LATOUCHE.

[L. C.]

## LAND SUB-COMMISSION.

(Before R. R. KANE, Barrister-at-Law, E. R. BAYLY, and J. G. BARRY, Esqrs.)

## BRENNAN v. LATOUCHE.

May 22, 1882.—*Judicial rent, determination of—Improvements—Tenant from year to year—Acceptance of lease prior to 1870—Imposition of rent in respect of increased value beyond yearly value of improvement-works—L. L. Act, 1881, s. 8 (9).*

*The acceptance, by a tenant from year to year, before 1870, of a lease of the holding for twenty-one years, containing the usual covenants to keep and give up the premises in repair, precludes the tenant from being entitled to compensation, under the Land Act of 1870, for improvements previously made, and excludes such improvements from the prohibition to have rent charged in respect of them contained in the Land Law Act, 1881, section 8 (9); but, in determining what would be a fair rent, the court is at liberty to consider, having regard to all the circumstances of the case, whether it is just and fair that any and, if so, what deduction should be made from the full letting value of the lands, in respect of the money expended on such improvements, no correlative obligation being imposed to charge the highest rent upon all that the court is not prohibited from putting any rent upon, but the amount of the rent being to be fixed having regard to the interest of the landlord and tenant respectively, and considering all the circumstances of the case. Adams v. Dunseath, 16 Ir. L. T. Rep. 59, discussed and applied.*

Application to determine judicial rent. The circumstances are sufficiently explained in the judgment, delivered as follows:—

MR. KANE.—This case presents circumstances of some difficulty. The holding comprises 144 acres, principally in the townland of Dunstown, but a small portion, about 6 Irish acres, in the townland of Harristown. The part in the townland of Dunstown seems to have been a gentleman's place, with what was a large three-storied house, with the offices suitable to a gentleman's residence upon it, and was let in the year 1798 to a Mr. Brunton, under a lease for three lives or forty-one years, at the annual rent of £169 Irish currency, equal to £156 sterling. That lease expired in 1839, and the place seems to have been in Mr. Latouche's hands from that year until 1845, when it, along with the 6 acres in Harristown, was let to the father of the present tenant, as a tenant from year to year, at a rent of £136 10s., which was reduced in 1851 to £180, the present rent. About the same year, 1851, the tenant expended a large sum of money, apparently about £400, in re-roofing the dwellinghouse, and converting it from a three into a two-storied house, and in rebuilding some of the out-offices, which had become ruinous. He seems, in addition to his own expenditure, to have been allowed £100 by Mr. Latouche, apparently for timber and slates. Upon the evidence, and on inspection of the buildings, we are of opinion that what has been done by the tenant were not mere repairs, but are to be considered as permanent buildings within the exception to sec. 4, sub-sec. a, of the Act of 1870; so that the tenant would not be excluded from compensation by the mere lapse of twenty years from the date of the improvement. However, in the year 1858 the then tenant, the father of the present tenant, accepted a lease of the holding, dated the 24th March, 1858, for twenty-one years, and

containing the usual covenants to keep and give up the premises in repair. In my opinion, we are bound by the decision of the majority of the Court of Appeal in *Adams v. Dunseath*, 16 Ir. L. T. Rep. 59, to hold that the acceptance of the lease destroyed the right to compensation under the Act of 1870 for all improvements made before its date, and therefore excluded such improvements from the prohibition to have rent charged in respect of them contained in s. 8, sub-sec. 9, of the Act of 1881. But, to adopt the words of the Lord Chancellor, in *Adams v. Dunseath*, "It should be observed that though the absolute prohibition of charging rent contained in this 9th sub-section is thus limited, it by no means follows that rent is to be charged on all outside the scope of the prohibition. That is a matter for the Commissioners in the exercise of their discretion, and having regard to what may appear to them to be just and right." In my opinion, although we, in this case, do not come under the prohibition contained in sec. 8, sub-sec. 9, we are not under a correlative obligation to charge the highest rent upon all we are not prohibited from putting any rent upon. We are—by the introductory part of sec. 8—to fix a fair rent, "having regard to the interest of the landlord and tenant respectively, and considering all the circumstances of the case." Surely, one of the circumstances of the case to be taken into consideration in determining what rent is "fair," may be that the tenant has laid out large sums of money in improvements for which he has received no compensation in fact, although he may, by reason of the supposed compensation by the taking of the lease, have lost his right to compensation under the Act of 1870, and therefore to the benefit of the absolute exclusion from rent under sub-sec. 9. In my opinion, therefore, we are at liberty to consider, having regard to all the circumstances of the case, whether it is just and fair that any and, if so, what deduction should be made from the present full letting value of the lands, in respect of the moneys so laid out in improvements by the father of the present tenant. These buildings are the only improvements of importance in this case. The tenant, during the continuance of the lease, laid out £40 in repairs to the house. But, under his covenant he was bound to keep it in repair, and he was therefore only fulfilling a legal obligation, and cannot claim for the money so laid out as on improvements. The only improvement on the land which is claimed is the stubbing up of furze out of one field and the partial clearing of a watercourse. On the other hand, the tenant has allowed drains which were made by the landlord to become choked up and useless, and has thereby deteriorated the land to at least as great an extent as he has improved it. The land has been divided by all the witnesses into three classes—some very good land, some upland not so good, and some wet bottom land. As to the valuations of the witnesses, there is a great discrepancy, and only two seem to have come near the mark. Mr. Fitzpatrick's estimate was £108 18s., or £115, including the buildings; Mr. Dillon's was £96 6s., with £10 for buildings. For the landlord, Joseph Milne and Philip Grierson valued the holding at £159 8s., and £190 2s. 4d. respectively. In our opinion, the valuations for the tenant are too low, and for the landlord too high. Upon the evidence in court, and our own inspection of the holding, we are of opinion that the present rent of £180 is not only a fair but a moderate rent. We, however, do not think we ought to increase it, and therefore declare it to be the judicial rent. We were asked by Mr. Wright to consider whether there should not be an increase instead of a decrease in this case; but then we have a notice to fix the value of the tenancy. Mr. Dillon thought it would be worth about £1,000 at his valuation, and Mr. Grierson £1,200 at the present rent, but we think £600 to be about the fair value of the tenancy at the present rent, and we therefore fix it at that sum.

Order accordingly.



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HAMILTON v. MAGUIRE.—CROSTHWAITE v. SMITH.

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## HIGH COURT OF JUSTICE.

## QUEEN'S BENCH DIVISION.

Reported by S. N. ELBINGTON, Barrister-at-Law.

(Before MAY, C.J., and LAWSON, J.)

HAMILTON v. MAGUIRE.

Nov. 24, 1882.—*Arrears of Rent Act, 1882, ss. 1 (3), 13—Suspension of proceedings—“Antecedent arrears”—Receipt for rent due in 1880—Appropriation of payment to rent due in 1881.*

*Section 13 of the Arrears of Rent Act, 1882, enabling the Court to suspend proceedings for the recovery of a holding for non-payment of rent in respect of the year 1881 and antecedent arrears, does not apply, unless, in addition to rent due in respect of 1881, arrears antecedent to 1881 be due and sued for in such proceedings.*

*Where, on a motion to stay proceedings in an action to recover land for non-payment of rent due in 1881, and 1882, it appeared that a receipt had been given for a half-year's rent, up to November, 1880, and it was contended that, by virtue of section 1 (3), this payment should be appropriated to the rent accrued due in 1881:*

*Held, that the application could not be sustained, within the provisions of section 13.*

Application to stay proceedings.—From the affidavit of Jane Maguire (wife of the tenant, who was in America) it appeared that in August, 1882, she was served with the copy of a writ of summons for the recovery of land (for non-payment of one year's rent due in 1881, and half a year's rent due in 1882) situated in the parish of Holmpatrick, county of Dublin. Upon the 4th of November, 1881, she was applied to by the agent of the plaintiff for a sum of £13 9s. 3d., being half a year's rent of the lands, and she got a receipt in the following terms:—

“Received from Hugh Maguire the sum of £13 9s. 3d., being half a year's rent due to Ion Trant Hamilton, out of his holding, ending Nov., 1880 (Eighty).”

“Dated Nov. 4, 1881.”

Upon the 1st day of November, 1882, she tendered to the agent £12 13s., another half-year's rent, which he refused to accept, and which was now lodged in court.

*Shannon*, for defendant, contended that the payment of the sum of £13 9s. 3d. satisfied half a year's rent due in the year 1881, and that the sum of £12 13s. lodged in court satisfied the other half-year's rent, also due in 1881. These payments, therefore, being appropriated to the year 1881, cleared up the rent of that year, and caused half a year's antecedent arrears, due in 1880. It was true the writ of summons is not endorsed for any antecedent arrears, but this form of the action cannot prevent the tenant from obtaining the benefit of the Act if, by virtue of section 1, sub-section 3, his payment in November, 1881, was now to be regarded as a payment for the year 1881.

[MAY, C.J.—Before the action was brought had not the rent due in 1880, been paid?]

Yes, according to the receipt; but we contend that, by virtue of the Arrears of Rent Act, the sum paid in November, 1881, is applicable to the half-year due in 1881, notwithstanding the form of the receipt.

[MAY, C.J.—Although it is for rent due in 1880?]

Yes; otherwise s. 1, sub-s. 3, has no meaning—providing that all payments on account of rent made in

the year 1881 shall be deemed to be made on account of the year 1881, so far as the rent of that year had then accrued due.

[MAY, C.J.—Does not the section say that the action must be brought for rent and antecedent arrears?]

Yes; but the form of this action can make no difficulty if s. 1, sub-s. 3, regulates the appropriation of the payment.

[MAY, C.J.—Was not the action brought for rent due in 1881?]

Yes; but they cannot evade the third sub-section, which entitles the tenant to the privilege we claim. Therefore, although the receipt was given in 1880, it is to be looked upon as a payment in 1881. The point does not appear to have been actually decided in the superior courts, but there is a decision—*Atkinson v. Jeffers*, before the Chairman of Armagh, 16 Ir. L. T. T. Rep. 99—which is against our contention; but the county court judge did not deal with the third sub-section of the first section of the Act. We have, by virtue of s. 1, sub-s. 3, and the lodgment in court, discharged the rent of 1881. There is thus half a year's rent due to the landlord before 1881.

[MAY, C.J.—How can this be? The tenant has paid the rent, and a receipt has been given.]

Then the third sub-section is unmeaning if this form of receipt is to prevail.

MAY, C.J.—We shall make no rule. If we are wrong our judgment can be revised on appeal.

Order accordingly.

Solicitor for defendant: P. Mc Gough.

## CROSTHWAITE v. SMITH.

Nov. 8, 1882.—*Pleading—Statement of claim introducing new causes of action—Amendment—O. XXVI., r. 1.*

*The plaintiff, in an action to recover land for non-payment of rent, having delivered a statement of claim for a larger sum than was claimed by the writ of summons, and for mesne rates which had not been included therein:*

*Held, that the statement of claim was irregular, and should be amended.*

Motion, on behalf of the defendant, under O. XXVI., r. 1, that the plaintiff's statement of claim should be set aside upon the grounds that it departed and varied from the writ of summons, by introducing new causes of action not claimed therein, and also a claim for a larger sum as due by defendant to plaintiff than was claimed by the writ, and a claim for arrears of rent that had occurred between periods different from those alleged in the writ.

The writ of summons, which was in the ordinary form directed by O. I., r. 2 a, set forth that the plaintiff sought to recover from the defendant, Samuel Smith, an executor of Wm. Smith, possession of the lands situated in Monkstown, comprising 13a. 1r. 21p., known as the lands of Kilnagosh, for non-payment of rent—viz., eight years' rent from the 1st of Nov., 1873, to the 1st Nov., 1881, at £35 a year—in all £280. The defendant had paid upon account £175. There was no claim for rent or mesne profits in the writ. The statement of claim alleged that Thomas M. Carew had let to William Smith the aforesaid lands, he (Smith) to pay £35 a year, in half-yearly payments, upon the 1st May and 1st Nov., in 1857. Thomas M. Carew died, and his estate became vested in Laurence Carew, and the interest in the lessor vested in plaintiff. In 1877 Wil-

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ham Smith died, having by his will nominated the defendant executor. The plaintiff claimed the aforesaid lands, £182 arrears of rent up to 1st May, 1882, money due for use and occupation from the 1st of May, 1882, to the day of plaintiff receiving possession thereof. The venue was laid in Wicklow; and the defendant likewise sought to change it to Dublin.

A. W. Samuels, for defendant, in support of the motion.—The writ was of the ordinary form used in actions to recover land for non-payment of rent, and the statement of claim is informal, as claiming under new causes of action—namely, for rent and mesne profits, not set forth in the writ of summons. The statement of claim cannot proceed upon grounds which are not embodied in the writ of summons: *Moore v. Allwell*,\* 15 Ir. L. T. Rep. 54, 8 L. R. (Ir.) 245. A year's rent (£35) had been paid into court, covering the rent due to 1st Nov., 1881, but in the statement of claim there was a charge for rent accruing due upon the 1st of May, 1882. This is a completely new cause of action.

W. Kenny, *contra*, admitted that the statement of claim was for a sum slightly in excess of that charged in the writ of summons, but the defendant could not be embarrassed because the writ of summons was correct.

A. W. Samuels.—The claim for the half-year's rent due in 1882 ought to be struck out from the statement of claim, also the claim for mesne rates.

The Court made an order that the plaintiff should, within a week, amend the statement of claim, as he might be advised; also that the writ of summons be amended by changing the venue to Dublin; the costs of the motion to be costs in the cause.

Solicitor for plaintiff: J. P. Kavanagh.

Solicitor for defendant: Arthur Samuels.

PATTON v. COOTE.

Nov. 10, 1882.—*Pleading—Amendment—Parties—Marriage of female defendant before statement of defence delivered—O. XLIX., r. 4.*

Motion, on behalf of the plaintiff, for an order that the pleadings be amended.—The writ of summons in an action for debt was issued against the defendant Coote in June, 1882. In August the statement of claim was delivered, and on the 25th of October the statement of defence was delivered. The defence was drawn in August, in the sole name of the defendant, then an unmarried lady. The vacation intervened, and in the meantime the lady married Mr. James C. Wolfe, and the object of the present application was to obtain from the court permission to make the required amendment in the pleadings to meet the change of circumstances in the case by reason of the aforesaid marriage, and the necessity of including in the action the husband as co-defendant.

J. H. Moore, in support of the application.

[MAY, C.J., suggested that a summons should be served upon the opposite party. This was the usual course.]

The difficulty in the present case has been removed by a notice served by the defendant on the plaintiff in these terms:—The statement of defence having been inadvertently delivered subsequent to the marriage of

defendant, she was willing to withdraw, but owing to the defendant's marriage it would become necessary that the statement of claim should be amended as well as the defence; and the defendant, for the purpose of avoiding costs, was willing to make the amendment.

He cited *Seear v. Lawson*, W. N. 1880, p. 189.\*

The Court made an order to amend the pleadings accordingly, the proceedings to be continued in the names of the added parties, and the statement of claim also to be amended.

Solicitor for plaintiff: W. Moore.

Solicitor for defendant: W. Hardy.

EXCHEQUER DIVISION.

Reported by HANS ATLMER, BARRISTER-AT-LAW.

(Before PALLES, C.B., and FITZGERALD, B.)

WILSON v. CONNOLLY.

June 30, 1882.—*Practice—Transfer of action to Chancery Division—Action for rent—Counter-claim to set aside lease—Jud. Act, s. 36 (5)—O. II., r. 3.*

Where a plaintiff claimed for rent due under a lease, and the defendant, admitting the lease and the rent being due, counter-claimed damages for non-performance of an agreement and that the lease should be set aside, on the application of the plaintiff the action was transferred to the Chancery Division.

Motion to strike out the alternative counter-claim of the defendant, or that the action be transferred to the Chancery Division. The action was for £80, two years' rent. The statement of claim alleged that by lease bearing date 23rd May, 1880, the plaintiff let the lands of Ballinagappa, in the county of Kildare, to the defendant, who was then in possession of the same, from the 25th March then last, at the yearly rent of £40. The defendant occupied and used the same, but paid no rent on the covenant in said lease contained. The statement of defence admitted the lease, and that £80 would be due on foot of same except for the matters hereinafter mentioned. The defendant then, by way of counter-claim, alleged that in April, 1880, she was in occupation of the said lands and some 24 acres of other lands, and the plaintiff then agreed to give her a lease of the lands comprised in the lease, and pay her £70 in cash, and expend £140 in building a dwelling-house for her, if she would give up the said other lands. In part performance the defendant gave up possession of the said 24 acres, and plaintiff paid the £70 and executed the lease, but neglected and refused to expend the £140 as aforesaid, which sum the defendant accordingly counter-claimed. By way of alternative counter-claim the defendant alleged she was an ignorant and weak-minded woman, and at the time when she made the said agreement acted without professional advice or assistance, and was ignorant of the fact of which plaintiff was well aware, that he had no power to make said lease. That he took advantage of her as aforesaid, and thereby induced her to execute on April 20, 1880, a surrender of all the lands in her possession, and on May 23, 1880, the said lease. She was ignorant of the value of the lands surrendered, and of the fact which the plaintiff well knew, that she had no power to make such surrender. The defendant claimed that the said agreement, surrender, and lease should be set aside as fraudulent and void, upon such

\* Followed in *Irwin v. Fitton*, 15 Ir. L. T. Rep. 95. As to where leave will be given to add a new claim, see *Wakefield v. Martin*, 14 *ib.* 24; *Anthony v. Percival*, *ib.* 96.—[E. N. B., Ed.]

\* See s. c., 15 Ch. Div. 426, 16 *ib.* 121.—[E. N. B., Ed.]

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terms as to the court shall seem fit. It appeared probable that the defendant was only guardian of her children, who were minors, and who had the real right to occupy the lands.

*H. B. Leech* in support of motion.—Here there are in reality three actions, and the last is an equity suit. The latter, then, should be excluded from this action under O. XXXL, r. 9, and Sch. r. 22: *Quin v. Hession*, 13 Ir. L. T. Rep. 12; *Naylor v. Farrer*, 26 W. R. 809; *Nicholson v. Jackson*, W. N. 1876, 38. The defences setting up two inconsistent states of facts would puzzle and confuse a jury. If, however, this court will try the case without a jury, we are content. The alternative counter-claims, by Judicature Act, s. 36 (5), assigned to the Chancery Division, being an action for the setting aside and cancellation of deeds; it should, therefore, be transferred there, Judicature Act, s. 37 (2). There will have to be a settling of deeds, which would be inconvenient in this court: *Hillman v. Mayhew*, 1 Ex. D. 182; *Padwick v. Scott*, 2 Ch. D. 736, 745.

*A. Holmes, contra.*—All these facts form but one transaction, and should be tried together. The real defence is the second counter-claim, which is placed second only for convenience of pleading. There need be no settling of deeds, for, if the deed of surrender be set aside, the lease surrendered will be set up. He cited *Mostyn v. West Mostyn Coal Co.*, 1 C. P. D. 145; *Storey v. Waddle*, 4 Q. B. D. 289; *Heap v. Marris*, 2 Q. B. D. 630; Jud. Act, s. 27 (7).

*PALLES, C.B.*—I have some hesitation in making this order, but as my brother Fitzgerald has formed a strong opinion, I shall not dissent. No doubt, if ever there was a case for a transfer, it is this. The original claim is admitted in the defence, and the counter-claim raised is equitable. As a general rule, such a case should be transferred to the Chancery Division, especially as deeds may have to be executed. The change can only be made with the consent of the Lord Chancellor, which is obtained through his secretary. Subject to obtaining his consent we made an order for transfer; costs to be costs in the cause. The doubt raised by James, L.J., in *Storey v. Waddle* does not arise. The children are not here, and possibly, the real question may be between parties not now before the court.

*FITZGERALD, B.*—There is no question of fact to be tried, as defendant admits the lease; the action is then substantially an equity suit.

Order accordingly.\*

CITY AND COUNTY BUILDING SOCIETY v. HAYES.

June 30, 1882.—Practice—Memorandum of Appearance—Address for Service—Fictitious Address—Statement of Claim—Substitution of Service of—O. XI., r. 1—Sch. r. 15.

After service of a writ of summons, the defendant entered an appearance, giving an address at which, on subsequently proceeding to serve a statement of claim, it was found he did not reside, the house being unoccupied. It was stated that he had gone to America, but that his wife, residing in Dublin, was in communication with him. On motion to set aside the appearance, or for leave to substitute service of the statement of claim:

Leave to substitute service was given, by posting a copy of the statement of claim on the unoccupied house, and serving the wife in person.

\* See *vide Earl of Ranfurly v. Dickson*, 16 Ir. L. T. & S. J. 105.—[E. N. B., Ed.]

Motion to substitute service of the statement of claim on the wife of the defendant or to set aside his appearance. The action was brought to recover possession of certain premises mortgaged by defendant to plaintiffs. The writ of summons was served on defendant at the Convent, St. Laurence's-place, Dublin, on May 3, 1882; and he entered an appearance in person on May 10, giving as his address 34 Glengariffe-parade. An affidavit of the law messenger of plaintiffs' solicitor stated that on May 25 he went to said address to deliver a copy of the statement of claim, but he found the said house unoccupied, and thereupon he left a copy in the letter-box. He believed that since the said delivery of the statement of claim defendant had gone to America, that his wife resided at 116 Upper Dorset-street, and that she was in communication with the defendant.

*Teeling*, in support of the motion.—The statement of claim was delivered at the address given by defendant within a reasonable time—a fortnight—after his appearance. He was not there; so we are entitled to have that appearance set aside as fictitious: Sch. r. 15. The power given under that rule existed under the C. L. P. Act: *Richy v. Crawford*, 2 Ir. L. T. 353, I. R. 2 C. L. 434. In the alternative, we ask for leave to substitute service on the wife.

The Court made an order giving leave to substitute service by posting a copy of the statement of claim at 34 Glengariffe-parade, and serving the wife in person at 116 Upper Dorset-street.

Solicitor for the plaintiffs: *J. Thornton*.

(Before FITZGERALD and DOWSE, BB.)

COGHLAN v. WOODS AND OTHERS.

Feb. 24, 1882.—Lunatic—Justices' warrant to commit—Printed form of, with blanks to be filled in—Neglect to insert—Removal of lunatic to district asylum—Certificate of medical officer—Incorporation of, in the warrant—30 & 31 Vic., c. 118, s. 10.

Where the blanks in a printed form of a warrant to commit a dangerous lunatic to the district asylum, under 30 & 31 Vic., c. 118, were not filled in with statements that the magistrates called in the assistance of a proper medical officer, and that he gave a proper medical certificate, the warrant was held void. A medical certificate, described in the warrant as "annexed," but not identified in any way by the reference as one which was before the magistrates previous to the signing of the warrant, cannot be taken as incorporated therewith for the purpose of supplying defects therein not of form but of substance. The medical custodian of the lunatic, acting and justifying under such warrant, is equally liable with the magistrates to an action for false imprisonment.

Demurrers.—The plaintiff, a farmer of the King's County, sought to recover £500 damages for assault and false imprisonment, and the statement of claim alleged that W. Woods and Molloy (Justices of the Peace) maliciously, and without reasonable or probable cause, ordered the plaintiff to be imprisoned and brought before them as justices of the peace, and then caused him to be conveyed to Maryborough Lunatic Asylum, and there detained in custody for twenty-eight days. Another paragraph alleged that Hatchell, the other defendant, as resident medical superintendent of the said asylum, without any authority or jurisdiction

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COGHLAN v. WOODS AND OTHERS.—THE QUEEN v. BRIEN.

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in that behalf, in conjunction with Woods and Molloy, kept him imprisoned in said asylum. The magistrates, in a special defence, alleged that the wife of the plaintiff having made a complaint on oath and in writing before the said Molloy, as a justice of the peace, that the plaintiff had assaulted her, and she believed him to be of unsound mind, the said Molloy issued a warrant for his arrest, by virtue of which he was arrested and brought before the said justices at Parsonstown; and it appearing to them that he had been apprehended under circumstances denoting a derangement of intellect, and a purpose of committing an indictable crime, they, the defendants, called to their assistance Thomas Woods, being the medical officer of the dispensary district in which they, the said justices of the peace, were to examine the plaintiff; and the said Thomas Woods there and then examined him, and certified under his hand to the said justices that he was a dangerous lunatic, and a fit subject for speedy admission into the asylum, under the provisions of 30 & 31 Vic., c. 118, s. 10; and thereupon the said justices, acting in the execution of their office *bona fide*, by warrant directed the plaintiff to be put in the asylum, which was accordingly done—which were the acts complained of. The defence of Hatchell was substantially the same, as he justified under the warrant. To those defences the plaintiff demurred separately, on the ground that the warrant did not set forth or specify the grounds or foundation of the jurisdiction in law of the justices to issue such warrant, and was wholly bad in law. The warrant, which was a printed form, with blanks to be filled in, recited the sworn information of the plaintiff's wife, "on the — day of Dec., 1880," and the facts from which it appeared the plaintiff was deranged. It proceeded thus:—"And whereas, we have called to our assistance —, who is —, and whereas, the said — has duly examined the said —, and has duly certified by the medical certificate annexed hereto that the said James Coghlan is now a dangerous lunatic," &c. The rest was filled in properly, except that it was stated to be "given under our hands and seals, at — this — day of December, 1880." The medical certificate was on the same sheet of paper as the warrant, and was duly signed by the medical officer, described as of Parsonstown, and it was dated December 24, 1880.

*Barry (J. Gibson, Q.C., with him)*, in support of demurrers.—The warrant, being referred to in the pleadings is before the Court: *Fitzpatrick v. Pine*, 13 I. C. L. 32. Every warrant must show jurisdiction on the face of it. The facts founding the jurisdiction—*viz.* the examination and certificate of the prescribed medical officer, are absent; and even if the name of the medical officer was contained in the warrant, it would be insufficient if his capacity as medical officer was not stated: 1 Vic., c. 27; 8 & 9 Vic., c. 107; 30 & 31 Vic., c. 118, s. 10. The certificate cannot be incorporated without parol evidence, which is inadmissible. He cited *Queen v. Atall*, 11 I. C. L. 279; *Hodgens v. Pöe*, 21 I. R. C. L. 32; *Lindsay v. Leahy*, 11 Q. B. 455. *Brookley (Monroe, Q.C., with him)*, *contra*, for Hatchell; the medical officer.—A distinction has always been drawn, as regards the strictness with which they are to be construed, between commitments in execution and commitments for mere safe custody, as here: *Rez v. Ghafay*, 7 B. & C. 689; 1 Chit. Crim. L., 113; *Patey*, Conv. 323, 344. The custodian is more favourably looked upon than the persons warranting the commitment. On the pleadings it is admitted that the proper medical officer was called in, and signed the required certificate.

*Walker, Q.C. (Molloy with him)*, *contra*, for the magistrates.—The date is not necessary to be inserted in the warrant: *Bowdler's case*, 12 Q. B. R. 612; *Braham v. Joyce*, 4 Ex. 487. The certificate of the medical officer is incorporated in the warrant, and supplies any deficiency therein, being referred to in the warrant as "annexed," and being actually on the same piece of paper. They must be read together. If the magistrates had jurisdiction, their mistake in its exercise should not deprive them of the benefit of 12 Vic., c. 16, s. 1, 7. The court will give judgment on the whole record: *Irwin v. Osborne*, 5 Ir. C. L. R. 404; *Leyman v. Latimer*, 3 Ex. D. 352; *MacAllister v. Bishop of Rochester*, 5 C. P. D. 194. In *Laurenson v. Hill*, 10 Ir. C. L. R. 177, the warrant was held bad as it did not recite the information; but here that is not the case.

FITZGERALD, B.—Those demurrers must be allowed. Two facts are necessary to establish the jurisdiction of the magistrates, which are wholly omitted in this warrant—namely, that the magistrates called in the assistance of the proper medical officer and that he gave a proper medical certificate. This objection is not one of form, but of substance; and the doctor is in no better position than the magistrates, as the defect appears on the face of the warrant. There is no incorporation of the certificate in the warrant. The reference on the printed form to a certificate as annexed does not in any way identify the certificate as one which was before the magistrates previous to the signing of the warrant.

DOWSE, B.—This is not a warrant at all, and a warrant is necessary by the statute. It is impossible to incorporate the medical certificate, even if it were sufficient to make the warrant a good one. As a matter of conjecture, I think it highly probable that the warrant was signed before the certificate was drawn up, and the blanks were left to be filled up afterwards by the clerk; probably the merits are with the magistrates, but the demurrers must be allowed nevertheless.

*Demurrers allowed.*

Solicitor for the plaintiff: *J. Fagan*.

Solicitors for the justices: *A. Mitchell & Son*.

Solicitor for the medical officer: *W. Fitzsimons*.

#### ASSIZES.

*Reported by W. A. SARGENT, Barrister-at-Law.*

(Before DOWSE, B.)

THE QUEEN v. BRIEN.

July 15, 1882.—*Criminal Law—Inciting to commit felony—Knowledge of incited person that act is felonious.*

*Quære, whether a person can be convicted of inciting another to commit a felony, where the latter is ignorant that the act to which he was incited was a felony.*

The traverser was indicted, at Waterford, for inciting John Callaghane to burn the dwelling-house of the traverser's son, Patrick Brien, with intent to injure. There was a second count charging the intent to defraud.

*Piers White, Q.C., with him—Cotes, for the Crown; Sargent, for the traverser*, at the close of the case for the Crown, asked his lordship to direct a verdict of acquittal, on the ground that a person cannot be convicted of inciting another to commit a felony unless the person incited knows that the act to which he has been incited is a felony; whereas there was here no proof given of such knowledge. In *Queen v. Wellman* (1. Cox. C. C. 193) *Patteson, J.*, after consulting *Parke, B.*, said: "We are both clearly of opinion that there can be no inciting to commit a felony unless the

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party incited knows that the act in which he is to engage is a felony."\*

Downs, B., said he would let the case go to the jury, and if the traverser was convicted, he would reserve the point for the court of Criminal Appeal.

The traverser was acquitted.

Solicitor for the Crown: *Samuel Lee Anderson.*

Solicitor for the traverser: *Isaac Thornton.*

#### LAND COMMISSION.

Reported by E. N. BLAKE, Barrister-at-Law.

(Before E. F. LITTON, Q.C.)

ARTHUR MONAGHAN v. SIR JOHN LESLIE.

Nov. 28, 1882.—*Arrears of Rent (Ir.) Act, 1882, s. 1*—"Usual day of payment" of rent—Deferred payment—Rent usually collected after certain period subsequent to gale day, but on indeterminate days.

In order to deprive a tenant of the benefit *prima facie* arising from the initiatory provisions of section 1 (3) of the *Arrears of Rent Act, 1882* (45 & 46 Vic., c. 47), it lies on the landlord, relying on the terminal proviso thereof, to establish affirmatively that, according to the "ordinary course of dealing" between him and the particular tenant (regardless of what may be customary on the estate as a whole), the rent has "usually been paid on some day after the day on which it became legally due." Such deferred day of payment must be a definite day upon which the rent has been usually paid, or a day capable of being fixed and defined with as much certainty as that upon which, in law and fact, the rent accrued due. And wherever, on the contrary, it is shown that the gales of rent have been paid in different months or at different periods in successive years, and where there has not been established a determinate rent day, upon which rents are usually paid, the case does not fall within the proviso in question, even though, according to the ordinary course of dealing, the rent was not usually demanded or collected until after the lapse of a certain period from the gale day when it accrued due.

Appeal from a ruling made by Mr. Geo. M'Dermot, Investigator, under the *Arrears of Rent Act, 1882*, who decided that, owing to the existence of a custom of a "hanging gale" on the landlord's estate, which is situate near Pettigo, in the Co. of Donegal, the tenant had not satisfied the rent for the year 1881 within the

meaning of section 1 of the *Arrears of Rent (Ireland) Act, 1882*, and that consequently he could not receive the benefit of that Act.

From the evidence of the tenant and the rent books, it appeared that he had paid on the 9th January, 1882, one year's rent, £10 10s., for which he received a receipt discharging the rent due up to the 29th September, 1879. Evidence was given as to the dates of the various payments of rent by the tenant. From the books produced by Mr. M'Cullagh, agent of the estate, it appeared that the rent due on 29th September, 1879, was paid on the 9th of January, 1882; the rent due on the 29th September, 1878, was paid on 20th November, 1880; the rent due on 29th September, 1877, was paid on 26th July, 1879; the rent due on 29th September, 1876, was paid on 21st January, 1878; the gale due on 29th September, 1875, was paid on the 20th December, 1876; the gale due on 29th September, 1874, was paid on 24th June, 1876; and so on backwards, there being at the various dates of payment arrears of rent due out of the holding. The rents which accrued due in 1860, 1861, and 1862, appeared to have been paid in the same years respectively. The agent, Mr. James M'Cullagh, was examined in reference to the facts. *Monroe, Q.C.*, having asked him the custom with regard to all the tenants on the estate, Mr. Litton, Q.C., disallowed the question on the ground that it was general; the words in the sub-section were "the ordinary course of dealing between the landlord and tenant of a holding;" he would not allow any question except as regards the one holding before them. At the request of Mr. *Monroe*, the learned judge made a note of the objection. A process was produced which had been served on Sept. 16th, 1881, for three years' rent up to Sept. 29th, 1881, which had been settled by payment of one year's rent and costs, leaving the "hanging gale."

*Weir, Q.C.* (with him *P. White*), for the appellant tenants. By the *Arrears of Rent Act, 1882*, s. 1, sub-s. 3, "All payments on account of rent made by the tenant to the landlord in or subsequent to the year expiring as aforesaid"—which is defined by sub-section 4 to be the last gale day of 1881—"but before the 30th day of November, 1882, shall be deemed to have been made on account of the rent payable in respect of the year expiring as aforesaid, to the extent to which the rent for that year had at the time of such payment accrued due." We come within all these requirements, having paid a year's rent on account of 1881, in 1882, and prior to 30th November. The proviso under which the landlord seeks to exclude us from the benefits of that sub-section is—"Provided that, where it appears that, according to the ordinary course of dealing between the landlord and tenant of a holding, the rent of such holding has usually been paid on some day after the day on which it became legally due, the usual day of payment shall be deemed, for the purposes of this sub-section, to be the time at which the rent accrued due." We submit, in the first place, that it is for the landlord to show that this proviso applies to these tenants, and excludes them from the benefit of the sub-section; in the second place, that it is not enough to show that the rents generally were in arrear over the estate, because, if that were so, there is scarcely an estate to which the proviso would not apply so as to exclude them; and in the third place, that the landlord must show that the rent in arrear was paid on a particular day, according to the usual course of dealing on the holding, and that if the landlord merely shows that it was allowed to fall into arrear, and was paid at dif-

\* "Upon this"—remarks Sir James Stephen (Dig. Cr. L., Note 3)—"Mr. Greaves (1 Russ. Cr. 84, note (a)) asks, 'How can the guilt of the inciter depend upon the state of mind of the incitee?' The inciting and the intention of the inciter constitute the offence." As I understand the facts of *R. v. Welham*, Welham incited Hood to carry off corn which Hood supposed Welham to have a right to carry off. If this were so, Welham's offence, if any, was an attempt to commit felony by an innocent agent, and not an incitement to commit a felony, which view would justify the language of the two eminent judges. A. tells B. to put into C.'s tea something which B. supposed to be powdered sugar, but which is really arsenic. This is an attempt by A. to murder C., but it is not an inciting B. to commit murder. This view is strengthened by *Williams' Case* (1 Den. C. C. 89), in which it was held that to incite a person to poison another under such circumstances that the instigator would have been an accessory before the fact if the poison had been given, was not an attempt to administer poison." See papers by the present writer (E. N. B.), on *Criminal Attempts*, 16 Ir. L. T. 578, 587, 601, et seq.—[Ed.]

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front times and on different days, the tenant is entitled to the full benefit of the sub-section.

[MR. LITTON, Q.C.—In every instance the rents appear to have been paid after the date on which they legally became due—that appears to be the usage]. We submit that it is not sufficient for the landlord to prove that the rents were paid on some date after that on which they legally accrued due. There is no estate in Ireland in which that does not occur. Out of the 600,000 tenants in Ireland, we do not believe there are 600 tenants who pay their rents on the day on which it becomes due. The sub-section means that the rent is payable, and paid usually, on one certain day after it legally accrues due.

*Monroe, Q.C., and Dane, contra.*—If the construction properly to be put upon the sub-section is that the rents must usually have been paid on a particular date, the section might be struck out of the Act altogether, for no such custom prevails in Ireland. The sub-section was intended to refer to the ordinary custom and the hanging gale; and although the May rent was not paid until the November following, there never was a day fixed in that November for the rents being paid. The usage merely meant that the rent would not be demanded until six months in some cases, and twelve months in other cases, after it legally accrued due. The words of the sub-section are “has usually been paid on some day,” which does not mean any particular day. The rents on the Leslie estate were never demandable until more than a year had elapsed after they became legally due, and the first day on which the office opened for the rent due on September, 1881, was the 20th of October, 1882. The only interference with that usage was in the case of the sale of a tenant's interest, when the purchaser should pay the arrears of rent up to the day of purchase; but he was not asked for another payment until two years had elapsed, so that he might be placed in the same position with regard to the hanging gale as the other tenants.

[MR. LITTON, Q.C.—Do you ask me to construe the word “paid” in this proviso as if it were “demanded”?] That is our contention. The instructions issued to the official Investigators support that contention—“By the sub-section referred to, wherever the May rent is paid in the following November and the November rent in the following May, the usual time of payment is deemed to be the time that the rent accrued due.”

[MR. LITTON, Q.C.—That says “time of payment.” You say “time of demand.” Do you mean to say that Sir John Leslie could not have recovered his rents before the time at which they were usually demanded?]

We presume he could in point of law. But every tenant knows perfectly well that the rent of September, 1881, would not be demanded until after the 20th October, 1881.

[MR. LITTON, Q.C.—They knew, in other words, that Sir J. Leslie was content to wait until October, 1882, for the rent which accrued due in September, 1881.]

They did. No person was ever asked for rent until the 20th October in the year after it accrued due. That was the custom.

[MR. LITTON, Q.C.—It is very unfortunate that the Legislature did not say “demanded” instead of “paid,” if it mean that. If it had, we would have no difficulty with these cases.]

The landlord had been paid his rents well and punctually until the recent agitation, and had always been indulgent and reasonable. If the Legislature

intended to benefit such a landlord it was surely but reasonable that Sir John Leslie would receive consideration. The intention is clear from the section, and we contend that weight should be given to it in this case in favour of the landlord.

[MR. LITTON, Q.C.—We cannot speculate on the intention of the Act. The words speak for themselves; it is unnecessary to speculate at all.]

*Atkinson v. Kerr*, 16 Ir. L. T. Rep. 100, was cited.

MR. LITTON, Q.C.—The tenant on the 23rd day of October lodged his application, under the Arrears of Rent Act, for an order for payment for the benefit of his landlord of a sum equal to one half of the antecedent arrears alleged to be due, and subject to the limitation prescribed by the statute, that the sum to be paid should not exceed a year's rent payable in respect of the holding. The tenant's application contains the prescribed statements required to bring the case within the Act, and amongst others the statement, in accordance with one of the preliminary conditions, that the rent of his holding in respect of the year of his tenancy expiring on the 29th September, 1881, had been satisfied. The application was in due course referred for investigation, and was investigated on the 18th of November. The only question raised before the Investigator was whether or not the rent “for the year expiring as aforesaid” had been satisfied. The Investigator arrived at the conclusion that it had not been satisfied, and he states in his report (which I have before me) that the case went off on the question of the hanging gale. On the 23rd instant a conditional order was made, following the report, directing that the application of the tenant be dismissed unless cause was shown within the time limited by the rules. The tenant now moves showing cause against the conditional order, and, having had the advantage of hearing the case ably argued on both sides, and having heard the evidence and examined the rent books and the tenants' receipts, I am called on to decide whether the conclusion arrived at by the Investigator is right or wrong. The following are the facts so far as it is necessary to state them for the purpose of deciding the question:—Sir John Leslie's estate is of large extent in the County of Donegal. It has been the practice to demand the rent only once a year, and not only so, but not to require the year's rent due in any one year until it had been more than twelve months in arrear. At the same time, I gather from the evidence that rent when offered at any time was not refused, even though the ordinary time had not arrived—that is to say, March and September. Rents of any particular year are not asked for or enforced until the March gale has been more than eighteen months due, and the September gale more than twelve months due, and then collected and payment received in one sum. And further, that when it became necessary to take legal steps against a tenant, the rent claimed was the entire amount legally due. In the particular case of Arthur Monaghan the rent books and the tenant's receipts were produced, and are of the greatest importance. The rent books debit the tenants with the year's rent regularly from the 29th September, 1881, year by year, and credit the payments from time to time made, and those payments corresponded with the tenant's receipts which have been produced. What do we find?—September, 1879, paid 9th January, 1882; September, 1878, paid 20th November, 1880; September, 1877, paid 26th July, 1879; September, 1876, paid 21st January, 1878; September, 1875, paid 20th December, 1876; September, 1874, paid 24th June, 1876. Going back we find the 1863 rent paid 25th April, 1864; 1862 was paid 8th December, 1862; 1861 was paid 23rd December, 1861; 1860 was paid November, 1860. At this period each year's rent was paid immediately after it accrued due, and there was no deferred payment. If we go still further back we find the September gale of 1856 paid in 1856; that of 1855 paid in two payments—17th December,

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1855, and November, 1856; that of 1854 also in two payments—December 20th, 1854, and December, 1855; and soon. We have also in evidence the fact that an ejection was brought in December, 1881, for non-payment of rent, claiming rent due immediately preceding 29th September, which, according to the alleged practice, would not have been demandable until October or November, 1882. On the investigation held before the Investigator, Arthur Monaghan relied on a payment of £10 10s. made on the 9th January, 1882, asserting that he thereby discharged the rent for the year of his tenancy ending 29th September, 1881, and fulfilled the preliminary conditions in question, because at the time of the payment the rent for that year had accrued due. This would undoubtedly be so, having regard to the earlier portion of sub-section 8, but the conclusion is challenged by Sir John Leslie, who relies on the proviso at the close of the sub-section which has given rise to so much controversy; and he contends, through his counsel, that although the March and September gales of 1881 were legally due at the date of payment, yet by reason of the ordinary dealing between the landlord and the tenant, and by virtue of the proviso at the close of sub-section 8, section 1, they are not to be deemed to have accrued due until after the £10 10s. had been in fact paid, and consequently the payment so made cannot be credited to the year expiring as aforesaid, but must be taken as applicable to the antecedent arrears, and a further year's rent must be paid. This appears to have been the opinion of the Investigator. The case, therefore, raises for the decision of the Court the construction of the sub-section referred to, and in particular that proviso which is said to deal with what is called the hanging gale. I am fully sensible of the interest which attaches to the question, and the important results which may follow the decision I am about to pronounce.

Now, in the first place, I think it advisable to abandon the use of the expression "hanging gale." The words do not occur in the Act of Parliament; and although I believe the expression "hanging gale" is, properly speaking, applied to a gale remaining unpaid after the next succeeding gale accrues legally due, still it is better to avoid language of a technical character, which may itself be open to controversy, and, taking the words of the sub-section as we find them, bring them to bear on the particular facts of this particular case. Referring then to the sub-section, the earlier part is free from all doubt, and distinctly appropriates the payment made in or subsequent to the year expiring as aforesaid, to the rent payable in respect of that year, to the extent to which the rent for that year had at the time of payment accrued due. This provision was absolutely essential, and forms a vital portion of the Act. But for it, the payment of the required year's rent in the year expiring or expired, or up to the 30th November, 1882, would have gone towards discharging the arrears which it was the object of the Act to discharge. The general and governing intention of the Legislature was to wipe out all arrears and to enable tenants to make a fresh start in life where they came forward and paid their rent for the year 1881; and undoubtedly, if the contention of Sir J. Leslie is correct, that intention is defeated, and the payment of £10 10s. made by Alfred Monaghan, solely because it was made before the 29th September, 1882, and not after, deprives him of the benefit intended to be conferred by the Act. The sub-section, for the sake of securing the object of the Act, confers on the tenant a distinct right or benefit, and I apprehend it requires words equally distinct and clear from ambiguity to cut down or limit the universal application of that enactment. The proviso which follows affects to do so under certain circumstances—namely, "provided that where it appears that according to the ordinary course of dealing between the landlord and tenant of a holding the rent of such holding has usually been paid on some day after the day on which it became

legally due; the usual day of payment shall be deemed, for the purposes of this sub-section, to be the time at which the rent accrued due." Now, the first observation I have to make is, it lies on the landlord to establish affirmatively the existence of those conditions which, undoubtedly if they do exist, must deprive the tenant of the benefit *prima facie* arising from the earlier enactment—that is, the landlord must prove to the satisfaction of the Court that according to the "ordinary course of dealing" between himself and the particular tenant the rent has usually been paid on some day after the day on which it became legally due. The words of the section do not refer to the practice or custom as regards the estate, but the ordinary course of dealing between the landlord and tenant of a holding. In such case the usual day of payment, and not the actual day on which it accrued due, shall be deemed, for the purpose of the sub-section, to be the time at which the rent accrued due. As I read the sub-section, there must be established, first, an "ordinary course of dealing" between the landlord and the particular tenant; and secondly, that course of dealing must show the usual payment of the rent on some day after the day it became legally due. Where both are established, then the enactment provides that that day—that is the "some day" shown to be the usual day on which the rent was paid, shall be deemed the time at which the rent accrued due for the purpose of the sub-section. Now, it has been pointed out by counsel that if the language of the proviso is taken in its literal sense, every single tenant within the limits prescribed by the Act would be drawn within it and excluded from the benefit of the statute; for the custom undoubtedly is, to pay the rent on some day after that on which it becomes due. Any construction which would lead to such a result is manifestly to be rejected as absurd. Now, the evidence in the present case shows that at an early date Monaghan's rent, year by year after it became due, and after the year came to be deferred as regards collection, was never paid on the same day in two consecutive years. Under those circumstances, can I say the rent has been usually paid on some day after the day on which it became legally due? Which of the several days shall I take as the day on which it was usually paid? "Some" day in connexion with the word "usually," points to a particular day—otherwise "some" day should be read in the indefinite sense as "any" day, or in the still more indefinite sense of any time or period. It appears to me the enactment provides in substance and in fact that the deferred day of payment—when an ordinary course of dealing is established—shall be deemed the time at which the rent accrued; but the deferred day must be that day upon which the rent has been usually paid—a definite day, or a day capable of being fixed and defined with as much certainty as the day upon which in law and in fact the rent accrued due. As rent must accrue due on some certain day, so the deferred day of payment, upon which it is to be deemed to accrue due, must be some certain day—that is, a day capable of being made certain by showing the rent was usually paid on that day. The ordinary course of dealing on large estates is to have a rent collection at stated periods of the year; and I believe I only state what will be admitted on all sides that the collection is arranged to suit the convenience of the agent or of the tenants by reference to some local fair, and that not unfrequently it extends over several days. In this case; however, there was no stated time for collection, no rent day in the usual sense of the term. The tenant might come in and pay on any of the weekly office days from 1st October, and we find accordingly payments made at all times of the year. If the practice of annual or half-yearly rent days was in the mind of the legislature, and if it was intended that the usual time of collection should be deemed the deferred period at which the rent was, for the purpose of the sub-section, to be deemed to have accrued due, very strange language

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has been used to give effect to that intention. If we find the language peculiar we have a right to assume that the words have been deliberately chosen, and that the words "usually paid on some day" were advisedly selected rather than "usually demanded," as contended for by Mr. Monroe, or "usually collected at stated times." I am at a loss to know how I am to arrive at the intention of the legislature, save by regarding the words it has used. For all I know the object in using the peculiar words we find in the sub-section, was to reduce to the smallest limit the mischief introduced into the general enactment by the proviso. This, however, is mere speculation; but in my opinion, the plain, distinct and paramount object of the Act ought to prevail when brought into conflict with language which is uncertain, obscure, and open to a twofold interpretation. In all cases, therefore, where the tenant's receipts or the agent's books show that the gales of rent have been paid in different months or at different periods in successive years, and where there has not been established a special rent day, upon which rents are usually paid, I feel bound to hold that the rent of the holding has not been usually paid on the "some day" required by the Act, after the day on which it became legally due within the meaning of the proviso; and, accordingly, that the proviso does not apply to such cases, even though, according to the ordinary course of dealing, the rent was not usually demanded or collected until after the lapse of a certain period from the gale day when it accrued due. The order, therefore, which I shall make in this case will be—To allow the cause shown, and declare that the year's rent paid on the 9th day of January, 1882, satisfied the rent for the year of the tenancy expiring on the last gale tenancy in the year 1881, and let the sum of £10 10s. be paid to or for the benefit of the landlord. The result will be that the antecedent arrears of the tenant are extinguished.

*Appeal allowed.*

(Before O'HAGAN, J., LITTON, Q.C., and J. E. VERNON, Esq.)

Dec. 5.—*Dane* applied for directions, desiring to know whether the court would desire to have the case re-argued before the three Commissioners, or would state a case for the Court of Appeal. He referred to Rule 17, under the Arrears of Rent Act.

O'HAGAN, J.—Our view is that, as the stating of a case would be the conjoint action of the Land Commissioners, the several members ought to hear the arguments and evidence. We shall direct, therefore, the case to be re-argued, and the notes of the evidence taken before Mr. Commissioner Litton can be used. We shall sit on Friday, Dec. 8, to hear the case.

Solicitor for the landlord: *J. W. Dane.*  
Solicitor for the tenants: *P. W. Gallagher.*

#### LAND SUB-COMMISSION.

(Before F. HODDER, Barrister-at-Law, J. F. BOMFORD and J. M. WEIR, Esqrs.)

M'MORROW v. IRVINE.

Feb. 7, 1882.—*Town-park—Town, what constitutes—Agreement to take as town-park—Land Law Act, 1881, s. 58 (2).*

*Ederney, Co. Fermanagh, is not sufficiently populous to constitute a town, within the meaning of the Land Law Act, 1881, s. 58 (2).*

*Designating a holding as "town-park," in the agreement under which it is let, is of no avail to constitute the holding a town-park, if in other respects it appears not to possess the characteristics contemplated by the statute.*

Applications to fix judicial rents, in respect of two separate holdings, comprising 6a. and 9a. 2r., situate respectively about a mile and half a mile (Eng.) from Ederney, Co. Fermanagh, in which the tenant had a shop and resided. At the time of the letting the tenant signed a document by which he took the land as town-parks, and was deprived of the benefit of the L. & T. Act, 1870. The tenant deposed that Ederney contained 40 houses, and the landlord (to whom Ederney belonged) stated that it had 400 inhabitants, while a former postmaster there deposed that the population 12 years ago was about 250. But the landlord stated that he had spent, since he got the property, £332 on building a market-house, and had built 22 houses, which had led to an increase of the population by at least 100. The tenant stated that no fair or market was held there, nor had it a local bank.

*Mr. Alexander*, solicitor, for the landlord.—We rely, in the first place, on the agreement.

[*Mr. HODDER.*—But that will not make it a town-park unless three requisites are fulfilled—the place should be let as a town-park, it should be situated in immediate proximity to a town, and it should bear an increased value because of its being held as accommodation land.]

It is so let; it adjoins the town, where the tenant lives; and the rent as now payable was fixed in consequence of the increased value of the holding as being adjacent to the town.

[*Mr. HODDER*, having looked in Thom's Directory to ascertain the population of Ederney, said—Really, if the town has only a population of 200 or 300 I think it is only trifling with the court to go on with the question.]

*Mr. J. C. Macniffe*, solicitor, for the tenant.—In *Cox v. Archdale* the County Court judge (Mr. Blake, Q.C.) held that lands were not town-parks which adjoined Derrygonnelly, which is larger than Ederney.

*Mr. HODDER.*—I think the lands are not town-parks. The evidence should be very strong to make me hold otherwise; and I say that these lands round a place the size of Ederney are not town-parks within the meaning of the Act. It is not a town of sufficient importance. In Moneygall the idea has been scouted, and it is a larger town than this.\*

#### COUNTY COURT.

(Before R. W. GAMBLE, Esq., Q.C.)

M'GROUGH v. CROZIER AND M'GOVERN.

Oct. 14, 31, 1882.—*Arrears of Rent Act, sec. 13—Proceedings pending—Stay of Decrees granted at former Sessions—Jurisdiction of County Court.*

*The County Court possesses no jurisdiction to stay proceedings, under the Arrears of Rent Act, 1882, on a decree for rent or for possession granted at a former session, the proceedings being no longer "pending."*

Applications to stay proceedings. The circumstances are sufficiently explained in the judgment.

*Mr. Peel*, solicitor, for the applicants.

*Mr. W. Simpson*, solicitor, contra.

*The Judges.*—In these cases applications under the 18th section of the Arrears of Rent Act have been made

\* It was held by Assistant-Commissioner Roche (Feb. 4, 1882) that Athleague, Co. Roscommon, containing some 260 inhabitants, did not come within the Act. See cases collected, by the present writer, in 15 Ir. L. T. 622.—[E. N. B. Ed.]



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to stay proceedings upon decrees for rent, and decrees for possession for non-payment of rent, granted and issued at a former sessions. The question whether this court has power to do so depends upon what is meant by pending proceedings in this court. The jurisdiction to hear civil cases was given to the Chairman of Quarter Sessions, by the 14th & 15th Vic., c. 57, sec. 85 and it was only given to hear and determine by civil bill. Thus, as to some cases of special jurisdiction—in cases against a landlord, who, by not paying his chief rent, has allowed the sub-tenant to be distrained by the head landlord (sec. 39), in cases of replevin (sec. 43), in cases for the recovery of a legacy (sec. 49). In all these cases the proceedings should be by civil bill in the required form, and served at the required time (secs. 65 to 68.) Thus in all cases the jurisdiction was given only when the proceedings was by civil bill in the manner directed. The decree is in force for one year only (sec. 139), unless it shall have been renewed. The jurisdiction to renew a decree was given by sections 139 and 140. The jurisdiction of the Civil Bill Court was extended by the 40 & 41 Vic., chap. 56 (part 3), but the mode of procedure by civil bill was retained in the Court of the County Court judge. The jurisdiction is different from that of the superior Courts of Record, where the proceedings are considered pending so long as the decree or judgment is unsatisfied, and these courts continually hear motions even to vary or set aside the judgment. In the Civil Bill Court there is no proceeding by notice of motion; the jurisdiction depends entirely upon the statutes, and cannot be exercised except as provided by statute. Once a decree has been pronounced the only statutable provision concerning it is to grant renewals of the decree or dismiss in the manner provided by sections 130 to 142. There is no provision made for withdrawing, varying, or staying a decree except by an appeal to the Judge of Assize under section 127. If not appealed from the decree or dismissal is made absolutely final to all intents and purposes, and shall not be subject to be removed by any writ of error or otherwise to any other of her Majesty's Courts, nor capable of being revised (sec. 133). The power of the County Court judge to bring back, vary, or annul a decree after it had once been pronounced was very fully discussed in the full court of the Exchequer Division in the case of *M'Glone v. Smith* (15 Ir. L. T. Rep. 97, 8 L. R. Ir. 267), which was an appeal from this court. In that case I found that by mistake a dismissal on the merits had been signed and issued, instead of a dismissal without prejudice, or an order annulling the proceedings for want of jurisdiction, as it should have been. In the interest of justice and to prevent fraud, I there assumed power to exercise the same jurisdiction as a superior Court of Record would clearly have done to rectify the mistake, and directed the Clerk of the Peace's book to be amended accordingly. But the full court of the Exchequer Division, upon the hearing of an application for a writ of prohibition, decided that once the decree was signed and issued, the County Court judge had no power over it. The Lord Chief Baron gave the judgment of the Court, and said: "I am of opinion that there is no jurisdiction to amend." He also alluded to a matter of great importance in this case, the distinction between a pending proceeding and a case where the decree had been signed. He said, "I am clearly of opinion that whatever may be the power of the judge during the sessions—a matter on which I say nothing—the court has no power after the expiration of the sessions to compel the party to bring back the decree or dismiss which must be deemed to have been made. If not appealed from it is final." This appears conclusive as to the construction of the 13th section of the Arrears Act, under which the applications have been now made to stay decrees issued at the June sessions, 1882, for rent and for possession of holdings for non-payment of rent. That section gave the court power to "postpone or suspend" proceedings, the very words implying a

reference to something not yet decided nor finally decreed. And it gives this power only "when any proceedings for recovery of rent of a holding, or for recovery of such holding for non-payment of rent are pending." In any case in which a decree for rent or for possession has been issued at any former sessions it is no longer pending, and this section gives the County Court judge no jurisdiction over it. The only jurisdiction given in the matter seems that given to the Land Commission Court by sub-section 2 of section 1. That court clearly has power as soon as they have determined that a tenant is entitled to the benefit of the Arrears Act to vacate the decree or judgment of this or any other court. These applications must all be refused, and though there would be power under section 67 of the County Courts Act (40 & 41 Vic., c. 56) to award costs, as the question was a new one under the Arrears of Rent Act the order will be to strike out the case, but without costs.

*Order accordingly.*

SUPREME COURT OF JUDICATURE.  
COURT OF APPEAL.

Reported by E. N. BLAKE, Barrister-at-Law.

(Before LAW, C., PALLES, C.B., and FITZGIBBON, L.J.)

CORPORATION OF DUBLIN v. COMMISSIONERS OF  
BLACKROCK.

Nov. 24, 25, 29, 1882.—Corporation aggregate—Contract—Writing—Seal—Signature—Ultra vires—Statute of Frauds—Blackrock Township Act, 1863, s. 28—Local Government Board Provisional Order, 1874—37 & 38 Vic., c. clxxvi.—Towns Commissioners' Clauses Act, s. 56—Dublin Waterworks Act, 1861.

By the 28th section of the "Blackrock Township Act, 1863," it is provided that the Corporation of Dublin "shall supply, and thenceforth continue to supply a quantity of water equivalent to 20 gallons per head per day for the population from time to time of the township." By a Provisional Order of the Local Government Board, in 1874 (confirmed by 37 & 38 Vic., c. clxxvi.), it was ordered "that it shall be lawful for the Corporation, should they deem it expedient, and in the event of their having a quantity of water in excess of the quantity required for the use of the city of Dublin, and for the supplies provided for the said several townships by the said statutes and contract, to give to the Commissioners respectively of the said several townships permission to draw quantities of water respectively in excess of the quantities provided by the said statutes and contract respectively, from the pipes or mains of the Corporation, on receiving notice from the Commissioners of the several townships respectively of their desire to take such supply in excess of the statutable or contract allowance, at a rate or rates to be agreed upon between the Corporation and such Commissioners respectively, not exceeding in any case the rate of four pence per 1,000 gallons, and it shall be lawful for the Commissioners of the said several townships respectively to pay out of the rates levied in their respective townships the rents, rates, or charges respectively made by the Corporation for such supply in excess as hereinbefore defined." Accordingly, Sir John Gray, acting for the Corporation of Dublin, and Mr. Vance, acting for the Blackrock Township Commissioners, entered into a written arrangement, not under seal,

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nor signed by two Commissioners (under the Towns Commissioners Clauses Act, s. 56), by which it was agreed that the statutory allowance of water which the Corporation were to supply should be calculated upon a population of 10,000, until the publication of the then next Government census; and that all water supplied in excess of the statutory allowance of twenty gallons per head per diem to such a population should be paid for by the defendants, at a price to be subsequently fixed; and by a subsequent written arrangement it was agreed that the price should be fixed at 3½d. per 1,000 gallons. The Corporation supplied the water accordingly. In an action brought by them to recover on foot of the stipulated price:

Held, on demurrer to the statement of defence (1), that, the Corporation were entitled to sue as plaintiffs, although the contract was not under seal, same having been wholly performed on their part (applying *The Fishmongers' Co. v. Robertson*, 5 M. & Gr. 192); (2) that, upon the true construction of the contract, it was in effect revocable at the pleasure of the parties at any moment, and, therefore, did not come within the Statute of Frauds, requiring agreements not to be performed within one year to be in writing (applying *Knowlman v. Bluett*, L. R. 9 Ex. 1, 307; *Eley v. Positive Assurance Co.*, 1 Ex. Div. 24), and so, under the 56th section of the Towns Commissioners' Clauses Act, was not required to be signed by two Commissioners; (3) that, the contract was not rendered illegal or ultra vires by reason of the reference in it to the fixing of the population of Blackrock, for the purposes in question, as 10,000 until the next census.

Per FITZGIBBON, L.J.—The meterage rate under the Provisional Order of 1874 is a rate within the 61st section of the Dublin Waterworks Act of 1861, and the provisions of that section are incorporated in the Provisional Order as effectually as if they were in terms repeated therein.

Demurrer.—The way in which the questions of law arising on the pleadings in this case came under consideration appears sufficiently, for the purposes of the present report, in the judgments delivered, without setting out the pleadings in extenso. Briefly stated, the circumstances in question were substantially as follows:—The Corporation of Dublin, under a Provisional Order of 1874, and the Act 37 & 38 Vic., c. clxxxvi., confirming it, being empowered to supply the various townships with water, entered into an arrangement with the Blackrock Township Commissioners to supply water to the inhabitants of Blackrock (whom they were bound to supply, under the Blackrock Township Act, 1863) at the rate of 20 gallons a day for each of the population, the number of which was taken as 10,000, until the next census; and by another arrangement they agreed that any water supplied in excess should be paid for at the rate of 3½d. per thousand gallons. Upon these agreements the Corporation supplied water in 1877 and the following years, up to and including part of last year, and the excess water calculated on the assumed population of 10,000, at the rate of 3½d. per thousand gallons, was admitted to amount to £448 9s. 1d. Portion of the sum was paid, and portion remitted, but for the balance, amounting to £258 4s. 10d. still due, the Corporation brought an action. The Blackrock Commissioners disputed the claim, while admitting they had got the water, and also that the agreements existed; but they alleged, first,

that the agreements had been come to between Mr. Vance on their part and the late Sir John Gray on the part of the Corporation, and that they were ultra vires; and, further, that the agreement was verbal, and not under seal, as required by the common law when the contracting parties are corporations, nor was it in writing signed by two members of the corporate bodies respectively, as appointed in the statute, and that, therefore, they were not bound by it. To their statement of defence, so maintaining, the Corporation demurred; and from the order of the Common Pleas Division, allowing the demurrer, this appeal was taken.

*Piers White*, Q.C., *Holmes*, Q.C., *Houston*, Q.C., and *Barton*, for the appellants.

*S. Walker*, Q.C., *Carton*, Q.C., and *Byrne*, for the respondents.

PALLES, C.B.—This case has been so fully argued, and we have had such an opportunity of considering the various questions which are involved in our decision, that we think it better to dispose of it at once, instead of putting the parties to the expense of another day.

A great number of questions have been argued at the bar, but a decision upon three of them will be sufficient to rule the matter before us.

There are two questions that have been argued upon which I myself wish to refrain from offering any opinion. I mean, first, whether the clauses in the Dublin Corporation Acts, in reference to contracts to supply water, not being under seal, apply to the supply of water under the Act of 1874. I do not say that I at all differ from the view of that question in the court below, but it appears to me to be a question of so much importance that it is not right to deliver an opinion upon it in a case where it does not arise. The second matter, upon which I desire to offer no opinion, is the question whether, if there is an executed consideration, though the contract is not under seal, where it ought to be under seal, a corporation of this character can be sued in the same way as an ordinary individual could be sued under similar circumstances. That, too, is a very important question; but, in my view, it does not arise in the present case.

Now, the three questions the decision of which, in my opinion, dispose of this case are—first, whether the Corporation of Dublin are entitled to sue as plaintiffs although they have not sealed the contract under which this water was supplied, assuming that there is no statutory exemption in their Acts of Parliament entitling them to enter into a contract of this description without a seal. That is the first question.

The second question is as regards the defendants' authentication of this contract—that is, whether this is a contract which ought to be in writing, signed by two of the Commissioners—or, in other words, whether it is a contract which, as between private individuals, ought to be in writing.

The third question is whether this contract has been rendered illegal by reason of the reference in it to the fixing of the population of Blackrock for certain purposes as 10,000 until the next census.

Now, as to the first question, I take it as perfect settled law from the time of the decision of *The Fishmongers' Company v. Robertson*, 5 M. & Gr. 192, down to the present, that where the contract has been actually executed by the corporation who are suing, they can sue as plaintiffs although the contract is not sealed. What is the objection usually made when a corporation are plaintiffs suing upon an unsealed contract? The only objection is that founded on the want of mutuality. But, want of mutuality is no objection when the contract has been wholly performed by the party suing in the action. The absence of mutuality in such a case cannot affect the defendant who has already got everything he was entitled to get under the contract. Now, Mr. Houston very fairly admitted that the principle

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of *The Fishmongers' Company v. Robertson*, and that class of cases, is applicable to the present, unless there were something in the constitution of the defendants which rendered the contract insufficiently authenticated upon their side. But that admission plainly gives up this objection to the plaintiffs suing altogether; for if, by reason of the defendants being a corporation and not bound by this contract because it is not signed by them, the plaintiffs are not entitled to sue, it is not by reason of any incapacity in the plaintiffs or want of authentication on their part, but it is by reason of the defendants not being bound by the contract; and that, therefore, brings us to the second question. In fact, the admission of Mr. Houston takes away from this first question all character of an independent objection. It is not required, he admits, if the second objection is good, and the defendants not liable by reason of the absence of writing, and if the absence of writing is no objection to the defendants' liability, he admits that the first objection cannot be sustained; so that we may pass over the first objection altogether. It must be ruled against the defendants admittedly if the Court should be against them on the second question.

The second question is involved in some little peculiarity. Under the Provisional Order of 1874, and the Act (37 & 38 Vict., chap. cxxxvi.) confirming it, the Corporation of Dublin acquired a certain power which may be shortly described as a power to sell excess water to the defendants here; and the defendants acquired a power to purchase that excess water. The price was to be a sum not exceeding 4d. per 1,000 gallons, to be fixed by agreement; and the water upon which that price was to be charged was water over and above what they were obliged to supply under the "Blackrock Township Act, 1863"—a quantity of water to be measured by the number of the population from time to time of the Blackrock Township. It appears that Sir John Gray, acting for the Corporation of Dublin, and Mr. Vance, acting for the Blackrock Township Commissioners, entered into what has been called during the argument "an agreement," and that agreement was that the statutable allowance of water which the Corporation were to supply should be calculated upon a population of 10,000, until the publication of the then next Government census; and that all water supplied in excess of the statutory allowance of twenty gallons *per head per diem* to such a population should be paid for by the defendants, at a price to be subsequently fixed. It then appears that there was a subsequent fixing of the price at 8½d. per 1,000 gallons; and, I own for myself, I quite concur with the argument of Mr. White and Mr. Houston, that we ought to read in the fixing of that price as a term in the arrangement made between Sir John Gray and Mr. Vance. I also agree with them that, as there was a reference in that agreement to the then next Government census, we ought to take it to have been in their contemplation that this price of 8½d. per 1,000 gallons, and the population of 10,000 which was to be an element in ascertaining the quantity upon which the price should be paid, should endure for a period above a year; and, in my opinion, if there had been a definite agreement between Sir John Gray on the part of the Corporation and Mr. Vance on the part of the township, that the Corporation should supply and that the township should take, for the entire period until the next Government census, excess water, to be paid for upon the calculation I have mentioned, that would have been an agreement not to be performed within a year, and, therefore, should be in writing within the Statute of Frauds.

But, in my view, no such agreement is alleged. I am not at all clear that any such agreement was in contemplation between the parties. I think all that was done was so done in reference, not to an obligation upon the part of the Corporation to supply, or an obligation upon the part of the township to accept, but in reference to the statutable power created by the Provisional Order.

The Corporation had the power to supply excess water at a certain price to be agreed upon. The township had the power to take it at a certain price to be agreed upon, and, in my view, that arrangement between Sir John Gray and Mr. Vance was entered into with a view to carrying out that power under the Act of Parliament, and the arrangement was that if that power were exercised, then the price should be a certain price. But there was no obligation upon the Corporation to supply excess water, and no obligation upon the township to accept it. It would have been competent for the township at any moment, if they thought the price too high, to serve notice to have it discontinued, and thenceforth decline to receive it; and, on the other hand, it was competent for the Corporation at any moment if they thought fit to serve notice and thenceforth discontinue to supply it. The question, then, is whether such a contract, if made between individuals, would be within the Statute of Frauds—a contract by which the price was fixed in the event of one party being willing to supply, and the other desiring to receive. That, in fact, is not a contract upon which an action could be brought at all. There was no obligation on either the Corporation or the township. The arrangement was—"As long as we, the Corporation, think fit to supply, and as long as you, the Blackrock Commissioners, think fit to accept, excess water, the price at which it is to be paid for shall be so and so." But, the Corporation could not have been sued for refusing to supply, nor could the Commissioners have been sued for refusing to accept, even if the contract had been sealed by both parties. In my opinion, this question is perfectly concluded by authority. I look upon it as one of the A-B-C's of the application of the Statute of Frauds. It has always been considered that the only mode in which you can test whether a contract is one not to be performed within the year is by ascertaining what are the obligations of the parties. If the obligations of the parties respectively are such that they may be reasonably intended to endure beyond the year, then, and not till then, the contract is within the statute. Here, the only obligation on the part of the defendants is the implied one which arises *de die in diem* from the acceptance of the water upon the terms previously arranged. If authority were required for the proposition I have laid down, it would be found in the case of *Knowlman v. Bluett*, L. R. 9 Exch. 1, and in Ex. Ch., *ib.*, 307; and the subsequent case of *Eley v. Positivus Assurance Company*, L. R. 1 Exch. Div. 24, instead of being against the principle of *Knowlman v. Bluett*, is in confirmation of it. There the decision of the two members of the court who took this view of the Statute of Frauds (Barons Amphlett and Cleasby) was grounded upon this, that they thought the true construction of the 118th article of association was that the plaintiff was to be continued as solicitor for the company during the entire of its existence. They thought the possible existence of the company ought to be considered as enduring, in the contemplation of the parties, for more than one year; and they distinguished the case of *Knowlman v. Bluett* by stating that in that case the contract was revocable at any moment. In the present case, according to the view I take of the contract sued upon here, it was revocable at the pleasure of the parties at any moment, and for that reason the Statute of Frauds would not apply as between private parties; and, therefore, under the 56th section of the Towns Commissioners' Clauses Act it was not required to be signed by two Commissioners.

So much for the second objection. The last question is one of a little more peculiarity, and perhaps rather more interesting than the two I have been already discussing. It has been principally argued by Mr. Houston in reply, and it depends upon the terms of the "Blackrock Township Act, 1863" (the 26th and 27th Victoria, chapter 121), and one of the clauses of the Provisional Order of 1874. I think I shall make what

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I have to say more clear by first reading a few words from each of those provisions:—

By the 28th section of the "Blackrock Township Act, 1868," it is provided that "the Corporation . . . shall supply, and thenceforth continue to supply, a quantity of water equivalent to 20 gallons *per head per day* for the population from time to time of the township." Now it seems clear that the words "from time to time" in that provision were intended by the legislature to be used literally—that the quantity of water that was to be supplied was to be measured *de die in diem* upon the actual population of the township; so that during the summer months, when the population of Blackrock was largely in excess of its winter population, there would be an obligation upon the Corporation to supply a larger quantity of water *per diem* than they would be obliged to supply during the winter months, because the legislative provision is not for a certain quantity *per year* or *per month*, but *per head per day*.

Then comes the Local Government Board Order of 1874. "It is ordered that it shall be lawful for the Corporation, should they deem it expedient, and in the event of their having a quantity of water in excess of the quantity required for the use of the city of Dublin, and for the supplies provided for the said several townships by the said statutes and contract, to give to the Commissioners respectively of the said several townships permission to draw quantities of water respectively in excess of the quantities provided by the said statutes and contract respectively, from the pipes or mains of the Corporation, on receiving notice from the Commissioners of the several townships respectively of their desire to take such supply in excess of the statutable or contract allowance, at a rate or rates to be agreed upon between the Corporation and such Commissioners respectively, not exceeding in any case the rate of four pence per 1,000 gallons, and it shall be lawful for the Commissioners of the said several townships respectively to pay out of the rates levied in their respective townships the rents, rates, or charges respectively made by the Corporation for such supply in excess as hereinbefore defined."

Now reading those two provisions together, the Corporation are entitled to recover from the Commissioners of the township a meterage rate for all such quantities of water taken in excess of 20 gallons *per head per day* for the population from time to time of the township, at a rate to be agreed upon, not exceeding four pence *per 1,000 gallons*. I have said my opinion is that the township were entitled to get 20 gallons *per head per day* upon the actual population, and thus they would be entitled to get a larger quantity in summer than in winter. But, when we come to measure the excess water that is to be paid for under these provisions, it is clear that we must give the Act of Parliament some reasonable construction; for, if it was read and applied literally, it would be necessary, before it could be ascertained what sum should be paid by the township for excess water, that the actual population should be ascertained each day, and of course that is not possible to be done. But, in addition to that, the Act of Parliament contemplates an agreement between the Corporation and the Commissioners as to price, and, therefore, it evidently contemplated something in the nature of a fixing beforehand of the actual population with a view to determining the excess quantity which was to be paid for by contract. These considerations satisfy me that the words "population from time to time of the township" can only mean something to be arrived at in the nature of an estimate, and being something to be arrived at in the nature of an estimate the Corporation and the Commissioners ought to be able to agree by contract upon what that estimate should be. But, in entering into such a contract, there is no doubt that the contract could not be made a cloak for evading the provisions of the Act of Parliament, and therefore we must see what is the

exact provision in the Act of Parliament, in order to take care that any fixing of the population or otherwise by the township will not be contrary to the provisions of the Act.

Now, the first observation to be made in reference to this is, that it is only necessary to fix the population for the purpose of ascertaining the amount to be paid for water supplied in excess. The next is that there is no limit in the Act as to the minimum to be paid—the limit is only as to the maximum. It would be competent to the Corporation to contract to supply excess water at a penny *per 1,000 gallons*. It would not be competent to the Commissioners to contract to pay at the rate of five pence *per 1,000 gallons*. Thus the element of purpose in the Act of Parliament, in the only limitation I can find to the fixing the quantity of excess water which is to be paid for by the township, is that it shall be such that they are not to be charged at a greater rate than four pence *per 1,000 gallons* for the excess. In my opinion, it was competent for both the Corporation and the Commissioners to estimate the population from time to time in the township of Blackrock for the purpose of this calculation at a number which they might agree upon as in excess of the actual number. I do not think they are bound to fix, or endeavour to fix, the actual number, but that if they fix some number which is not less than, or in excess of, the actual number, then the purpose of the Act of Parliament is fully satisfied, and there being no corresponding limitation as to a minimum rate, the Act of Parliament is not violated in any way.

The question is, whether upon these pleadings this agreement is an illegal agreement or not. Now, the Corporation having a general power, as I think they have, to thus fix by estimate the population, it would appear to me that the statement of claim could not be subject to demurrer but for one element which has been introduced into this arrangement between Sir John Gray and Mr. Vance—I refer to the term as to the next census. Now, if it were desired by the defendants to raise the question that this term rendered the contract void (if it were a contract), I think it would have been necessary for them to have alleged in their pleading that that period was an unreasonable period; because if they had the power of fixing the population for any limited period, instead of taking the actual number from day to day, the only limit must be that of a reasonable time, and (what is a reasonable time being a question of fact, not a question of law) we could not assume upon these pleadings that fixing a number for seven years was fixing it for an unreasonable time; and, therefore, for that reason alone I should think the statement of claim not subject to demurrer upon that ground. But going further than that, and supposing it were alleged in the pleadings here that seven years—or the period till the next census—was an unreasonable time, I would observe that the contract on which the plaintiffs are suing was a contract, not to supply for a fixed period, but only so long as both parties chose. I think the question would be, whether fixing a price for no definite time, but giving a power to each party to revoke that fixed price whenever they thought fit, rendered the contract illegal. In my opinion, such an agreement could not be held unreasonable, because both the parties had the power of withdrawing from it—the Commissioners could withdraw if they thought at any time that the actual population was much in excess, and the Corporation could withdraw if they thought it was much less than the number estimated. Therefore, so far as the statement of claim is concerned, I think it is not open to demurrer upon that ground.

We now come to the 8th paragraph of the defence. In substance it alleges that this number, 10,000, so fixed as the population of the township, was an arbitrary number and not the actual number, nor fixed upon or determined or adopted as the actual number of said population at the time when the agreement is alleged to

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have been made, or at any time thereafter. I pass over for a moment the words "arbitrary number." It was not the actual number; but, clearly its not being the actual number would not in itself have rendered the agreement illegal. The actual number never could be ascertained. In my opinion, in fixing the population, they were not bound to fix it as the population upon any particular day during the interval it was to cover. In fact, I rather think they would have been wrong in fixing it as the population on any particular day. If they sought to arrive at mathematical accuracy for the purposes of calculation, it would rather be by taking an average of the population upon each of the different days constituting the period in question. But, as I have already said, I go further than that. I do not think they were bound to fix it in that way by the method of averages. I think it would be sufficient if they took care that the number, 10,000, was over and above the fair estimated average population of the township for the period intended to be covered.

I now treat the plea as including the word "arbitrary," the presence of which, up to this, I have ignored. I read, however, this word in the plea, not as meaning without reference to any principle whatsoever, but without regard to the particular principle propounded by the plea—viz., that the number should be the actual or estimated population of the township on some particular day. Giving, then, full force and effect to every word in the plea, in the sense in which it was intended to be used, it seems to me that it does not show that this number, 10,000, was not *bona fide* fixed as a number in excess of the estimated average population of Blackrock, as it then was, or possibly would be until after the then next census; and that being so, I think there is nothing in the plea which constitutes an answer to the action.

For these reasons, and without going into any question, except, first, the question whether the Corporation can sue, not having sealed this contract; secondly, whether the contract required to be in writing, signed by two commissioners; and, thirdly, whether upon the facts stated in the pleadings it was an illegal contract—going into these questions only, I am of opinion that the judgment of the Common Pleas Division was right, and ought to be affirmed.

LAW, C., concurred.

FITZGERBON, L.J.—I concur in the judgment pronounced by my Lord Chief Baron; at the same time, I wish to say I entertain no doubt that the meterage rate under the Provisional Order of 1874 is a rate within the 61st section of the "Dublin Waterworks Act" of 1861, and that the provisions of that section are incorporated as effectually as if they were in terms repeated in the Provisional Order. With regard to the supposed illegality of fixing a rough standard of population, I am entirely unable to see that it is applicable in the present case. The contract for the supply of excess water, which is the only contract sued upon, is a contract arising *de die in diem* from delivery of the water on one side and acceptance on the other, and whether the standard of population was or was not fixed by reference to some census which the parties would not have a right to use for the purpose if it ceased to be favourable to the defendants, I think it lies upon the defendants to show that the water sued for was not in fact excess water. It is not an illegality to be assumed in the argument on the pleadings. In my opinion, it would rest upon the defendants to show, in answer to an action under this contract, not only that the standard from which the water supplied assumed the character of excess water was a standard that at the time was illegal, but that the use of that standard had resulted in charging them for water as excess water which was not so in fact. They are endeavouring to incorporate an illegality, which would only arise when the contract ceased to give them the full statutory allowance, with

a contract under which they have not shown on the pleadings that they did not get a great deal more than they were entitled to.

*Appeal disallowed.*

Solicitor for the appellants: A. D. Kennedy.

Solicitor for the respondents: Mooney.

## HIGH COURT OF JUSTICE.

### QUEEN'S BENCH DIVISION.

Reported by S. N. ELLINGTON, Barrister-at-Law.

(Before MAY, C.J., and BARRY, J.)

LYNCH v. THE MIDLAND RAILWAY CO.

April 21, 1882.—Carrier—Contract—Impossibility of performance—Delay in carriage occasioned by operation of statute—Contagious Diseases (Animals) Act, 1878—Declaration of owner—Licence by local authority—Duties of consignor and of carrier—Delivery within a reasonable time—Construction of pleading.

In an action against a railway company by a consignor of cattle, delivered in Ireland to be forwarded to March and Lynn in England, the statement of claim alleged (par. 4) that the defendants did not deliver 20 of said cattle at Lynn within a reasonable time, but delayed and detained them in trucks and waggons after their arrival at Lynn for a long and unreasonable time, whereby the cattle were injured; and (par. 5) that the defendants did not deliver 25 of said cattle at March within a reasonable time, but, on the contrary, delayed them for a long time in trucks and waggons on the journey between Liverpool and March, whereby they were injured. The defendants, by their statement of defence, pleaded (par. 14) to the 4th paragraph of the statement of claim, that the defendants were always ready and willing to deliver the 20 head of cattle at Lynn within a reasonable time, but were prevented from so doing by the causes thereafter mentioned. They then referred to the Contagious Diseases (Animals) Act, 1878, and stated that by an order of the Privy Council, made in pursuance of that Act, the county of Norfolk, in which Lynn is situate, was declared to be an area infested with foot and mouth disease; and that under the 4th schedule of the said Act and the orders of the Privy Council of Jan. 3, 26, 1881, it became unsafe to move the cattle from the trucks in which the same had arrived at Lynn except by a licence of the local authority, granted on conditions prescribed by the orders in Council; and they averred that no such licence was forthcoming when the cattle arrived at Lynn. The local authority of and for the county of Norfolk refused to allow the cattle to be, and prevented the same from being, moved out of the said trucks unless and until such licence was obtained and produced to their proper officer; and the defendants averred that such licence was afterwards obtained and produced to the officer, whereupon the local authority permitted the cattle to be removed from the trucks, and the defendants thereupon forthwith removed the same and delivered them to the plaintiff. They further pleaded (par. 15) to the 5th paragraph of the statement of claim, referring to the same Sanitary Act and orders in Council, and stating that the defendants carried the cattle with due and reasonable speed as far as the town of Peterborough, on the borders of the county

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of Norfolk, and that it was unlawful to move or carry the cattle from Peterborough to March without a licence of the local authority of the county of Norfolk, and that previous to the arrival of the cattle at Peterborough the plaintiff had not obtained such licence, nor was any such licence given, and by reason of the premises it became unlawful to carry the cattle further on the journey, and the cattle were prevented from being so carried for a time, and did remain at Peterborough for a time. To the 14th paragraph of the defence the plaintiff replied that one of the conditions prescribed by the Privy Council upon which the said licence would be granted was, that the owner of the cattle would make and sign a declaration, as in the schedule to the order set forth, and the plaintiff, as the owner of the cattle, made and signed the said declaration, and at the request of the defendants, and before the cattle were despatched from Liverpool on the way to Lynn, delivered the declaration to the defendants, but the defendants did not forward the declaration to Lynn with the cattle, so as to have the same forthcoming when the cattle arrived at Lynn or March; but, on the contrary, negligently made default in so doing; that the local authority at Lynn was always ready and willing to grant the licence upon the production by the defendants of the declaration, and the refusal of the local authority to allow the cattle to be removed from the waggons was occasioned by the neglect and default of the defendants in not producing the declaration to the said local authority. To the 15th paragraph of the defence the plaintiff replied to the effect that the licence there referred to was obtainable from the proper local authority on the arrival of the cattle at Peterborough by the production to the local authority of a declaration in writing made by the plaintiff and delivered by him to the defendants before the departure of the cattle from Liverpool, and which declaration the defendants negligently and improperly omitted to produce to the said local authority, by reason whereof a licence for the removal of the cattle from Peterborough could not for a long time be obtained, and the delay in the 15th paragraph mentioned was occasioned thereby. The defendants having demurred to those replications, on the ground that they did not disclose any contract or obligation upon the part of the defendants to forward the declaration to the local authority:

Held, allowing the demurrer, that the defendants were under no obligation, by any express or implied contract, or by reason of any duty otherwise imposed on them, to procure the licenses, nor was any duty imposed on them to forward the declaration; but that, the contract being to carry and deliver within a reasonable time, and not at any specified time, the case did not fall within the doctrine that, if a person contracts absolutely to do a certain act, he is not discharged from his obligation by the supervention of circumstances rendering performance difficult or impossible; while for delay in carriage within such reasonable time, occasioned by the regulations of the Act and Order in Council, they would not be responsible under the circumstances appearing.

Demurrer by the defendants to certain replies pleaded by the plaintiff to the statement of defence.

The statement of claim (paragraph 1) alleged that

the defendants were carriers of cattle for hire from Dublin and Drogheda to Lynn and March, in England. The 2nd paragraph alleged that the plaintiff delivered to the defendants, as such carriers, 45 head of the cattle to be by the defendants carried from Dublin to March, with all due and reasonable speed, and at March to be delivered for the plaintiff within a reasonable time. The 3rd paragraph alleged that at Liverpool it was agreed between the plaintiff and defendants that the defendants would carry 20 of the said 45 head of cattle to Lynn, instead of March, and there deliver them within a reasonable time. By the 4th paragraph it was stated that the defendants did not deliver the said 20 cattle at Lynn within a reasonable time, but delayed and detained them in trucks and waggons after their arrival at Lynn for a long and unreasonable time, whereby the cattle were injured, and the plaintiff put to expense in feeding them, and so forth. By the 5th paragraph it was alleged that the defendants did not deliver the 25 head of cattle destined for March within a reasonable time, but, on the contrary, delayed them for a long time in trucks and waggons on the journey between Liverpool and March, whereby they were injured, and deteriorated in value.

The 14th paragraph of the defence, pleaded to the 4th paragraph of the statement of claim, alleged that the defendants were always ready and willing to deliver the 20 head of cattle at Lynn within a reasonable time, but were prevented from so doing by the causes therein mentioned. The defendants then referred to the Contagious Diseases (Animals) Act, 1878, and stated in substance that by an order of the Privy Council, made in pursuance of that Act, the county of Norfolk, in which Lynn is situate, was declared to be an area infected with foot and mouth disease; and that under the 4th schedule of the said Act and the orders of the Privy Council of Jan. 3, 26, 1881, it became unsafe to move the said cattle from the trucks in which the same had arrived at Lynn except by a licence of the local authority, granted on conditions prescribed by the orders in Council; and the defendants averred that no such licence was forthcoming when the said cattle arrived at Lynn. The local authority of and for the county of Norfolk refused to allow the cattle to be, and prevented the same from being, moved out of the said trucks unless and until such licence as aforesaid was obtained and produced to their proper officer, and the defendants averred that such licence was afterwards obtained and produced to the said officer, whereupon the local authority permitted the said cattle to be removed from the said trucks, and the defendants thereupon forthwith removed the same and delivered them to the plaintiff. The 15th par. of the defence, pleaded to the 5th par. of the statement of claim, referred to the same sanitary Act and orders in Council. It stated that the defendants carried the said cattle with due and reasonable speed as far as the town of Peterborough, which is on the borders of the county of Norfolk, and that it was unlawful to move or carry the said cattle from the said town of Peterborough unto the said town of March without a licence of the local authority of the said county of Norfolk, and that previous to the arrival of the said cattle at Peterborough the plaintiff had not obtained such licence, nor was any such licence given, and by reason of the premises it became unlawful to carry the cattle further on the said journey, and the cattle were prevented from being so carried for a time, and did remain at Peterborough for a time.

To the 14th paragraph of the defence the plaintiff

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replied to the following effect, viz.—that one of the conditions prescribed by the Privy Council upon which the said licences would be granted was, that the owner of the cattle would make and sign a declaration, as in the schedule to the order set forth, and the plaintiff, as the owner of the said cattle, made and signed the said declaration, and at the request of the defendants, and before the said cattle were despatched from Liverpool on the way to Lynn, delivered the said declaration to the defendants, but the defendants did not forward the said declaration to Lynn with the said cattle, so as to have the same forthcoming when the said cattle arrived at Lynn or March, but, on the contrary, negligently made default in so doing; that the local authority at Lynn was always ready and willing to grant the said licence upon the production by the defendants of the said declaration, and the refusal of the local authority to allow the said cattle to be removed from the said waggons was occasioned by the neglect and default of the defendants in not producing the declaration to the said local authority. To the 15th paragraph of the defence the plaintiff replied to the effect that the licence there referred to was obtainable from the proper local authority on the arrival of the cattle at Peterborough by the production to the said local authority of a declaration in writing made by the plaintiff and delivered by him to the defendants before the departure of the said cattle from Liverpool, and which declaration the defendants negligently and improperly omitted to produce to the said local authority, by reason whereof a licence for the removal of the cattle from Peterborough could not for a long time be obtained, and the delay in the 15th paragraph mentioned was occasioned thereby. To those replications the defendants demurred, on the ground that they did not disclose any contract or obligation upon the part of the defendants to forward the declaration to the local authority.

*Sullivan* (with him *W. O'Brien*, Q.C.), in support of the demurrer.

*Lyster* (with him *Sergeant Hemphill*, Q.C.), *contra*.

The following cases, &c., were cited:—*Kelner v. Baxter*, L. R. 2 C. P. 174; *Collis v. Selden*, 3 C. P. 495; *Dalton v. Powles*, 2 B. & S. 174; *Bailey v. De Crespigny*, L. R. 4 Q. B. 180; *Espósito v. Bowden*, 7 E. & B. 787; *Richards v. Easto*, 15 M. & W. 253; *Hale v. Rawson* 4 C. B. N. S. 85; *Bottomley v. Nuttall*, 5 ib. 136; *Shaw v. G. S. & W. Ry. Co.*, 8 L. R. Ir. 10, 15 Ir. L. T. 115; *Newington Local Board v. Cottingham*, 12 Ch. Div. 725; *Fitzgerald v. The Midland Ry. Co.*, 34 L. T. N. S. 771; *Abbot, Shipping*, 268; 41 & 42 Vic. c. 74.

*MAX*, C.J. (after referring to the pleadings)—It seems that the substantial point to be determined on the pleadings is that referred to by the demurrer to the replies—namely, Did any obligation rest on the defendants, by any contract, express or implied, existing between them and the plaintiff, or by reason of any duty imposed on them, and arising out of the facts alleged, to procure these licences, so rendered necessary by the Act of 1878, and the Orders in Council, made in pursuance of its provisions. First, referring to the reply to the 14th paragraph of the statement of defence, it is conceded upon the pleadings that, in order to the removal of the cattle from the station at Lynn, it was necessary that the local authority at Lynn should have given a licence for that purpose. Then it appears from the Order in Council of the 3rd of January, 1881 (sec. 9, A, sub-sec. 1), that these animals ought not to have been moved, except with a licence of the local authority on a certificate of a veterinary inspector, certifying that the animals were not affected with foot and mouth

disease, and had not, to the best of his knowledge and belief, been exposed to the infection of the foot and mouth disease, or on a declaration, such as is indicated in Form A in the schedule to the order, or to the like effect, made by the owner of the animals described in the declaration, or his agent authorised in writing for that purpose. The declaration in Form A is to the effect that the declarant declares that to the best of his knowledge and belief the animals specified are not affected with foot and mouth disease, and have not been exposed to the infection of such disease. Now, with regard to the obtaining this certificate of the veterinary inspector, under the first branch of the alternative in sec. 9, sub-sec. 1, it seems clear that the procurement of such certificate rested with the plaintiff, the owner of the cattle, and so also it was incumbent on the owner of the cattle, or his duly appointed agent, to make the declaration mentioned in the second branch of the alternative. The allegation in the reply to the 14th paragraph of the statement of defence is that the plaintiff duly made the proper declaration before the cattle left Liverpool for Lynn; and at the request of the defendants delivered the same to the defendants; but the defendants did not forward the said declaration to Lynn with the said cattle, so as to have the same forthcoming when the said cattle arrived at Lynn, but, on the contrary, negligently made default in so doing; by reason of which default the local authority refused to allow the cattle to be removed. This allegation, that the declaration was delivered to the defendants, is singularly bare and meagre. There is no allegation that it was delivered to the defendants to be delivered by them to the local authority at Lynn; there is not even an allegation that the defendants were informed of the nature and object of such declaration, or were aware of the necessity of its production to the local authority. There is the utter absence of any statement, or any express contract or undertaking by the defendants, to forward the declaration to Lynn. No fact being, therefore, stated from which such a contract could be implied, and no express contract being alleged, contract of this nature, and all reference to the forwarding this declaration seems out of the case; and it therefore seems unnecessary to inquire whether such contract, if entered into, would have bound the defendants, or would have been void *ultra vires*, with the additional objection that it would have been a contract by parol, and that the defendants are a corporation. It is, secondly, to be considered whether any duty rested on the defendants to forward this declaration to Lynn; the allegation that the defendants were guilty of negligence and default in not forwarding the declaration having no legal significance unless facts are alleged from which such duty could be deduced. The defendants were carriers of cattle, and as such were *prima facie* bound to carry them safely to their destination and deliver them within a reasonable time; but that, I think, was the limit of their duty as carriers. No additional special duty rested on them as carriers, owing to the exceptional fact that Lynn, the place of destination, was within an infected area, and it is simply in their capacity of carriers that the defendants are sued: I think the replication to the 14th paragraph of the statement of defence, is wholly defective in not showing any contract between the parties with reference to the obtaining the necessary licence, nor any fact out of which the suggested duty in that behalf arose.

It was argued by the plaintiff that this case falls within the doctrine that if a person contracts absolutely to do a certain act, he is not in any case discharged from his obligation by the superintention of acts, rendering performance difficult or even impossible. *Richards v. Easto*, 15 M. & W. 253, and other cases on this point, were referred to, but I do not think this principle applicable to the present case. The defendants did not enter into a contract, express or implied, to carry and deliver the cattle at any specified time, but within a reasonable

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time, and so it is pleaded in the statement of claim. Whether they were or were not conveyed and delivered within such reasonable time would depend on all the circumstances. They would not, I think, be responsible for delay occasioned by the regulations springing out of the Act of Parliament, and the Orders in Council, and particularly not in the present case, in which, as appears from the reply, the existence of these regulations and the necessity of procuring a licence for the transmission and delivery of the cattle, were known to the plaintiff; nor could the plaintiff be heard to complain of delay occasioned by the absence of the proper licence, and the obligation to take proper steps to procure the licence rested not on the defendants, but on himself. He was the owner of the cattle, and was aware that a licence for their delivery was necessary. It was clearly incumbent on him to procure the proper passport for his cattle, and any loss occasioned by delay in obtaining that licence ought, I think, to fall on him. I think both these replications are bad and insufficient.

But, finally, the counsel for the plaintiff argued that these defences were insufficient because they contained no allegation that it was the duty of the plaintiff to procure these licences; but such an allegation was, in my opinion, wholly uncalled for. Upon the facts stated in these pleadings, I think it appeared that it was not the duty of the defendants to procure them. On the contrary, it appears, in my opinion, that any such duty was imposed on the plaintiff, the owner of the cattle, and who were interested in their transmission and delivery, and who had it in their power to take proper steps to procure them. I think these demurrers should be allowed.

BARRY, J.—I concur in thinking that the defences are good, and the replications bad. The pleaders at both sides seem to have been curiously afraid of each other, or of their own respective cases, as on neither side is the proposition which has been contended for in the argument before us, specifically, in plain language, raised on the pleading. The defendants contended that the duty of procuring the licence of the local authority was cast on the plaintiff, and mean to assert that the delay in the delivery was caused by his default in not obtaining it, but though the statement of defence is certainly not remarkable for brevity it does not from first to last contain a simple averment of either of these propositions, but we are left to infer the grounds of defence from statements of the vaguest character. On the other hand, the plaintiff's counsel have first strenuously required that the duty of procuring the licence lay on the defendants, but, secondly, they assert that there is a practice whereby the railway company take charge of the owner's declaration (Form A), and have it on the proper occasion for production to the authorities; and that this practice was duly followed by the plaintiff, so that there was, in fact, a contract on the part of the defendants to carry forward the declaration and produce it at the station of delivery; and that the delay was occasioned by their breach of that contract. This contention they seek to raise on the replication; but, it is only necessary to read the replication to see that it is wholly insufficient in its averment.

We were much pressed with an argument that the statement of defence admits an absolute and unconditional contract to carry and deliver within a reasonable time, and admits a breach of that contract, and that the defendants cannot rely on the want of the licence as they had not made it an express condition of the contract that the plaintiff should obtain the licence. This argument might, and most probably would, have prevailed under the former system of pleading, but I think under the existing system we may interpret the defence in a more liberal spirit, and it seems to me that the fair result of this pleading may be held to be—"True it is, there was a delay in the delivery of the cattle, but we, the defendants, did everything in due performance of our contract as carriers. We carried

and were ready and willing to deliver within a reasonable time, and the delay was solely caused by you (the plaintiff) failing to obtain the licence necessary by law for enabling you to take delivery of the cattle." On this construction, I think the defence a good one, though vaguely pleaded, and, for the reasons stated, I think the replications bad.

*Demurrer allowed.\**

Solicitor for plaintiff: *Samuel Abbott.*

Solicitor for defendants: *C. J. Fay & Co.*

#### EXCHEQUER DIVISION.

*Reported by HANS AYLMER, Barrister-at-Law.*

(Before PALLES, C.B., and FITZGERALD, B.)

GILSENAN v. WALSH.

June 17th, 1882. — *Practice — Writ of summons — Special endorsement, what constitutes — Notice in lieu of statement of claim — O. XX., r. 2.*

*The claim endorsed on a writ of summons was for £154 14s., balance due on foot of wages for three and a half years; and the particulars stated the dates, the credits allowed, and how they were calculated:*

*Held, a good special endorsement, and sufficient as a statement of claim.*

Motion, to set aside a notice in lieu of statement of claim, on the ground that the writ of summons was not specially endorsed, or in the alternative that the plaintiff be directed to deliver a further statement of claim, on the ground that the said notice was embarrassing.

The writ was endorsed as follows:—The plaintiff's claim is for £154 14s., being a balance due on foot of three years and half a year for wages, of which the following are the particulars:—To three and a half years' wages due from 1st May, 1878, to the 1st November, 1881, £273. By amount allowed for board and lodging for three and a half years, from 1st May, 1878, to the 1st November, 1881, at the rate of 13s. per week, £118 6s. Balance, £154 14s.

*Lawless*, in support of the motion.—This writ is not sufficiently endorsed. It is not stated whether the money is due by the defendant, or in what capacity he is sued.† Even if sufficient as a writ, it is impossible to plead to it. A contract of some complexity is to be inferred, and its terms should be set out. He cited *Meade v. Mouillott*, 4 L. R. Ir. 207, 18 Ir. L. T. Dig. 27.

*P. Keogh*, contra.

PALLES, C.B.—This is a good special endorsement. We have held many less complete ones good. The times within which the cause of action arose, the credits allowed, and how they are calculated, are all set out. As to its sufficiency as a notice in lieu of statement of claim, no affidavit is made by the defendant that he is embarrassed thereby. *Meade v. Mouillott* is quite a different case. That was an attempt to recover by this summary method on a special contract. The motion must be refused with costs.

FITZGERALD, B., concurred.

*Order accordingly.*

Solicitor for plaintiff: *Robinson.*

Solicitor for defendant: *J. Lawless.*

\* See Com., and cases collected by the present writer, 16 Ir. L. T. 275, 289, 317, 625, 635.—[E. N. B., Ed.]

† See *Ahern v. O'Donovan*, 15 Ir. L. T. Rep. 7.—[E. N. B., Ed.]



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MURTAGH v. MARQUIS OF BUTE.—MONAGHAN v. SIR JOHN LESLIE.

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## ASSIZES.

(Before LAWSON, J.)

MURTAGH v. MARQUIS OF BATH.

March 11, 1882.—*L. & T. Act, 1870, s. 65*—Payment of grand jury cess—Sale of tenant-right under Ulster Custom—Creation of new tenancy—Implied term that purchaser shall continue to pay all the rates.

Where, subsequent to the Landlord and Tenant Act, 1870, the tenant of a holding, subject to the Ulster tenant-right custom, who had been liable to pay the entire grand jury cess, sold his interest, and the purchase-money was paid into the estate office and the purchaser put into possession by the agent:

Held, that a new tenancy in the purchaser was created, but that it was an implied term thereof that he should continue liable to pay the whole grand jury cess, section 65 of the statute not preventing such an agreement from being entered into.

Appeal (heard at Monaghan) from dismissal of civil bill process, brought to recover grand jury cess, under the circumstances stated in the judgment.

*J. Ross*, for the tenant.

*Mr. M'William*, solicitor, for the landlord.

**LAWSON, J.**—In this case the plaintiff sought to recover a sum of 11s. 4d. county rates paid by him, relying upon the 65th section of the Land Act of 1870, whereby, with respect to tenancies created subsequently, half the county rates are to be paid by the landlord. The question is one of general importance as affecting the sale of the tenant right. It appears that in February, 1880, Woods, who was tenant of a farm under the Marquis of Bath, applied to the office for leave to sell his farm to Murtagh, the plaintiff, for a sum of £70. The agent gave the permission, and the purchase money, £70, was paid into the office according to the usual custom, and after deducting from it the half year's rent due, the balance was paid over to Woods, and the bailiff of the estate went and put Murtagh into possession. It is relied on that this was a surrender of the old and the creation of a new tenancy, and that, therefore, the 65th section transferred the liability to half the rates to the landlord. It is, I think, in point of law, the creation of a new tenancy, but that was a tenancy subject to all the conditions and obligations of the preceding tenant, and as he was bound to pay all the rate, the new tenant is under the same obligation. The section relied upon does not prevent the entering into an agreement which would render the tenant liable to all the rate, and in my opinion that term is implied in this contract, and is just as binding as if it had been expressly mentioned. It would be very injurious to the tenants themselves to hold that such a transaction did not give to the incoming tenant all the rights which his predecessors had, and if he has the rights he also takes all the liabilities of his predecessors. I must, therefore, dismiss this process.

*Order accordingly.*

## LAND COMMISSION.

*Reported by E. N. BLAKE, Barrister-at-Law.*

(Before O'HAGAN, J., E. F. LITTON, Q.C., LORD MONCK, and J. E. VERNON, Esq.)

ARTHUR and WILLIAM MONAGHAN v. SIR JOHN LESLIE.

Dec. 8, 11, 1881.—*Arrears of Rent (Ir.) Act, 1882, s. 1*—"Usual day of payment" of rent—Deferred payment—Rent usually collected after certain period subsequent to gale day, but on indeterminate days.

*In order to deprive a tenant of the benefit prima facie arising from the initiatory provisions of section 1 (3) of the Arrears of Rent Act, 1882 (45 & 46 Vic., c. 47), it lies on the landlord, relying on the terminal proviso thereof, to establish affirmatively that, according to the "ordinary course of dealing" between him and the particular tenant the rent has "usually been paid on some day after the day on which it became legally due." Such deferred day of payment must be a definite day upon which the rent has been usually paid, or a day capable of being fixed and defined with as much certainty as that upon which, in law and fact, the rent accrued due.*

Appeal from rulings made by Mr. George M'Dermot, barrister-at-law, Investigator, under the Arrears of Rent Act, 1882, who decided that, owing to the existence of a custom allowing a "hanging gale" on the landlord's estate, the tenants had not satisfied the rent for the year 1881 within the meaning of section 1, and that consequently they were not entitled to the benefit of the Act. The case of the tenant Arthur Monaghan had been argued on a previous occasion before Mr. Litton, Q.C. (reported, *ante*, p. 107), who desired that the question involved should be re-argued before the full Court, it alone having power to state a case for the Court of Appeal. The circumstances appearing (already stated in the previous report) are sufficiently explained, for the purposes of the present report, in the judgment delivered.

*Weir, Q.C.* (with him *P. White*), for the appellant tenants.—There has been no uniform course of dealing as regards the period of or for payment; and any theory as to the time of its being demandable, sought to be set up by the landlord, conflicts with the whole practice prevailing between the parties. It is not the date on which the agent was prepared to receive the rent, but that on which it was actually paid that is to determine the question; nor is it to be governed by evidence of a general custom, but of particular dealings between the parties—and so Mr. Commissioner Litton ruled, excluding the former evidence.

[*Mr. VERNON*.—In the evidence given before him, was there any of any notification to the particular tenant that the rent would be expected to be paid on the day the office was opened?] The evidence showed that no notification was given, verbally or otherwise.

[*Monroe, Q.C.*—One of the objects we had in asking the general evidence as to the usage of the estate to be received was because everybody knew it as an admitted understanding. *Mr. LITTON, Q.C.*—What evidence was there of that? *Monroe, Q.C.*—The question was not allowed to be asked.]

The onus of showing that the tenant is not entitled to the benefit of the enactment lies on the landlord. The statute must be construed according to the plain meaning of the terms used, and not by speculating on its intention or intentions. It does not even mention the word "hanging gale." "Time" and "day" are distinctively used; and to construe "day" in the sense contended for by the landlord would be to give to it different meanings in different places closely connected. "Day" in s. 1, sub-s. (3) is used in apposition to "gale day" in s. 1 (a); and what is provided for is a usual day of payment later than the gale day. If "some day" be interpreted to mean any day the proviso would be universally applicable, instead of operating as a mere exception. Taken with the words "has usually been paid," followed by "usual day of payment," the

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"some day" must mean a day certain on which the rent has been paid (not a day for payment), substituted for the definite day on which the rent accrues due. But, not only is there no evidence of any such specific day of payment, but there is none even of any specific day of demand.

*Monroe, Q.C., and Dane, contra.*—According to the judgment already pronounced, wherever it is shown that the gales of rent have been paid in different months or at different periods in successive years, and where there has not been established a determinate rent day upon which the rents are usually paid, the case would not fall within the proviso, even though according to the ordinary course of dealing, the rent was not usually demanded or collected until after the lapse of a certain period from the gale day when it accrued due: 16 Ir. L. T. Rep. 107. On that determination there is no case in which this sub-section could apply unless there was a specified day after the rent became due fixed for the payment; or in other words, if one landlord said, "You may have up to November 5th for payment," and another said, "You may have what time you like for payment," in one case the Act of Parliament would apply, and in the other it would not. It is perfectly manifest that the mischief intended to be met by the first part of the sub-section was that there might be a considerable amount of arrears existing on a landlord's estate, and if rent was paid at a certain time the law would appropriate that payment to the rent that accrued due at the earliest period, and therefore the Legislature said—"True, that would be the natural course of appropriation; but if you can show any rent has been paid in 1881, or down to November, 1882, we appropriate that to the rent of 1881; but that is not to apply to a case where, although the rent becomes payable, it is thoroughly well known and thoroughly well understood that, though payable, it is not to be paid," or in other words, "You are not to appropriate payments made in 1881 or 1882 to the payment of rent in 1881 in those cases in which, although payable, it was well known it was not to be paid until the year afterwards." What the Legislature had in view was what is called the custom of the "hanging gale;" and the Instructions to Investigators issued by this court seem to have had that construction in contemplation. "Some day" means any usual day for payment (and "for" should be read instead of "of"), between two particular periods, on which payment can be fairly demanded according to usage, and before which it would not be payable. Here the rent was by usage payable on or after the 20th of October. The fair was then held. If the tenants so knew and understood, there was no occasion to send them a notice.

[O'HAGAN, J.—You could have cross-examined them as to their knowledge of any such custom. But, could you ask what was the usual custom on the estate, not having shown the knowledge of any particular tenant?]

We should first lay a foundation, by showing a custom existed. There was a tacit understanding that it was not to be payable for a year. As regards the civil bill process, we were obliged to endorse all the rent then legally accrued due, under Deasy's Act.

[Mr. LITTON, Q.C.—I would not rely on that matter at all.]

The rent is to be assumed to have accrued due on the "usual day of payment," so that if the landlord, through an indulgence to the tenant, was in the habit of not asking for the rent for months after it was legally due he should not be punished by the application

of the section to him: *Atkinson v. Kerr*, 16 Ir. L. T. Rep. 100. *Quinn v. McArde*, 16 Ir. L. T. Rep. 95, supports our contention, for there the May rent was usually paid along with the November rent in the "December (or January," according to the affidavit) following. A proviso, repugnant to the prior part of a section, may even be taken to go the length of repealing it: *Att-Gen. v. Chelsea Waterworks*, Fitz. Rep. 195; Maxwell, *Stata.*, 107-8. To require that the rent should be usually paid on a fixed day would abrogate the proviso.

[O'HAGAN, J.—What is clear is not to be abrogated by what is obscure. LORD MONCK.—I can only tell you it is within my own knowledge that this sub-section and proviso puzzled every lawyer in the House of Lords, from the Lord Chancellor down.]

It should be construed as a remedial measure, and an indulgent landlord was not intended to suffer from its operation.

*P. White* replied.

*Cur. adv. vult.*

O'HAGAN, J.—The question in the first of these cases is whether a sum of £10 10s., the amount of a year's rent, which was paid by the tenant on the 9th January in the present year, is to be deemed as having been paid on account of the year of the tenancy expiring on the 29th of September, 1881. The question in the second case is similar—namely, whether a payment of £22, being the amount of a year's rent, paid by the tenant on the 12th of December, 1881, is to be deemed to have been paid on account of the like year of the tenancy. By section 1, sub-section 1, of the Arrears of Rent Act, a tenant, in order to obtain the benefit of the Act, must show that the rent, payable in respect of the year to the tenancy expiring on the last gale day of the tenancy in the year 1881, has been satisfied, and that antecedent arrears of rent are due to the landlord. Sub-section 2 of the same section enacts that all payments on account of rent made by the tenant to the landlord, in or subsequent to the year expiring, as aforesaid, shall be deemed to have been made on account of the rent payable in respect of the year expiring, as aforesaid, to the extent to which the rent for that year had at the time of such payment accrued due. The gale days in both the present cases were the 25th of March and the 29th Sept. Both gales of the year expiring as aforesaid had, therefore, accrued due at the time when the respective payments were made, and those payments would, therefore, plainly be deemed to be on account of the rent of the year expiring as aforesaid, if the proviso contained in the same sub-section does not operate to prevent them from having that effect. That proviso is as follows—"Provided that where it appears that according to the ordinary course of dealing between the landlord and tenant of a holding, the rent of such holding has usually been paid on some day after the day on which it became legally due, the usual day of payment shall be deemed, for the purposes of this sub-section, to be the time at which the rent accrued due." What is insisted on by the landlord in the present cases is that the course of dealing between the landlord and the respective tenants brings them within the class of cases contemplated by the proviso, and that the rent payable in respect of the year expiring as agreed, although it had legally accrued due, at the time of the respective payments had not accrued due, having regard to this proviso and to the course of dealing between landlord and tenant. Such was the view taken by the Investigator, who accordingly reported against the tenants' claim. A conditional order having been made in pursuance of this report, the tenant showed cause, and the matter came on to be argued before Mr. Litton during the absence of the other Commissioners. The rent-books were produced, and Arthur Monaghan, on the one hand, and Mr.

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M'Cullagh, the laudlord's agent, on the other, were examined *visu voce* and subjected to cross-examination. Mr. Litton came to the conclusion that the facts did not bring the case within the proviso, and that the payments made in January, 1882, and December, 1881, should be credited to the rent of 1881 (16 Ir. L. T. Rep. 107). He deemed the matter, however, so important that he desired the cases to be re-argued before all the Commissioners, and we accordingly heard it fully and most ably argued. We did not hear any fresh *visu voce* evidence, but proceeded on the shorthand writer's notes of the evidence before Mr. Litton, taken together with the entries in the rent-books. Now, I shall first advert to the course of dealing shown by the rent-books, which gives very clearly the dates of all payments made on account of rent by these tenants—in one case for twenty-six years, and in the other for over thirty years. In Arthur or John Monaghan's case, the tenant held formerly a portion only of his present farm at a rent, first of £2 18s. 6d., and then of £3 1s. 6d., and afterwards of £5 10s. He obtained another piece of land in 1866 at the rent of £5, and his rent from that time became £10 10s. At the early period his rent, which was then partly paid in labour, was discharged in full the same year that it became due; but, afterwards he seems to have drifted into greater arrear, so that it was not paid until the lapse of more than a year from its accrual. To take the last ten or eleven years: On the 1st of January, 1872, a payment was made of £10 10s., which was credited to the rent of 29th September, 1870. He made subsequent payments of £10 10s. each on the following dates—namely—the 10th of February, 1873; the 22nd December, 1878; the 8th of February, 1875; the 24th of January, 1876; the 20th of December, 1876; the 21st of January, 1878; the 26th of June, 1879; the 20th of November, 1880, and on the 9th of January, 1882—the last being the payment the application of which is now in controversy. Each of these payments, when made, was credited as against the year's rent of the year of the tenancy ending on the 29th September of the year but one preceding. In William's case the rent at an early period seems to have fallen into arrear, and to have been, also, in great degree discharged by labour. Payments are entered up as having been made at various periods in the months of July, August, September, October, November, and December. Taking, however, the last ten or eleven years, as in the former case, we find that on the 23rd of September, 1872, a payment was made of £24, being a year's rent; and a like amount was paid by him on the following dates—the 24th November, 1873; the 23rd November, 1874; the 15th November, 1875; the 20th November, 1876; the 19th of November, 1877, and the 23rd of December, 1878. Each of them was credited to the rent of the year but one previous. In 1879 no payment appears to have been made, so that two years' arrears became due. The rent was reduced from £25 to £22, and the next two payments were made on the 8th of November, 1880, and the 12th December, 1881, the last being the payment now in controversy. Turning to the *visu voce* examination, Arthur Monaghan, the representative of John Monaghan, was examined, and produced his receipts; but it does not appear to me that his evidence tells us anything more than the books do. He was asked by Mr. Litton whether he was ever notified to come in and pay his rent from time to time, and his answer was, "Not until Mr. M'Cullagh's time;" but the question was not pursued on either side, and no evidence was given of any such notice. Mr. M'Cullagh, the agent, was examined, and he said, in answer to Mr. Litton, that the ordinary course of dealing was that the September rent was paid on the 20th of October next year; and in answer to Mr. Dane, he said that Monaghan should pay his rent on or after the 20th of October, twelve months after the rent was due. The estate office, he said, was always closed on the 20th of May

till the 20th of October, and was opened on the latter day. He was asked was it open on every day in the week, and he said "On Mondays." He was asked on cross-examination whether the offices were ever open in summer at all, and he said "Yes;" and whether he had received rent in the summer, and he said he had. He was further asked whether he knew anything of any alleged custom of usual dealing, save so far as appears from the books, and he answered "No;" and whether, as regard this particular tenant, he knows anything except what appears in the books, and he answered "I don't know." On his re-examination by Mr. Dane, he said that the 20th of October was the fair day of Pettigo, and the first fair day after the 29th September.

It has been contended with great earnestness and force by Mr. Monroe and Mr. Dane, for the landlord, that it is impossible to read the words "some day" in the proviso in question as meaning some definite and determinate day; that what the Legislature had in view was what is commonly termed in Ireland the custom of the hanging gale, by which a gale of rent is, by usage, not demanded or paid until another had accrued due, or sometimes until a second succeeding gale had accrued due; that these postponed payments were hardly ever made on any definite day; and that to require a course of dealing to be proved showing a payment on some definite day would be tantamount to striking the proviso out of the statute altogether. They further urged that even if a definite day were required it was not necessary that it should be shown to be the day on which the rent, according to the course of dealing, had been actually paid; that the usual day of payment meant, not the day on which payment was made, but on which it was required to be made, and on or after which it was in fact made—as Mr. Monroe put it, not the usual day of payment, but the usual day for payment—and that in the present case the evidence showed that the 20th of October, the day on which the agent's office was opened for receipt of rents after the summer, was the usual day for payment of the rent of these holdings. To this it was answered by Mr. Weir and Mr. White, that the word hanging gale is nowhere mentioned in the enactment; that to depart from the plain terms of a statute, where the words are clear, in order to meet some suggested intention, is a vicious and fallacious method of construction, and has been over and over again repudiated by judges. That what the statute plainly provided for was a usual day of payment later than the gale day; that as the rent accrues due on a certain day, so the day substituted for it must also be certain, and not an indefinite and fluctuating period of time; that to construe the word "day," in the sense the landlord's counsel contended for, would be to give to the same word different meanings, when the places in which it occurs are in the closest juxtaposition to each other; that if the word "some day" be interpreted to mean any day, or some uncertain day, then the effect would be that the proviso, instead of being an exception to the substantive enactment, would be universally applicable, because there hardly existed a holding in Ireland on which the rent is not usually paid on some day or other after it accrued due. They said that what the framer of the proviso plainly had in his mind was the custom of some fixed rent-day on which the tenant not only was required to pay his rent, but as a matter of fact customarily did so, and that every word of the proviso was aptly framed to meet such a case. With respect to the second contention—namely, that if a definite day were necessary the 20th of October was such definite day—they answered that, even if it were shown that the rent was required to be paid on that day, it would not bring it within the section, because the basis of the entire enactment is that it must appear that the rent has usually been paid on the day in question; and if that basis fail, no other basis can be substituted; and that where you have the words "usual day of payment" immediately following the

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words "has usually been paid," it is plain that what what must be shown to be usual is payment on that day. They answered, secondly, that there was no evidence given even of the rent being required to be paid on the 20th of October; that the agent's evidence amounted to no more than this—that his office was open for receipt of rent on the 20th of October (the October fair-day of Pettigo); but that no demand or requisition upon the tenants in those cases to come in and pay their rents was ever made.

Now, in dealing with these important questions, it is right to revert to the precise object which the Act aimed at accomplishing: When three circumstances concur—first, that the rent for the year 1881 has been satisfied; secondly, that antecedent arrears are due; and, thirdly, that the tenant is unable to pay such arrears; then this Commission is authorised to make an order for payment to the landlord of a sum equal to half the arrears, provided that it does not exceed a year's rent. This enactment seems at first to present little or no difficulty beyond the difficulty which might arise from investigation of the tenant's ability. Yet if there had been no further provision, the whole object of the statute would have been defeated, for, as the ordinary rule of an estate, as well as of other accounts between debtor and creditor, is that each payment made is credited to the earliest debt, and as no one is by law compelled to receive a portion only of what is due to him, a tenant might be placed in the position of being unable to pay the rent of the year 1881 without discharging the previous arrears. Accordingly, sub-section 3 of section 1 provides that all payments made in or subsequent to the year of the tenancy expiring as aforesaid, but before the 30th November, 1882, shall be deemed to be made in respect of that year to the extent to which the rent for that year had at the time of the payment accrued due. This provision is, we conceive, perfectly clear and unambiguous. The gale days—that is, the days on which the rent by law accrued due—were in the present cases the 25 March and the 29th September. Suppose, then, a payment to have been made on the 24th March, 1881, such payment would not, under the statute, be credited to the rent of 1881, because no gale of that rent had then accrued due. But suppose the payment to be made on the 25th of March or any subsequent day before the 29th of September, then the payment would be credited as against the half year's rent due on the 25th of March, 1881, but no payment would be credited to the rent of the 29th of September until that day arrived. Nothing can be clearer than this. The day of the accruing due of the rent is one definite day, and, therefore, it can at once be determined whether a particular payment is to be deemed made on foot of the rent of the year 1881 by simply seeing whether it was made before a particular day or on or after that day. Then comes a proviso engrafted on that enactment, that in certain cases the day on which the rent had legally accrued due should not be deemed so for the purposes of the sub-section. It enacts that, where it appears that by the ordinary course of dealing between the landlord and tenant of a holding the rent had been usually paid on some day after the day on which it became legally due, the usual day of payment was to be deemed "the time at which the rent accrued due." Mr. Monroe contends that the words "some day" is an indefinite expression, pointing rather to a period of time than to a fixed day, and that this is fortified by the subsequent use of the word "time"—namely, that the usual day of payment is to be deemed the time at which the rent accrued due. But the time at which the rent legally accrues due is one certain day, and the whole wording of the proviso imports that what is substituted should be as certain, otherwise how is it possible to determine whether a particular payment made by a tenant is to be credited as against the rent of 1881 or not. In the earlier part of the section the line is clearly drawn—that is to say, the day of the

legal accruing due of the rent must have arrived before any payment could be credited against it. But if you definite period of time, it appears to be impossible to substitute, not another day; but, a fluctuating and insensy when the rent is to be deemed to have accrued due. It is a cardinal rule in the construction of statutes that words and sentences are to be construed in their plain and grammatical meaning, unless either the context shows that something different was intended, or that the primary construction leads to some contradiction or absurdity. The able counsel for the landlord contend that the literal interpretation only leads to an absurdity; because the custom in Ireland is such that the literal interpretation would find no application. How are we to know that? Is it to be said that there are no estates in Ireland on which a rent day exists, that rent day being some day after the rent became legally due, demand of payment on which is publicly notified, and on which, by the course of dealing, the rent is usually paid? We have no evidence that a state of facts which would meet the very words of the statute may not exist, and exist to a considerable extent. But, secondly, it is contended that in these cases there was a definite day which was the usual day of or for payment, and that this day was the 20th of October in each year, on which day the year's rent due on the last gale day of the preceding year was demanded and became payable, and on or after which it was in fact paid. In our opinion, the evidence as to this fails. In the case of Arthur Monaghan, although the payments of rent are traced back for twenty-six years, in no single instance was the rent paid on the 20th of October. In the case of Wm. Monaghan the payments are traced back for even a longer period. Since 1851 but one payment was made on the 20th October; that was in the year 1869. The rent for the year 1871 was paid on the 23rd of September, 1872. Since then it has been paid on a different day in each and every year, varying from the 15th November to the 23rd December. Nor was there the slightest evidence produced of any demand or notice having been given to either of these tenants in any year whatever. Mr. M'Cullagh, who has been agent only since the year 1876-1877, upon being asked what was the usual day of payment of the rent by John Monaghan, said the 20th of October, but upon being tested he said he had no knowledge except what was derived from the books; and as to his own practice, the sum and substance of it amounts to no more than this, that the rent office was open by him on that day, being one of the fair days of Pettigo. If it were once established that the 20th of October or any other fixed day was the "usual day" within the statute, it would be immaterial that either the payments now in controversy or any other particular payments were not made on that day. But, we are of opinion that upon the evidence in this case no "usual day" has been shown; and inasmuch as the payments were both made subsequent to the year expiring on the last gale day of 1881, and after the rent for that year had accrued those payments must, in our opinion, be deemed to have been made on account of the rent payable in respect of the year expiring as aforesaid. The order will, therefore, stand allowing the cause shown.

Mr. LITTON, Q.C., LORD MONCK, and Mr. VERNON, concurred.

Monroe, Q.C.—We desire to have a case stated for the Court of Appeal.

O'HAGAN, J.—Before doing so we must see that there is a question of law involved; and at present our opinion is that there is none, and that the case depends on a mere inference of fact. We must, therefore, ask you, in the first place, to state definitely in writing the precise questions of law you would desire to be reserved for the court above; and on a subsequent day the case

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will be set down for argument on your requisition, when we shall, also, deal with the question of costs. Were we not, ourselves, to draw the necessary inferences of fact, we would be subject to animadversion in the court above.

*Appeal allowed.*

Solicitor for tenants: *P. W. Gallagher.*  
Solicitor for landlord: *J. W. Dane.*

**LAND SUB-COMMISSION.**

(Before R. FOLEY, Q.C., LAURENCE DOYLE, Barrister-at-Law, and JAMES HOWLIN, Esqrs.)

**KEARNEY v. CODDINGTON.**

1882.—*Land Law Act, 1881, s. 58—Agricultural or Pastoral holding—Residential farm—Letting to tenant in his capacity of parish priest—Determination of judicial rent—Fixing value of tenancy—True value, what, and when to be determined.*

In 1869 the Rev. Mr. Kearney, parish priest of Bohermeen, became tenant from year to year, under Mr. Coddington, of twelve Irish acres of land, and a dwelling-house and offices thereon, which at that time were in the landlord's possession, at a rent of £45 per annum, afterwards reduced to £40, the Poor Law valuation being £28 10s. The dwelling-house and offices, which could not now be built for less than £400 or £500, were valued at £13 (included in the £28 10s.), and would be unsuitable for a person living by agriculture alone and occupying a farm of that extent, while the house was even rather larger than the average residence of Catholic clergymen. Built about seventy years ago, it had ever since been occupied by the successive priests of the parish, except during a short interval, when it was occupied by a medical doctor. The land had been originally demised in 1798 as an agricultural holding, since when the house had been built by one of the clergymen in occupation:

Held (Mr. FOLEY, Q.C., *diss.*), that the holding was not agricultural or pastoral, within the Land Law Act, 1881, section 58.

Application, on behalf of tenant, to fix judicial rent; and cross-notice, on behalf of landlord, to fix value of tenancy.

The holding formed part of the lands of Bohermeen, on which the parochial house was built, the tenant being the parish priest, there residing. In addition to the documentary evidence, referred to in the judgments, the following evidence was given:—The tenant deposed that he was appointed parish priest of Bohermeen in 1869. Mr. Coddington, the landlord, asked a rent of £50 a year, but after some time the rent, against witness's remonstrance, was fixed at £45 a year, until the law would be settled, as expected, in 1870, but it was paid only for one year, for, giving way to witness's dissatisfaction, the landlord reduced it to £40, which was since paid. Witness had improved the holding by manuring the land highly with farm-yard and bone manures. Although he had written to Mr. Coddington, praising his generosity in reducing the rent, it was only because he was satisfied with £40 as compared with £50 then; but he believed that the poor law valuation (£28 10s.) would be the fair rent, excluding his improvements. He denied that, as far as

he knew, Mr. Coddington was anxious to preserve the place for the residence of the succeeding parish priest; so far from that, he said he could get £50 a year for it from others. On Nov. 12, 1873, he wrote to Mr. Coddington, saying: "The farm annexed to my house is entirely too small, especially if the land is to be enriched and improved as it ought to be. If this be so, I would suggest that a legitimate opportunity may shortly occur to add to it a neighbouring plot of ground. The Savages are very old people, and have no representatives, and if their holding is annexed to mine I will give you £3 an acre for it, and you will have no trouble whatever." The Savages were very old, and should give up the land (which was much better than his) soon after. An old man named Owen M'Donagh said he recollected the Rev. Mr. Brannigan, P.P., living and dying in the house occupied by Father Kearney. The chapel was not built till 1808. Father Brannigan built the house about the year 1810, and occupied it until his death in 1833. After his death a nephew of his (a doctor) occupied the house. Father Kennedy, the successor of Father Brannigan, lived in this house also, but died in a neighbouring house. Father Geoghegan, the succeeding parish priest, lived in the house also, and Father Langan, the next parish priest, likewise occupied it. John Farrelly, a farmer, who had examined and valued the land, testified to the improved condition of the holding, and estimated its value at £18 15s., including the tenant's improvements, and £12 without the improvements. He remembered that after Father Brannigan's death his nephew managed the farm. He put out Father Kennedy, the succeeding parish priest, and the reverend gentleman died in a neighbouring house. Mr. Patrick Smith, an auctioneer, estimated the present value of the land at £17 1s. 4d., independent of its connexion with the buildings. Mr. Coddington then gave evidence as to entries in books and payments by a former parish priest's executors, the Rev. Mr. M'Cullagh. He could not say if he had paid any money in cash to Father Geoghegan. Mr. Coddington, jun., deposed that the rent paid by Father Langan, the predecessor of Father Kearney, was £45. The land was worth 50s. an acre. Witness himself did not farm any land, but inspected the holding as agent. Robert Rennicks, bailiff on the estate, said if it were not a priest's holding a great deal more could be got for it. The condition of the farm was good when Father Kearney got it, and was so still. Mr. Joseph Lowry, auctioneer and valuator, and Sub-Sheriff of Meath, considered a fair value would be 44s. per Irish acre, and he would value the house and grounds at £14 a year rent.

Mr. W. Mooney, solicitor, for the tenant.—The holding was originally set as a purely agricultural holding. At the time it was first let the priests of the parish largely derived their incomes from farming, and though it is principally in pasture at present, it had for a whole series of years been treated as an ordinary agricultural and pastoral holding. It would be unjust to the tenant to fix the value of the tenancy at present, because the court is not in a position to ascertain the full price which the tenant would get. The proper time to ascertain the price would be when the tenant proceeded to sell his interest, and if in pursuance of his intention to do so he invited tenders, which turned out to be *bona fide*, the court, if called upon, would be bound to give effect to them.

[Mr. DOYLE.—You think the true value of the tenancy mentioned in the sub-section is the price the holding would bring by public competition.]

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Undoubtedly.\* The tenant by the terms of the Act is entitled to the best price he could get, and the landlord has the right of pre-emption after the full price was ascertained.

[Mr. DOYLE.—Your contention is that the specified value referred to in the sub-section and the best price he can get are the same thing?]  
Quite so.\* But at present you have not the materials to ascertain the best price, and you cannot have them until the tenant sells.

[Mr. FOLEY.—That appears to be the good sense of the matter; at all events, if we are not constrained by the language of the Act. After a great deal of consideration it appears to me to be going too fast to fix the value of the tenancy at the present moment. When a fair rent has been fixed on the application of the tenant, and he has his statutory term made certain, he has something to sell; but, until then he has nothing and if the court were now forced to settle the fair rent, and at the same time fix the valuation of his interest for saleable purposes, we would be doing a plain injustice to the tenant.† The rent being fixed, the tenant has something to sell, and he has a right to select his best market, not in the present depressed state of the country, but, as the Act contemplates, at its true value.]

\* See *Lloyd v. Irwin*, *infra*.—[E. N. B., Ed.]

† In delivering judgment in a subsequent case, *Flinn v. Pratt*, Mr. Foley, Q.C., said:—In this case an application has been made on the part of the landlord to fix the specified value of the tenancy. No evidence of any kind has been produced on the landlord's behalf to enable us to do so. We have asked the landlord's advisers if the value of the tenant's estate in the statutory term, which imports nothing less than a potential right to acquire the fee-simple in their holdings, is to be established at a nominal sum, and they admitted that that was not their contention. We then asked them if the scale of compensation to the tenant for the loss of parting with this valuable right ought to be less than the scale of compensation prescribed in cases of disturbance by the Land Act of 1870, as amended and enlarged by the Act of 1881, and to this we did not receive any answer. We are, therefore, as judges of law as well as of fact, not supplied with a scintilla of evidence on the part of the landlord to enable us to know the price at which the landlord is now entitled to bargain for the right to purchase the tenant's interest. We will not act on any speculations of our own, and for these reasons the application will be refused. On the general question as to whether it is desirable to entertain simultaneously the application to fix a fair rent, and likewise to fix the value of the tenancy, which are applications very dissimilar, if not contrariant in their nature, it seems to me that we ought to have a discretion to leave the value of the tenancy to be ascertained at the time of sale. According to the greatest authority, Lord St. Leonards, the way to ascertain the value of a thing is to see what it will fetch in open market set up for sale. How are we to ascertain *a priori* the sum which the tenant's goodwill is worth except by open competition. By postponement we prevent the chance or risk of doing a great injustice. The attempt to measure a fair price now would be a leap in the dark. In fixing fair rents there are some things reasonably clear. A deduction is made from the rent for any portion of the annual value which is found to be due to improvements not made by the landlord. We ask ourselves and discover as best we can from the evidence what annual sum could a tenant afford to pay one year with another for his holding, and the question with us is not what sum could a tenant in possession be got or sorewed up to offer for his holding, for what

*Shannon*, for the landlord, submitted that this was a letting to the Rev. Father Kearney in his capacity as parish priest;‡ that the letting had been for generations past to the parish priests of the parish, and was a residential farm in the nature of being an adjunct to the dwelling-house thereon, set thus to successive parish priests as a parochial building; and that this proceeding was an attempt by the Rev. Mr. Kearney to obtain for himself, personally, the house that had always been occupied by the parish priests of Bohernmeen. He also submitted, assuming that the court held against him on these contentions, that this was a residential holding and not agricultural or pastoral in its character. He relied upon documents showing that the interest of the holding had been purchased from Father Brannigan's representative by Father Geoghegan, and that both he and the landlord, in correspondence at present existing, expressed a desire that the place should be for the use of the parish priest living among Mr. Coddington's tenantry, and that with that view Father Geoghegan had been compensated for his expenditure in acquiring and improving the holding, by Coddington. The result of acceding to the present application, therefore, would be to give Father Kearney a personal interest in the holding which was intended for the use of the parish priest.‡ He further submitted that the landlord, having purchased Father Geoghegan's interest, and compensated him for his improvements, was entitled to have a value and rent assessed upon them under the Act.

*Judgment deferred.*

Mr. FOLEY, Q.C.—The holding in this case contains 20a. 1r. statute measure. The present rent is £40; the poor law valuation, £28 10s.—divided thus, £15 10s. for the lands, and £13 for the buildings. It appears in evidence that by an indenture of lease dated so far back as the 10th December, 1798, made between Henry Coddington, of Oldbridge—I suppose the father, or a predecessor in title of this landlord—of the one part, and the Rev. Michael Brannigan of Bohernmeen, of the other part, the lands were demised to the lessee and to his heirs and assigns, as all that tenement and garden on which he then resided, with the field held by him; and also a field lately held by Richard Murray, and another field lately held by Peter Hammond—to hold the premises under the lessor his heirs and assigns at the yearly rent of £27 19s. 4d. or £27 9s. 4d. over and above all taxes then or thereafter to be imposed, during the lives of the three parties therein named, the survivor of whom died, according to the evidence, in the year 1860. There was not a line in this document

will not a man give for his home? The occupancy of the holding gives the tenant a title to have this fair rent fixed on these lines, and in my opinion excludes the landlord from the competition value, and this exclusion or deprivation of the right to the competition value of the farm is the creation of the statute which we are bound to obey. In the case of the landlord he has no occupation to give, and the tenant has the right to the competition value of his holding.

‡ In a recent American case (*Chatard v. O'Donovan*, 21 Amer. L. Register, 461) it was held that, where a Catholic priest was appointed to his position as pastor by, and held it at the discretion of, his bishop, subject to removal at the bishop's pleasure (see *O'Keefe v. Cardinal Cullen*, 7 Ir. L. T. Rep. 100), the priest would have no right of occupancy of premises as a parsonage and place for religious worship save only as incidental to his employment in the pastorate, and when he is deprived of the latter the former ceases, without his being entitled to a notice to quit, as between landlord and tenant, the relationship being rather that of master and servant. But, obviously, the relationship between the parties in the principal case could not be so regarded.—[E. N. B., Ed.]

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leading up to the idea that the holding was let or taken as a parochial residence; the tenant was not even described as a Parish Priest. The rent indicated by its amount that it was thereby demised as an agricultural farm. The limitation of the interest in the premises was to the heirs of the lessee, not to his successors, and the heirs would succeed by special occupancy to the descendable freehold when the lessee died. The premises were capable of being sold, underlet, or assigned, at the pleasure of the lessee or his heirs during the continuancy of the lease; and if Mr. Coddington, the lessor, had a hundred times the intention to make the farm a residence allocated to the parish priest, no court of law or equity would have listened for one moment to any such declaration of intention while the lease of 1798 remained subsisting and undetermined. The evidence of Owen Donagh, repels the idea of the farm being let by way of parochial residence as an adjunct to the chapel, for he says the chapel was not built till 1808. Father Brannigan died in 1833, and then, in accordance with his legal title, as we must now presume, he was succeeded in the occupation of his holding by his nephew, also named Brannigan, who was a medical doctor, and was not an ecclesiastic. The lease expired in 1860 by the death of the last surviving party to the lease. The land was worked as a farm prior to 1860, and nothing had occurred except the building of a comfortable house at his own expense, by the occupier, to alter the character of the holding which had been impressed upon it by the lease of 1798. It was endeavoured to be shown by evidence of transactions contained in letters which passed between the Rev. Mr. Geoghegan and Mr. Coddington, and certain entries made by Mr. Coddington in his own books, that in some way or other he, Mr. Coddington, had become the purchaser or owner of the house built by Brannigan, together with the improvements, and that the house was therefore to become a parochial residence. These letters plainly cannot be read in evidence against Mr. Kearney; they are inadmissible. Mr. Coddington never in any way bound himself to devote the house to such a purpose; it was a treaty not ripened into contract (see Land Law Act, 1881, section 58, sub-sec. 7). Neither can the entries against interest, by Mr. Coddington, not proved to have been communicated to Mr. Kearney, be used in evidence against him—and they are not used to refresh the memory, for Mr. Coddington cannot from memory depose to these transactions. No user of the house by the clergy, however numerous, is of the slightest importance to control the solemn agreement of 1798, and no user since that time is of the slightest value unless based on a contract as expressed in sec. 58, sub-sec. 7. We now approach the evidence which was clearly admissible—namely, the letters of the Rev. Mr. Kearney himself. [The Chairman read extracts from letters put in evidence in the case. One of them declined to accede to Mr. Coddington's proposition, and in that Mr. Coddington had acquiesced.] These letters, so far as they go, state that Father Kearney was not bound to keep the place as a parochial residence; on the contrary, that he was allowed to keep the place simply as an agricultural holding. In other letters, dated November, 1871, and November, 1873, the clergyman complains that the farm adjoining his house is too small, especially if it were to be enriched and improved as it ought to be; and these letters are important in this way, that they show the man was desirous of improving his holding, and wanted his landlord's assistance in doing so. The man was a good and improving tenant, and Mr. Coddington himself admitted so, and the enactment ought to be regarded as intended to meet cases of that class. My reading of the agreement is that this was originally an agricultural holding, and I shall not hold an enactment intended for the public good to deprive an individual of the benefits conferred by it unless I am coerced by the enactment itself or on the authorities to do so. The question is—Is this Court

to say and decide that a holding originally demised as an agricultural farm in '98, and used as such ever since, has lost that character by the circumstance that an improving tenant built on it a house somewhat more commodious than an ordinary farmer might require—yet certainly a modest house for the claimant—when there is not a grain of legal proof before us that Father Kearney ever agreed to take the holding for purposes other or different from those for which it was always held and used; and so far from it that, on the contrary, he declined Mr. Coddington's proposition, and continued to farm the holding. There is a little contradiction in Father Kearney's letters to Mr. Coddington, for the latter gentleman, it would appear, never asked him to keep the place for the parish priest of that parish or his successor, and Father Kearney, who is an honourable and respectable man, did not ask to keep Mr. Coddington to such conditions when going into the house, but had matters so arranged that he could be removed just like any other tenant. As I said before, there is not a grain of legal testimony to show that the place was ever held other than as an agricultural holding, and, if that be so, can it be argued that a parish priest must only have the same class of house to live in as any other farmer? He has to earn the respect and esteem of his people, and he must do this as well by maintaining his position as by his exemplary conduct. He, therefore, in this case, occupied a dwelling suited to his position, but at the same time he continued to farm the holding. Not a witness has been produced, not a document has been read to prove it to be a residential holding; not a question put on cross-examination as to whether he took it as a residence without regard to its agricultural character. The onus of proof lies with the party who wants to show that it is an agricultural holding, and that must be done in this case before it can be taken out of range of the policy of this enactment. Has that been done? No it has not; and if my colleagues act upon their own notions of what a priest's house should be, in regard to the extent of land he occupied, they will be acting upon their judgment merely somewhat in the capacity of unsworn jurors. I did not think they would take such a view of the matter, having regard to the large experience they had of the world and the requirements of rank and station. On the authorities it appears to me that, not alone should this farm be considered an agricultural one, but that the tenant should be entitled to a statutory lease deducting from the rent the value of the improvements effected by him. It, also, appears to me, on the authorities, that any residence on a small farm that monopolised the greater part of the farm in lawns, shrubberies, plantations, gardens, and the like, might be said to be residential; but this could not be said of Father Kearney's residence. It was a plain farmhouse, not a bit better than those in which the majority of well-to-do English farmers live in. We visited the place ourselves and saw the house, and I should say for my own part that I would like to see our parish priests having far better residences. This is a case of great importance, and one which involves a very grave and momentous principle, and I trust that it will be taken before a higher tribunal in order to have the point settled on a satisfactory basis. Our priests will have many cases of this nature to contend with during the administration of the Land Act, because there are very many of them situate precisely as Mr. Kearney is. If it were once established that the fact of their having comfortable residences upon comparatively small farms constituted residential holdings instead of agricultural, then they would lose all the benefits conferred by the Act. A residential holding is one that has been beautified beyond the usual range of agricultural holdings. Most of those in court are probably acquainted with the Glen, near Drogheda, the residence of Mr. Frank Chadwick. A class of residence such as that would not come under the Act. It is situate in the midst of beautiful grounds, has ponds,

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greenhouses, shrubberies, walks, lawns, &c., round and adjaacent to it. That is a contrast to Father Kearney's residence, because it just is what the other is not. The clergyman's house has no lawn, no pond, no shrubbery, in fact nothing at all of the ornate. In the entire case there was a chain of incontrovertible evidence showing that the holding was purely agricultural. The tenant to be sure was an industrious man, and built a little better than his neighbours, but what of all that?—it did not take away the agricultural character. As observed by Lord O'Hagan, in *Carr v. Nunn*, 7 Ir. L. T. Rep. 26, in matters of this description, "every case must be regarded on its own special merits." Plainly this case has its own merits. It was beyond doubt, a truly generous lease showing what a worthy and disinterested landlord Mr. Coddington was, as he had always the reputation of being—because from beginning to end of the instrument there was not one stringent covenant in it; no clause binding the tenant not to sub-let, to build, or any other restrictions so common to other leases; but there was one clause in it which showed in a peculiar manner the agricultural nature of the holding, and that was the liberty to cut turf, which was not at all usual in other leases. The character of the tenant should be taken into account when the style of the house was considered. Was the law to be strained because one tenant built his house a little bit better than those around him, or because he chose to have one a little more indifferent, or perhaps a little worse than others might have? Surely not. This case on the whole is a doubtful one, as may be seen from the fact that my colleagues differ from me in their judgment on it. But I hold that, when there is a doubt, it is the tenant should get the benefit of it—if anything is to be sacrificed it should be sacrificed to the canon of the enactment. Under all the circumstances I unhesitatingly say that Father Kearney should be declared entitled to the benefits of the Act, that his holding was an agricultural one, and that he is entitled to the benefits of his improvements.

Mr. DOYLE—In the view which I take of this case, I do not consider it necessary to go into the history of the transactions between the landlord and the successive tenants who preceded Father Kearney in the occupation of the holding. In the year 1869 Father Kearney, having been appointed parish priest of Bohernmeen, entered into negotiations with Mr. Coddington with a view to become tenant of the holding. Mr. Coddington had the holding in his own hands, and no other person had any claim to the buildings or other improvements which were then upon it. No material addition has been made to those buildings or improvements since that time. Ultimately Father Kearney became tenant from year to year at the rent of £45, which was afterwards reduced to the present rent of £40. I am of opinion that we are to look at the character and circumstances of the holding at the date of the commencement of the present tenancy in order to determine the question which is before us for our decision—namely, whether this holding is excluded from the Act of 1881 as not being agricultural or pastoral in its character, or partly agricultural and partly pastoral. In answering this question I accept entirely the statement of the law applicable to the matter which Mr. Foley has made. I regret, however, that in applying the law to the facts of the case, as I understand them, I have come to a different conclusion from him. I think that this holding, whether we regard its own character or the circumstances in which the present tenancy began, must be considered to be substantially a residence and not a farm. The house and offices would be quite unsuitable for a person living by agriculture, and occupying a little farm of twelve Irish acres; the valuation of the buildings is £18, and of the land £15. It is unnecessary to say that farmers occupying twelve acres do not ordinarily live in houses valued at £18. No

person, in fact, would come to live in this house who did not possess some source of income largely exceeding the profits to be derived from this small piece of land. The dwelling-house is rather larger than the average house occupied by a Catholic clergyman. It was built about seventy years ago, and has ever since been occupied by the successive priests of the parish, except during a short interval, when it was occupied by the nephew of one of them, a medical doctor. It is the sort of house which anybody acquainted with the country would naturally expect to find in the occupation of a clergyman or other professional man, but not by any means in the occupation of a small farmer. It appears to me that the present tenant in 1869 took the holding mainly as a residence, with a piece of land attached for the accommodation of the house, and that this character still remains impressed upon it. I think, therefore, that the holding is a residence with a piece of land annexed to it, and not a farm, and that the Act does not apply to it.

Mr. HOWLIN—I cannot take the view that this holding is an agricultural one within the meaning of the Act. The house on it is one which could not at the present time be built for less than between £400 and £500, and is of a class altogether unsuited to the requirements of a person farming so small an extent as about 12 acres. Then we have the fact that it has been inhabited for years by the rev. gentlemen who were in succession parish priest of Bohernmeen. Having regard to the wish expressed by the late Rev. Mr. Geoghegan that the place should continue to be a residence for the Catholic clergymen of the district, I trust that the landlord, Mr. Coddington, may see fit to make such arrangements as will secure so satisfactory a result. Some words having dropped from the Chairman which might be interpreted as expressing his knowledge that his colleagues think the house too good for the Catholic clergymen of the district, I wish to repudiate on my own part any such construction of my views in this case. In my own county I have had the pleasure to be able to provide a site in perpetuity for the building of a much better house for the Catholic clergymen of the parish.

*Application dismissed, with costs.*

Solicitor for tenant: *William Mooney.*

Solicitors for landlord: *Tisdall & Twybill.*

(Before CECIL R. ROCHE, Barrister-at-law, M. P. LYNCH, and H. MORRISON, Esqrs.)

LLOYD v. IRWIN.

July, 1882.—*Sale of tenancy—True value—Disagreement between landlord and tenant—Declaration of sale to purchaser to be void—Right of pre-emption on part of landlord—Land Law (Ir.) Act, 1881, s. 1, sub-ss. 1, 2, 3, 4, 5, 6.*

*Where a tenant serves on his landlord a notice of his intention to sell his tenancy, and the landlord serves on the tenant a notice electing to purchase the tenancy, and applying to the Land Commission to fix the true value of the tenancy, a sale made by the tenant subsequent to such notice by the landlord will be set aside.*

*In fixing the true value of the tenancy, the Court will not consider the market value of the tenancy, but what, having regard to the interest of landlord and tenant respectively under the code, would be the true estimate of price between them. Adams v. Dunseath, 16 Ir. L. T. Rep. 59, applied.*



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Application on behalf of the landlord to set aside a sale by the tenant, and to fix the true value of tenancy.

The rent of the holding was £110 13s. 10d., and the tenant, on the 12th December, 1881, served a notice in the prescribed form on the landlord of his intention to sell his tenancy. On the 24th of December the landlord served the tenant with notice that, having received notice of the tenant's intention to sell, and having disagreed with the tenant as to the terms of the purchase thereof by him, he (the landlord) electing to purchase the same, and under clause 1 of the Land Act, 1881, applied to the court to ascertain the true value thereof. On the 13th of January, 1882, the tenant served the following notice (signed by him) on the landlord:—"I have agreed to sell my tenancy in the above holding. The name of the purchaser is George R. Acheson, and the consideration agreed to be given by him for the purchase is £500." On the 24th of January, 1882, the landlord served the following notice on the tenant: "I apply to the court to declare void the sale made or agreed to be made by you of your tenancy in the above holding to George R. Acheson; and I make this application because you have failed to give notice of your intention to sell the tenancy in the manner directed by the rules made pursuant to the above-mentioned statute, or satisfied the landlord that you are the proper person to do so, or that the landlord has served you with Form No. 2, being an originating notice of application by him to ascertain the value of tenancy with a view to purchase." It appeared that prior to the service of these notices, about the month of November, 1881, Mr. Irwin had intimated to Mr. Lloyd his intention of selling his farm. Some negotiations had then commenced as to the purchase of Mr. Irwin's interest by Mr. Lloyd, the terms offered by Mr. Lloyd, in a letter of November 8th, being to allow 1 year's rent, which was then due, and to pay for the improvements effected by the tenant on the lands. This offer was considered insufficient by Mr. Irwin, who informed Mr. Lloyd that he could get more, and that Mr. Acheson would probably become a purchaser. Mr. Lloyd raised no objection to Mr. Acheson as a tenant, and it was not contended during the course of the case that Mr. Acheson was not, in every sense of the word, a desirable tenant. These negotiations between the landlord and tenant were finally put an end to by a letter dated 18th November, 1881, in which Mr. Lloyd intimated to Mr. Irwin that he would not permit him to sell his interest in the farm. Subsequently to that date, Mr. Lloyd was informed of the amount of the purchase money (£500) that Mr. Acheson was willing to give; but he still persisted in his refusal, whereupon the tenant served him with the notice of his intention to sell of the 12th of December. On the 13th of January, 1882, the negotiations between Mr. Irwin and Mr. Acheson culminated in an agreement, duly executed, in which Mr. Acheson agreed to purchase the farm for £500, under certain conditions unnecessary to set out for the purpose of this report. This agreement, it was at one stage of the case urged, was not a *bonâ fide* one, but it was abandoned by the landlord during the progress of the case.

*Bird*, for the landlord.

*Kelly*, for the tenant.

Mr. ROSEN.—The portions of the Act having reference to the sale of tenancies are contained in section 1, which enacts: "the tenant for the time being of every holding, not hereinafter specially excepted from the provisions of this Act, may sell his tenancy for the best

price that can be got for the same subject to the following regulations, and subject also to the provisions contained in this Act, with respect to the sale of a tenancy, subject to statutory conditions." It is to be observed that the general right to sell for the best price that can be got is limited by this section. These limitations, so far as they affect this case, are as follows:—Sub-s. 2—"The tenant shall give the prescribed notice to his landlord of his intention to sell his tenancy. (3.) On receiving such notice the landlord may purchase the tenancy for such sum as may be agreed upon, or, in the event of disagreement, may be ascertained by the court to be the *true value* thereof. (4.) Where the tenant shall agree to sell his tenancy to some other person than the landlord, he shall upon informing the landlord of the name of the purchaser state in writing therewith the consideration agreed to be given for the tenancy. (5.) If the tenant fails to give the landlord the notice or information required by the foregoing sub-sections, the court may, if it think fit, and that the just interests of the landlord so require, declare the sale to be void. (6.) Where the tenancy is sold to some other person than the landlord, the landlord may, within the prescribed period, refuse, on reasonable grounds, to accept the purchaser as tenant."

Now, it appears to me that the unrestricted right of sale, given by the earlier clause of a. 1, is very much cut down and restricted by sub-a. 3, which directs the court to ascertain the *true value*. As to the meaning of that phrase I shall presently revert. But, it seems to me beyond dispute that, when the landlord has invoked the machinery of the court to fix a true value, it is not open to the tenant to stop this proceeding by such a sale, or notice of sale, as was attempted in this case on the 18th of January. This notice must, therefore, be dismissed, and the landlord's notice of the 24th of January, 1882, to set aside the sale must be granted, and we hereby set aside the sale of the 13th of January, and declare it void.

It is now necessary to say what the true value is. This is pithily and clearly laid down by Sir Edward Sullivan, M.R., in *Adams v. Dunsceath* (16 Ir. L. T. Rep. 59), where he says:—"The right of sale is on the express enactment a restricted one, the landlord can intervene, and then the court must fix the true value. This value cannot be the market value, but what, having regard to the interest of landlord and tenant respectively under this code, would be the true estimate of price between them." Such being the case, I disregard the fact of Mr. Irwin having been offered £500 by Mr. Acheson. Had such an offer been an extravagant one, or a competition price, it would be no test whatever of the true value. But, it must be observed that it was not a competition price, and Mr. Irwin by no means put up the farm to the highest bidder. I make these observations lest it should be supposed for a minute that I fix the sum of £500 as the true value because Mr. Acheson offered that sum for it. I expressly repudiate such a test. The farm has been visited by my colleagues, we have heard all the evidence, and, as a result, I have little hesitation in stating my belief that, in fixing the true value of this very convenient and marketable farm at £500, we have by no means set too high a value on it. The true value of the farm we fix of £500.

Mr. LYNCH concurred in the judgment, but wished to express his opinion that the true value was what a tenant could get for a tenancy from a *bonâ fide* purchaser in the open market, at which price the landlord had a right of pre-emption.\*

Solicitor for landlord: *A. Tisdall*.

Solicitor for tenant: *J. Burke*.

\* See *Kearney v. Coddington*, *supra*.—[E. N. B., Ed.]

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LYONS v. LORD ARMATHWAITE.—GRIFFIN AND OTHERS v. HICKSON.

[L. C.]

(Before JOHN GEORGE MACCARTHY, Esq., Solicitor.)

LYONS v. LORD ORMATHWAITE.

Oct. 21, 1882.—*Land Law Act, 1881, s. 8, sub-s. 4.—Improvements made by landlord—Tenant only partially compensated for expenditure by him—Receipt stating money received from landlord “in full discharge of claims” — Rebuttal.*

*In order to come within sub-section (4), section 8, of the Land Law Act, 1881, providing that an application to determine a fair rent may be disallowed where the improvements have been made by the landlord, it must appear that such improvements were so completely, and not merely partially, made by the landlord, that there would be nothing in respect of which the tenant would be entitled to compensation. And it is open to the tenant to show that improvements made by him cost an amount in excess of the sum allowed to him therefor by the landlord, and to claim the benefit thereof to that extent, notwithstanding his having given a receipt admitting that the sum so allowed by the landlord “was paid pursuant to agreement” (contrary to the fact), “and was received by him in full discharge of all claims” on foot of said improvements.*

Application to fix a fair rent.—The circumstances are sufficiently explained in the judgment.

Mr. B. O’C. Horgan, solicitor, for the tenant.  
O’Reardon, Q.C., contra.

MR. MACCARTHY.—Daniel Lyons holds 124 acres near Listowel. His father, who was his predecessor in title, died in 1876. In the same year a new contract of tenancy was entered into with applicant, and the rent was increased from £56 to £64. During the father’s occupancy, but subsequent to 1862, he made 123 perches of drains, 130 perches of dykes, and a limekiln, towards which improvements the landlord contributed £7 8s., being an amount obviously less than their cost. During the occupancy of the present tenant he built a cattle store, the cost of which he estimates at £20, and reclaimed three acres at an estimated cost of £24, the landlord making certain allowances, which, according to the evidence, were insufficient to cover the cost. On the occasion of each allowance being made, the tenant signed a very peculiar form of receipt, admitting that the sum paid by him “was paid pursuant to agreement, and that the amount was received by him in full discharge of all claims for said work and any other improvements made by him on said farm up to the date of the receipt.” No evidence was given that any antecedent agreement or other contract had in fact been entered into. Under these circumstances it was contended by counsel for the landlord that the case should be dismissed, pursuant to what is commonly called the “Heneage” clause. The cost of improvements being in excess of the landlord’s contributions, it is evident that, apart from the special question of the receipts, the case would not come within that clause. The receipts are evidence of the actual sums which passed under them, but, inasmuch as they were not in fact made in pursuance of an antecedent contract, they bind the tenant no further. He is entitled, in having his rent fixed, to get the benefit of any improvements he has made to the extent to which, as a matter of fact, he has not been compensated. The Act contemplates complete, not partial, compensation. A receipt not under seal is no estoppel. It can be questioned between the original parties in like manner as an acceptor of a bill of exchange can plead want of consideration, or the owner of a ship can question the accuracy of the statement in a bill of lading against the shipper. In this

case it is perfectly open to the tenant to show that the improvements specified in the receipts cost more than the allowances made by the landlord; and in this, and in all the other cases that turn on the same point, the tenants have, according to the evidence, shown it. My colleagues and the official valuer consider that in many cases the cost has been over-estimated, but that nevertheless the cost exceeded the allowance.

As to the clause in the receipt stating that the tenant has accepted the specified amount in discharge of all claims up to its date, it seems to me that whatever may have been its force previous to the Acts of 1870 and 1881, it is wholly inoperative as against the plain provisions of their acts. Considered as a receipt it is liable to be rebutted by evidence, and it has been so rebutted; considered as an estoppel, it is not obligatory; considered as a contract it is void. Under all these circumstances of the case we consider the presents rents of the several tenants too high. To dismiss the cases under the “Heneage” clause in face of the evidence would be absurd, and we admit the tenants to the benefit of the Act.

Solicitor for the tenant: B. O’Conor Horgan.  
Solicitor for the landlord: Francis Creagh.

GRIFFIN AND OTHERS v. HICKSON.

Oct. 23, 1882.—*Tenant holding under agreement for lease—Landlord refusing to grant lease—Tenant treated as yearly tenant, and fair rent fixed.*

*A Landlord persistently refusing to perform his part of a parol agreement for a lease for eight years, will not be permitted to set up said agreement, so practically waived, as a bar to the tenants coming in to claim, as yearly tenants, the benefits of the Land Law (Ireland) Act, 1881.*

Application to fix fair rent.—The facts are sufficiently explained in the judgment.

Mr. B. O’C. Horgan, solicitor, for the tenants.  
Hickson, Q.C., for the landlord.

MR. M’CARTHY.—The learned counsel for the landlord called upon us to dismiss all the applications on this estate on the grounds that the tenants held under subsisting agreements for leases. The circumstances are these:—In 1852 the tenants got leases for twenty years. These leases expired in 1873, and negotiations for new leases were then entered into between the agent of the estate on the one side and the tenants on the other. A verbal agreement was entered into, which, having regard to the reported decision in *Nux v. Fabian* (L. R. Ch. Ap. 35), was binding if the parties were authorised to make it, and if it had not been subsequently waived. The term and the date of its commencement were agreed upon, increased rent was agreed upon, and such increased rent has since been paid. The tenants agreed to pay a half-year’s rent as security for the last year, and £2 each for the costs of the leases, and such payments were made. Here, then, we have the essentials of a specific agreement, and a part performance by the tenants quite adequate to take the case out of the statute of frauds. But, at the very root of the transaction, there lies this difficulty—that we had no evidence of the authority of the agent to enter into any such contract at all. A mere agent to receive rents has no such authority: *Piers v. Sneyd* (17 Beav. 151). A power of attorney to manage the estate might have authorised him, but he testified that he had no such power of attorney. Shortly after the agreement was entered into, the tenants applied to sub-agent for their leases, but they were refused; and the tenants have since been treated as yearly tenants. Now, could the landlord, who has persistently refused to grant leases to those tenants, be permitted to set up this agreement for a lease when it suits him—could he

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apply to the Chancery Division of the High Court of Justice to enforce the specific performance thereof? It seems to be well settled law that the part performance necessary to have a contract enforced must be a part performance by the party seeking relief (Fry on Specific Performance, p. 255, where the cases on this point are collected). Here we have no performance by the landlord. On the contrary, we have a series of refusals to perform his part of the agreement; and I do not think it is now open to him or his representatives to turn round after nine years and claim the benefit of a contract which had been thus virtually and practically waived. It is not on light grounds that any court of justice should deny to the tenantry of a considerable estate the rights to which *prima facie* the statute entitles them. I decline to deny these rights on the grounds stated, and I admit the tenants to the benefit of the Act. [The judicial rent was then fixed.]

Solicitor for tenants: *B. O'C. Horgan.*

Solicitor for landlord: *Thomas F. O'Connell.*

### COUNTY COURT.

Reported by *W. A. SARGENT*, Barrister-at-Law.

(Before *G. WATERS*, Q.C.)

CONNELL v. SKEHAN.

July 21, 1882.—*Fair rent*.—Written agreement for three years for grazing and depasturage—"Temporary convenience"—*L. & T. Act*, 1870, s. 15, sub-s. 4—*L. & T. Act*, 1881, ss. 57, 58, sub-ss. 3, 4, 6.

By an agreement of letting, the tenant was to hold 66 acres for three years, for grazing and depasturage; he was to reside on them, and might till 4 acres; and the landlord was to pay all taxes, and the tenant to give up possession at the end of the term. On an application to determine a judicial rent, under the *Land Law Act*, 1881:

Held, that the tenancy came within the Act, not being excluded as for a "temporary depasturage," under section 58 (5), nor being for "temporary convenience" under section 15, sub-s. 4, of the *L. & T. Act*, 1870.

Application to determine a judicial rent.—By agreement dated January, 1879, the landlord agreed to let and the tenant to take 66 acres of certain lands for three years "for grazing and depasturage;" the tenant was to reside on them, and might till 4 acres; the landlord was to pay all taxes, and the tenant was to give up possession at the end of the term.

Mr. *M'Coy*, solicitor for the landlord, objected that this was a mere dairy agreement, and not a tenancy within the Act; being merely a letting for a temporary convenience of the landlord or tenant.

*Sargent*, for the tenant, relied on the agreement as containing all the ordinary words of an agreement for the letting of lands; and contended that, to be outside the Act, it should have borne on its face a mention of the "temporary convenience," under the Act of 1870, s. 15, sub-s. 4; and that the term was too long to be considered a "temporary depasturage" within s. 58, sub-s. 6, of the Act of 1881. He distinguished *Mulligan v. Adams*, 8 Ir. L. Rep. 132; and submitted that the poor law valuation and express words of the agreement as to residence took the case out of s. 58, sub-ss. 3, 4, of Act of 1881. And he further relied on the definitions in s. 57 of "contract of tenancy," "present tenant," and "holding."

The Judge, after consideration, held that the agreement came within the provisions of the Act, and fixed a fair rent.\*

Solicitor for tenant: *J. G. Strange.*

Solicitor for landlord: *A. M'Coy.*

\* See *Eiffe* (app.) v. *M'Kenna* (resp.), 16 Ir. L. T. Rep. 39.—[*E. N. B., Ed.*]



# THE IRISH LAW TIMES

## AND SOLICITORS' JOURNAL.

### PUBLIC GENERAL STATUTES,

45° & 46° VICTORIÆ (1882).

 *The important Statutes only are set out at Length.*

#### CAP. I.

An Act to apply the sum of Three hundred and thirteen thousand two hundred and seventy pounds out of the Consolidated Fund to the service of the year ending on the thirty-first day of March one thousand eight hundred and eighty-two. [13th March 1882.]

#### CAP. II.

An Act to authorise the use of Reply Post Cards. [13th March 1882.]

WHEREAS the Post Office Act, 1875, authorised the Treasury from time to time by warrant to fix the rates of postage to be charged by or under the authority of the Postmaster-General in respect (among other postal packets) of post cards, conveyed or delivered for conveyance by post, whether in the United Kingdom or elsewhere, subject to the proviso (among others) that the highest rate for an inland post card shall not exceed one half-penny:

And whereas it is proposed to issue such reply post cards as herein-after mentioned, and doubts have arisen as to the power to issue the same, and it is expedient to remove such doubts:

Be it therefore enacted, by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

**Short title.** 1. This Act may be cited as the Post Office (Reply Post Cards) Act, 1882, and this Act may be cited together with the Post Office (Duties) Acts, 1840 to 1875, as the Post Office (Duties) Acts, 1840 to 1882.

Acts not to prevent issue of reply post cards.

2. Nothing in the Post Office (Duties) Acts, 1840 to 1875, or any of them, shall be deemed to prevent the issue of a reply post card, or the fixing of a rate of postage for a reply post card not exceeding double the rate charged for an ordinary post card.

A "reply post card" means a post card of such a character that the person receiving the same through the post may without further payment again transmit the same or a part thereof through the post.

A reply post card or any part thereof which may be again transmitted through the post without further payment shall be deemed to be a postal packet within the meaning of the above-mentioned Acts.

#### CAP. III.

An Act to amend the Law relating to the use of Gunpowder in Slate Mines. [29th March 1882.]

#### CAP. IV.

An Act to apply certain sums out of the Consolidated Fund to the service of the years ending on the thirty-first day of March one thousand eight hundred and eighty-one, one thousand eight hundred and eighty-two, and one thousand eight hundred and eighty-three. [29th March 1882.]

#### CAP. V.

An Act to enable Her Majesty to provide for the Establishment of His Royal Highness the Duke of Albany and Her Serene Highness Princess Helen Frederica Augusta of Waldeck and Pymont, and to settle an Annuity on Her Serene Highness. [21st April 1882.]

#### CAP. VI.

An Act to amend the law in regard to Householders under the General Police and Improvement Acts in Scotland. [28th April 1882.]

#### CAP. VII.

An Act to provide, during twelve months, for the Discipline and Regulation of the Army. [28th April 1882.]

#### CAP. VIII.

An Act to apply the sum of nine million two hundred and eighty-two thousand four hundred and thirty-five pounds out of the Consolidated Fund to the service of the year ending on the thirty-first day of March one thousand eight hundred and eighty-three. [19th May 1882.]

## CAP. IX.

An Act to amend the Documentary Evidence Act, 1868, and other enactments relating to the evidence of documents by means of copies printed by the Government Printers.

[19th June 1882.]

31 & 32 Vict.  
c. 37.  
32 & 34 Vict.  
c. 75, s. 55.  
33 & 34 Vict.  
c. 79, s. 21.  
34 & 35 Vict.  
c. 70, s. 7.  
40 & 41 Vict.  
c. 21, s. 91.  
40 & 41 Vict.  
c. 53, s. 58.

WHEREAS by the Documentary Evidence Act, 1868, and enactments applying that Act, divers proclamations, orders, regulations, rules, and other documents may be proved by the production of copies thereof purporting to be printed by the Government Printer, and the Government Printer is thereby defined to mean and include the Printer to Her Majesty :

And whereas divers other enactments provide that copies of Acts of Parliament, regulations, warrants, circulars, gazettes, and other documents shall be admissible in evidence if purporting to be printed by the Government Printer, or the Queen's Printer, or a printer authorised by Her Majesty, or otherwise under the authority of Her Majesty :

And whereas it is expedient to make further provision respecting the printing of the copies aforesaid :

Be it therefore enacted, &c.,

Short title. 1. This Act may be cited as the Documentary Evidence Act, 1882.

Documents printed under superintendence of Stationery Office receivable in evidence. 2. Where any enactment, whether passed before or after the passing of this Act, provides that a copy of any Act of Parliament, proclamation, order, regulation, rule, warrant, circular, list, gazette, or document shall be conclusive evidence, or be evidence, or have any other effect, when purporting to be printed by the Government Printer, or the Queen's Printer, or a printer authorised by Her Majesty, or otherwise under Her Majesty's authority, whatever may be the precise expression used, such copy shall also be conclusive evidence, or evidence, or have the said effect (as the case may be) if it purports to be printed under the superintendence or authority of Her Majesty's Stationery Office.

Penalty for forgery. 3. If any person prints any copy of any Act, proclamation, order, regulation, royal warrant, circular, list, gazette, or document which falsely purports to have been printed under the superintendence or authority of Her Majesty's Stationery Office, or tenders in evidence any copy which falsely purports to have been printed as aforesaid, knowing that the same was not so printed, he shall be guilty of felony, and shall, on conviction, be liable to penal servitude for a term not exceeding seven years, or to be imprisoned for a term not exceeding two years, with or without hard labour.

Application of Act to Ireland. 4. The Documentary Evidence Act, 1868, as amended by this Act, shall apply to proclamations, orders, and regulations issued by the Lord Lieutenant or other chief governor or governors of Ireland, either alone or acting with the advice of the Privy Council in Ireland, as fully as it applies to proclamations, orders, and regulations issued by Her Majesty.

In the same Act, the term "the Privy Council" shall include the Privy Council in Ireland, or any committee thereof.

In the same Act, and in this Act, the term "the Government Printer" shall include any printer to Her Majesty in Ireland and any printer printing in Ireland under the superintendence or authority of Her Majesty's Stationery Office.

## CAP. X.

An Act for making provision for facilitating the Manœuvres of Troops to be assembled during the present Summer. [19th June 1882.]

## CAP. XI.

An Act to amend the Public Health (Scotland) Act, 1867. [19th June 1882.]

## CAP. XII.

An Act to amend the Law relating to the application of moneys arising from the sale of Militia Storehouses. [19th June 1882.]

## CAP. XIII.

An Act for the Improvement of Arklow Harbour. [19th June 1882.]

## CAP. XIV.

An Act to confer further powers upon the Metropolitan Board of Works with respect to Streets and Buildings in the Metropolis. [19th June 1882.]

## CAP. XV.

An Act to provide for the better application of Moneys paid by way of Compensation for the compulsory acquisition of Common Lands and extinguishment of Rights of Common. [19th June 1882.]

## CAP. XVI.

An Act to amend the Irish Reproductive Loan Fund Act, 1874. [19th June 1882.]

WHEREAS under the provisions of an Act of Parliament passed in the session of the thirty-seventh and thirty-eighth years of the reign of Her present Majesty, chapter eighty-six, intitled "The Irish Reproductive Loan Fund Act, 1874," loans have been made for fishing purposes which have proved to be of great public utility and of important benefit to the poorer classes of fishermen in certain counties in Ireland; and it is expedient for the still further encouragement and promotion of the Fisheries that the provisions of said Act should be amended :

Be it therefore enacted, &c.,

Short title of Act. 1. This Act may be cited for all purposes as the Irish Reproductive Loan Fund Amendment Act, 1882.

Repeal of clauses 2 and 3 of s. 5, of 37 & 38 Vict. c. 86. 2. The second and third clauses of the fifth section of the Act thirty-seventh and thirty-eighth Victoria, chapter eighty-six, which limit the amount of loans to be made in any one year to a certain proportion of the fund standing to the credit of the county in which such loans are made, are hereby repealed; and it shall be lawful for the Commissioners, under the said Act, to advance, by way of loan, such amount, not exceeding in the whole the amount standing to the credit of each

county in any year, as the Inspectors of Irish Fisheries may from time to time recommend, subject to the provisions of the said Act and the rules made thereunder by the Lord Lieutenant.

**Lord Lieutenant in Council may make rules for supply of boats and gear to borrowers in lieu of money.** 3. In addition to any rules heretofore made the Lord Lieutenant in Council may make such further rules as may seem expedient to enable the Inspectors of Irish Fisheries to supply, in cases where they may deem it expedient, to persons obtaining loans under the said Act and this Act, boats or fishing-gear in lieu of money; and on the certificate of the Inspectors that such boats and gear have been supplied the Commissioners may pay for such boats and gear instead of paying the money to the borrowers, which shall be as effectually binding on the borrowers, so far as the liabilities or securities they may have entered into with the Commissioners shall extend, as if such borrowers had received the actual value of such securities in money instead of boats and gear.

**Recovery of loans. Summary powers.** 4. All moneys of whatever amount, and at whatever time they may have accrued, due to the Commissioners on account of loans made by them under the said recited Act or this Act, including any costs and charges in respect of such loans or the recovery thereof, may be recovered before the justices in petty sessions, in the manner prescribed by the Act of the twenty-second year of the reign of Her present Majesty, chapter fourteen, and any Acts amending it.

The power given by this section shall be deemed to be in addition to and not in derogation of any other powers to which the Commissioners may be entitled at common law or in equity of recovering any moneys due to them, and the Commissioners may use any such powers accordingly.

**Certificate of amount due.** 5. A certificate, purporting to be under the seal of the Commissioners and to be signed by one of them, stating the amount due to the Commissioners from any person in respect of any loan made to him under the said recited Act or this Act, together with interest thereon, and any costs and charges in respect of such loans or the recovery thereof, shall, until the contrary is proved, be evidence of the amount due and of the liability of the party therein named to pay the same; and it shall be sufficient, notwithstanding any rule, order, or form of procedure in any court whatsoever, if such certificate be produced to the court before which proceedings are instituted for the recovery of any such sum by any person delegated by the said Commissioners, or any one of them, to produce such certificate.

**Two Acts to be construed as one Act.** 6. This Act and the said recited Act may be read and construed as one Act.

## CAP. XVII.

An Act for the transfer of Property in Ireland held for the Service of Her Majesty's Customs and of the Inland Revenue to the Commissioners of Public Works in Ireland; and for other purposes relating thereto.

[3rd July 1882.]

## CAP. XVIII.

An Act to regulate the procedure of School Boards in Scotland in the dismissal of Teachers.

[3rd July 1882.]

## CAP. XIX.

An Act to amend the law relating to the interment of any person found *felo de se*.

[3rd July 1882.]

## CAP. XX.

An Act to amend the Poor Rate Assessment and Collection Act, 1869.

[3rd July 1882.]

BE it enacted, &amp;c.,

**Short title.** 1. This Act shall be called the Poor Rate Assessment and Collection Act, 1869, Amendment Act, 1882.

**Interpretation, 32 & 33 Vict. c. 41.** 2. This Act and the Poor Rate Assessment and Collection Act, 1869, as amended, shall be read as one Act.

**Payment of rates by outgoing occupier to be proportionate to time of occupation.** 3. The provisions of the sixteenth section of the Poor Rate Assessment and Collection Act, 1869, so far as regards the payment of rates by an outgoing occupier, shall extend and apply to any outgoing occupier assessed in the rate, and such outgoing occupier shall only be liable to pay so much of the rate as shall be proportionate to the time of his occupation within the period for which the rate was made, notwithstanding he may not be succeeded in his occupation by an incoming tenant.

**Publication of rate where no parish church.** 4. In a parish in which there is no church or chapel of the parish, a poor rate, whether made before or after the passing of this Act, shall be deemed to have been duly published if, within fourteen days after the making of the rate, notice thereof has been given by affixing such notice in some public and conspicuous place or situation in the parish.

## CAP. XXI.

An Act to amend the Places of Worship Sites Act, 1873.

[12th July 1882.]

## CAP. XXII.

An Act to make better provision for Inquiries with regard to Boiler Explosions.

[12th July 1882.]

WHEREAS special provision has been made by law for making inquiry into the causes and circumstances of boiler explosions on board ships and on railways, and it is expedient that like provision be made for making inquiries with respect to boiler explosions in other cases:

Be it therefore enacted, &amp;c.,

**Short title.** 1. This Act may be cited as the Boiler Explosions Act, 1882.

**Extent of Act.** 2. This Act shall extend to the whole of the United Kingdom.

**Interpretation of terms.** 3. In this Act the term "boiler" means any closed vessel used for generating steam, or for heating water, or for heating other liquids, or into which steam is admitted for heating, steaming, boiling, or other similar purposes.

The term "court of summary jurisdiction" means any justices of the peace, metropolitan police magistrate, stipendiary magistrate, sheriff, sheriff substitute, or other magistrate or officer, by whatever name called, who is

capable of exercising jurisdiction in summary proceedings for the recovery of penalties.

Application of Act.

4. This Act shall not apply to any boiler used exclusively for domestic purposes, or to any boiler used in the service of Her Majesty, or to any boiler on board a steamship having a certificate from the Board of Trade, or to any boiler explosion into which an inquiry may be held under the provisions of the Coal Mines Regulation Act, 1872, and the Metalliferous Mines Regulation Act, 1872, or either of them.

35 & 36 Vict. c. 77.  
35 & 36 Vict. c. 77.  
Notice of boiler explosion to be sent to the Board of Trade.

5. (1.) On the occurrence of an explosion from any boiler to which this Act applies, notice thereof shall, within twenty-four hours thereafter, be sent to the Board of Trade by the owner or user, or by the person acting on behalf of the owner or user.

(2.) The notice shall state the precise locality as well as the day and hour of the explosion, the number of persons injured or killed, in addition to the purposes for which the boiler was used, and, generally, the part of the boiler that failed, and the extent of the failure, and such other particulars, if any, as the Board of Trade by notice inserted in the London Gazette may require, and shall be in the form printed in the schedule to this Act, or in such other form as the Board of Trade may from time to time approve for the purpose.

(3.) If default is made in complying with the requirements of this section, the person in default shall, on summary conviction, be liable to a fine not exceeding twenty pounds.

Power for Board of Trade to direct inquiry as to boiler explosion.

6. (1.) On receiving notice of a boiler explosion the Board of Trade may, if it thinks fit, appoint one or more competent and independent engineer or engineers, practically conversant with the manufacture and working of boilers, to make a preliminary inquiry with respect to the explosion, and the persons so appointed shall have the powers conferred on the court by subsection (4) of this section. If it appears to the Board of Trade, either upon or without such preliminary inquiry, that a formal investigation of the causes and circumstances attending the explosion is expedient, the Board of Trade may direct a formal investigation to be held; and with respect to such investigation the following provisions shall have effect:

(2.) Formal investigations of boiler explosions shall be made at or near the place of such explosion by a court consisting of not less than two commissioners appointed by the Board of Trade, of whom one at least shall be a competent and practical engineer specially conversant with the manufacture and working of steam boilers, and one a competent lawyer. The court shall be presided over by one of the commissioners, the selection being made by the Board of Trade.

(3.) Any such formal investigation shall be held in open court, in such manner, and under such conditions, as the commissioners may think most effectual for ascertaining the causes and circumstances of the explosion, and for enabling them to make the report herein-after mentioned in this section.

(4.) The court shall have, for the purpose of its investigations, all the powers of a court of summary jurisdiction when acting as a court in the exercise of its ordinary jurisdiction, and shall in addition have the following powers; viz.,

(a.) The court, or any one appointed by it, may enter and inspect any place or building, the entry or inspection whereof appears to the court requisite for the said purpose:

(b.) It may by summons under its hand require the attendance of all such persons as it thinks fit to

call before it, and examine for the said purpose, and may for such purpose require answers or returns to such inquiries as it thinks fit to make:

(c.) It may require and enforce the production of all books, papers, and documents which it considers important for the said purpose:

(d.) It may administer an oath, and require any person examined to make and sign a declaration of the truth of the statements made by him in his examination:

(e.) Every person so summoned, not being the owner or user of the boiler, or in the service or employment of the owner or user, or in any way connected with the working or management of the boiler, shall be allowed by the Board of Trade such expenses as would be allowed to a witness attending on subpoena before a court of record, and in Scotland to a witness attending a criminal trial by jury in the sheriff court; and in case of dispute as to the amount to be allowed, the same shall be referred by the court to a master of one of the superior courts, and in Scotland to the auditor of the Court of Session, who, on request under the hands of the members of the court, shall ascertain and certify the proper amount of such expenses.

(5.) The court making a formal investigation with respect to any boiler explosion, shall present a full and clear report to the Board of Trade, stating the causes of the explosion, and all the circumstances attending the same, with the evidence, adding thereto any observations thereon, or on the evidence, or on any matters arising out of the investigation which they think right to make, and the Board of Trade shall cause every such report to be made public in such manner as it thinks fit. When no formal investigation is held, the report presented to the Board of Trade by the engineer making a preliminary inquiry with respect to a boiler explosion shall be made public in such manner as the Board of Trade thinks fit.

As to costs and expenses of inquiry.

7. The court may order the costs and expenses of a preliminary inquiry or formal investigation or any part thereof, including therein the remuneration of persons holding such inquiry or investigation, to be paid by any person summoned before it, or by the Board of Trade; and such order shall, on the application of any party entitled to the benefit of the same, be enforced by any court of summary jurisdiction as if such costs and expenses were a penalty imposed by such court.

The Board of Trade may, if they think fit, pay to the persons holding any inquiry or investigation under this Act such remuneration as they may with the consent of the Treasury appoint.

If and so far as not otherwise provided for, all costs and expenses incurred by the Board of Trade, including any remuneration paid under this section, and any costs and expenses ordered by the court to be paid by the Board of Trade, shall be paid out of moneys to be provided by Parliament.

Recovery of fine.

27 & 28 Vict. c. 53.

44 & 45 Vict. c. 33.

8. Any fine payable under this Act shall be recoverable in England in the manner provided by the Summary Jurisdiction Acts, in Scotland in the manner provided by the Summary Jurisdiction Acts, 1864 and 1881, and of any Act or Acts amending the same, and in Ireland within the police district of Dublin metropolis, in accordance with the provisions of the Acts regulating the powers and duties of justices of the peace for such district, or of the police of such district elsewhere in Ireland in



accordance with the provisions of the Petty Sessions (Ireland) Act, 1851 (14 & 15 Vict., c. 93), and any Act amending or affecting the same.

SCHEDULE.

REPORT OF EXPLOSION of a STEAM BOILER to be sent to the BOARD OF TRADE within twenty-four hours after the occurrence of an EXPLOSION.

See Section 5.

1. Name of premises or works on which the boiler exploded.
  2. Address by the post.
  3. Day and hour of explosion.
  4. Number of persons killed.
  5. Number of persons injured.
  6. General description of the boiler.
  7. Purposes for which the boiler was used.
  8. Part of the boiler which failed, and the extent of failure generally.
  9. Pressure at which boiler was worked.
  10. Name and address of any society or association by whom the boiler was last inspected or insured.
- Signature of person responsible for the accuracy of the particulars contained in this form.

Address  
Date

CAP. XXIII.

An Act to extend the Public Health Act, 1875, to the making of Byelaws for Fruit Pickers. [12th July 1882.]

CAP. XXIV.

An Act to amend the Petty Sessions (Ireland) Act, 1851. [12th July 1882.]

BE it enacted, &c.,

1. In the Petty Sessions (Ireland) Act, 1851, the word "agent" shall include the father, son, husband, wife, or brother of the complainant or defendant; provided that any such person be thereunto authorised in writing by the complainant or defendant (as the case may be), and do receive no remuneration therefor, and have the leave of the court to appear and be heard, and that the court is satisfied that such complainant or defendant is from infirmity, or other unavoidable cause, unable to appear.

2. This Act may be cited as the Petty Sessions (Ireland) Act, 1882; and the Petty Sessions (Ireland) Act, 1851, and this Act may be cited together as the Petty Sessions (Ireland) Acts, 1851, 1882.

CAP. XXV.

An Act for the prevention of Crime in Ireland. [12th July 1882.]

WHEREAS by reason of the action of secret societies and combinations for illegal purposes in Ireland the operation of the ordinary law has become insufficient for the repression and prevention of crime, and it is expedient to make further provision for that purpose:

Be it therefore enacted, &c.,

PART I.

SPECIAL COMMISSION.

1. (1.) The Lord Lieutenant may from time to time direct a commission or com-

missions to be issued for the appointment of a court or courts of special commissioners for the trial in manner provided by this Act of persons committed for trial for any of the following offences; that is to say,

- (a.) Treason or treason-felony committed after the passing of this Act;
- (b.) Murder or manslaughter;
- (c.) Attempt to murder;
- (d.) Aggravated crime of violence against the person;
- (e.) Arson, whether by common law or by statute;
- (f.) Attack on dwelling-house;

and whenever it appears to the Lord Lieutenant that in the case of any person committed for trial for any of the said offences a just and impartial trial cannot be had according to the ordinary course of law, the Lord Lieutenant may by warrant assign to any such court of Special Commissioners (in this Act referred to as a Special Commission court) the duty of sitting at the place named in the warrant and of there, without a jury, hearing and determining, according to law, the charge made against the person so committed for trial and named in the warrant, and of doing therein what to justice appertains.

(2.) A Special Commission court shall consist of three judges of the Supreme Court of Judicature in Ireland (other than the Lord Chancellor), to be named in such commission, and they shall try in open court, according to the tenor of a warrant under this Act, all persons named in the warrant who may be brought before them for trial.

(3.) The evidence taken on a trial before a Special Commission court, and the reasons, if any, given by the judges in delivering judgment, shall be taken down by a shorthand writer, who shall be sworn to take the same accurately to the best of his ability.

(4.) A person tried by a Special Commission court shall be acquitted unless the whole court concur in his conviction, and the judges of the said court shall in all cases of conviction give in open court the reasons for such conviction.

(5.) Where a person is tried by a Special Commission court he shall, if acquitted by such court, be entitled to be conveyed free of cost to any place he selects in the county in which he was committed for trial.

(6.) The Lord Lieutenant shall from time to time provide for the payment of the reasonable expenses of witnesses, and in the case of poor persons charged with treason, treason felony, or murder, for the payment of counsel required for the defence of a person brought for trial before a Special Commission court, and certified to be so required by such court.

Provided that nothing in this Act shall empower a Special Commission court to try a person for any offence, unless a judge and jury in Ireland would, but for this section, have had jurisdiction to try that person for the said offence.

Appeal from Special Commission court to Court of Criminal Appeal.

2. (1.) Any person convicted by a Special Commission court under this Act may, subject to the provisions of this Act, appeal either against the conviction and sentence of the court, or against the sentence alone, to the Court of Criminal Appeal, hereinafter mentioned, on any ground, whether of law or of fact; and the Court of Criminal Appeal shall (subject to the provisions of this Act) have power after hearing the appeal to confirm the conviction and sentence, or to enter an acquittal, or to vary the conviction or sentence.

Provided that—

- (a.) The conviction shall not be varied save by substituting a conviction for some less offence, for which the Special Commission court had

Special Commission Court.

jurisdiction on the trial to convict the appellant; and

(b.) The sentence shall not be increased.

(2.) The conviction and sentence as confirmed or varied by the Court of Criminal Appeal shall have effect as if it were the conviction and sentence of the Special Commission court, and shall be deemed to be the sentence of a Special Commission court.

(3.) If the appellant establishes want of jurisdiction in the Special Commission court, the Court of Criminal Appeal may quash the proceedings.

(4.) The Court of Criminal Appeal shall have for the purpose of any appeal all the powers and jurisdiction of the Special Commission court.

Constitution of Court of Criminal Appeal.  
40 & 41 Viet. c. 57.

3. (1.) The Court of Criminal Appeal under this Act shall consist of the judges of the Supreme Court of Judicature in Ireland (with the exception of the Lord Chancellor), and any of those judges not

less than five may sit and exercise the powers of the court.

Provided that a judge who sat in the Special Commission court shall not sit in the Court of Criminal Appeal on any appeal against a conviction or sentence by that Special Commission court to which he was a party.

(3.) The determination of any appeal shall be according to the determination of a majority of the judges who heard the appeal.

## PART II.

### SPECIAL JURORS AND VENUE.

Special jurors in criminal cases.

4. (1.) Where the trial of a person charged with an indictable offence would otherwise have been had by a jury before some court not being a court of general or quarter sessions, the Attorney General for Ireland, or the person charged, may, on serving the prescribed notice in the prescribed manner, require that the jury shall consist entirely of special jurors, and the jury shall consist of special jurors accordingly. Where more persons than one are to be tried together on the same charge, and notice for special jurors has not been served by the Attorney General, but has been served by some and not all of such persons, the jury shall consist entirely of special jurors or not, as the court may direct:

Provided that a trial shall not be impeached on any ground connected with the qualification of the jurors or any of them.

(2.) The special jurors shall be taken by ballot in manner provided by the nineteenth section of the Juries Procedure (Ireland) Act, 1876, from all the jurors upon the panel returned by the sheriff from the special jurors book.

(3.) A county mentioned in the first column of the Second Schedule to this Act, and a county of a city or town set opposite the name of that county in the second column of the said schedule, shall as respects special jurors be deemed to be contributory counties; and the special jurors of each of two contributory counties shall be lawful jurors for the trial of any person who is to be tried by special jurors in either of such contributory counties; and, whenever a trial requiring special jurors under this Act is about to take place in any one of two contributory counties, steps shall be duly taken by the sheriff of each of the said counties for returning to the proper officer of the court in which such trial is held the panel of the special jurors of his county, and the special jury for such trial shall be taken by ballot accordingly from all the jurors upon such two panels indifferently; and the sheriff of each of the said contributory counties

shall deliver to the proper officer of the court the cards for such ballot, and the ballot shall be taken in manner provided by the said nineteenth section of the Juries Procedure (Ireland) Act, 1876.

The expression "sheriff" in this section includes any officer who by law performs the duties of sheriff in relation to the return of jurors.

Penalty for non-attendance of special juror. 5. The words "twenty pounds" shall be substituted for the words "forty shillings" in section four of the Juries Procedure (Ireland) Act, 1876, in the case of special jurors.

Change of venue. 6. (1.) The Attorney General, on making application to the High Court of Justice or a judge thereof, and certifying that in his opinion it is expedient in the interests of justice that a person awaiting his trial for an indictable offence should be tried in some county named in the certificate other than the county in which he would otherwise be tried, shall be entitled as of right to an order directing such person to be tried in the county named in the certificate; and, if such order is made before any indictment or inquisition has been found, the said offence may be inquired of in the county named in the order in like manner in all respects as if it had been committed in that county; and, if the order is made after an indictment or inquisition has been found, the indictment or inquisition shall be transmitted to the court of assize for the county named in the order, and have effect as if it had originally been duly found at or returned to that court; and, in either case, the offence may be heard and determined, and the person charged with the said offence may be convicted and sentenced, as if the offence had been committed in the county named in the order, but the sentence of the court shall be carried into effect as if such person had been tried in the county in which he would have been tried if the said order had not been made, and such person shall, if necessary, be removed accordingly, in pursuance of an order of the court made for the purpose.

(2.) The Lord Lieutenant shall from time to time provide for the payment, if an order is made under this section respecting the trial of any person, of the reasonable expenses of such person coming to the place at which, in pursuance of such order, he is to be tried in any case where he was admitted to bail, and also of the witnesses required for the defence of such person, and certified by the court before whom he is tried to be so required.

(3.) Where an order is made under this Act directing a change of venue, the prescribed Crown solicitor, or other prescribed officer under the direction of the Attorney General, shall provide, where necessary, for advancing money for enabling the person to be tried and the witnesses required for the defence of such person to attend the trial.

(4.) For the purposes of this section the expression "awaiting his trial" means committed for trial or charged with any indictable offence by indictment or inquisition; and "court of assize" includes any court of oyer and terminer or gaol delivery.

## PART III.

### OFFENCES AGAINST THIS ACT.

Intimidation.

7. Every person who—

Wrongfully and without legal authority uses intimidation, or incites any other person to use intimidation,

(a.) to or towards any person or persons with a view to cause any person or persons, either to do any act which such person or persons has or have a legal right to abstain from doing, or to abstain

from doing any act which such person or persons has or have a legal right to do; or

- (b.) to or towards any person or persons in consequence, either of his or their having done any act which he or they had a legal right to do, or of his or their having abstained from doing any act which he or they had a legal right to abstain from doing,

shall be guilty of an offence against this Act.

In this Act the expression "intimidation" includes any word spoken or act done in order to and calculated to put any person in fear of any injury or danger to himself, or to any member of his family, or to any person in his employment, or in fear of any injury to or loss of his property, business, or means of living.

**Riots and other offences.** 8. Every person who in a proclaimed district—

- (a.) Takes part in any riot or unlawful assembly; or  
 (b.) Within nine months after the execution of any writ of possession or decree for possession of any house or land takes or holds forcible possession of such house or land or any part thereof; or  
 (c.) Commits an aggravated act of violence against the person; or  
 (d.) Commits an assault on any constable, bailiff, process server, or other minister of the law, while in the execution of his duty or in consequence thereof,

shall be guilty of an offence against this Act.

**Unlawful associations.** 9. Every person who knowingly—

- (a.) Is a member of an unlawful association as defined by this Act; or  
 (b.) Takes part in the operations of an unlawful association as defined by this Act, or of any meeting thereof,

shall be guilty of an offence against this Act.

**Illegal meetings.** 10. (1.) The Lord Lieutenant may from time to time, by order in writing of which public notice shall be given and published in the prescribed manner, prohibit any meeting which he has reason to believe to be dangerous to the public peace or the public safety. A copy of such order shall be forthwith served in the prescribed manner if possible on the promoters of such meeting.

(2.) And, in case such meeting be so prohibited, two or more justices of the peace shall attend at the place where they have reason to believe such meeting is to be held, and one or more of such justices shall in the prescribed form and manner then and there notify aloud, to the persons attending, that such meeting is prohibited by the Lord Lieutenant; and in case any of the persons so met or assembled together shall not disperse forthwith within a reasonable time, each of such persons thereupon shall be guilty of an offence against this Act; so, however, that the term of imprisonment awarded shall not exceed three months.

(3.) A copy of every such order shall be laid before Parliament within fourteen days after the day on which such order was made, if Parliament be then sitting, and if not, then within fourteen days after the next meeting of Parliament.

**Arrest of persons found at night under suspicious circumstances.** 11. (1.) In a proclaimed district, if a person is out of his place of abode at any time after one hour later than sunset and before sunrise under circumstances giving rise to a reasonable suspicion of a criminal intent, any constable may arrest that person and bring him forthwith before the nearest available justice of the peace, and such justice, after inquiry into the circumstances of the case, may either discharge him or take the necessary steps, by committing him to prison or taking reasonable bail with

two sufficient sureties not exceeding fifty pounds each, to bring him as soon as may be, and within a period not exceeding seven days, before a court of summary jurisdiction acting under this Act, and if on such person appearing before a court of summary jurisdiction acting under this Act, and the case being heard, the court believes that such person was out of his place of abode and not upon some lawful occasion or business he shall be guilty of an offence against this Act; so, however, that the term of imprisonment awarded shall not exceed three months.

(2.) Upon the hearing of a charge under this section against a person, that person may, if he thinks fit, be examined as an ordinary witness in the case.

#### PART IV.

##### GENERAL POWERS.

**Arrest of strangers found under suspicious circumstances.** 12. (1.) If a constable finds in a proclaimed district any stranger under circumstances giving rise to a reasonable suspicion of a criminal intent, he may arrest such stranger and bring him before a justice of the peace, and if such justice after inquiry into the circumstances of the case by evidence on oath, is satisfied that such stranger has not a lawful object in being in such place the justice may require him to give security by entering into a recognizance with two sufficient sureties to an amount not exceeding fifty pounds for each surety, to keep the peace and to be of good behaviour towards all Her Majesty's subjects during the ensuing six months, and, in default of his giving such security, may commit him to prison until he gives such security or is discharged in pursuance of this section, so however that he shall not be so imprisoned for more than one month.

(2.) The justice shall, on the application of any such person brought before him as aforesaid, adjourn the further hearing of the case to a petty sessions to be held for the petty sessions district within which such arrest took place, not less than four days after the date of such application, and to consist of at least two justices, on such person giving reasonable bail for his appearance at such petty sessions. Such court of petty sessions shall deal with the case in manner provided by the Petty Sessions (Ireland) Act, 1851, and the Acts amending the same, in the case of summary proceedings, and shall have the same power to deal with such person as is in this section hereinbefore conferred on a justice of the peace.

(3.) Upon the inquiry into the circumstances of the case of a person arrested under this section, such person and the husband or wife of such person as the case may be, may, if such person thinks fit, be examined as an ordinary witness in the case.

(4.) The justice or justices committing a person to prison in pursuance of this section may for good cause discharge a person so committed, and in any case shall forthwith transmit a report of the committal to the Lord Lieutenant, stating the grounds of the committal, the security required, and any explanation given by the prisoner by way of defence. The Lord Lieutenant may order the prisoner to be discharged if it seems just to him so to do.

**Newspapers.** 13. (1.) Where after the passing of this Act any newspaper wherever printed is circulated or attempted to be circulated in Ireland, and any copy of such newspaper appears to the Lord Lieutenant to contain matter inciting to the commission of treason or of any act of violence or intimidation, the Lord Lieutenant may order that all copies of such newspaper containing that matter shall, when found in Ireland, be forfeited to Her Majesty, and any constable duly

authorised by the Lord Lieutenant may seize the same.

(2.) Where it appears to the Lord Lieutenant that such newspaper was printed and published in Ireland, the order of the Lord Lieutenant shall indicate the part of the newspaper on account of which the order was made, and if the newspaper specifies the office in Ireland at which the newspaper is printed and published, the order shall, as soon as practicable, be served in the prescribed manner at the office so specified.

(3.) Every order of the Lord Lieutenant under this section shall be published in the "Dublin Gazette," and shall be laid before Parliament within thirty days if Parliament is then sitting, and, if not, within thirty days after the next sitting of Parliament

Searches for arms and illegal documents.

14. (1.) It shall be lawful for the Lord Lieutenant from time to time by warrant in the prescribed form to direct the inspectors and sub-inspectors of constabulary for the time being acting in any constabulary district, or any of them, to search for and seize in any proclaimed district, or in any part thereof, specified in the warrant, all or any of the following articles; that is to say, any arms, ammunition, papers, documents, instruments, or articles suspected to be used or to be intended to be used for the purpose of or in connexion with any secret society or secret association existing for criminal purposes; all such articles when seized shall be forfeited to Her Majesty.

(2.) Any inspector or sub-inspector so authorised by the warrant may, at any time within three months from the date of the warrant, and at any place within the proclaimed district or the part thereof specified in the warrant, together with such constables and other persons as he calls to his assistance, seize, detain, and carry away any of the articles above mentioned which he may find; and for the purposes aforesaid may at any time enter into any house, building, or place, and if admittance is refused or is not obtained within a reasonable time after it is first demanded, may enter by force in order to execute such warrant.

(3.) The person so executing the warrant shall, if desired, before executing the warrant produce the same.

Application of Alien Act to aliens.

15. The Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter twenty, intitled "An Act to authorise for one year and to the end of the then next session of Parliament the removal of aliens from the realm," and a copy of which is set forth in the third schedule to this Act, is hereby re-enacted, and shall continue in force for the same period as this Act.

Provided as follows:—

- (1.) For the purposes of construction the Act mentioned in this section shall be deemed to have been passed at the date of the passing of this Act, and expressions in the said Act referring to its commencement or passing shall be construed accordingly, but section seven of the said Act, providing for its duration, shall be of no effect:
- (2.) An alien convicted of a misdemeanour under section two of the said Act shall be treated as a misdemeanant of the first class or division:
- (3.) The place in which any examination of witnesses or hearing of a case before the Lords of the Privy Council, in pursuance of section three of the said Act is held, shall be in open court:
- (4.) The said Act shall extend to the Isle of Man in like manner as if that isle were declared by the said Act to form part of Great Britain.

Power of justices to summon witnesses.

16. Where a sworn information has been made that an offence has been committed, any resident magistrate in the county or place in which the offence was committed, although no person may be charged before him with the commission of such offence, may summon to appear before him at a police office or the place where the petty sessions for the district in which the said offence has been committed are usually held any person within his jurisdiction whom he has reason to believe to be capable of giving material evidence concerning such offence, and he may examine on oath and take the deposition of such person concerning any such offence, and, if he sees cause, may bind such person by recognizance to appear and give evidence at the next petty sessions, or when called upon within three months from the date of such recognizance; and the law relating to a witness when summoned before a justice having jurisdiction and required to give evidence concerning the matter of an information or complaint shall apply to a witness summoned under this section.

(1.) An offence for the purposes of this section means any felony or misdemeanour, and also any offence against this Act, with the exception of the offences specified in sections ten and eleven of this Act.

(2.) A person summoned to appear under this section shall not be excused from answering any question on the ground that the answer thereto may criminate, or tend to criminate, himself, but any statement made by any person in answer to any question put to him on any examination under this section shall not, except in case of an indictment or other criminal proceeding for perjury, be admissible in evidence against him in any proceeding civil or criminal.

(3.) A magistrate who conducts the examination, under this section, of a person concerning any offence, shall not, if such offence is punishable on summary conviction, take part in the hearing and determination of a charge for that offence, and shall not, if such offence is an indictable offence, take part in the committing for trial of such person for such offence.

Power of apprehending absconding witnesses.

17. Whenever any person is bound by recognizance to give evidence before justices, or any criminal court, any justice, if he sees fit, upon information being made in writing, and on oath, that such person is about to abscond, or has absconded, may issue his warrant for the arrest of such person, and if such person is arrested any justice, upon being satisfied that the ends of justice would otherwise be defeated, may commit such person to prison until the time at which he is bound by such recognizance to give evidence, unless in the meantime he produces sufficient sureties. Provided that any person so arrested shall be entitled on demand to receive a copy of the information upon which the warrant for his arrest was issued.

Additional constabulary force.

18. (1.) When it appears to the Lord Lieutenant from time to time, that by reason of the existence or apprehension of crime and outrage in any district, the number of constabulary ordinarily employed in such district is not sufficient, he may by proclamation, which shall be published in the "Dublin Gazette," declare that for the reasons aforesaid such district requires additional constabulary, and may order additional constabulary to be employed in such district, and for that purpose may from time to time add to the Royal Irish Constabulary such officers and men (if any) as he thinks necessary.

(2.) The Inspector-General of the Royal Irish Constabulary shall from time to time make out, in such manner as the Lord Lieutenant may order, an account of the total cost of any additional constabulary

employed in any district under this section, and shall certify the amount to the Lord Lieutenant.

(3.) The whole, or such part of the whole as the Lord Lieutenant may order, of the amount so certified, shall be a charge payable by the district in which such additional constabulary are employed. And the Lord Lieutenant may exempt from charge any specified portion of the area declared to be chargeable, or any specified rateable property in such area.

Provided that if the district is in a county where the number of constabulary is, after allowing for vacancies arising from death, absence on leave, absence from illness, or other like cause, deficient as compared with the quota for that county, and additional constabulary are employed, under this section, in the county, a charge under this section shall not be made in respect of such number of the additional constabulary as is equal to the number required for the time being to make up the said deficiency.

There shall be published monthly in the "Dublin Gazette" a return showing the number of additional constabulary employed pursuant to this section, the district or districts in which they are respectively employed, and a statement of the cost or approximate cost to each district resulting from such employment.

Power of Lord Lieutenant as to compensation, to be paid in certain cases of murder or maiming.

19. (1.) Where it appears from information on oath and in writing that any one has been murdered, maimed, or otherwise injured in his person, and that such murder, maiming, or injury is a crime of the character commonly known as agrarian, or arising out of any unlawful association, and an application is made for compensation, the Lord Lieutenant may, if he thinks fit, after giving public notice in the district in the prescribed manner, by warrant nominate such person or persons being or one of whom shall be a practising barrister of at least six years standing as he thinks fit to investigate the application, and after hearing all parties whom he or they deem to be interested, including any body of ratepayers of the district, to report to the Lord Lieutenant thereon; the parties shall be heard personally or by counsel, and the evidence taken on oath in open court.

(2.) For the purpose of such investigation the person or persons so nominated shall, with respect to enforcing the attendance of witnesses and all other matters, have the same power as justices sitting in petty sessions. Such public notice shall be given of the place and time at which the investigation will be held, and the investigation shall be proceeded with in such manner, and the report to the Lord Lieutenant shall be in the prescribed form and shall be made in such manner as the Lord Lieutenant may direct. The remuneration of such person or persons and the expenses of holding the investigation, to such amount as may be fixed by the Lord Lieutenant, with the approval of Her Majesty's Treasury, shall be defrayed out of moneys to be provided by Parliament.

(3.) Upon such report, the Lord Lieutenant may dismiss the application if he thinks fit, or may award such sum for compensation as he thinks just.

(4.) The said sum shall, if the Lord Lieutenant think just, be a charge payable by such district and in such instalments as the Lord Lieutenant may by warrant order, and shall be paid to the personal representative of the person murdered or to the person maimed or injured, or if he is dead to his personal representative.

(5.) Applications under this Act may be made by the personal representative or one of the next-of-kin of any person murdered, or by any person maimed or

injured, or by a Crown solicitor, or by any person in that behalf authorised by the Lord Lieutenant.

(6.) This section shall not apply to any cases of murder, maiming, or injury which have occurred before the first day of June one thousand eight hundred and eighty, except cases in which notice of intention to apply for a presentment under the provisions of the 33 Vic. c. 9. thirty-ninth section of the Peace Preservation (Ireland) Act, 1870, had been published as prescribed by that Act, but the claim for compensation failed to be decided by reason of the expiration of that Act.

(7.) Where the act causing the murder, maiming, or injury has occurred since the passing of this Act, an application for compensation under this section shall not be entertained unless it is made within three months after the occurrence of the act causing the murder, maiming, or injury.

(8.) Where the act causing the murder, maiming, or injury has occurred before the passing of this Act, an application for compensation under this section shall not be entertained unless it is made within three months after the passing of this Act.

20. (1.) For the purpose of the provisions of this Act with respect to additional constabulary in any district, and compensation in cases of murder, maiming, or injury, the expression "district" means any county, barony, townland, or parish, or part or parts thereof respectively.

(2.) Any charge in respect of such additional constabulary, or any sum for such compensation as aforesaid, which is for the time being a charge payable by any district shall be apportioned rateably upon all rateable hereditaments in the district other than those exempted by the Lord Lieutenant in pursuance of this Act, and shall be payable by the occupiers thereof:

(3.) Such apportionment shall be made and such charges collected by persons for the time being appointed by warrant of the Lord Lieutenant for that purpose; and every person so appointed collector shall, for the purpose of such collection, have all the powers, authorities, and remedies given by law to the collector of grand jury cess, and shall account for the sums which he is authorised to collect in manner directed from time to time by the Lord Lieutenant, and the Lord Lieutenant's warrant shall be conclusive proof that the sums named in the warrant are to be raised in the district as therein mentioned, and that the person named in the warrant is authorised to collect the same.

(4.) Any person liable to any portion of such charge shall on demand before the execution of the warrant for collection be entitled to inspect the apportionment and the warrant or a copy thereof for the collection of the same.

(5.) A return showing the sums from time to time collected under this section, the districts from which the same have been levied, and the manner in which the same have been disposed of, shall be presented annually to Parliament within one month after the opening of Parliament.

Every warrant imposing a charge upon a district in respect of such additional constabulary, or such compensation as aforesaid, shall specify the time during which it is to remain in force, and shall be in the prescribed form, and shall be published in the prescribed manner, and a copy of every such warrant shall be laid before Parliament within one month after the date of the warrant, if Parliament is then sitting, and if not within one month after the next meeting of Parliament, together with a statement showing the following par-

particulars, in cases where such particulars do not appear in the warrant; that is to say, the valuation of the district proposed to be charged; the number of instalments by and the time within which the charge is to be raised; the poundage rate necessary for raising the same; and the grounds upon which the district has been charged, and the number of inhabitants in such district at the last census as far as can be ascertained.

## PART V.

## SUPPLEMENTAL PROVISIONS AND DEFINITIONS.

**Punishment for offence against Act.** 21. A person guilty of an offence against this Act shall be liable on summary conviction to imprisonment with or without hard labour for a term not exceeding six months, or such less term as is in that behalf fixed by any section of this Act.

**Summary procedure for offences under Act.** 22. (1.) Any offence against this Act shall be punishable on summary conviction, and may be prosecuted—

(a.) Within the police district of Dublin Metropolis in manner provided by the Acts regulating the powers and duties of justices of the peace of such district or of the police of such district; and

(b.) Elsewhere in manner provided by the Petty Sessions (Ireland) Act, 1851, and the 14 & 15 Vict. c. 93. Acts amending the same, subject nevertheless to the provisions of this section.

(2.) The proceedings for enforcing the appearance of the person charged, and the attendance of witnesses, shall be the same, and the evidence for both the prosecution and defence shall be taken as depositions in the same manner as if the offence were an indictable offence; but, save as aforesaid, the procedure, including the enforcing the attendance of witnesses for the defence, shall be the same as in the case of an offence punishable on summary conviction.

(3.) A charge for an offence against this Act shall be heard and determined—

(a.) Within the police district of Dublin Metropolis before a divisional justice of that district; and

(b.) Elsewhere before two resident magistrates in petty sessions, one of whom shall be a person of the sufficiency of whose legal knowledge the Lord Lieutenant shall be satisfied:

And in this Act the expression "court of summary jurisdiction acting under this Act" means any such divisional justice or two resident magistrates.

(4.) The petty sessions held by two resident magistrates may be held at any place fixed by law for the holding of petty sessions, and on such days as may be from time to time determined in the prescribed manner.

(5.) Where a person is convicted summarily of an offence against this Act and sentenced to any term of imprisonment exceeding one month, such person may appeal against such conviction to a court of general sessions held in pursuance of this section, but the proceedings before a divisional justice or two resident magistrates, on a charge for an offence against this Act, shall not be reviewed in any other manner, whether by means of a writ of certiorari or otherwise, and such appeal shall, save as herein-after otherwise provided,—

(a.) Be subject, except in the police district of Dublin Metropolis, to the provisions to which an appeal under the Petty Sessions (Ireland) Act, 1851, is by section twenty-four of that Act, and any enactments amending that section made subject; and

(b.) Be subject in the police district of Dublin Metropolis to the said provisions, with such modifications therein as may be prescribed for the purpose of adapting the same to the circumstances of that district.

(6.) For the purpose of hearing and determining appeals under this section general sessions of the peace shall be held at the prescribed times and places, and at such general sessions the chairman of the county shall sit as sole judge of the court, and shall hear and determine any such appeals which are brought before him, and shall have the jurisdiction and powers of a court of quarter sessions, and the decision of such chairman, whether as to the jurisdiction of the justice or magistrates or otherwise, shall be final and conclusive.

(7.) Any depositions taken at the hearing of a case before the divisional justice or two resident magistrates may be admitted in evidence on an appeal in that case.

(8.) The expression "chairman of the county" in this section means a county court judge and chairman of the quarter sessions of a county, and includes a recorder.

**Proclamation of districts.** 23. The Lord Lieutenant, by and with the advice of the Privy Council in Ireland, may from time to time, when it appears to him necessary for the prevention of crime and outrage, by proclamation declare the provisions of this Act which relate to proclaimed districts or any of those provisions to be in force within any specified part of Ireland as from the date of the proclamation, or any later date specified in the proclamation; and the provisions of this Act which are mentioned in the proclamation shall after the said date be in force within such specified part of Ireland, and that part of Ireland shall be a proclaimed district within the meaning of the provisions so mentioned. The proclamation shall provide for the manner of the promulgation thereof.

**Supplemental provisions as to proclamations and orders.** 24. (1.) The Lord Lieutenant, but by and with the advice of the Privy Council, where a proclamation or order has been made by and with such advice, may, by a further proclamation or order, from time to time alter or revoke any proclamation or order made by him under this Act. A copy of every proclamation under this Act shall be laid before each House of Parliament within fourteen days after the making thereof, if Parliament is then sitting, and if not, then within fourteen days after the next meeting of Parliament.

(2.) Any warrant, order, notice, or other document of the Lord Lieutenant under this Act may be signed under his hand or under the hand of the Chief Secretary to the Lord Lieutenant.

(3.) Every proclamation under this Act, and a notice of the promulgation thereof in the manner provided, shall be published in the "Dublin Gazette."

(4.) The production of a printed copy of the "Dublin Gazette," purporting to be printed and published by the Queen's authority, and containing the publication of any proclamation, order, or notice under this Act, shall be conclusive evidence of the contents of such proclamation, order, or notice, and of the date thereof, and in the case of a proclamation that the district specified in such proclamation is a proclaimed district within the meaning of the provisions of this Act mentioned in the proclamation, and that the said proclamation has been duly promulgated, and in the case of an order that it has been duly made.

**Regulation as to warrants and notice of trial.** 25. (1.) A warrant for the trial by a Special Commission court of a person charged with an offence shall be in the

14 & 15 Vict. c. 93.

prescribed form, and shall, subject to the other provisions of this Act, be issued before he is arraigned for trial for such offence before some other tribunal in the ordinary course of law, or before the expiration of two months from the date of his being committed for trial, whichever of such events may first happen.

(2.) A copy of a warrant for the trial of a person before a Special Commission court shall be served on such person in the prescribed manner not less than fourteen days before his trial before such court begins, and shall be published in the "Dublin Gazette," and shall be laid before Parliament within fourteen days, if Parliament be then sitting, and, if not, within fourteen days after the then next meeting of Parliament.

(3.) Not less than fourteen days before the sitting of any Special Commission court to try a person for any offence, public notice shall be given in the prescribed manner in the locality in which the person charged with such offence was committed for trial, stating the names of the Special Commissioners, the said offence, the name of the person charged with such offence, and the place at which the court will sit and the day on which the sitting of the court will begin. A copy of such notice shall also be served in the prescribed manner, and within the prescribed time, on the person to be tried.

(4.) An objection to the jurisdiction of a Special Commission court to try a person for any offence shall not be entertained by reason only of any non-observance of the provisions of this section; but the court, on application, may adjourn the case, so as to prevent any person charged being prejudiced by such non-observance.

**Rota of Judges.** 26. (1.) The judges to be members of a Special Commission court, and the judges to sit in the Court of Criminal Appeal under this Act, shall be respectively selected according to separate rotas to be determined by ballots held at the prescribed time and in the prescribed manner; but where a judge appears to the Lord Lieutenant to be, on account of illness or some reasonable cause, ineligible, the judge next on the rota shall be selected.

(2.) Any judge appointed after either rota is determined shall be added after all the other judges on the rota.

(3.) An objection to the jurisdiction of a Special Commission court, or of the Court of Criminal Appeal under this Act, shall not be entertained by reason only of the rota of the judges to form or sit on such court not having been properly determined, or not having been observed.

**Regulations as to courts.** 27. (1.) Commissions under this Act constituting Special Commission courts shall be in the prescribed form and be issued and superseded in the prescribed manner.

(2.) If any member of a Special Commission court dies, or it appears to the Lord Lieutenant that from illness or some reasonable cause it is necessary that another judge should be appointed in the place of a member of a Special Commission court, the Lord Lieutenant may, if he thinks it expedient so to do, direct a supplemental commission to be issued in the prescribed form and manner, appointing the next judge on the rota who is not ineligible to fill the vacancy in such court.

(3.) Subject to the provisions of this Act, and for the purpose of the trial of any persons charged before them, a Special Commission court shall have all the powers and jurisdiction of Her Majesty's High Court of Justice in Ireland, and all the same powers and jurisdiction as if it were a court of assize, and court of oyer and terminer, and a court of gaol delivery, trying

with a jury an offender indicted before such court, and shall have all the powers of a petty jury at such court, and shall be a superior court of record, and the same intendment shall be made in respect of all orders, writs, and processes made by and issuing out of such Special Commission court, as if it were a superior court of record acting according to the course and by the authority of the common law.

(4.) All the members of a Special Commission court shall be present at the hearing and determination of the case of a person tried before such court, but, save as aforesaid, the jurisdiction of the court may be exercised by any of such members, and any act of the court shall not be invalidated by reason of any vacancy among the members.

(5.) Any offence with which a person brought for trial before a Special Commission court, in pursuance of this Act, is charged, shall be deemed to have been committed at some place within the jurisdiction of such court.

(6.) During such time as a person is subject, in pursuance of a warrant under this Act, to be tried by a Special Commission court for any offence, he shall not be liable to be tried by any other court for the same offence.

(7.) The trial by a Special Commission court of a person in pursuance of a warrant under this Act shall begin at such time within two months from the date of the warrant as may be ordered by the Lord Lieutenant, unless such trial is postponed by the court in the prescribed manner on the request of such person, or on account of the illness or absence of a witness, or on account of a vacancy in the court, or of the illness of such person, or some other sufficient cause, or unless the trial of such person, when commenced, has been discontinued on account of a vacancy in the court or the illness of such person, or some other sufficient cause.

(8.) Where a trial of a person is postponed or discontinued, the trial of such person may take place before the same court or any other Special Commission court, and shall take place as soon as may be and within the prescribed time.

(9.) In the event of a trial of a person which has been postponed or discontinued taking place before the same Special Commission court, the prescribed notice shall be given of such trial, and in the event of such trial taking place before another Special Commission court, a new warrant shall be issued for the trial of such person, and such warrant shall not be invalidated by reason only that it is issued after the expiration of two months from the date of such person being committed for trial.

(10.) A commission appointing a Special Commission court shall not be superseded or affected by the issue of another like commission, or of any commission of assize, oyer and terminer, gaol delivery, or other commission whatsoever, whether to the same or any other persons, nor shall the sitting or jurisdiction of such court be affected by the sitting of any such commission or of the High Court of Justice.

(11.) The number of judges sitting as the Court of Criminal Appeal under this Act to hear any case shall be such uneven number as, subject to the provisions of this Act, the Lord Chancellor may from time to time appoint, but if during the hearing of any case any judge so sitting dies or becomes unable to act, the whole case shall be again heard.

(12.) Sentence of death passed by a Special Commission court shall be carried into effect in the county or place where the trial is held by the sheriff having jurisdiction therein, or in such other place and by such other sheriff or officer as the Lord Lieutenant may direct.

(13.) The indictment against any person brought for trial before a Special Commission court shall be prepared in the prescribed manner, and shall be in the prescribed form, and shall be of the same effect as if it were, and shall, so far as circumstances may admit, be deemed for all the purposes of the trial to be, an indictment found by a grand jury; and the proceedings before a Special Commission court shall, so far as circumstances may admit, be conducted in like manner as the proceedings on the trial of an indictment before a court of oyer and terminer, and the court shall have the same power of amending any indictment or other document or proceeding which a court of oyer and terminer has.

(14.) An objection to the jurisdiction of a Special Commission court to try a person in pursuance of a warrant under this Act shall not be entertained by reason only of any want of form in the warrant or of any mistake in the name or description of such person in the warrant if it is shown that the person tried is the person to whom the warrant relates; and an objection to the proceedings of such court for any want of form on the trial of any person shall not be entertained, if no injustice was thereby done to such person.

(15.) Lists of the names of all persons convicted by a Special Commission court under this Act, with the dates of their convictions and the offences of which they have respectively been convicted, shall from time to time be laid before both Houses of Parliament at the following times, that is to say, a list of such names shall be laid before Parliament within seven days after the commencement of each Session of Parliament, and subsequent lists at intervals of not more than three months during the continuance of each Session. Every list after the first list shall contain only the names of persons convicted since the previous list.

(16.) The Lord Lieutenant shall from time to time provide for the payment of the reasonable expenses of a person coming to the place at which he is to be tried before a Special Commission court in any case where he was admitted to bail and is to be tried beyond the limits of the county in which he was committed for trial.

(17.) The prescribed Crown Solicitor, or other prescribed officer, under the direction of the Attorney General, shall provide, when necessary, for advancing money for enabling a person about to be tried before a Special Commission court, and the witnesses required for the defence of such person, to attend the trial.

Rules of Procedure in Schedule.

28. The rules in the first schedule to this Act with respect to procedure on appeals under this Act to the Court of Criminal Appeal and the other matters therein mentioned shall have the same effect as if enacted in the body of this Act.

Allowances to judges, witnesses, and others.

29. There shall be paid out of the Consolidated Fund such allowances to judges and chairmen of counties, and there shall be paid out of moneys provided by Parliament such allowances to officers and other persons acting in pursuance of this Act, and such expenses incurred in reference to any court established or exercising jurisdiction under this Act, and such expenses of persons charged, counsel, and witnesses, payable in pursuance of this Act, as the Lord Lieutenant, with the approval of the Commissioners of Her Majesty's Treasury, may from time to time appoint.

Rules for procedure and matters to be prescribed.

30. The Lord Lieutenant may, from time to time, by and with the advice of the Privy Council make, and when made revoke, add to, and alter rules in relation to the following matters:—

- (1.) For adapting the procedure on and preliminary to the trial of criminal cases, including the forms of indictment and other matters, to a Special Commission court under this Act; and
- (2.) In relation to the procedure on appeals from a Special Commission court under this Act, and in relation to the sittings of the Court of Criminal Appeal under this Act; and
- (3.) In the case of a trial before a Special Commission court, in relation to the sitting of such court in any place, and to the nomination of officers of such court; and
- (4.) In the case of a trial before a Special Commission court, or the case where a special jury is required or where the venue is changed in relation to the attendance, authority, and duty of sheriffs, coroners, justices, gaolers, constables, officers, ministers, and persons, the removal and custody of prisoners, the alteration of any writs, precepts, inquisitions, indictments, recognizances, proceedings, and documents, the transmission of inquisitions, indictments, recognizances, and documents, and the expenses of prosecutors, and witnesses, and the carrying of sentences into effect; also, in the case where a special jury is required, the number of jurors to be returned on any panel; and
- (5.) In relation to forms for the purposes of this Act, and to any matter by this Act directed to be prescribed; and
- (6.) In relation to any matters which appear to the Lord Lieutenant, by and with the advice aforesaid, to be necessary for carrying into effect the provisions of this Act;

and any rules made in pursuance of this Act shall be judicially noticed and be of the same validity as if they were contained in this Act.

Powers of Act to be cumulative.

31. Any powers or jurisdiction conferred by this Act on any court or authority in relation to any offence or matter shall be deemed to be in addition to and not in derogation of any other powers or jurisdiction of any court or authority subsisting at common law or by Act of Parliament in relation to such offence or matter:

Provided that no person shall be tried or punished twice for the same offence.

Saving for trade unions.

34 & 35 Vict. c. 31.  
39 & 40 Vict. c. 22.  
38 & 39 Vict. c. 84.

Saving for associations.

32. No agreement or combination which, under the Trade Union Acts, 1871 and 1876, or the Conspiracy and Protection of Property Act, 1875, is legal, shall be deemed to be an offence against this Act.

33. Nothing in this Act shall render unlawful any political or social association for such objects, and acting by such means as, under this Act or otherwise, are not unlawful, nor shall membership of such an association be deemed to be an offence against this Act.

Definition of "unlawful association."

34. The expression "unlawful association" means an association formed:—

- (a.) for the commission of crimes; or
- (b.) carrying on operations for or by the commission of crimes; or
- (c.) for encouraging or aiding persons to commit crimes;

and the expression "crime" for the purposes of this section means any offence against this Act, and also any crime punishable on indictment by imprisonment with hard labour, or by any greater punishment.

General definitions.

35. In this Act unless the context otherwise requires—



The expression "Lord Lieutenant" means the Lord Lieutenant of Ireland or other Chief Governor or Governors of Ireland for the time being.

The expression "county" includes a county of a city and a county of a town and city and county.

The expression "Attorney General" includes in the case of any vacancy or inability to act the Solicitor General.

44 & 45 Vict. c. 5. The expressions "arms" and "ammunition" respectively have the same meaning as in the Peace Preservation (Ireland) Act, 1881.

The expression "prescribed" means prescribed by rules to be made by the Lord Lieutenant in manner provided by this Act.

The expression "committed for trial" means a person committed to gaol to be there kept until his trial for an offence, or admitted to bail on the condition of his appearing to take his trial for any offence.

The expression "aggravated act of violence against the person" means an assault which either causes actual bodily harm or grievous bodily harm, or is committed with intent to cause grievous bodily harm.

The expression "attack on a dwelling house" means any crime cognisable by law involving the breaking into, firing at, or otherwise assaulting or injuring a dwelling house.

The expression "resident magistrate" means a magistrate appointed in pursuance of the Act of the session of the sixth and seventh years of the reign of King William the Fourth, chapter thirteen, intituled "An Act to consolidate the laws relating to the constabulary force in Ireland," and of the Acts amending the same, and includes any divisional justice of the police district of Dublin metropolis.

The expression "inspector of constabulary" means a county inspector of the Royal Irish Constabulary, and includes an inspector of the Dublin metropolitan police, and the expression "sub-inspector of constabulary" means a sub-inspector of the Royal Irish Constabulary.

The expression "judges of the Supreme Court of Judicature" means the judges of Her Majesty's Court of Appeal and of Her Majesty's High Court of Justice in Ireland other than the Judicial Commissioner of the Irish Land Commission.

Short title. 36. This Act may be cited as the Prevention of Crime (Ireland) Act, 1882.

Duration of Act. 37. This Act shall continue in force until the expiration of three years next after the passing thereof, and to the end of the then current session of Parliament.

Provided, that the expiration of this Act shall not affect the validity of anything done in pursuance of this Act, and any person convicted under this Act may be punished as if this Act continued in force, and all appeals, prosecutions, and other legal proceedings pending under this Act at the time of the expiration thereof may be carried on, completed and carried into effect, and the sentences carried into execution, as if this Act had not expired.

SCHEDULES.

FIRST SCHEDULE.

Section 28.

RULES FOR APPEALS TO THE COURT OF CRIMINAL APPEAL.

(1.) Notice of the appeal shall be given within seven days after the day on which the appellant was sentenced by the

Special Commission court, or such further time as may be allowed by the said Special Commission Court, or by the Court of Criminal Appeal.

(2.) The said notice shall be served in the prescribed manner on the master of the Crown Office, or other prescribed person (who is in this Schedule included in the term Master of the Crown Office), but such notice shall not be invalidated by any informality in the procedure.

(3.) The master of the Crown Office shall forthwith in the prescribed manner give notice to the Attorney General, and to the Special Commission court before which the appellant was tried, and the latter court shall forthwith forward in the prescribed manner for the use of the Court of Criminal Appeal copies of the shorthand writer's notes, and all indictments, documents, and things connected with the case.

(4.) The master of the Crown Office shall forthwith give notice to the judges whose duty it is, according to the rota, to sit in the Court of Criminal Appeal, and those judges shall, notwithstanding any vacation, forthwith proceed to hold a court, and hear and determine the appeal.

(5.) Unless the Court of Criminal Appeal on the application of the appellant, or of the Attorney-General, for special reason otherwise orders, the court shall be held within fourteen days after the day on which the appellant was sentenced, and shall sit from day to day to hear the appeal.

(6.) The appeal shall be heard in open court in the presence of the appellant, and the appellant may appear by counsel or solicitor.

(7.) The court may re-hear the case by the reading of the evidence as contained in the shorthand writer's notes, and may permit to be called or call any new witness, and may recall any witness who gave evidence at the trial, and may either examine such witness or let him be examined and cross examined by or on behalf of the appellant and the prosecutor.

(8.) During the time allowed for an appeal and while an appeal is pending a sentence shall not be carried into execution, but the appellant shall be detained in custody in like manner as if he were awaiting his trial; and he shall be brought before the court in accordance with the prescribed rules, and the master of the Crown Office shall give the prescribed notice of the appeal to the sheriff, gaoler, and other persons concerned in the execution of the sentence or the custody of the appellant, and shall also give such notice of the result of the appeal as may be necessary for carrying into effect the final judgment of the court.

(9.) Where a person convicted by a Special Commission court is in custody and without legal assistance, and is desirous to appeal, it shall be the duty of the governor or other chief officer of the prison in which he is confined to assist him in making out and forwarding within due time a notice of appeal to the proper officer in accordance with this Act.

(10.) An appellant shall be entitled, on application, to have a copy of the shorthand writer's notes, free of charge.

Section 4.

SECOND SCHEDULE.

Column 1.	Column 2.
County of Antrim.	County of the Town of Carrickfergus.
County of Cork.	County of the City of Cork.
County of Dublin.	County of the City of Dublin.
County of Galway.	County of the Town of Galway.
County of Kilkenny.	County of the City of Kilkenny.
County of Limerick.	County of the City of Limerick.
County of Waterford.	County of the City of Waterford.

Section 15.

## THIRD SCHEDULE.

## ALIEN ACT.

COPY OF ACT REFERRED TO.

ANNO UNDECIMO  
VICTORIÆ REGINÆ.  
CAP. XX.

An Act to authorise for One Year, and to the End of the then next Session of Parliament, the Removal of Aliens from the Realm. [9th June 1848.]

Power to Secretary of State or Lord Lieutenant of Ireland to order Aliens to depart this Realm.

WHEREAS it is expedient for the due Security of the Peace and Tranquillity of this Realm, that Provision should be made, for a Time to be limited, respecting Aliens arriving or resident in this Kingdom: Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That when and so often as One of Her Majesty's Principal Secretaries of State in that Part of the United Kingdom called Great Britain, or the Lord Lieutenant or other Chief Governor or Governors in that Part of the United Kingdom called Ireland, shall have Reason to believe, from Information given to him or them respectively, in Writing, by any Person subscribing his or her Name and Address thereto, that for the Preservation of the Peace and Tranquillity of any Part of this Realm it is expedient to remove therefrom any Alien or Aliens who may be in any part of this Realm, or who may hereafter arrive therein, it shall be lawful for such Secretary of State in that Part of the United Kingdom called Great Britain, and for such Lord Lieutenant or other Chief Governor or Governors in that Part of the United Kingdom called Ireland, by Order under his or their Hand or Hands respectively, to be published in the London or Dublin Gazette, as the Case may be, to direct that any such Alien or Aliens who may be within Great Britain or Ireland respectively, or who may hereafter arrive therein, shall depart this Realm, within a Time limited in such Order;

If Aliens wilfully refuse to obey such Order, they may be committed to Gaol until taken in charge for the purpose of the being sent out of the Realm. and if any such Alien shall knowingly and wilfully refuse or neglect to pay due Obedience to such Order, or shall be found in this Realm or any part thereof, contrary to such Order, after such Publication thereof as aforesaid, and after the Expiration of the Time limited in such Order, it shall be lawful for any of Her Majesty's Principal Secretaries of State, or for the Lord Lieutenant or other Chief Governor or Governors of Ireland, or his or their Chief Secretary, or for any Justice of the Peace, or for the Mayor or Chief Magistrate of any City or Place, to cause every such Alien to be arrested, and to be committed to the Common Gaol of the County or place where he or she shall be so arrested, there to remain, without Bail or Mainprize, until he or she shall be taken in charge for the Purpose of being sent out of the Realm, under the Authority hereinafter given.

Penalty on Aliens disobeying such Order.

Order as aforesaid shall be guilty of a Misdemeanour, and being convicted thereof shall, at the Discretion of the Court, be adjudged to suffer Imprisonment for any Time not exceeding one Month for the First Offence, and not exceeding Twelve Months for the Second and any subsequent Offence.

Aliens on neglecting to obey Order may be given in charge by Warrant of Secretary of State or Lord Lieutenant of Ireland, to be conveyed out of the Kingdom.

Neglect to obey such Order, or convicted of such Refusal or Neglect, and either before or after such Alien shall have

suffered the Punishment inflicted for the same, by Warrant under his hand and Seal, to give such Alien in charge to One of Her Majesty's Messengers, or to any other Person or Persons to whom he shall think proper to direct such Warrant, in order to such Alien being conveyed out of the Kingdom; and such Alien shall be so conveyed accordingly:

Where any Alien shall allege any Excuse for not complying with Order, Privy Council to judge of the Sufficiency of the same.

Provided always, that where such Alien (not having been convicted as aforesaid) shall allege any Excuse for not complying with such Order, or any Reason why the same should not be enforced, or why further Time should be allowed him or her for complying therewith, it shall be lawful for the Lords of Her Majesty's Privy Council in Great Britain or in Ireland, as the Case may be, to judge of the Sufficiency of such Excuse or Reason, and to allow or disallow the same either absolutely or on such Condition as they shall think fit; and where such Alien shall be in Custody under such Warrant of any of Her Majesty's Secretaries of State or of the Lord Lieutenant or other Chief Governor or Governors of Ireland as aforesaid, the Messenger or other Person in whose Custody he or she shall be, forthwith upon its being signified to him that such Excuse or Reason is alleged by such Alien, shall make known the same to such Secretary of State, or to the Lord Lieutenant or other Chief Governor or Governors of Ireland, as the Case may be, who, upon receiving such Notification, or in any Case in which he or they shall be informed that any such Excuse or Reason is alleged by or on behalf of any Alien to quit the Realm, shall forthwith suspend the Execution of such Warrant until the Matter can be inquired into and determined by the said Lords of Her Majesty's Privy Council; and such Alien, if in Custody under any such Warrant, shall remain in such Custody, or if not in Custody may be given in charge by any such Warrant as aforesaid, and shall remain in Custody until the Determination thereon shall be made known, unless in the meantime such Secretary of State, or the Lord Lieutenant or other Chief Governor or Governors of Ireland, shall consent to or the said Lords shall make Order for the Release of such Alien, either with or without Security: Provided always, that the Lords of Her Majesty's Most Honourable Privy Council shall cause to be delivered to such Alien, in Writing, a general Summary of the Matters alleged against him or her, and shall allow him or her reasonable Time to prepare his or her Defence; and that it shall be lawful for him or her to summon and examine upon Oath Witnesses before the said Lords of Her Majesty's Most Honourable Privy Council, and to be heard before them, by himself or herself, or his or her Counsel, in support of the Excuse or Reason by him or her alleged.

Privy Council shall cause a Summary of Matters alleged against Alien to be delivered to him, &c.

Judges may admit Aliens to Bail in all Cases, if they see sufficient Cause.

IV. Provided always, and be it enacted, That in every Case in which Power is given by this Act to commit any Alien to Gaol without Bail or Mainprize it shall and may be lawful for any Justices of Her Majesty's Courts of Record at Westminster or in Dublin, or for any of the Barons in Great Britain or Ireland, being of the Degree of the Coif, or for the Lord Justice Clerk or any of the Commissioners of Justiciary in Scotland, if upon Application made he shall see sufficient Cause, to admit such Person to Bail, he or she giving sufficient Security for his or her Appearance to answer the Matters alleged against him or her.

Where Alien shall not have been sent out of the Realm within One Month after Commitment, Judge, &c. empowered, where application has been made, to continue in, or discharge such Alien out of, Custody.

V. Provided, nevertheless, and be it enacted, That where any Alien who shall have been committed under this Act to remain until he or she shall be taken in charge for the Purpose of being sent out of the Realm, shall not be sent out of the Realm within one Calendar Month after such Commitment, it shall in every such Case be lawful for any of the Justices of Her Majesty's Courts of Record at Westminster or in Dublin, or for any of the Barons in Great Britain or Ireland, being of the Degree of the Coif, or for the Lord Justice Clerk or any of the Commissioners of Justiciary in Scotland, or for any Two of

Her Majesty's Justices of the Peace in any Part of the United Kingdom, upon Application made to him or them by or on the Behalf of the Person so committed, and upon Proof made to him or them that reasonable Notice of the Intention to make such Application had been given to some or One of Her Majesty's Principal Secretaries of State in Great Britain, or to the Lord Lieutenant or Chief Governor or Governors of Ireland, or his or their Chief Secretary, according to his or their Discretion, to order the Person so committed to be continued in or discharged out of Custody.

Act not to extend to Ambassadors, &c., or Aliens who have resided in the Kingdom for Three Years. VI. Provided always, and be it enacted, That nothing in this Act contained shall affect any Foreign Ambassador or other Public Minister duly authorised, nor any Person belonging to the diplomatic or domestic Establishment of any such Foreign Ambassador or Public Minister, registered as such according to Law, or being actually attendant upon such Ambassador or Minister, nor any Alien under the Age of Fourteen Years, or who shall have been residing within this Realm for Three Years next before the passing of this Act.

Duration of Act. VII. And be it enacted, That this Act shall continue in force for One Year from the passing thereof, and until the End of the then next Session of Parliament.

Act may be repealed, &c. VIII. And be it enacted, That this Act may be repealed or amended in the present Session of Parliament,

CAP. XXVI.

An Act to amend the Law relating to the Election of Lords Temporal to serve in Parliament for Ireland. [12th July 1882.]

BE it enacted, &c., . . . . .  
Reduction of period between tests of writ and election. 1. In the event of any future election of a Lord Temporal to serve in Parliament for Ireland, the period of fifty-two days from the teste of the writs for such election, within which it is required by the Act of Union of Great Britain and Ireland that the same shall be returned into the Crown Office of Ireland, shall be reduced to a period of thirty days.

Short title. 2. This Act may be cited as the Election of Representative Peers (Ireland) Act, 1882.

CAP. XXVII.

An Act to extend certain Provisions of the Poor Rate Assessment and Collection Act, 1869, to the Highway Rate, and for other purposes. [12th July 1882.]

CAP. XXVIII.

An Act to apply the sum of five million seven hundred and three thousand eight hundred and ninety-one pounds out of the Consolidated Fund to the service of the year ending on the thirty-first day of March one thousand eight hundred and eighty-three. [24th July 1882.]

CAP. XXIX.

An Act to amend the Acts relating to the County Courts in Ireland, and to make better provision for Appeals under the said Acts. [24th July 1882.]

WHEREAS it is expedient to amend the law and procedure regulating appeals from county courts in Ireland:

Be it enacted, &c., . . . . .

Application of Act. 1. This Act shall extend to Ireland only.

Short title. 2. This Act may be cited as the County Court Amendment (Ireland) Act, 1882.

Interpretation of terms. 3. The terms "county court judge," "clerk of the peace," "civil bill court," "county," and "borough" in this Act shall have the same meaning as is provided by the fortieth and forty-first Victoria, chapter fifty-six.

Any person dissatisfied with any decree, dismissal, or order, whether adverse to him or in his favour, pronounced by any county court judge, in the exercise by him of any jurisdiction at law under the several Acts conferring jurisdiction on county or civil bill courts in Ireland, may, in manner herein provided, appeal therefrom to the judge of assize for the respective counties in which such decree, dismissal, or order shall have been made or pronounced; and such judge of assize is hereby empowered and required to hear such suit or matter, and to make such decree or order thereon, and issue such execution in all respects as is empowered by the several statutes in that behalf by the said county court judges to be awarded, and the said judge of assize may upon any such appeal adjourn or remit the suit or matter back to the county court judge with such declarations or directions as he shall think proper, and may upon said appeal make such order with reference to the costs thereof as he shall think fit. Nothing contained in this section shall apply to any suit or matter instituted under the equitable jurisdiction vested in the county courts by the County Officers and Courts (Ireland) Act, 1877, 40 & 41 Vict. c. 58.

4. Any person dissatisfied with any decree, dismissal, or order, whether adverse to him or in his favour, pronounced by any county court judge, in the exercise by him of any jurisdiction at law under the several Acts conferring jurisdiction on county or civil bill courts in Ireland, may, in manner herein provided, appeal therefrom to the judge of assize for the respective counties in which such decree, dismissal, or order shall have been made or pronounced; and such judge of assize is hereby empowered and required to hear such suit or matter, and to make such decree or order thereon, and issue such execution in all respects as is empowered by the several statutes in that behalf by the said county court judges to be awarded, and the said judge of assize may upon any such appeal adjourn or remit the suit or matter back to the county court judge with such declarations or directions as he shall think proper, and may upon said appeal make such order with reference to the costs thereof as he shall think fit. Nothing contained in this section shall apply to any suit or matter instituted under the equitable jurisdiction vested in the county courts by the County Officers and Courts (Ireland) Act, 1877, 40 & 41 Vict. c. 58.

5. Every appeal under this Act shall be by notice signed by the party appealing or his solicitor in the form or to the like effect in the schedule to this Act annexed. Such notice shall be lodged with the clerk of the peace and shall be served within four clear days from the close of the sitting of the county court for the hearing of civil bills at which the decree or adjudication appealed from shall have been made, and shall be to the next assize to be held after the said period. Service of such notice shall be effected on the opposing party or his solicitor personally, or by leaving same at their or either of their residences with a clerk, servant, wife, or child, or other person therein over the age of sixteen years; and proof of such service shall be by affidavit made before any justice of the peace, which he is hereby empowered to take, or be by affidavit.

6. A notice of appeal shall be a stay of execution, provided a recognizance with sufficient sureties conditioned to pay the sum recovered and costs, or costs awarded in case no sum is recovered if a defendant appealing, or to pay the costs awarded where the appellant was a plaintiff in the county court, and to pay the costs of the appeal in case the adjudication appealed from was in favour of the party appealing, be entered into within the said period of four clear days before the clerk of the peace or any justice of the peace of the county, or in case the party appealing desire to dispense with a recognizance by lodgment within the like period of the amount of said

proof being given the clerk of the peace shall enter the same for hearing before the judge of assize, and such entry shall be prima facie proof of due service thereof before such judge of assize.

6. A notice of appeal shall be a stay of execution, provided a recognizance with sufficient sureties conditioned to pay the sum recovered and costs, or costs awarded in case no sum is recovered if a defendant appealing, or to pay the costs awarded where the appellant was a plaintiff in the county court, and to pay the costs of the appeal in case the adjudication appealed from was in favour of the party appealing, be entered into within the said period of four clear days before the clerk of the peace or any justice of the peace of the county, or in case the party appealing desire to dispense with a recognizance by lodgment within the like period of the amount of said

sums respectively with the clerk of the peace, who shall retain the same and dispose thereof as he shall be directed by the judge of assize; and the recognizance herein provided may be in the Form 31, Schedule C. of the fourteenth and fifteenth Victoria, chapter fifty-seven, or to the like effect, and with such variation as is by this Act provided; and the reception of such recognizance by the clerk of the peace shall be conclusive evidence that the several provisions herein enacted in reference thereto have been complied with, and in case any such recognizance shall have been taken by any justice of the peace, the same shall be returned to the clerk of the peace within two days after same shall have been taken or acknowledged: Provided always, that nothing herein contained shall affect the provisions of the sixty-ninth section of the twenty-third and twenty-fourth Victoria, chapter one hundred and fifty-four.

Appeal from Recorder of Dublin.

7. Appeals in civil bill cases from the Recorder of Dublin shall be to the court to which such appeals lie at the time of the passing of this Act, but in other respects shall be regulated by the enactments contained in this Act.

Execution after notice of entering into recognizance to render party a trespasser.

8. In case any decree, dismiss, or adjudication, notwithstanding notice of appeal and of the entry into such recognizance or of the making of such lodgment as is herein provided, shall be executed, the party so executing the same or continuing in possession of any goods thereafter shall be deemed to be a trespasser, and may be proceeded against accordingly.

Repeal and re-enactment of certain statutable provisions.

9. From and after the passing of this Act sections one hundred and twenty-seven, one hundred and twenty-eight, one hundred and twenty-nine, and one hundred and thirty of the fourteenth and fifteenth Victoria, chapter fifty-seven, are hereby repealed; and it is hereby further enacted that every decree, dismiss, or adjudication made under section one hundred and fifty of the fourteenth and fifteenth Victoria, chapter fifty-seven, may be appealed from as in this Act provided. The fifty-fifth section of the County Officers and Courts (Ireland) Act, 1877, is hereby repealed.

Extension of existing jurisdiction of county courts under 40 & 41 Vict. c. 64. s. 23.

10. The several civil bill courts in Ireland shall, in addition to the jurisdiction now possessed by them, have and exercise all the power and authority of the High Court of Chancery in the suits and matters herein-after mentioned, that is to say, where the subject thereof shall not exceed in amount or value, so far as it consists of personalty, five hundred pounds, and so far as it consists of lands, shall not exceed the annual value of thirty pounds; (that is to say,)

- (a.) In suits by executors or administrators for the administration of assets;
- (b.) In suits for the setting aside, cancelling, or reforming any deed, agreement, assurance, or conveyance of any property on the ground of fraud or mistake.

Appeals under jurisdiction conferred by foregoing section.

11. Every order or adjudication made under the jurisdiction conferred by the foregoing section of this Act shall be subject to appeal as is provided by Part II. of the County Officers and Courts (Ireland) Act, 1877.

Not to affect appeals under 33 & 34 Vict. c. 46. 44 & 45 Vict. c. 49.

12. Nothing in this Act shall be deemed to include any appeal brought under the provisions of the Landlord and Tenant (Ireland) Act, 1870, or the Land Law (Ireland) Act, 1881, and appeals

thereunder shall be brought in manner and to the court provided by the forty-seventh section of the Land Law (Ireland) Act, 1881.

#### SCHEDULE.

Notice of appeal.

NOTICE OF APPEAL.

Division of County of County Court.  
Plaintiff  
Defendant

TAKE NOTICE that I hereby appeal against the (*here state whether decree, order, dismiss, as the case may be,*) herein to the next going judge of assize in and for the county of

Dated this day of

(Signed)

To the Clerk of the Peace, The (Plaintiff or Defendant, *as the case may be,*) and his Solicitor.

#### CAP. XXX.

An Act to amend the Baths and Wash Houses Acts. [24th July 1882.]

#### CAP. XXXI.

An Act to render Judgments obtained in certain Inferior Courts in England, Scotland, and Ireland respectively, effectual in any other part of the United Kingdom. [24th July 1882.]

81 & 82 Vict. c. 64.

WHEREAS it is expedient to extend the principle of the Judgments Extension Act, 1868, to the judgments of certain inferior courts of Great Britain and Ireland:

Be it therefore enacted, &c., . . .

Short title.

1. This Act may be cited for all purposes as the Inferior Courts Judgments Extension Act, 1892.

Interpretation of terms.

2. In this Act the following words and expressions shall have the interpretations and meanings in this section assigned to them respectively, unless there be something in the subject or context repugnant to such construction; (that is to say),

The expression "judgment" shall include decreet, civil bill decree, dismiss, or order:

The expression "inferior courts" shall include County Courts, Civil Bill Courts, and all Courts in England and Ireland having jurisdiction to hear and determine civil causes, other than the High Courts of Justice; and in Ireland, Courts of Petty Sessions and the Court of Bankruptcy; and in Scotland shall include the Sheriffs Courts and the Courts held under the Small Debts and Debts Recovery Acts;

The expression "registrar of an inferior court" shall include the sheriff clerk of a Sheriff's Court in Scotland, and any officer fulfilling the duties of a registrar in an inferior court in England; and in Ireland shall include the clerk of the peace or other officer whose duty it is to enter the judgment, decree, or order of the court:

"Prescribed" means prescribed by rules made under the provisions of this Act:

The expression "person" shall include any party or parties to a cause in any inferior court in England, Scotland, or Ireland:

The expression "plaintiff" shall include pursuer, complainer, or any person at whose instance any action or proceeding in an inferior court is instituted; and the expression "defendant" shall in-

clude defender, respondent, or other person against whom any such action or proceeding is directed: The expression "action" shall mean the action or other proceeding in which any judgment was pronounced; and the expression "summons" shall mean the summons or other initial writ in such action.

**Registrar of Inferior Court to grant certificate of judgment.**

3. Where judgment shall hereafter be obtained or entered up in any of the inferior courts of England, Scotland, or Ireland respectively for any debt, damages, or costs, the registrar of such inferior court or other proper officer shall, after the time for appealing against such judgment shall have elapsed, and in the event of such judgment not being reversed upon appeal or of execution thereunder not being stayed, upon the application of the party who has recovered such judgment, and upon proof that the same has not been satisfied, and payment of the prescribed fee, grant a certificate in the form in the schedule to this Act annexed.

**Registration of certificate shall have the effect of a judgment of the Court in which it is registered.**

4. On the production to the registrar or other proper officer of a county court, or, in the City of London, of the City of London Court in England where a judgment has been obtained in Scotland or Ireland, or to the registrar or other proper officer of a Sheriff's Court in Scotland where a judgment has been obtained in England or Ireland, or to the registrar or other proper officer of a Civil Bill Court in Ireland where a judgment has been obtained in England or Scotland of a certificate under this Act purporting to be signed by the registrar or other proper officer of the inferior court where such judgment was obtained, such certificate shall, on payment of the prescribed fee, be registered in the prescribed form by such registrar or other proper officer to whom the same shall be produced for that purpose; and all reasonable costs and charges attendant upon the obtaining and registering such certificate shall be added to and recovered in like manner as if the same were part of the original judgment. No certificate of any such judgment shall be registered as aforesaid in any inferior court in the United Kingdom more than twelve months after the date of such judgment.

**Execution of judgments.**

5. Where a certificate of a judgment of any of the inferior courts aforesaid has been registered under this Act, process of execution may issue thereon out of the Court in which the same shall have been so registered against any goods or chattels of the person against whom such judgment shall have been obtained, which are within the jurisdiction of such last-mentioned Court, in the same or the like manner as if the judgment to be executed had been obtained in the Court in which such certificate shall be so registered as aforesaid.

**Jurisdiction over registered judgments limited to execution.**

6. The courts of Great Britain and Ireland to which this Act applies shall, in so far as relates to execution under this Act, have and exercise the same control and jurisdiction over and with respect to the execution of any judgment, a certificate of which shall be registered under this Act, as they now have and exercise over and with respect to the execution of any judgment in their own courts.

**Cancellation of registry.**

7. On proof of the setting aside, or satisfaction, of any judgment of which a certificate shall have been registered under this Act, the Court in which such certificate is so registered may order the registration thereof to be cancelled.

**Costs not to be allowed in actions on judgments unless by order of Court.**

8. In any action brought in any of the inferior courts aforesaid for the purpose of enforcing any judgment which might be registered under this Act in the country in which such action is brought, the party bringing such action shall not recover or be entitled to any costs or expenses, unless the Court in which such action shall be brought shall otherwise order.

**Existing limits of local jurisdiction shall not be exceeded.**

9. Nothing contained in this Act shall authorise the registration in an inferior court of the certificate of any judgment for a greater amount than might have been recovered if the action or proceeding had been originally commenced in such inferior court.

Provided that where a judgment obtained in an inferior court in Scotland cannot be registered in an inferior court in England or Ireland, by reason of its being for a greater amount than might have been recovered if the action or proceeding had been originally commenced in such inferior court, it shall be competent to register a certificate of such judgment in the register directed to be kept in the Court of Common Pleas at Westminster and Dublin respectively, to be called "The Register of Scotch Judgments," by section three of the Judgments Extension Act, 1868, in the same manner, to the same effect, and subject to the same provisions, as if the said certificate had been a certificate of an extracted decret of the Court of Session, registered in the said register under the said Act.

**Act not to apply in certain cases.**

10. This Act shall not apply to any judgment pronounced by any inferior court in England against any person domiciled in Scotland or Ireland at the time of the commencement of any action, unless the whole cause of action shall have arisen, or the obligation to which the judgment relates ought to have been fulfilled, within the district of such inferior court, and the summons was served upon the defendant personally within the said district, nor to any judgment pronounced by any inferior court in Scotland against any person domiciled in England or Ireland at the time of the commencement of any action, unless the whole cause of action shall have arisen, or the obligation to which the judgment relates ought to have been fulfilled, within the district of such inferior court, and the summons was served upon the defendant personally within the said district, nor to any judgment pronounced by any inferior court in Ireland against any person domiciled in England or Scotland at the time of the commencement of any action, unless the whole cause of action shall have arisen, or the obligation to which the judgment relates ought to have been fulfilled, within the district of such inferior court, and the summons was served upon the defendant personally within the said district.

Provided that it shall be competent to any person against whom any judgment to which this Act does not apply, as aforesaid, is sought to be enforced by registration in the register of an inferior court in England or Ireland to apply for and obtain from one of the superior courts of England or Ireland a prohibition or injunction against the enforcement of such judgment, and of any execution thereupon; and that it shall be competent to any person against whom any judgment to which this Act does not apply, as aforesaid, is sought to be enforced by registration in the register of an inferior court in Scotland, to apply for and obtain from the Bill Chamber or Court of Session in Scotland suspension or suspension and interdict of or against the enforcement of such judgment and any diligence thereon, and in any such proceeding as aforesaid the unsuccessful party may be found liable in costs.

Rules. 11. Rules for the purposes of this Act may be made and altered from time to time by the like persons and in the like manner in which rules and regulations may be respectively made under and for the purposes of the County Courts Acts in England; of the Sheriffs Courts Acts in Scotland, and of the Civil Bill Courts Acts in Ireland; provided that the said rules and regulations shall not extend the jurisdiction of any inferior court.

#### SCHEDULE.

CERTIFICATE issued in terms of the Inferior Courts Judgments Extension Act, 1882.

I, \_\_\_\_\_, certify that [here state name, business, or occupation, and address of person obtaining judgment, and whether Plaintiff or Defendant] on the \_\_\_\_\_ day of 18\_\_\_\_, obtained judgment against [here state name, business, or occupation and address of person against whom judgment was obtained, and whether Plaintiff or Defendant] in the Court of \_\_\_\_\_ for payment of the sum of \_\_\_\_\_ on account of [here state shortly the nature of the claim with the amount of costs (if any) for which judgment was obtained.]

[To be signed by the Registrar or other proper Officer of the Inferior Court from which the certificate issues, and to be sealed with the Seal of the Court.]

NOTE of PRESENTATION to be appended to above Form.

The above certificate is presented by me for registration in the Court of \_\_\_\_\_, in accordance with the provisions of the Inferior Courts Judgments Extension Act, 1882.

[Signature and address of Solicitor, Law Agent, or Creditor presenting for Registration.]

#### CAP. XXXII.

An Act for the acquisition of Property and the provision of new Buildings for the Admiralty and War Office. [24th July 1882.]

#### CAP. XXXIII.

An Act further to amend the Acts relating to the raising of money by the Metropolitan Board of Works; and for other purposes. [10th August 1882.]

#### CAP. XXXIV.

An Act to amend "The Beer Dealers' Retail Licences Act, 1880." [10th August 1882.]

#### CAP. XXXV.

An Act to amend so much of "The Friendly Societies Act, 1875," as relates to quinquennial returns of sickness and mortality. [10th August 1882.]

#### CAP. XXXVI.

An Act to amend the Pauper Inmates Discharge and Regulation Act, 1871. [10th August 1882.]

#### CAP. XXXVII.

An Act to amend the Law respecting the obtaining of Corn Returns. [10th August 1882.]

#### CAP. XXXVIII.

An Act for facilitating Sales, Leases, and other dispositions of Settled Land, and for promoting the execution of Improvements thereon. [10th August 1882.]

Be it enacted, &c., .

#### I.—PRELIMINARY.

Short title; commencement; extent. 1. (1) This Act may be cited as the Settled Land Act, 1882.

(2) This Act, except where it is otherwise expressed, shall commence and take effect from and immediately after the thirty-first day of December one thousand eight hundred and eighty-two, which time is in this Act referred to as the commencement of this Act.

(3) This Act does not extend to Scotland.

#### II.—DEFINITIONS.

Definition of settlement; tenant for life, &c. 2.—(1) Any deed, will, agreement for a settlement, or other agreement, covenant to surrender, copy of court roll, Act of Parliament, or other instrument, or any

number of instruments, whether made or passed before or after, or partly before and partly after, the commencement of this Act, under or by virtue of which instrument or instruments any land, or any estate or interest in land, stands for the time being limited to or in trust for any persons by way of succession, creates or is for purposes of this Act a settlement, and is in this Act referred to as a settlement, or as the settlement, as the case requires.

(2) An estate or interest in remainder or reversion not disposed of by a settlement, and reverting to the settlor or descending to the testator's heir, is for purposes of this Act an estate or interest coming to the settlor or heir under or by virtue of the settlement, and comprised in the subject of the settlement.

(3) Land, and any estate or interest therein, which is the subject of a settlement, is for purposes of this Act settled land, and is, in relation to the settlement, referred to in this Act as the settled land.

(4) The determination of the question whether land is settled land, for purposes of this Act, or not, is governed by the state of facts, and the limitations of the settlement, at the time of the settlement taking effect.

(5) The person who is for the time being, under a settlement, beneficially entitled to possession of settled land, for his life, is for purposes of this Act the tenant for life of that land, and the tenant for life under that settlement.

(6) If, in any case, there are two or more persons so entitled as tenants in common, or as joint tenants, or for other concurrent estates or interests, they together constitute the tenant for life for purposes of this Act.

(7) A person being tenant for life within the foregoing definitions shall be deemed to be such notwithstanding that, under the settlement or otherwise, the settled land, or his estate or interest therein, is incumbered or charged in any manner or to any extent.

(8) The persons, if any, who are for the time being, under a settlement, trustees with power of sale of settled land, or with power of consent to or approval of the exercise of such a power of sale, or if under a settlement there are no such trustees, then the persons, if any, for the time being, who are by the settlement declared to be trustees thereof for purposes of this Act, are for purposes of this Act trustees of the settlement.

(9.) Capital money arising under this Act, and receivable for the trusts and purposes of the settlement, is in this Act referred to as capital money arising under this Act.

(10.) In this Act—

(i.) Land includes incorporeal hereditaments, also an undivided share in land; income includes rents and profits; and possession includes receipt of income:

(ii.) Rent includes yearly or other rent, and toll, duty, royalty, or other reservation, by the acre, or the ton, or otherwise; and, in relation to rent, payment includes delivery; and fine includes premium or fore-gift, and any payment, consideration, or benefit in the nature of a fine, premium, or fore-gift:

(iii.) Building purposes include the erecting and the improving of, and the adding to, and the repairing of buildings; and a building lease is a lease for any building purposes or purposes connected therewith:

(iv.) Mines and minerals mean mines and minerals whether already opened or in work or not, and include all minerals and substances in, on, or under the land, obtainable by underground or by surface working; and mining purposes include the sinking and searching for, winning, working, getting, making merchantable, smelting or otherwise converting or working for the purposes of any manufacture, carrying away, and disposing of mines and minerals, in or under the settled land, or any other land, and the erection of buildings, and the execution of engineering and other works, suitable for those purposes; and a mining lease is a lease for any mining purposes or purposes connected therewith, and includes a grant or licence for any mining purposes:

(v.) Manor includes lordship, and reputed manor or lordship:

(vi.) Steward includes deputy steward, or other proper officer, of a manor:

(vii.) Will includes codicil, and other testamentary instrument, and a writing in the nature of a will:

(viii.) Securities include stocks, funds, and shares:

(ix.) Her Majesty's High Court of Justice is referred to as the Court:

(x.) The Land Commissioners for England as constituted by this Act are referred to as the Land Commissioners:

(xi.) Person includes corporation.

III.—SALE; ENFRANCHISEMENT; EXCHANGE; PARTITION.

*General Powers and Regulations.*

3. A tenant for life—

Powers to tenant for life to sell &c.

- (i.) May sell the settled land, or any part thereof, or any easement, right, or privilege of any kind, over or in relation to the same; and
- (ii.) Where the settlement comprises a manor,—may sell the seignory of any freehold land within the manor, or the freehold and inheritance of any copyhold or customary land, parcel of the manor, with or without any exception or reservation of all or any mines or minerals, or of any rights or powers relative to mining purposes, so as in every such case to effect an enfranchisement; and
- (iii.) May make an exchange of the settled land, or any part thereof, for other land, including an exchange in consideration of money paid for equality of exchange; and
- (iv.) Where the settlement comprises an undivided share in land, or, under the settlement, the settled land has come to be held in undivided shares,—may concur in making partition of the

entirety, including a partition in consideration of money paid for equality of partition.

Regulations respecting sale, enfranchisement, exchange, and partition.

4. (1.) Every sale shall be made at the best price that can reasonably be obtained.

(2.) Every exchange and every partition shall be made for the best consideration in land or in land and money that can reasonably be obtained.

(3.) A sale may be made in one lot or in several lots, and either by auction or by private contract.

(4.) On a sale the tenant for life may fix reserve biddings and buy in at an auction.

(5.) A sale, exchange, or partition may be made subject to any stipulations respecting title, or evidence of title, or other things.

(6.) On a sale, exchange, or partition, any restriction or reservation with respect to building on or other user of land, or with respect to mines and minerals, or with respect to or for the purpose of the more beneficial working thereof, or with respect to any other thing, may be imposed or reserved and made binding, as far as the law permits, by covenant, condition, or otherwise, on the tenant for life and the settled land, or any part thereof, or on the other party and any land sold or given in exchange or on partition to him.

(7.) An enfranchisement may be made with or without a re-grant of any right of common or other right, easement, or privilege theretofore appendant or appurtenant to or held or enjoyed with the land enfranchised, or reputed so to be.

(8.) Settled land in England shall not be given in exchange for land out of England.

*Special Powers.*

Transfer of incumbrances on land sold, &c.

5. Where on a sale, exchange, or partition there is an incumbrance affecting land sold or given in exchange or on partition, the tenant for life, with

the consent of the incumbrancer, may charge that incumbrance on any other part of the settled land, whether already charged therewith or not, in exoneration of the part sold or so given, and, by conveyance of the fee simple, or other estate or interest the subject of the settlement, or by creation of a term of years in the settled land, or otherwise, make provision accordingly.

IV.—LEASES.

*General Powers and Regulations.*

Power for tenant for life to lease for ordinary or building or mining purposes.

6. A tenant for life may lease the settled land, or any part thereof, or any easement, right, or privilege of any kind, over or in relation to the same, for any purpose whatever, whether involving waste or not, for any term not exceeding—

- (i.) In case of a building lease, ninety-nine years:
- (ii.) In case of a mining lease, sixty years:
- (iii.) In case of any other lease, twenty-one years.

Regulations respecting leases generally.

7. (1.) Every lease shall be by deed, and be made to take effect in possession not later than twelve months after its date.

(2.) Every lease shall reserve the best rent that can reasonably be obtained, regard being had to any fine taken, and to any money laid out or to be laid out for the benefit of the settled land, and generally to the circumstances of the case.

(3.) Every lease shall contain a covenant by the lessee for payment of the rent, and a condition of re-entry on the rent not being paid within a time therein specified not exceeding thirty days.

(4.) A counterpart of every lease shall be executed by the lessee and delivered to the tenant for life; of which execution and delivery the execution of the lease by the tenant for life shall be sufficient evidence.

(5.) A statement, contained in a lease or in an indenture thereon, signed by the tenant for life, respecting any matter of fact or of calculation under this Act in relation to the lease, shall, in favour of the lessee and of those claiming under him, be sufficient evidence of the matter stated.

#### *Building and Mining Leases.*

Regulations  
respecting  
building leases.

8. (1.) Every building lease shall be made partly in consideration of the lessee, or some person by whose direction the lease is granted, or some other person, having erected, or agreeing to erect, buildings, new or additional, or having improved or repaired, or agreeing to improve or repair, buildings, or having executed, or agreeing to execute, on the land leased, an improvement authorized by this Act, for or in connexion with building purposes.

(2.) A peppercorn rent or a nominal or other rent less than the rent ultimately payable, may be made payable for the first five years or any less part of the term.

(3.) Where the land is contracted to be leased in lots, the entire amount of rent to be ultimately payable may be apportioned among the lots in any manner; save that—

(i.) The annual rent reserved by any lease shall not be less than ten shillings; and

(ii.) The total amount of the rents reserved on all leases for the time being granted shall not be less than the total amount of the rents which, in order that the leases may be in conformity with this Act, ought to be reserved in respect of the whole land for the time being leased; and

(iii.) The rent reserved by any lease shall not exceed one fifth part of the full annual value of the land comprised in that lease with the buildings thereon when completed.

Regulations  
respecting  
mining leases.

9. (1.) In a mining lease—

(i.) The rent may be made to be ascertainable by or to vary according to the acreage worked, or by or according to the quantities of any mineral or substance gotten, made merchantable, converted, carried away, or disposed of, in or from the settled land, or any other land, or by or according to any facilities given in that behalf; and

(ii.) A fixed or minimum rent may be made payable with or without power for the lessee, in case the rent, according to acreage or quantity, in any specified period does not produce an amount equal to the fixed or minimum rent, to make up the deficiency in any subsequent specified period, free of rent other than the fixed or minimum rent.

(2.) A lease may be made partly in consideration of the lessee having executed, or his agreeing to execute, on the land leased, an improvement authorized by this Act, for or in connexion with mining purposes.

Variation of  
building or  
mining lease  
according to  
circumstances  
of district.

10. (1.) Where it is shown to the Court with respect to the district in which any settled land is situate, either—

(i.) That it is the custom for land therein to be leased or granted for building or mining purposes for a longer term or on other conditions than the term or conditions specified in that behalf in this Act, or in perpetuity; or

(ii.) That it is difficult to make leases or grants for building or mining purposes of land therein, except for a longer term or on other conditions than the term and conditions specified in that behalf in this Act, or except in perpetuity;

the Court may, if it thinks fit authorize generally the tenant for life to make from time to time leases or grants of or affecting the settled land in that district, or parts thereof, for any term or in perpetuity, at fee-farm or other rents, secured by condition of re-entry, or otherwise, as in the order of the Court expressed, or may, if it thinks fit, authorize the tenant for life to make any such lease or grant in any particular case.

(2.) Thereupon the tenant for life, and subject to any direction in the order of the Court to the contrary, each of his successors in title being a tenant for life, or having the powers of a tenant for life under this Act, may make in any case, or in the particular case, a lease or grant of or affecting the settled land, or part thereof, in conformity with the order.

Part of  
mining rent  
to be set  
aside.

11. Under a mining lease, whether the mines or minerals leased are already opened or in work or not, unless a contrary intention is expressed in the settlement, there shall be from time to time set aside, as capital money arising under this Act, part of the rent as follows, namely—where the tenant for life is impeachable for waste in respect of minerals, three fourth parts of the rent, and otherwise one fourth part thereof, and in every such case the residue of the rent shall go as rents and profits.

#### *Special Powers.*

Leasing powers  
for special  
objects.

12. The leasing power of a tenant for life extends to the making of—

(i.) A lease for giving effect to a contract entered into by any of his predecessors in title for making a lease, which, if made by the predecessors, would have been binding on the successors in title; and

(ii.) A lease for giving effect to a covenant of renewal, performance whereof could be enforced against the owner for the time being of the settled land; and

(iii.) A lease for confirming, as far as may be, a previous lease, being void or voidable; but so that every lease, as and when confirmed, shall be such a lease as might at the date of the original lease have been lawfully granted, under this Act, or otherwise, as the case may require.

#### *Surrenders.*

Surrender and  
new grant of  
leases.

13. (1.) A tenant for life may accept, with or without consideration, a surrender of any lease of settled land, whether made under this Act or not, in respect of the whole land leased, or any part thereof, with or without an exception of all or any of the mines and minerals therein, or in respect of mines and minerals or any of them.

(2.) On a surrender of a lease in respect of part only of the land or mines and minerals leased, the rent may be apportioned.

(3.) On a surrender, the tenant for life may make of the land or mines and minerals surrendered, or of any part thereof, a new or other lease, or new or other leases in lots.

(4.) A new or other lease may comprise additional land or mines and minerals, and may reserve any apportioned or other rent.

(5.) On a surrender, and the making of a new or other lease, whether for the same or for any extended



or other term, and whether or not subject to the same or to any other covenants, provisions, or conditions, the value of the lessee's interest in the lease surrender may be taken into account in the determination of the amount of the rent to be reserved, and of any fine to be taken, and of the nature of the covenants, provisions, and conditions to be inserted in the new or other lease.

(6.) Every new or other lease shall be in conformity with this Act.

*Copyholds.*

Power to grant to copyholders licences for leasing.

14. (1.) A tenant for life may grant to a tenant of copyhold or customary land, parcel of a manor comprised in the settlement, a licence to make any such lease of that land, or of a specified part thereof, as the tenant for life is by this Act empowered to make of freehold land.

(2.) The licence may fix the annual value whereon fines, fees, or other customary payments are to be assessed, or the amount of those fines, fees, or payments.

(3.) The licence shall be entered on the court rolls of the manor, of which entry a certificate in writing of the steward shall be sufficient evidence.

V.—SALES, LEASES, AND OTHER DISPOSITIONS.

*Mansion and Park.*

Restriction as to mansion house, park, &c.

15. Notwithstanding anything in this Act, the principal mansion house on any settled land, and the demesnes thereof, and other lands usually occupied therewith, shall not be sold or leased by the tenant for life, without the consent of the trustees of the settlement, or an order of the Court.

*Streets and Open Spaces.*

16. On or in connexion with a sale or grant for building purposes, or a building lease, the tenant for life, for the general benefit of the residents on the settled land, or on any part thereof,—

Dedication for streets, open spaces, &c.

- (i.) May cause or require any parts of the settled land to be appropriated and laid out for streets, roads, paths, squares, gardens, or other open spaces, for the use, gratuitously or on payment, of the public or of individuals, with sewers, drains, watercourses, fencing, paving, or other works necessary or proper in connexion therewith; and
- (ii.) May provide that the parts so appropriated shall be conveyed to or vested in the trustees of the settlement, or other trustees, or any company or public body, on trusts or subject to provisions for securing the continued appropriation thereof to the purposes aforesaid, and the continued repair or maintenance of streets and other places and works aforesaid, with or without provision for appointment of new trustees when required; and
- (iii.) May execute any general or other deed necessary or proper for giving effect to the provisions of this section (which deed may be enrolled in the Central Office of the Supreme Court of Judicature), and thereby declare the mode, terms, and conditions of the appropriation, and the manner in which and the person by whom the benefit thereof is to be enjoyed, and the nature and extent of the privileges and conveniences granted.

*Surface and Minerals apart.*

Separate dealing with surface and minerals, with or without way-leaves, &c.

17. (1.) A sale, exchange, partition, or mining lease, may be made either of land, with or without an exception or reservation of all or any of the mines and minerals therein, or of any mines and minerals, and in any such case with or without a grant or reservation of powers of working, wayleaves or rights of way, rights of water and drainage, and other powers, easements, rights, and privileges for or incident to or connected with mining purposes, in relation to the settled land, or any part thereof, or any other land.

(2.) An exchange or partition may be made subject to and in consideration of the reservation of an undivided share in mines or minerals.

*Mortgage.*

Mortgage for equality money, &c.

18. Where money is required for enfranchisement, or for equality of exchange or partition, the tenant for life may raise the same on mortgage of the settled land, or of any part thereof, by conveyance of the fee simple, or other estate or interest the subject of the settlement, or by creation of a term of years in the settled land, or otherwise, and the money raised shall be capital money arising under this Act.

*Undivided Share.*

Concurrence in exercise of powers as to undivided share.

19. Where the settled land comprises an undivided share in land, or, under the settlement, the settled land has come to be held in undivided shares, the tenant for life of an undivided share may join or concur, in any manner and to any extent necessary or proper for any purpose of this Act, with any person entitled to or having power or right of disposition of or over another undivided share.

*Conveyance.*

Completion of sale, lease, &c., by conveyance.

20. (1.) On a sale, exchange, partition, lease, mortgage, or charge, the tenant for life may, as regards land sold, given in exchange or on partition, leased, mortgaged, or charged, or intended so to be, including copyhold or customary or leasehold land vested in trustees, or as regards easements or other rights or privileges sold or leased, or intended so to be, convey or create the same by deed, for the estate or interest the subject of the settlement, or for any less estate or interest, to the uses and in the manner requisite for giving effect to the sale, exchange, partition, lease, mortgage, or charge.

(2.) Such a deed, to the extent and in the manner to and in which it is expressed or intended to operate and can operate under this Act, is effectual to pass the land conveyed, or the easements, rights, or privileges created, discharged from all the limitations, powers, and provisions of the settlement, and from all estates, interests, and charges subsisting or to arise thereunder, but subject to and with the exception of—

- (i.) All estates, interests, and charges having priority to the settlement; and
- (ii.) All such other, if any, estates, interests, and charges as have been conveyed or created for securing money actually raised at the date of the deed; and
- (iii.) All leases and grants at fee-farm rents or otherwise, and all grants of easements, rights of common, or other rights or privileges granted or made for value in money or money's worth, or agreed so to be, before the date of the deed, by the tenant for life, or by any of his prede-

cessors in title, or by any trustees for him or them, under the settlement, or under any statutory power, or being otherwise binding on the successors in title of the tenant for life.

(3.) In case of a deed relating to copyhold or customary land, it is sufficient that the deed be entered on the court rolls of the manor, and the steward is hereby required on production to him of the deed to make the proper entry; and on that production, and on payment of customary fines, fees, and other dues or payments, any person whose title under the deed requires to be perfected by admittance shall be admitted accordingly; but if the steward so requires, there shall also be produced to him so much of the settlement as may be necessary to show the title of the person executing the deed; and the same may, if the steward thinks fit, be also entered on the court rolls.

#### VI.—INVESTMENT OR OTHER APPLICATION OF CAPITAL TRUST MONEY.

Capital money under Act; investment, &c. by trustees or Court.

21. Capital money arising under this Act, subject to payment of claims properly payable thereout, and to application thereof for any special authorized object for which the same was raised, shall, when received, be invested or otherwise applied wholly in one, or partly in one and partly in another or others, of the following modes (namely):

- (i.) In investment on Government securities, or on other securities on which the trustees of the settlement are by the settlement or by law authorized to invest trust money of the settlement, or on the security of the bonds, mortgages, or debentures, or in the purchase of the debenture stock, of any railway company in Great Britain or Ireland incorporated by special Act of Parliament, and having for ten years next before the date of investment paid a dividend on its ordinary stock or shares, with power to vary the investment into or for any other such securities:
- (ii.) In discharge, purchase, or redemption of incumbrances affecting the inheritance of the settled land, or other the whole estate the subject of the settlement, or of land-tax, rentcharge in lieu of tith, Crown rent, chief rent, or quit rent, charged on or payable out of the settled land:
- (iii.) In payment for any improvement authorized by this Act:
- (iv.) In payment for equality of exchange or partition of settled land:
- (v.) In purchase of the seignory of any part of the settled land, being freehold land, or in purchase of the fee simple of any part of the settled land, being copyhold or customary land:
- (vi.) In purchase of the reversion or freehold in fee of any part of the settled land, being leasehold land held for years, or life, or years determinable on life:
- (vii.) In purchase of land in fee simple, or of copyhold or customary land, or of leasehold land held for sixty years or more unexpired at the time of purchase, subject or not to any exception or reservation of or in respect of mines, or minerals therein, or of or in respect of rights or powers relative to the working of mines or minerals therein, or in other land:
- (viii.) In purchase, either in fee simple, or for a term of sixty years or more, of mines and minerals convenient to be held or worked with the settled land, or of any easement, right, or privilege

convenient to be held with the settled land for mining or other purposes:

- (ix.) In payment to any person becoming absolutely entitled or empowered to give an absolute discharge:
- (x.) In payment of costs, charges, and expenses of or incidental to the exercise of any of the powers, or the execution of any of the provisions, of this Act:
- (xi.) In any other mode in which money produced by the exercise of a power of sale in the settlement is applicable thereunder.

Regulations respecting investments, devolution, and income invested or applied as aforesaid, be paid of securities, &c.

22. (1.) Capital money arising under this Act shall, in order to its being either to the trustees of the settlement or into Court, at the option of the tenant for life, and shall be invested or applied by the trustees, or under the direction of the Court, as the case may be, accordingly.

(2.) The investment or other application by the trustees shall be made according to the direction of the tenant for life, and in default thereof, according to the discretion of the trustees, but in the last-mentioned case subject to any consent required or direction given by the settlement with respect to the investment or other application by the trustees of trust money of the settlement; and any investment shall be in the names or under the control of the trustees.

(3.) The investment or other application under the direction of the Court shall be made on the application of the tenant for life, or of the trustees.

(4.) Any investment or other application shall not during the life of the tenant for life be altered without his consent.

(5.) Capital money arising under this Act while remaining uninvested or unapplied, and securities on which an investment of any such capital money is made, shall, for all purposes of disposition, transmission, and devolution, be considered as land, and the same shall be held for and go to the same persons successively, in the same manner and for and on the same estates, interests, and trusts, as the land wherefrom the money arises would, if not disposed of, have been held and have gone under the settlement.

(6.) The income of those securities shall be paid or applied as the income of that land, if not disposed of, would have been payable or applicable under the settlement.

(7.) Those securities may be converted into money, which shall be capital money arising under this Act.

Investment in land in England.

23. Capital money arising under this Act from settled land in England shall not be applied in the purchase of land out of England, unless the settlement expressly authorizes the same.

Settlement of land purchased, taken in exchange, &c.

24. (1.) Land acquired by purchase or in exchange, or on partition, shall be made subject to the settlement in manner directed in this section.

(2.) Freehold land shall be conveyed to the uses, on the trusts, and subject to the powers and provisions which, under the settlement, or by reason of the exercise of any power of charging therein contained, are subsisting with respect to the settled land, or as near thereto as circumstances permit, but not so as to increase or multiply charges or powers of charging.

(3.) Copyhold, customary, or leasehold land shall be conveyed to and vested in the trustees of the settlement on trusts and subject to powers and provisions corresponding, as nearly as the law and circumstances per-

mit, with the uses, trusts, powers, and provisions to on and subject to which freehold land is to be conveyed as aforesaid; so nevertheless that the beneficial interest in land held by lease for years shall not vest absolutely in a person who is by the settlement made by purchase tenant in tail, or in tail male, or in tail female, and who dies under the age of twenty-one years, but shall, on the death of that person under that age, go as freehold land conveyed as aforesaid would go.

(4.) Land acquired as aforesaid may be made a substituted security for any charge in respect of money actually raised, and remaining unpaid, from which the settled land, or any part thereof, or any undivided share therein, has theretofore been released on the occasion and in order to the completion of a sale, exchange, or partition.

(5.) Where a charge does not affect the whole of the settled land, then the land acquired shall not be subjected thereto, unless the land is acquired either by purchase with money arising from sale of land which was before the sale subject to the charge, or by an exchange or partition of land which, or an undivided share wherein, was before the exchange or partition subject to the charge.

(6.) On land being so acquired, any person who, by the direction of the tenant for life, so conveys the land as to subject it to any charge, is not concerned to inquire whether or not it is proper that the land should be subjected to the charge.

(7.) The provisions of this section referring to land extend and apply, as far as may be, to mines and minerals, and to easements, rights, and privileges over and in relation to land.

## VII.—IMPROVEMENTS.

### *Improvements with Capital Trust Money.*

Description of  
Improvements  
authorized  
by Act.

25. Improvements authorized by this Act are the making or execution on, or in connexion with, and for the benefit of settled land, of any of the following works, or of any works for any of the following purposes, and any operation incident to or necessary or proper in the execution of any of those works, or necessary or proper for carrying into effect any of those purposes, or for securing the full benefit of any of those works or purposes (namely):

- (i.) Drainage, including the straightening, widening, or deepening of drains, streams, and watercourses;
- (ii.) Irrigation; warping;
- (iii.) Drains, pipes, and machinery for supply and distribution of sewage as manure;
- (iv.) Embanking or weiring from a river or lake, or from the sea, or a tidal water;
- (v.) Groyne; sea walls; defences against water;
- (vi.) Inclosing; straightening of fences; re-division of fields;
- (vii.) Reclamation; dry warping;
- (viii.) Farm roads; private roads; roads or streets in villages or towns;
- (ix.) Clearing; trenching; planting;
- (x.) Cottages for labourers, farm-servants, and artisans, employed on the settled land or not;
- (xi.) Farmhouses, offices, and out-buildings, and other buildings for farm purposes;
- (xii.) Saw-mills, scutch-mills, and other mills, water-wheels, engine-houses, and kilns, which will increase the value of the settled land for agricultural purposes or as woodland or otherwise;
- (xiii.) Reservoirs, tanks, conduits, watercourses, pipes, wells, ponds, shafts, dams, weirs, sluices, and other works and machinery for supply and distribution of water for agricultural, manufac-

turing, or other purposes, or for domestic or other consumption:

- (xiv.) Tramways; railways; canals; docks;
- (xv.) Jetties, piers, and landing places on rivers, lakes, the sea, or tidal waters, for facilitating transport of persons and of agricultural stock and produce, and of manure and other things required for agricultural purposes, and of minerals, and of things required for mining purposes;
- (xvi.) Markets and market-places;
- (xvii.) Streets, roads, paths, squares, gardens, or other open spaces for the use, gratuitously or on payment, of the public or of individuals, or for dedication to the public, the same being necessary or proper in connexion with the conversion of land into building land;
- (xviii.) Sewers, drains, watercourses, pipe-making, fencing, paving, brick-making, tile-making, and other works necessary or proper in connexion with any of the objects aforesaid;
- (xix.) Trial pits for mines, and other preliminary works necessary or proper in connexion with development of mines;
- (xx.) Reconstruction, enlargement, or improvement of any of those works.

Approval by Land  
Commissioners  
of scheme for  
improvement  
and payment  
thereon.

26. (1.) Where the tenant for life is desirous that capital money arising under this Act shall be applied in or towards payment for an improvement authorized by this Act, he may submit for approval to the trustees of the settlement, or to the Court, as the case may require, a scheme for the execution of the improvement, showing the proposed expenditure thereon.

(2.) Where the capital money to be expended is in the hands of trustees, then, after a scheme is approved by them, the trustees may apply that money in or towards payment for the whole or part of any work or operation comprised in the improvement, on—

- (i.) A certificate of the Land Commissioners certifying that the work or operation, or some specified part thereof, has been properly executed, and what amount is properly payable by the trustees in respect thereof, which certificate shall be conclusive in favour of the trustees as an authority and discharge for any payment made by them in pursuance thereof; or on
- (ii.) A like certificate of a competent engineer or able practical surveyor nominated by the trustees and approved by the Commissioners, or by the Court, which certificate shall be conclusive as aforesaid; or on
- (iii.) An order of the Court directing or authorizing the trustees to so apply a specified portion of the capital money.

(3.) Where the capital money to be expended is in Court, then, after a scheme is approved by the Court, the Court may, if it thinks fit, on a report or certificate of the Commissioners, or of a competent engineer or able practical surveyor, approved by the Court, or on such other evidence as the Court thinks sufficient, make such order and give such directions as it thinks fit for the application of that money, or any part thereof, in or towards payment for the whole or part of any work or operation comprised in the improvement.

Concurrence in  
improvements.

27. The tenant for life may join or concur with any other person interested in executing any improvement authorized by this Act, or in contributing to the cost thereof.

Obligation on  
tenant for life  
and successors  
to maintain,  
insure, &c.

28. (1.) The tenant for life, and each of his successors in title having, under the settlement, a limited estate or interest only in the settled land, shall, during such

period, if any, as the Land Commissioners by certificate in any case prescribe, maintain and repair, at his own expense, every improvement executed under the foregoing provisions of this Act, and where a building or work in its nature insurable against damage by fire is comprised in the improvement, shall insure and keep insured the same, at his own expense, in such amount, if any, as the Commissioners by certificate in any case prescribe.

(2.) The tenant for life, or any of his successors as aforesaid, shall not cut down or knowingly permit to be cut down, except in proper thinning, any trees planted as an improvement under the foregoing provisions of this Act.

(3.) The tenant for life, and each of his successors as aforesaid, shall from time to time, if required by the Commissioners, on or without the suggestion of any person having, under the settlement, any estate or interest in the settled land in possession, remainder, or otherwise, report to the commissioners the state of every improvement executed under this Act, and the fact and particulars of fire insurance, if any.

(4.) The Commissioners may vary any certificate made by them under this section, in such manner or to such extent as circumstances appear to them to require, but not so as to increase the liabilities of the tenant for life, or any of his successors as aforesaid.

(5.) If the tenant for life, or any of his successors as aforesaid, fails in any respect to comply with the requisitions of this section, or does any act in contravention thereof, any person having, under the settlement, any estate or interest in the settled land in possession, remainder, or reversion, shall have a right of action, in respect of that default or act, against the tenant for life; and the estate of the tenant for life, after his death, shall be liable to make good to the persons entitled under the settlement any damages occasioned by that default or act.

#### *Execution and Repair of Improvements.*

Protection as regards waste in execution and repair of improvements. 29. The tenant for life, and each of his successors in title having, under the settlement, a limited estate or interest only in the settled land, and all persons employed by or under contract with the tenant for life, or any such successor, may from time to time enter on the settled land, and, without impeachment of waste by any remainderman or reversioneer, thereon execute any improvement authorized by this Act, or inspect, maintain, and repair the same, and, for the purposes thereof, on the settled land, do, make, and use all acts, works, and conveniences proper for the execution, maintenance, repair, and use thereof, and get and work freestone, limestone, clay, sand, and other substances, and make tramways and other ways, and burn and make bricks, tiles, and other things, and cut down and use timber and other trees not planted or left standing for shelter or ornament.

#### *Improvement of Land Act, 1864.*

Extension of 37 & 38 Vict. c. 114, s. 9. 30. The enumeration of improvements contained in section nine of the Improvement of Land Act, 1864, is hereby extended so as to comprise, subject and according to the provisions of that Act, but only as regards applications made to the Land Commissioners after the commencement of this Act, all improvements authorized by this Act.

#### VIII.—CONTRACTS.

Power for tenant for life to enter into contracts.

31. (1.) A tenant for life—  
(i.) May contract to make any sale, exchange, partition, mortgage, or charge; and

(ii.) May vary or rescind, with or without consideration, the contract, in the like cases and manner in which, if he were absolute owner of the settled land, he might lawfully vary or rescind the same, but so that the contract as varied be in conformity with this Act; and any such consideration, if paid in money, shall be capital money arising under this Act; and

(iii.) May contract to make any lease; and in making the lease may vary the terms, with or without consideration, but so that the lease be in conformity with this Act; and

(iv.) May accept a surrender of a contract for a lease, in like manner and on the like terms in and on which he might accept a surrender of a lease; and thereupon may make a new or other contract, or new or other contracts, for or relative to a lease or leases, in like manner and on the like terms in and on which he might make a new or other lease, or new or other leases, where a lease had been granted; and

(v.) May enter into a contract for or relating to the execution of any improvement authorized by this Act, and may vary or rescind the same; and

(vi.) May, in any other case, enter into a contract to do any act for carrying into effect any of the purposes of this Act, and may vary or rescind the same.

(2.) Every contract shall be binding on and shall enure for the benefit of the settled land, and shall be enforceable against and by every successor in title for the time being of the tenant for life, and may be carried into effect by any such successor; but so that it may be varied or rescinded by any such successor, in the like case and manner, if any, as if it had been made by himself.

(3.) The Court may, on the application of the tenant for life, or of any such successor, or of any person interested in any contract, give directions respecting the enforcing, carrying into effect, varying, or rescinding thereof.

(4.) Any preliminary contract under this Act for or relating to a lease shall not form part of the title or evidence of the title of any person to the lease, or to the benefit thereof.

#### IX.—MISCELLANEOUS PROVISIONS.

Application of money in Court under Land Clauses and other Acts. 8 & 9 Vict. c. 18. 23 & 24 Vict. c. 106. 32 & 33 Vict. c. 18. 40 & 41 Vict. c. 18. 32. Where, under an Act incorporating or applying, wholly or in part, the Lands Clauses Consolidation Acts, 1845, 1860, and 1869, or under the Settled Estates Act, 1877, or under any other Act, public, local, personal, or private, money is at the commencement of this Act in Court, or is afterwards paid into Court, and is liable to be laid out in the purchase of land to be made subject to a settlement, then, in addition to any mode of dealing therewith authorized by the Act under which the money is in Court, that money may be invested or applied as capital money arising under this Act, on the like terms, if any, respecting costs and other things, as nearly as circumstances admit, and (notwithstanding anything in this Act) according to the same procedure, as if the modes of investment or application authorized by this Act were authorized by the Act under which the money is in Court.

Application of money in hands of trustees under powers of settlement. 33. Where under a settlement, money is in the hands of trustees, and is liable to be laid out in the purchase of land to be made subject to the settlement, then, in addition to such powers of dealing therewith as the trustees have independently

of this Act, they may, at the option of the tenant for life, invest or apply the same as capital money arising under this Act.

Application of money paid for lease or reversion.

34. Where capital money arising under this Act is purchase money paid in respect of a lease for years, or life, or years determinable on life, or in respect of any other estate or interest in land less than the fee simple, or in respect of a reversion dependent on any such lease, estate, or interest, the trustees of the settlement or the Court as the case may be, and in the case of the Court on the application of any party interested in that money, may, notwithstanding anything in this Act, require and cause the same to be laid out, invested, accumulated, and paid in such manner as, in the judgment of the trustees or of the Court, as the case may be, will give to the parties interested in that money the like benefit therefrom as they might lawfully have had from the lease, estate, interest, or reversion in respect whereof the money was paid, or as near thereto as may be.

Cutting and sale of timber and part of proceeds to be set aside.

35. (1.) Where a tenant for life is impeachable for waste in respect of timber, and there is on the settled land timber ripe and fit for cutting, the tenant for life, on obtaining the consent of the trustees of the settlement or an order of the Court, may cut and sell that timber, or any part thereof.

(2.) Three fourth parts of the net proceeds of the sale shall be set aside as and be capital money arising under this Act, and the other fourth part shall go as rents and profits.

Proceedings for protection or recovery of land settled or claimed as settled.

36. The Court may, if it thinks fit, approve of any action, defence, petition to Parliament, parliamentary opposition, or other proceeding taken or proposed to be taken for protection of settled land, or of any action or proceeding taken or proposed to be taken for recovery of land being or alleged to be subject to a settlement, and may direct that any costs, charges, or expenses incurred or to be incurred in relation thereto, or any part thereof, be paid out of property subject to the settlement.

Heirlooms.

37. (1.) Where personal chattels are settled on trust so as to devolve with land until a tenant in tail by purchase is born or attains the age of twenty-one years, or so as otherwise to vest in some person becoming entitled to an estate of freehold of inheritance in the land, a tenant for life of the land may sell the chattels or any of them.

(2.) The money arising by the sale shall be capital money arising under this Act, and shall be paid, invested, or applied and otherwise dealt with in like manner in all respects as by this Act directed with respect to other capital money arising under this Act, or may be invested in the purchase of other chattels, of the same or any other nature, which, when purchased, shall be settled and held on the same trusts, and shall devolve in the same manner as the chattels sold.

(3.) A sale or purchase of chattels under this section shall not be made without an order of the Court.

#### X.—TRUSTEES.

Appointment of trustees by Court.

38. (1.) If at any time there are no trustees of a settlement within the definition in this Act, or where in any other case it is expedient, for purposes of this Act, that new trustees of a settlement be appointed, the Court may, if it thinks fit, on the application of the tenant for life or of any other person having, under

the settlement, an estate or interest in the settled land in possession, remainder, or otherwise, or, in the case of an infant, of his testamentary or other guardian, or next friend, appoint fit persons to be trustees under the settlement for purposes of this Act.

(2.) The persons so appointed, and the survivors and survivor of them, while continuing to be trustees or trustee, and, until the appointment of new trustees the personal representatives or representative for the time being of the last surviving or continuing trustee, shall for purposes of this Act become and be the trustees or trustee of the settlement.

Number of trustees to act.

39. (1.) Notwithstanding anything in this Act, capital money arising under this Act shall not be paid to fewer than two persons as trustees of a settlement, unless the settlement authorizes the receipt of capital trust money of the settlement by one trustee.

(2.) Subject thereto, the provisions of this Act referring to the trustees of a settlement apply to the surviving or continuing trustees or trustee of the settlement for the time being.

Trustees receipts.

40. The receipt in writing of the trustees of a settlement, or where one trustee is empowered to act, of one trustee, or of the personal representatives or representative of the last surviving or continuing trustee, for any money or securities, paid or transferred to the trustees, trustee, representatives, or representative, as the case may be, effectually discharges the payer or transferor therefrom, and from being bound to see to the application thereof, or being answerable for any loss or misapplication thereof, and, in case of a mortgagee or other person advancing money, from being concerned to see that any money advanced by him is wanted for any purpose of this Act, or that no more than is wanted is raised.

Protection of each trustee individually.

41. Each person who is for the time being trustee of a settlement is answerable for what he actually receives only, notwithstanding his signing any receipt for conformity, and in respect of his own acts, receipts, and defaults only, and is not answerable in respect of those of any other trustee, or of any banker, broker or other person, or for the insufficiency or deficiency of any securities, or for any loss not happening through his own wilful default.

Protection of trustees generally.

42. The trustees of a settlement, or any of them, are not liable for giving any consent, or for not making, bringing, taking, or doing any such application, action, proceeding, or thing, as they might make, bring, take, or do; and in case of purchase of land with capital money arising under this Act, or of an exchange, partition, or lease, are not liable for adopting any contract made by the tenant for life, or bound to inquire as to the propriety of the purchase, exchange, partition, or lease, or answerable as regards any price, consideration, or fine, and are not liable to see to or answerable for the investigation of the title, or answerable for a conveyance of land, if the conveyance purports to convey the land in the proper mode, or liable in respect of purchase-money paid by them by direction of the tenant for life to any person joining in the conveyance as a conveying party, or as giving a receipt for the purchase-money, or in any other character or in respect of any other money paid by them by direction of the tenant for life on the purchase, exchange, partition, or lease.

Trustees reimbursement.

43. The trustees of a settlement may reimburse themselves or pay and dis-

charge out of the trust property all expenses properly incurred by them.

Reference of differences to Court.

44. If at any time a difference arises between a tenant for life and the trustees of the settlement, respecting the exercise of any of the powers of this Act, or respecting any matter relating thereto, the Court may, on the application of either party, give such directions respecting the costs of the application, as the Court thinks fit.

Notice to trustees.

45. (1). A tenant for life, when intending to make a sale, exchange, partition, lease, mortgage, or charge, shall give notice of his intention in that behalf to each of the trustees of the settlement, by posting registered letters, containing the notice, addressed to the trustees, severally, each at his usual or last known place of abode in the United Kingdom, and shall give like notice to the solicitor for the trustees, if any such solicitor is known to the tenant for life, by posting a registered letter, containing the notice, addressed to the solicitor at his place of business in the United Kingdom, every letter under this section being posted not less than one month before the making by the tenant for life of the sale, exchange, partition, lease, mortgage, or charge, or of a contract for the same.

(2.) Provided that at the date of notice given the number of trustees shall not be less than two, unless a contrary intention is expressed in the settlement.

(3.) A person dealing in good faith with the tenant for life is not concerned to inquire respecting the giving of any such notice as is required by this section.

#### XI.—COURT; LAND COMMISSIONERS; PROCEDURE.

Regulations respecting payments into Court, applications, &c.

46. (1.) All matters within the jurisdiction of the Court under this Act shall, subject to the Acts regulating the Court, be assigned to the Chancery Division of the Court.

(2.) Payment of money into Court effectually exonerates therefrom the person making the payment.

(3.) Every application to the Court shall be by petition, or by summons at Chambers.

(4.) On an application by the trustees of a settlement notice shall be served in the first instance on the tenant for life.

(5.) On any application notice shall be served on such persons, if any, as the Court thinks fit.

(6.) The Court shall have full power and discretion to make such order as it thinks fit respecting the costs, charges, or expenses of all or any of the parties to any application, and may if it thinks fit, order that all or any of those costs, charges, or expenses be paid out of property subject to the settlement.

(7.) General Rules for purposes of this Act shall be deemed Rules of Court within section seventeen of the Appellate Jurisdiction Act, 1876, as altered by section nine-teen of the Supreme Court of Judicature Act, 1881, and may be made accordingly.

(8.) The powers of the Court may, as regards land in the County Palatine of Lancaster, be exercised also by the Court of Chancery of the County Palatine; and Rules for regulating proceedings in that Court shall be from time to time made by the Chancellor of the Duchy of Lancaster, with the advice and consent of a Judge of the High Court acting in the Chancery Division, and of the Vice-Chancellor of the County Palatine.

(9.) General Rules, and Rules for the Court of Chancery of the County Palatine, may be made at

any time after the passing of this Act, to take effect on or after the commencement of this Act.

(10.) The powers of the Court may, as regards land not exceeding in capital value five hundred pounds, or in annual rateable value thirty pounds, and, as regards capital money arising under this Act, and securities in which the same is invested, not exceeding in amount or value five hundred pounds, and as regards personal chattels settled or to be settled, as in this Act mentioned, not exceeding in value five hundred pounds, be exercised by any County Court within the district whereof is situate any part of the land which is to be dealt with in the Court, or from which the capital money to be dealt with in the Court arises under this Act, or in connexion with which the personal chattels to be dealt with in the Court are settled.

Payment of costs out of settled property.

47. Where the Court directs that any costs, charges, or expenses be paid out of property subject to a settlement, the same shall, subject and according to the directions of the Court, be raised and paid out of capital money arising under this Act, or other money liable to be laid out in the purchase of land to be made subject to the settlement, or out of investments representing such money or out of income of any such money or investments, or out of any accumulations of income of land, money, or investment, or by means of a sale of part of the settled land in respect whereof the costs, charges, or expenses are incurred, or of other settled land comprised in the same settlement and subject to the same limitations, or by means of a mortgage of the settled land or any part thereof, to be made by such person as the Court directs, and either by conveyance of the fee simple or other estate or interest the subject of the settlement, or by creation of a term, or otherwise, or by means of a charge on the settled land or any part thereof, or partly in one of those modes and partly in another or others, or in any such other mode as the Court thinks fit.

Constitution of Land Commissioners; their powers, &c.

48. (1.) The commissioners now bearing the three several styles of the Inclosure Commissioners for England and Wales, and the Copyhold Commissioners, and the Tithe Commissioners for England and Wales, shall, by virtue of this Act, become and shall be styled the Land Commissioners for England.

(2.) The Land Commissioners shall cause one seal to be made with their style as given by this Act; and in the execution and discharge of any power or duty under any Act relating to the three several bodies of commissioners aforesaid, they shall adopt and use the seal and style of the Land Commissioners for England, and no other.

(3.) Nothing in the foregoing provisions of this section shall be construed as altering in any respect the powers, authorities, or duties of the Land Commissioners, or as affecting in respect of appointment, salary, pension, or otherwise any of those commissioners, in office at the passing of this Act, or any assistant commissioner, secretary, or other officer or person then in office or employed under them.

(4.) All Acts of Parliament, judgments, decrees, or orders of any court, awards, deeds, and other documents, passed or made before the commencement of this Act, shall be read and have effect as if the Land Commissioners were therein mentioned instead of one or more of the three several bodies of commissioners aforesaid.

(5.) All acts, matters, and things commenced by or under the authority of any one or more of the three several bodies of commissioners aforesaid before the commencement of this Act, and not then completed,

shall and may be carried on and completed by or under the authority of the Land Commissioners; and the Land Commissioners, for the purpose of prosecuting or defending, and carrying on any action, suit, or proceeding pending at the commencement of this Act, shall come into the place of any one or more, as the case may require, of the three several bodies of commissioners aforesaid.

(6.) The Land Commissioners shall, by virtue of this Act, have, for the purposes of any Act, public, local, personal, or private, passed or to be passed, making provision for the execution of improvements on settled land, all such powers and authorities as they have for the purposes of the Improvement of Land Act, 1864; and the provisions of the last-mentioned Act relating to their proceedings and inquiries, and to authentication of instruments, and to declarations, statements, notices, applications, forms, security for expenses, inspections, and examinations, shall extend and apply, as far as the nature and circumstances of the case admit, to acts and proceedings done or taken by or in relation to the Land Commissioners under any Act making provision as last aforesaid; and the provisions of any Act relating to fees or to security for costs to be taken in respect of the business transacted under the Acts administered by the three several bodies of commissioners aforesaid shall extend and apply to the business transacted by or under the direction of the Land Commissioners under any Act, public, local, personal, or private, passed or to be passed, by which any power or duty is conferred or imposed on them.

Filing of certificates, &c., of Commissioners.

49. (1.) Every certificate and report approved and made by the Land Commissioners under this Act shall be filed in their office.

(2.) An office copy of any certificate or report so filed shall be delivered out of their office to any person requiring the same, on payment of the proper fee, and shall be sufficient evidence of the certificate or report whereof it purports to be a copy.

## XII.—RESTRICTIONS, SAVINGS, AND GENERAL PROVISIONS.

Powers not assignable; contract not to exercise powers void.

50. (1.) The powers under this Act of a tenant for life are not capable of assignment or release, and do not pass to a person as being, by operation of law or otherwise, an assignee of a tenant for life, and remain exercisable by the tenant for life after and notwithstanding any assignment, by operation of law or otherwise, of his estate or interest under the settlement.

(2.) A contract by a tenant for life not to exercise any of his powers under this Act is void.

(3.) But this section shall operate without prejudice to the rights of any person being an assignee for value of the estate or interest of the tenant for life; and in that case the assignee's rights shall not be affected without his consent, except that, unless the assignee is actually in possession of the settled land or part thereof, his consent shall not be requisite for the making of leases thereof by the tenant for life, provided the leases are made at the best rent that can reasonably be obtained, without fine, and in other respects are in conformity with this Act.

(4.) This section extends to assignments made or coming into operation before or after and to acts done before or after the commencement of this Act; and in this section assignment includes assignment by way of mortgage, and any partial or qualified assignment, and any charge or incumbrance; and assignee has a meaning corresponding with that of assignment.

Prohibition or limitation against exercise of powers, void.

51. (1.) If in a settlement, will, assurance, or other instrument executed or made before or after, or partly before and partly after, the commencement of this Act a provision is inserted purporting or attempting, by way of direction, declaration, or otherwise, to forbid a tenant for life to exercise any power under this Act, or attempting, or tending, or intended, by a limitation, gift, or disposition over of settled land, or by a limitation, gift, or disposition of other real or any personal property, or by the imposition of any condition, or by forfeiture, or in any other manner whatever, to prohibit or prevent him from exercising, or to induce him to abstain from exercising, or to put him into a position inconsistent with his exercising, any power under this Act, that provision, as far as it purports, or attempts, or tends, or is intended to have, or would or might have, the operation aforesaid, shall be deemed to be void.

(2.) For the purposes of this section an estate or interest limited to continue so long only as a person abstains from exercising any power shall be and take effect as an estate or interest to continue for the period for which it would continue if that person were to abstain from exercising the power, discharged from liability to determination or cesser by or on his exercising the same.

Provisions against forfeiture.

52. Notwithstanding anything in a settlement, the exercise by the tenant for life of any power under this Act shall not occasion forfeiture.

Tenant for life trustee for all parties interested.

53. A tenant for life shall, in exercising any power under this Act, have regard to the interests of all parties entitled under the settlement, and shall, in relation to the exercise thereof by him, be deemed to be in the position and to have the duties and liabilities of a trustee for those parties.

General protection of purchasers, &c.

54. On a sale, exchange, partition, lease, mortgage, or charge, or purchaser, lessee, mortgagee, or other person dealing in good faith with a tenant for life shall, as against all parties entitled under the settlement, be conclusively taken to have given the best price, consideration, or rent, as the case may require, that could reasonably be obtained by the tenant for life, and to have complied with all the requisitions of this Act.

Exercise of powers; limitation of provisions, &c.

55. (1.) Powers and authorities conferred by this Act on a tenant for life or trustees or the Court or the Land Commissioners are exercisable from time to time.

(2.) Where a power of sale, enfranchisement, exchange, partition, leasing, mortgaging, charging, or other power is exercised by a tenant for life, or by the trustees of a settlement, he and they may respectively execute, make, and do all deeds, instruments, and things necessary or proper in that behalf.

(3.) Where any provision in this Act refers to sale, purchase, exchange, partition, leasing, or other dealing, or to any power, consent, payment, receipt, deed, assurance, contract, expenses, act, or transaction, the same shall be construed to extend only (unless it is otherwise expressed) to sales, purchases, exchanges, partitions, leasings, dealings, powers, consents, payments, receipts, deeds, assurances, contracts, expenses, acts, and transactions under this Act.

Saving for other powers.

56. (1.) Nothing in this Act shall take away, abridge, or prejudicially affect any power for the time being subsisting under a settle-

ment, or by statute or otherwise, exercisable by a tenant for life, or by trustees with his consent, or on his request, or by his direction, or otherwise; and the powers given by this Act are cumulative.

(2.) But in case of conflict between the provisions of a settlement and the provisions of this Act, relative to any matter in respect whereof the tenant for life exercises or contracts or intends to exercise any power under this Act, the provisions of this Act shall prevail; and, accordingly, notwithstanding anything in the settlement, the consent of the tenant for life shall, by virtue of this Act, be necessary to the exercise by the trustees of the settlement or other person of any power conferred by the settlement exercisable for any purpose provided for in this Act.

(3.) If a question arises, or a doubt is entertained, respecting any matter within this section, the Court may, on the application of the trustees of the settlement, or of the tenant for life, or of any other person interested, give its decision, opinion, advice, or direction thereon.

Additional or larger powers by settlement.

57. (1.) Nothing in this Act shall preclude a settlor from conferring on the tenant for life, or the trustees of the settlement, any powers additional to or larger than those conferred by this Act.

(2.) Any additional or larger powers so conferred shall, as far as may be, notwithstanding anything in this Act, operate and be exercisable in the like manner, and with all the like incidents, effects, and consequences, as if they were conferred by this Act, unless a contrary intention is expressed in the settlement.

#### XIII.—LIMITED OWNERS GENERALLY.

Enumeration of other limited owners, to have powers of tenant for life.

58. (1.) Each person as follows shall, when the estate or interest of each of them is in possession, have the powers of a tenant for life under this Act, as if each of them were a tenant for life as defined in this Act (namely):

- (i.) A tenant in tail, including a tenant in tail who is by Act of Parliament restrained from barring or defeating his estate tail, and although the reversion is in the Crown, and so that the exercise by him of his powers under this Act shall bind the Crown, but not including such a tenant in tail where the land in respect whereof he is so restrained was purchased with money provided by Parliament in consideration of public services:
- (ii.) A tenant in fee simple, with an executory limitation, gift, or disposition over, on failure of his issue, or in any other event:
- (iii.) A person entitled to a base fee, although the reversion is in the Crown, and so that the exercise by him of his powers under this Act shall bind the Crown:
- (iv.) A tenant for years determinable on life, not holding merely under a lease at a rent:
- (v.) A tenant for the life of another, not holding merely under a lease at a rent:
- (vi.) A tenant for his own or any other life, or for years determinable on life, whose estate is liable to cease in any event during that life, whether by expiration of the estate, or by conditional limitation, or otherwise, or to be defeated by an executory limitation, gift, or disposition over, or is subject to a trust for accumulation of income for payment of debts or other purpose:

(vii.) A tenant in tail after possibility of issue extinct:

(viii.) A tenant by the curtesy:

(ix.) A person entitled to the income of land under a trust or direction for payment thereof to him during his own or any other life, whether subject to expenses of management or not, or until sale of the land, or until forfeiture of his interest therein on bankruptcy or other event.

(2.) In every such case, the provisions of this Act referring to a tenant for life, either as conferring powers on him or otherwise, and to a settlement, and to settled land, shall extend to each of the persons aforesaid, and to the instrument under which his estate or interest arises, and to the land therein comprised.

(3.) In any such case any reference in this Act to death as regards a tenant for life shall, where necessary, be deemed to refer to the determination by death or otherwise of such estate or interest as last aforesaid.

#### XIV.—INFANTS; MARRIED WOMEN; LUNATICS.

Infant absolutely entitled to be as tenant for life.

59. Where a person, who is in his own right seized of or entitled in possession to land, is an infant, then for purposes of this Act the land is settled land, and the infant shall be deemed tenant for life thereof.

Tenant for life, infant.

60. Where a tenant for life, or a person having the powers of a tenant for life under this Act, is an infant, or an infant would, if he were of full age, be a tenant for life, or have the powers of a tenant for life under this Act, the powers of a tenant for life under this Act, may be exercised on his behalf by the trustees of the settlement, and if there are none, then by such person and in such manner as the Court, on the application of a testamentary or other guardian or next friend of the infant, either generally or in a particular instance, orders.

Married woman, how to be affected.

61.—(1.) The foregoing provisions of this Act do not apply in the case of a married woman.

(2.) Where a married woman who, if she had not been a married woman, would have been a tenant for life or would have had the powers of a tenant for life under the foregoing provisions of this Act, is entitled for her separate use, or is entitled under any statute, passed or to be passed, for her separate property, or as a feme sole, then she, without her husband, shall have the powers of a tenant for life under this Act.

(3.) Where she is entitled otherwise than as aforesaid, then she and her husband together shall have the powers of a tenant for life under this Act.

(4.) The provisions of this Act referring to a tenant for life and a settlement and settled land shall extend to the married woman without her husband, or to her and her husband together, as the case may require, and to the instrument under which her estate or interest arises, and to the land therein comprised.

(5.) The married woman may execute, make, and do all deeds, instruments, and things necessary or proper for giving effect to the provisions of this section.

(6.) A restraint on anticipation in the settlement shall not prevent the exercise by her of any power under this Act.

Tenant for life, lunatic.

62. Where a tenant for life, or a person having the powers of a tenant for life under this Act, is a lunatic, so found by inquisition, the committee of his estate may, in his name and on his behalf, under an order of the Lord Chancellor, or other person intrusted by virtue of the Queen's Sign Manual with the care and commitment of the custody



of the persons and estates of lunatics, exercise the powers of a tenant for life under this Act; and the order may be made on the petition of any person interested in the settled land, or of the committee of the estate.

#### XV.—SETTLEMENT BY WAY OF TRUSTS FOR SALE.

Provision for case of trust to sell and re-invest in land. 63. (1.) Any land, or any estate or interest in land, which under or by virtue of any deed, will, or agreement, covenant to surrender, copy of court roll, Act of Parliament, or other instrument or any number of instruments, whether made or passed before or after, or partly before and partly after, the commencement of this Act, is subject to a trust or direction for sale of that land, estate, or interest, and for the application or disposal of the money to arise from the sale, or the income of that money, or the income of the land until sale or any part of that money or income, for the benefit of any person for his life, or any other limited period, or for the benefit of two or more persons concurrently for any limited period, and whether absolutely, or subject to a trust for accumulation of income for payment of debts or other purpose, or to any other restriction, shall be deemed to be settled land, and the instrument or instruments under which the trust arises shall be deemed to be a settlement; and the person for the time being beneficially entitled to the income of the land, estate, or interest aforesaid until sale, whether absolutely or subject as aforesaid, shall be deemed to be tenant for life thereof; or if two or more persons are so entitled concurrently, then those persons shall be deemed to constitute together the tenant for life thereof; and the persons, if any, who are for the time being under the settlement trustees for sale of the settled land, or having power of consent to, or approval of, or control over the sale, or if under the settlement there are no such trustees, then the persons, if any, for the time being, who are by the settlement declared to be trustees thereof for purposes of this Act are for purposes of this Act trustees of the settlement.

(2.) In every such case the provisions of this Act referring to a tenant for life, and to a settlement, and to settled land, shall extend to the person or persons aforesaid, and to the instrument or instruments under which his or their estate or interest arises, and to the land therein comprised, subject and except as in this section provided (that is to say):

(i.) Any reference in this Act to the predecessors or successors in title of the tenant for life, or to the remaindermen, or reversioners or other persons interested in the settled land, shall be deemed to refer to the persons interested in succession or otherwise in the money to arise from sale of the land, or the income of that money, or the income of the land until sale (as the case may require).

(ii.) Capital money arising under this Act from the settled land shall not be applied in the purchase of land unless such application is authorized by the settlement in the case of capital money arising thereunder from sales or other dispositions of the settled land, but may, in addition to any other mode of application authorized by this Act, be applied in any mode in which capital money arising under the settlement from any such sale or other disposition is applicable thereunder, subject to any consent required or direction given by the settlement with respect to the application of trust money of the settlement.

(iii.) Capital money arising under this Act from the settled land and the securities in which the same

is invested, shall not for any purpose of disposition, transmission, or devolution, be considered as land unless the same would, if arising under the settlement from a sale or disposition of the settled land, have been so considered, and the same shall be held in trust for and shall go to the same persons successively in the same manner and for and on the same estates, interests, and trusts as the same would have gone and been held if arising under the settlement from a sale or disposition of the settled land, and the income of such capital money and securities shall be paid or applied accordingly.

(iv.) Land of whatever tenure acquired under this Act, by purchase, or in exchange, or on partition, shall be conveyed to and vested in the trustees of the settlement, on the trusts, and subject to the powers and provisions which, under the settlement or by reason of the exercise of any power of appointment or charging therein contained, are subsisting with respect to the settled land, or would be so subsisting if the same had not been sold, or as near thereto as circumstances permit, but so as not to increase or multiply charges or powers of charging.

#### XVI.—REPEALS.

Repeal of enactments in schedule.

64. (1.) The enactments described in the schedule to this Act are hereby repealed.

(2.) The repeal by this Act of any enactment shall not affect any right accrued or obligation incurred thereunder before the commencement of this Act; nor shall the same affect the validity or invalidity, or any operation, effect, or consequence, of any instrument executed or made, or of anything done or suffered, or of any order made, before the commencement of this Act; nor shall the same affect any action, proceeding, or thing then pending or uncompleted; and every such action, proceeding, and thing may be carried on and completed as if there had been no such repeal in this Act.

#### XVII.—IRELAND.

Modifications respecting Ireland.

65. (1.) In the application of this Act to Ireland the foregoing provisions shall be modified as in this section provided.

(2.) The Court shall be Her Majesty's High Court of Justice in Ireland.

(3.) All matters within the jurisdiction of that Court shall, subject to the Acts regulating that Court, be assigned to the Chancery Division of that Court; but General Rules under this Act for Ireland may direct that those matters or any of them be assigned to the Land Judges of that Division.

(4.) Any deed inrolled under this Act shall be inrolled in the Record and Writ Office of that Division.

(5.) General Rules for purposes of this Act for Ireland shall be deemed Rules of Court within the 40 & 41 Vict. Supreme Court of Judicature Act (Ireland), 1877, and may be made accordingly, at any time after the passing of this Act, to take effect on or after the Commencement of this Act.

(6.) The several Civil Bill Courts in Ireland shall, in addition to the jurisdiction possessed by them independently of this Act, have and exercise the power and authority exercisable by the Court under this Act, in all proceedings where the property, the subject of the proceedings, does not exceed in capital value five hundred pounds, or in annual value thirty pounds.

(7.) The provisions of Part II. of the 40 & 41 Vict. County Officers and Courts (Ireland) c. 56.

Act, 1877, relative to the equitable jurisdiction of the Civil Bill Courts, shall apply to the jurisdiction exercisable by those Courts under this Act.

(8.) Rules and Orders for purposes of this Act, as far as it relates to the Civil Bill Courts, may be made at any time after the passing of this Act, to take effect on or after the commencement of this Act, in manner prescribed by section seventy-nine of the County Officers and Courts (Ireland) Act, 1877.

(9.) The Commissioners of Public Works in Ireland shall be substituted for the Land Commissioners.

(10.) The term for which a lease other than a building or mining lease be granted shall be not exceeding thirty-five years.

THE SCHEDULE.

Section 64.

REPEALS.

23 & 24 Vict., c. 145, in part	An Act to give to trustees, mortgagees, and others, certain powers now commonly inserted in settlements, mortgages, and wills	} in part; namely,—
Parts I. and IV. (being so much of the Act as is not repealed by the Conveyancing and Law of Property Act, 1881).		
27 & 28 Vict., c. 114, in part	The Improvement of Land Act, 1864 Sections seventeen and eighteen : Section twenty-one, from "either by a party" to "benefice or" (inclusive); and from "or if the land owner" to "minor or minors" (inclusive); and "or circumstance" (twice) : Except as regards Scotland.	} in part; namely,—
40 & 41 Vict., c. 18, in part	The Settled Estates Act, 1877 Section seventeen.	} in part; namely,—

CAP. XXXIX.

An Act for further improving the Practice of Conveyancing; and for other purposes.

[10th August 1882.]

Be it enacted, &c.,

Preliminary.

Short titles; commencement; extent; interpretation.  
44 & 45 Vict. c. 41.

1. (1.) This Act may be cited as the Conveyancing Act, 1882; and the Conveyancing and Law of Property Act, 1881 (in this Act referred to as the Conveyancing Act of 1881) and this Act may be cited together as the Conveyancing Acts, 1881, 1882.

(2.) This Act, except where it is otherwise expressed, shall commence and take effect from and immediately after the thirty-first day of December one thousand eight hundred and eighty-two, which time is in this Act referred to as the commencement of this Act.

(3.) This Act does not extend to Scotland.

(4.) In this Act and in the Schedule thereto—

(i.) Property includes real and personal property, and any debt, and any thing in action, and any other right or interest in the nature of property, whether in possession or not;

(ii.) Purchaser includes a lessee or mortgagee, or an intending purchaser, lessee, or mortgagee, or other

person, who, for valuable consideration, takes or deals for property, and purchase has a meaning corresponding with that of purchaser;

3 & 4 Will. 4 c. 74. (iii.) The Act of the session of the third and fourth years of King William the Fourth (chapter seventy-four) "for the abolition of Fines and Recoveries, and for the substitution of more simple modes of Assurance" is referred to as the Fines and Recoveries Act; and  
4 & 5 Will. 4 c. 92. the Act of the session of the fourth and fifth years of King William the Fourth (chapter ninety-two) "for the abolition of Fines and Recoveries, and for the substitution of more simple modes of Assurance in Ireland" is referred to as the Fines and Recoveries (Ireland) Act.

Searches.

Official negative and other certificates of searches for judgments, crown debts, &c.

2. (1.) Where any person requires, for purposes of this section, search to be made in the Central Office of the Supreme Court of Judicature for entries of judgments, deeds, or other matters or documents, whereof entries are required or allowed to be made in that office by any Act described in Part I. of the First Schedule to the Conveyancing Act of 1881, or by any other Act, he may deliver in the office a requisition in that behalf, referring to this section.

(2.) Thereupon the proper officer shall diligently make the search required, and shall make and file in the office a certificate setting forth the result thereof; and office copies of that certificate shall be issued on requisition, and an office copy shall be evidence of the certificate.

(3.) In favour of a purchaser, as against persons interested under or in respect of judgments, deeds, or other matters or documents, whereof entries are required or allowed as aforesaid, the certificate, according to the tenor thereof, shall be conclusive, affirmatively or negatively, as the case may be.

(4.) Every requisition under this section shall be in writing, signed by the person making the same, specifying the name against which he desires search to be made, or in relation to which he requires an office copy certificate of result of search, and other sufficient particulars; and the person making any such requisition shall not be entitled to a search, or an office copy certificate, until he has satisfied the proper officer that the same is required for the purposes of this section.

(5.) General Rules shall be made for the purposes of this section, prescribing forms and contents of requisitions and certificates, and regulating the practice of the office, and prescribing, with the concurrence of the Commissioners of Her Majesty's Treasury, the fees to be taken therein; which Rules shall be deemed Rules of Court, within section seventeen of the Appellate Jurisdiction Act, 1876, as altered by section nineteen of the Supreme Court of Judicature Act, 1881, and may be made, at any time after the passing of this Act, to take effect on or after the commencement of this Act.

(6.) If any officer, clerk, or person employed in the office commits, or is party or privy to, any act or fraud or collusion, or is wilfully negligent, in the making of or otherwise in relation to any certificate or office copy under this section, he shall be guilty of a misdemeanour.

(7.) Nothing in this section or in any Rule made thereunder shall take away, abridge, or prejudicially affect any right which any person may have independently of this section to make any search in the office; and every such search may be made as if this section or any such Rule had not been enacted or made.

(8.) Where a solicitor obtains an office copy certi-

ficate of result of search under this section, he shall not be answerable in respect of any loss that may arise from error in the certificate.

(9.) Where the solicitor is acting for trustees, executors, agents, or other persons in a fiduciary position, those persons also shall not be so answerable.

(10.) Where such persons obtain such an office copy without a solicitor, they shall also be protected in like manner.

(11.) Nothing in this section applies to deeds enrolled under the Fines and Recoveries Act, or under any other Act, or under any statutory Rule.

(12.) This section does not extend to Ireland.

#### Notice.

Restriction on constructive notice.

3. (1) A purchaser shall not be prejudicially affected by notice of any instrument, fact, or thing unless—

(i.) It is within his own knowledge, or would have come to his knowledge if such inquiries and inspections had been made as ought reasonably to have been made by him; or

(ii.) In the same transaction with respect to which a question of notice to the purchaser arises, it has come to the knowledge of his counsel, as such, or of his solicitor, or other agent, as such, or would have come to the knowledge of his solicitor, or other agent, as such, if such inquiries and inspections had been made as ought reasonably to have been made by the solicitor or other agent.

(2.) This section shall not exempt a purchaser from any liability under, or any obligation to perform or observe, any covenant, condition, provision, or restriction contained in any instrument under which his title is derived, mediately, or immediately; and such liability or obligation may be enforced in the same manner and to the same extent as if this section had not been enacted.

(3.) A purchaser shall not by reason of anything in this section be affected by notice in any case where he would not have been so affected if this section had not been enacted.

(4.) This section applies to purchases made either before or after the commencement of this Act; save that, where an action is pending at the commencement of this Act the rights of the parties shall not be affected by this section.

#### Leases.

Contract for lease not part of title to lease.

4. (1.) Where a lease is made under a power contained in a settlement, will, Act of Parliament, or other instrument, any preliminary contract for or relating to the lease shall not, for the purpose of the deduction of title to an intended assign, form part of the title, or evidence of the title, to the lease.

(2.) This section applies to leases made either before or after the commencement of this Act.

#### Separate Trustees.

Appointment of separate sets of trustees.

5. (1.) On an appointment of new trustees, a separate set of trustees may be appointed for any part of the trust property held on trusts distinct from those relating to any other part or parts of the trust property; or, if only one trustee was originally appointed, then one separate trustee may be so appointed for the first-mentioned part.

(2.) This section applies to trusts created either before or after the commencement of this Act.

#### Powers.

Disclaimer of power by trustees.

6. (1.) A person to whom any power, whether coupled with an interest or not, is given, may, by deed, disclaim the power; and, after disclaimer, shall not be capable of exercising or joining in the exercise of the power.

(2.) On such disclaimer, the power may be exercised by the other or others, or the survivors or survivor of the others, of the persons to whom the power is given, unless the contrary is expressed in the instrument creating the power.

(3.) This section applies to powers created by instruments coming into operation either before or after the commencement of this Act.

#### Married Women.

Acknowledgment of deeds by married women.

7. (1.) In section seventy-nine of the Fines and Recoveries Act, and section seventy of the Fines and Recoveries (Ireland) Act, there shall, by virtue of this Act, be substituted for the words "two of the perpetual commissioners, or two special commissioners," the words "one of the perpetual commissioners, or one special commissioner;" and in section eighty-three of the Fines and Recoveries Act, and in section seventy-four of the Fines and Recoveries (Ireland) Act, there shall, by virtue of this Act, be substituted for the word "persons" the word "person," and for the word "commissioners" the words "a commissioner;" and all other provisions of those Acts, and all other enactments having reference in any manner to the sections aforesaid shall be read and have effect accordingly.

(2.) Where the memorandum of acknowledgment by a married woman of a deed purports to be signed by a person authorized to take the acknowledgment, the deed shall, as regards the execution thereof by the married woman, take effect at the time of acknowledgment, and shall be conclusively taken to have been duly acknowledged.

(3.) A deed acknowledged before or after the commencement of this Act by a married woman, before a judge of the High Court of Justice in England or Ireland, or before a judge of a county court in England, or before a chairman in Ireland, or before a perpetual commissioner or a special commissioner, shall not be impeached or impeachable by reason only that such judge, chairman, or commissioner was interested or concerned either as a party, or as solicitor, or clerk to the solicitor for one of the parties, or otherwise, in the transaction giving occasion for the acknowledgment; and General Rules shall be made for preventing any person interested or concerned as aforesaid from taking an acknowledgment; but no such Rule shall make invalid any acknowledgment; and those Rules, shall as regards England, be deemed Rules of Court within section seventeen of the Appellate Jurisdiction Act, 39 & 40 Vict. c. 59. 1876, as altered by section nineteen of the Supreme Court of Judicature Act, 1881, 44 & 45 Vict. c. 63. and shall, as regards Ireland, be deemed Rules of Court within the Supreme Court of Judicature Act (Ireland), 1877, and may be made accordingly, for England and Ireland respectively, at any time after the passing of this Act, to take effect on or after the commencement of this Act.

(4.) The enactments described in the Schedule to this Act are hereby repealed.

(5.) The foregoing provisions of this section, including the repeal therein, apply only to the execution of deeds by married women after the commencement of this Act.

(6.) Notwithstanding the repeal or any other thing

in this section, the certificate, if not lodged before the commencement of this Act, of the taking of an acknowledgment by a married woman of a deed executed before the commencement of this Act, with any affidavit relating thereto, shall be lodged, examined, and filed in the like manner and with the like effects and consequences as if this section had not been enacted.

(7.) There shall continue to be kept in the proper office of the Supreme Court of Judicature an index to all certificates of acknowledgments of deeds by married women lodged therein, before or after the commencement of this Act, containing the names of the married women and their husbands, alphabetically arranged, and the dates of the certificates and of the deeds to which they respectively relate, and other particulars found convenient; and every such certificate lodged after the commencement of this Act shall be entered in the index as soon as may be after the certificate is filed.

(8.) An office copy of any such certificate filed before or after the commencement of this Act shall be delivered to any person applying for the same; and every such office copy shall be received as evidence of the acknowledgment of the deed to which the certificate refers.

#### *Powers of Attorney.*

Effect of power of attorney, for value, made absolutely irrevocable.

8. (1.) If a power of attorney, given for valuable consideration, is in the instrument creating the power expressed to be irrevocable, then, in favour of a

purchaser,—

(i.) The power shall not be revoked at any time, either by anything done by the donor of the power without the concurrence of the donee of the power, or by the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power; and

(ii.) Any act done at any time by the donee of the power, in pursuance of the power, shall be as valid as if anything done by the donor of the power without the concurrence of the donee of the power, or the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power, had not been done or happened; and

(iii.) Neither the donee of the power nor the purchaser shall at any time be prejudicially affected by notice of anything done by the donor of the power, without the concurrence of the donee of the power or of the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power.

(2.) This section applies only to powers of attorney created by instruments executed after the commencement of this Act.

Effect of power of attorney, for value or not, made irrevocable for fixed time.

9. (1.) If a power of attorney, whether given for valuable consideration or not, is in the instrument creating the power expressed to be irrevocable for a fixed time, therein specified, not exceeding one year from the date of the instrument, then, in favour of a purchaser,—

(i.) The power shall not be revoked, for and during that fixed time, either by anything done by the donor of the power without the concurrence of the donee of the power, or by the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power; and

(ii.) Any act done within that fixed time, by the donee of the power, in pursuance of the power, shall be as valid as if anything done by the donor of the power without the concurrence of the donee of the power, or the death, marriage, lunacy, unsoundness of mind, or

bankruptcy of the donor of the power, had not been done or happened; and

(iii.) Neither the donee of the power, nor the purchaser, shall at any time be prejudicially affected by notice either during or after that fixed time of anything done by the donor of the power during that fixed time, without the concurrence of the donee of the power, or of the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power within that fixed time.

(2.) This section applies only to powers of attorney created by instruments executed after the commencement of this Act.

#### *Executory Limitations.*

Restriction on executory limitations.

10. (1.) Where there is a person entitled to land for an estate in fee, or for a term of years absolute or determinable on life, or for term of life, with an executory limitation over on default or failure of all or any of his issue, whether within or at any specified period or time or not, that executory limitation shall be or become void and incapable of taking effect, if and as soon as there is living any issue who has attained the age of twenty-one years, of the class on default or failure whereof the limitation over was to take effect.

(2.) This section applies only where the executory limitation is contained in an instrument coming into operation after the commencement of this Act.

#### *Long Terms.*

Amendment of enactment respecting long terms.

11. Section sixty-five of the Conveyancing Act of 1881 shall apply to and include, and shall be deemed to have always applied to and included, every such term as in that section mentioned, whether having as the immediate reversion thereon the freehold or not; but not—

(i.) Any term liable to be determined by re-entry for condition broken; or

(ii.) Any term created by sub-demise out of a superior term, itself incapable of being enlarged into a fee simple.

#### *Mortgages.*

Reconveyance on mortgage.

12. The right of the mortgagor, under section fifteen of the Conveyancing Act of 1881, to require a mortgagee, instead of reconveying, to assign the mortgage debt and convey the mortgaged property to a third person, shall belong to and be capable of being enforced by each incumbrancer, or by the mortgagor, notwithstanding any intermediate incumbrance; but a requisition of an incumbrancer shall prevail over a requisition of the mortgagor, and, as between incumbrancers, a requisition of a prior incumbrancer shall prevail over a requisition of a subsequent incumbrancer.

#### *Saving.*

Restriction on repeals in this Act.

13. The repeal by this Act of any enactment shall not affect any right accrued or obligation incurred thereunder before the commencement of this Act; nor shall the same affect the validity or invalidity, or any operation, effect, or consequence, of any instrument executed or made, or of anything done or suffered, before the commencement of this Act; nor shall the same affect any action, proceeding, or thing then pending or uncompleted; and every such action, proceeding and thing may be carried on and completed as if there had been no such repeal in this Act.

SCHEDULE.

Section 7 (4).	<b>REPEALS.</b>
3 & 4 Will. 4. c. 74. in part.	The Fines and Recoveries } in part ; Act - - - - - } namely,— Section eighty-four, from and including the words “and the same judge,” to the end of that section. Sections eighty-five to eighty-eight, inclusive.
4 & 5 Will. 4. c. 92. in part.	The Fines and Recoveries } in part ; (Ireland) Act - - - } namely,— Section seventy-five from and including the words “and the same Judge,” to the end of that section. Sections seventy-six to seventy-nine, inclusive.
17 & 18 Vict. c. 75.	An Act to remove doubts concerning the due acknowledgments of deeds by married women in certain cases.
41 & 42 Vict. c. 23.	The acknowledgment of deeds by Married Women (Ireland) Act, 1878.

CAP. XL.

An Act to amend the law of Copyright relating to Musical Compositions. [10th August 1882.]

WHEREAS it is expedient to amend the law relating to copyright in musical compositions, and to protect the public from vexatious proceedings for the recovery of penalties for the unauthorised performance of the same :

Be it therefore enacted, &c., . . . . .

Printed notice restraining public performance.

1. On and after the passing of this Act the proprietor of the copyright in any musical composition first published after the passing of this Act, or his assignee, who shall be entitled to and be desirous of retaining in his own hands exclusively the right of public representation or performance of the same, shall print or cause to be printed upon the title-page of every published copy of such musical composition a notice to the effect that the right of public representation or performance is reserved.

Provision when right of performance and copyright are vested in different owners.

2. In case, after the passing of this Act, the right of public representation or performance of and the copyright in, any musical composition shall be or become vested before publication of any copy thereof in different owners, then, if the owner of the right of public representation or performance shall desire to retain the same, he shall, before any such publication of any copy of such musical composition, give to the owner of the copyright therein notice in writing requiring him to print upon every copy of such musical composition a notice to the effect that the right of public representation or performance is reserved; but in case the right of public representation or performance of, and the copyright in, any musical composition shall, after publication of any copy thereof subsequently to the passing of this Act, first become vested in different owners, and such notice as aforesaid shall have been duly printed on all copies published after the passing of this Act previously to such vesting, then, if the owner of the right of performance and representation shall desire to retain the same, he shall, before the publication of any further copies of such musical composition, give notice in writing to the person in whom the copyright shall be then vested, requiring him to print such notice as

aforesaid on every copy of such musical composition to be thereafter published.

Penalty on owner of copyright for noncompliance with notice from owner of right of performance.

3. If the owner for the time being of the copyright in any musical composition shall, after due notice being given to him or his predecessor in title at the time, and generally in accordance with the last preceding section, neglect or fail to print legibly and conspicuously upon every copy of such composition published by him or by his authority, or by any person lawfully entitled to publish the same, and claiming through or under him, a note or memorandum stating that the right of public representation or performance is reserved, then and in such case the owner of the copyright at the time of the happening of such neglect or default, shall forfeit and pay to the owner of the right of public representation or performance of such composition the sum of twenty pounds, to be recovered in any court of competent jurisdiction.

Costs. 3 & 4 Will. 4. c. 15.

4. Notwithstanding the provisions of the Act passed in the third and fourth years of His Majesty King William the Fourth to amend the laws relating to dramatic literary property, or any other Act in which those provisions are incorporated, the cost of any action or proceedings for penalties or damages in respect of the unauthorised representation or performance of any musical composition published before the passing of this Act shall, in cases in which the plaintiff shall not recover more than forty shillings as penalty or damages, be in the discretion of the court or judge before whom such action or proceedings shall be tried.

Short title.

5. This Act may be cited as the Copyright (Musical Compositions) Act, 1882.

CAP. XLI.

An Act to grant certain Duties of Customs and Inland Revenue, to alter other Duties, and to amend the Laws relating to Customs and Inland Revenue. [10th August 1882.]

CAP. XLII.

An Act to amend the Law relating to Civil Imprisonment in Scotland. [18th August 1882.]

CAP. XLIII.

An Act to amend the Bills of Sale Act, 1878. [18th August 1882.]

CAP. XLIV.

An Act to authorise the Commutation of a portion of a Pension in pursuance of the Pensions Commutation Act, 1871. [18th August 1882.]

CAP. XLV.

An Act to make provision for the transfer of the Assets and Liabilities of the Provident Branch of the Bombay Civil Fund and other funds to the Secretary of State for India in Council. [18th August 1882.]

## CAP. XLVI.

An Act to amend the Isle of Man (Officers) Act, 1876. [18th August 1882.]

## CAP. XLVII.

An Act to make provision respecting certain Arrears of Rent in Ireland. [18th August 1882.]

Be it enacted, &c.,

## PART I.

*Settlement of Arrears of Rent.*

Settlement by Land Commission of arrears of rent. 1. (1.) In the case of any holding to which the Land Law (Ireland) Act, 1881, applies, and which is valued under the Acts relating to the valuation of rateable property in Ireland at not more than thirty pounds a year, if on the application of the landlord and the tenant of such holding, or of either of them after ten days notice in the prescribed manner by the landlord or his agent to the tenant, or by the tenant to the landlord or his agent, the following circumstances (in this Act referred to as preliminary conditions) are proved to the satisfaction of the Irish Land Commission, namely,—

- (a.) That the rent payable in respect of the year of the tenancy expiring on the last gale day of the tenancy in the year one thousand eight hundred and eighty-one (which year of the tenancy is in this Act referred to as "the year expiring as aforesaid") has been satisfied on or before the thirtieth day of November one thousand eight hundred and eighty-two; and
- (b.) That antecedent arrears of rent are due to the landlord; and
- (c.) That the tenant is unable to discharge such antecedent arrears, without loss of his holding, or deprivation of the means necessary for the cultivation thereof,

the Irish Land Commission (in this Act referred to as the Land Commission) may make an order for the payment to or for the benefit of the landlord of a sum equal to one half of such antecedent arrears, subject to the limitation that the sum so paid shall not exceed the yearly rent payable in respect of the holding for the year of the tenancy next preceding the year expiring as aforesaid: Provided that for the purpose of application under the provisions of sections two, ten, and thirteen respectively of this Act, the Land Commission may in respect of such notice extend the periods in the said sections respectively mentioned for any time not exceeding ten days.

(2.) On such order for payment to or for the benefit of the landlord being made by the Land Commission, all such antecedent arrears of rent shall, subject as herein-after mentioned, be released and extinguished, and any judgment, decree, or security for the rent of the holding, and any judgment or decree for the recovery of the holding on account of the nonpayment of rent, shall be vacated so far as regards any rent due in respect of the holding before the last gale day in the year expiring as aforesaid, but shall not be vacated so far as regards any rent subsequently accrued due, or any costs due in pursuance of such judgment, decree, or security: Provided that in the event of a sale of the tenancy within seven years from the making of such order the arrears of rent dealt with by such order and not satisfied by payment or remission shall, to an amount not exceeding one year of such arrears nor one half of the proceeds of such sale, be a sum payable to the landlord

44 & 45 Vic. c. 49. out of such proceeds within the meaning of the Land Law (Ireland) Act, 1881.

For the purposes of this Act the saleable value of the tenant's interest shall, so far as the Commissioners think it reasonable, be taken into account in ascertaining whether the tenant is unable to discharge such antecedent arrears.

(3.) All payments on account of rent made by the tenant to the landlord in or subsequent to the year expiring as aforesaid, but before the thirtieth day of November one thousand eight hundred and eighty-two, shall be deemed to have been made on account of the rent payable in respect of the year expiring as aforesaid, to the extent to which the rent for that year had at the time of such payment accrued due, provided that where it appears that, according to the ordinary course of dealing between the landlord and tenant of a holding, the rent of such holding has usually been paid on some day after the day on which it became legally due, the usual day of payment shall be deemed, for the purposes of this sub-section, to be the time at which the rent accrued due.

(4.) A remission by the landlord of the whole or any part of the rent payable in respect of the year expiring as aforesaid shall be deemed to be a satisfaction of the amount of rent so remitted; provided that no remission made for any previous year shall be credited to the year expiring as aforesaid.

(5.) The Land Commission, if satisfied on the occasion of any application made under this Act that it is just so to do, may authorise the tenant to make to the Land Commission any payments on account of the rent payable in respect of the year of the tenancy expiring as aforesaid which the tenant might otherwise have made to the landlord, and such payment shall for the purposes of this Act be deemed to have been made to the landlord, and the Land Commission shall, having first given public notice in the prescribed manner, cause any sum so paid by the tenant to be paid to the person appearing to such Commission to be entitled thereto as landlord.

(6.) Any money payable under this Act by the Land Commission to the landlord shall be paid to the person entitled as landlord without cost, except so far as may be caused by disputed title or by the person so entitled failing to comply with the rules for the time being in force relating to the payment of such money: Provided always, that where two or more parties are entitled to the arrears, the Land Commission shall have power to decide the rights of the parties, and the proportion in which the sums so ordered to be paid to or for the benefit of the landlord shall be divided amongst them.

Modification in case of evicted tenant when restored to holding.

2. Any tenant evicted from his holding for nonpayment of rent, or whose tenancy has been purchased for the landlord at any sale under and by virtue of any writ of execution founded upon a judgment obtained by the landlord for an arrear of rent due in respect of such holding, may, if his landlord agrees to reinstate him, apply, with the consent of his landlord in the prescribed manner, during the time limited for applications under this Act to the Land Commission under this Act, and the Land Commission may make an order under this Act in the same manner as if the tenant had not been evicted or his tenancy had not been sold.

Any tenant evicted for nonpayment of rent whom the landlord does not agree to reinstate, but who is entitled to apply for a writ of restitution in pursuance of the seventy-first section of the Landlord and Tenant

23 & 24 Vic. c. 164. Law Amendment Act (Ireland), 1860,

may apply during the time limited for applications under this Act to the Land Commission

under this Act, and the Land Commission may make an order under this Act in the same manner as if the tenant had not been evicted, and on an application being made to the court having cognizance of the case for a writ of restitution, that court shall deal with the case as if the tenant had paid all arrears of rent up to the last gale day in the year expiring as aforesaid, and on compliance by the tenant with the other conditions of the said Act of 1860 the court may order his restitution: Provided that an order of the Land Commission under this section shall not take effect until and unless the tenant is restored to his holding.

For the purpose of enabling any such evicted tenant to make an application to the Land Commission under the first section of this Act, the Land Commission shall have power, on application made by him within six months from the time of eviction, and during the time limited for applications under this Act, to enlarge the time during which he may redeem his tenancy for a period not exceeding three months, subject to such terms and conditions as may seem just.

**Application of Act to existing leases.** 3. This Act shall apply to holdings subject to existing leases within the meaning of section twenty-one of the Land Law (Ireland) Act, 1881, in like manner as it applies to any other holding.

## PART II.

### Supplemental Provisions.

**Powers of Land Commission** 4. For the purposes of this Act the Land Commission may exercise all such powers vested in them for the purpose of the execution of the Land Law (Ireland) Act, 1881, as are referred to in the first schedule to this Act, and shall have full jurisdiction to hear and determine all matters, whether of law or fact, that may be required to be determined by them for the purposes of this Act, and they shall have power to retain in their hands any moneys which may be payable to a landlord until they have decided to whom such moneys are legally payable, and they shall in respect of such moneys have all the powers vested in the court by the thirty-seventh section of the Landlord and Tenant (Ireland) Act, 1870, in respect of the distribution of purchase moneys, in the same manner as if the moneys so payable to the landlord were purchase moneys.

The Land Commission shall not be subject to be restrained in the execution of their powers under this Act by the order of any court, nor shall any proceedings before them be removed by certiorari into any court.

The Land Commission may of its own motion, or shall on the application of any party to any proceeding pending before it unless it considers such application frivolous and vexatious, state a case in respect of any question of law arising in such proceedings, and refer the same for the consideration and decision of Her Majesty's Court of Appeal in Ireland.

**Delegation of powers of Land Commission.** 5. The Land Commission may from time to time by rule under this Act or by any special order delegate any power or duty under this Act, except the power of making rules or appointments, to the Civil Bill Court or to any Sub-Commission, or any member of the Land Commission, or any member of a Sub-Commission being a barrister-at-law or solicitor, and every Court, Sub-Commission, or member of the Land Commission or Sub-Commission to whom such power or duty shall be delegated, shall, in reference thereto, and subject to an appeal on matter of law to the Land

Commission on and in such conditions and circumstances as may be prescribed, have all the powers of the Land Commissioners.

The Land Commission may, from time to time, with the assent of the Treasury, appoint fit persons possessing such qualifications as may be prescribed by the Treasury to investigate and report as to the existence or non-existence in the case of holdings of the preliminary conditions required to be proved for the purpose of orders under this Act and as to the values of such holdings, and the Land Commission may adopt any such report, or any part thereof, as may seem expedient, and may from time to time direct a fresh investigation to take place, or may themselves take evidence in respect of the subject matter of such investigation.

Any person or persons appointed in pursuance of this section may for the purposes of the investigation administer an oath.

The Commissioners of Her Majesty's Treasury may be represented on any inquiry under this Act by any person nominated by them for such purpose.

**Incorporated provisions of 33 & 34 Vict. c. 48.** 6. In the case of any persons interested in any matter arising under this Act, the provisions of sections fifty-nine, sixty, and sixty-one of the Landlord and Tenant (Ireland) Act, 1870, as to administration on the death of a tenant, and as to provision for married women, and as to provision for other persons under disability, shall apply to any proceedings under this Act in the same manner as if the said sections were herein enacted, and in terms made applicable to this Act.

**Punishment of fraudulent claim.** 7. If in any proceeding under this Act any person concerned in such proceeding as principal or agent, with intent to substantiate a false claim, suppresses, attempts to suppress, or is privy to the suppression of any document, or of any fact, or produces or is privy to the production of any false evidence the person so offending shall be guilty of a misdemeanour, and upon conviction shall be liable, in the discretion of the court, either to imprisonment for a term not exceeding two years, with or without hard labour, or to a fine not exceeding five hundred pounds. Any sum paid by the Land Commission in respect of any false claim shall be a debt due to the Crown from the person on behalf of whom it is paid.

**Charge of liabilities under Act on Irish Church Temporalities Fund and Consolidated Fund.** 8. Any liabilities incurred by the Land Commission on account of payments to landlords in respect of arrears of rent under this Act shall be primarily a charge on the Irish Church Temporalities Fund, and, subject thereto, on the Consolidated

Fund in such manner as may hereafter be provided by Parliament.

The Irish Church Temporalities Fund means the fund under the control of the Land Commission under the provisions of the Irish Church Act 44 and 45 Vict. c. 71. Amendment Act, 1881.

**Definition of landlord.** 9. The expression "landlord" in relation to a holding means, for the purposes of this Act, any person for the time being entitled to receive the rents and profits of such holding.

**Limit of time.** 10. An application under this Act shall not be made by any landlord or tenant after the last day of December one thousand eight hundred and eighty-two, except by leave of the Land Commission, and in no case after the thirtieth day of April one thousand eight hundred and eighty-three, and the Land Commission shall grant such leave only in cases where it is proved to their satisfaction that injustice would be done in case leave were refused.

Exclusion of tenants of holdings of an aggregate valuation exceeding thirty pounds.

11. An order under this Act shall not be made in the case of a holding the tenant of which is possessed of two or more holdings in Ireland to which the Land Law (Ireland) Act, 1881, applies, and the valuation of which under the Acts relating to the valuation of rateable property in Ireland amounts in the whole to more than thirty pounds a year.

And the question as to whether the tenant of any holding in respect of which an application may be made under this Act is or is not possessed of such holdings as are in this section in that behalf mentioned may be investigated and reported on by any person appointed under this Act to investigate and report on the preliminary conditions for an order under this Act.

Holding valued as part of larger tenement.

12. Where a holding, as defined by the Land Law (Ireland) Act, 1881, is not separately valued, but forms part of a larger parcel of land valued as one tenement under the Acts relating to the valuation of rateable property in Ireland, such holding shall be deemed to be a separate holding for the purposes of this Act, and to be valued under the said Acts at such proportion of the sum at which the whole of the said tenement is valued as the rent of the holding bears to the rent of the whole of the said tenement.

Suspension of proceedings.

13. Where any proceedings for the recovery of the rent of a holding to which this Act applies, or for the recovery of such holding for nonpayment of rent on account of the rent in respect of the year expiring as aforesaid and antecedent arrears, have been taken before or after an application under this Act in respect of such holding, and are pending before such application is disposed of, the court before which such proceedings are pending shall, if the provisions of section one, sub-section (a.), have been complied with, and on such terms and conditions as the court may direct, postpone or suspend such proceedings until the application under this Act has been disposed of.

Evidence.

14. Evidence required for the purposes of this Act shall, whenever practicable, be taken upon oath, and may be either oral or by affidavit, and affidavits of the landlord, or his agent, and the tenant may be accepted as prima facie evidence of all or any of the preliminary conditions or other matters.

Affidavits for the purposes of this Act may be taken and sworn before any person authorised by this or any other Act to administer an oath.

Cancellation of certain rent-charges under 44 & 45 Vict., c. 49, s. 59, in repayment of advances for arrears of rent.

15. Whereas by section fifty-nine of the Land Law (Ireland) Act, 1881, it is provided, that where it appeared to the Court, on the joint application, made on or before the twenty-eighth day of February one thousand eight hundred and eighty-two, of the landlord and tenant of any holding valued at a sum not exceeding thirty pounds a year, that the tenant had paid the whole of the rent payable in respect of the year of the tenancy expiring on the gale day next before the twenty-second day of August one thousand eight hundred and eighty-one, and that antecedent arrears were due, the Land Commission might make in respect of such antecedent arrears an advance of a sum not exceeding one year's rent of the holding and not exceeding half the antecedent arrears, and thereupon the Court should by order declare the holding to be charged with the repayment to the Land Commission of the said advance by a rentcharge payable and calculated as in the said section mentioned:

And whereas in pursuance of the said section divers advances have been made in respect of the arrears of rent on divers holdings, and such holdings have been

charged with the repayment of the said advances by such rentcharges as in the said section mentioned, and it is expedient to amend the said section: Be it therefore enacted as follows:

Where in pursuance of section fifty-nine of the Land Law (Ireland) Act, 1881, an advance has been made, before the passing of this Act, towards the payment of the arrears due in respect of any holding, and a rentcharge has been charged on such holding for the repayment of such advance, the Land Commission, if it is proved to their satisfaction on the application of either the landlord or the tenant of the holding that the tenant was, at the date of the said advance being made, unable to discharge the arrears in respect of which the advance was made, may by order cancel the said rentcharge, and the same shall cease to be payable, whether by the landlord or the tenant, as from the last day appointed for payment of the same next before the date of the order, and the amount of the said advance shall be a charge on the Irish Church Temporalities Fund.

Arrears of rent how dealt with.

16. Where it appears to the Land Commission, on the joint application of the landlord and tenant of any such holding valued at a sum not exceeding fifty pounds a year, that the tenant has paid the whole (or such sum as the landlord may be willing to accept in full discharge of the whole) of the rent payable in respect of the year of the tenancy expiring as aforesaid, and that the tenant has obtained a receipt in full for such rent, and that antecedent arrears are due, the Land Commission may make to the landlord, in respect of such antecedent arrears, an advance of a sum not exceeding one year's rent of the holding, and not exceeding half the antecedent arrears, and thereupon the Court shall by order declare the holding to be charged with the repayment of the advance to the Land Commission, by a rentcharge payable half-yearly on the first day of January and the first day of July during the thirty-five years from the date specified in the order, and calculated at the rate of five pounds by the hundred, by the year, of the advance.

The charge declared by the order as aforesaid shall have priority over all charges affecting the holding, except quit-rent and crown rent, and sums payable to the Commissioners of Public Works, and shall be payable by the tenant of the holding for the time being, and shall be levied and collected in manner herein-after provided; and in the event of the tenant failing to pay any half-yearly instalment of the said charge for the space of twelve months after the same shall have accrued due, then and in every such case the amount of such instalments, together with the entire of the unpaid residue of such charge, with interest as ascertained by the Land Commission, shall forthwith be payable by the tenant, and the amount thereof shall be raised by sale of the tenancy in the prescribed manner.

The half-yearly instalments of such charge shall be from time to time collected by the collector authorised to collect poor rate in the electoral division in which such holding is situate; and for the purpose of such collection every collector shall have all such powers and authorities as he shall for the time being possess for collecting and recovering poor rate, and shall and may collect and levy the same accordingly from the tenant liable to pay the same, notwithstanding that such tenant may not be liable to pay poor rate.

For the purpose of such collection the Land Commission shall, in each half-year, transmit to the clerk of every union, within which any holding or holdings charged as aforesaid shall be situate, a warrant under the seal of the Land Commission, setting forth the names of the tenants within such union liable to pay



such charges or the instalments thereof, and the amount due by each respectively, and such warrant shall be judicially noticed in all proceedings in court, and shall be conclusive evidence of the arrears due by such tenants respectively, and of their liability to pay the same.

The collector shall be paid by the Land Commission such remuneration, not exceeding one shilling in the pound of his collection, as the Land Commission, with the consent of the Treasury, may determine, and the clerk of the union may be paid such remuneration (if any) as the Land Commission may with the like consent determine.

Every such collector shall pay and account for the sums collected or collectable by him under this Act to the guardians of the union in which such holding is situate in the prescribed form; and the guardians shall transmit the amounts from time to time received by them as aforesaid to the Land Commission under the prescribed regulations.

In the event of such default by the tenant for the space of twelve months as aforesaid, it shall be lawful for the county court of the county in which the holding is situate, on the application of the Land Commission, to order a sale of such tenancy, which shall be sold, and the proceeds of such sale dealt with by the said county court in the prescribed manner.

If the proceeds of any such sale fail to realise the amount ascertained by the Land Commission as aforesaid, together with the cost of sale, the amount of the deficiency shall be paid by the landlord of the said holding, and shall be a charge upon his estate and interest therein, and shall be collected and levied in the prescribed manner: Provided, that on any transfer of the tenant's interest in the holding by sale, the principal sum and interest, if any, remaining due to the Land Commission, shall be paid out of the purchase money to the Land Commission.

On the order of the Land Commission being made as aforesaid in relation to any holding such antecedent arrears shall be deemed to be absolutely released.

The landlord and tenant may agree that any rent paid by the tenant in or subsequent to the year expiring as aforesaid shall be deemed, for the purposes of this section, to have been paid in respect of the rent due for that year, and not in respect of arrears of rent.

Where arrears of rent in respect of a holding are due to some person or persons besides the landlord the advance made under this section shall be rateably distributed amongst the persons entitled thereto.

An application for an advance under this section shall not be made after the periods mentioned in the tenth clause aforesaid.

The omission or refusal by either landlord or tenant of any holding to join with the other of them in obtaining a loan from the Land Commission under this section shall not prejudice any other application or proceeding which either of them may make or institute under this Act or the Landlord and Tenant (Ireland) Act, 1870, or the Land Law (Ireland) Act, 1881, in relation to such holding.

The Land Commission shall, at such time after the expiration of each period of twelve months as the Treasury may from time to time appoint, make up an account showing for the said period of twelve months the amount of all such payments due to them in respect of rentcharges payable to them under this section as they have failed to recover at the expiration of the said period.

Whenever, in the case of any tenant evicted for non-payment of rent, or in case the holding of the tenant has been sold and purchased by the landlord, and possession taken thereof by him, since the first day of May one thousand eight hundred and eighty, the landlord

agrees to reinstate such tenant on the terms in this section set forth, this section shall apply as if such tenant had not been so evicted from his holding.

17. Where, in the case of a holding of which any person is owner, antecedent arrears of rent due in respect of any year or years, or portion of a year, have been extinguished in pursuance of this Act, and any public charge or tax accrued during such year or years, or portion of year or years, is due from such person as or in consequence of his being owner of such holding, then, on proof to the satisfaction of the Land Commission that the owner has, during such time as aforesaid, received no rent, or an amount of rent less than the full rent, such public charges or taxes shall, if no rent has been received, be wholly remitted, and if an amount of rent less than the full rent has been received, be remitted in proportion to the amount of rent not received.

Where a person has paid any public charges or taxes which, if not paid, would be remitted under this section, the amount which would have been so remitted shall be allowed as a deduction from any future payment or payments of the public charges or taxes of the same description, or may be recovered as a debt from the authority to whom it may have been paid.

Any payment which an owner may receive under this Act in respect of arrears of rent shall, for the purposes of this section, be taken into account as rent.

The Land Commission shall ascertain, for the purposes of this section, in such manner as they think best calculated to ascertain the truth, the amount of public charges or taxes due in any year or portion of a year from a person as or in consequence of his being owner of a holding.

"Public charges or taxes" means tithe rentcharge payable to the Land Commission, income tax, quit-rent, or any of such charges or taxes.

### PART III.

#### Emigration.

Power of guardians to borrow for emigration.

18. From and after the passing of this Act, the board of guardians of any union in Ireland are authorised to borrow money for the purpose of defraying or assisting to defray the expenses of the emigration of poor persons resident within their union, or any electoral division thereof, in manner provided by the Poor Law c. 104.

Amendment (Ireland) Act, 1849, as amended by subsequent Acts, subject to the following modifications; (that is to say),

- (1.) The provisions of the said Act in relation to the repayment of the advance by annual instalments shall not apply;
- (2.) The advances may be made by the Commissioners of Public Works out of any moneys granted to them for the purpose of loans in place of the Public Works Loans Commissioners;
- (3.) Every such advance made by the Commissioners of Public Works shall bear interest at the rate of three-and-a-half per centum per annum, or at such other rate as the Treasury may from time to time fix, in order to enable the advance to be made without loss to the Exchequer;
- (4.) Every such advance made by the Commissioners of Public Works, and the interest thereon, shall be repaid within such period from the date of the advance, not being less than fifteen years nor more than thirty years, as the Treasury may from time to time fix.

For the purposes of this Act the Poor Law Amendment (Ireland) Act, 1849, means the Act of the session

of the twelfth and thirteenth years of the reign of Her present Majesty, chapter one hundred and four.

Orders for payment of loans may be made by Local Government Board.

19. If at any time the Commissioners of Public Works in Ireland certify that any sum remains due to them from the board of guardians of any union on account of any loan or advance made under this Act, and is then payable to the Commissioners, the Local Government Board shall, by order under their seal, require the guardians of the union to pay the sum so certified, and shall send copies of such order to the board of guardians and to the treasurer of the union; and thereupon the treasurer of the union shall, out of any money then in his hands to the credit of the guardians, or if such money is insufficient for the purpose, then out of all moneys subsequently received by him on account of the guardians, pay over the amount mentioned in the order to the Commissioners of Public Works. The guardians of the union shall debit the several electoral divisions with such proportions of that sum as may be payable by such electoral divisions respectively.

Grants in aid of emigration.

20. The Treasury may from time to time authorise the Commissioners of Public Works to make, subject to the regulations of the Treasury, grants to the board of guardians of any union, or such other body or persons and on such terms as the Lord Lieutenant may approve, for emigration purposes.

The moneys so granted shall be applied in accordance with the said regulations for the same purposes as moneys borrowed under the provisions of this Act.

The sums granted by the Commissioners of Public Works shall not exceed one hundred thousand pounds in the whole, and the sums granted shall not exceed five pounds per each person.

Such grants shall only be made for the benefit of the unions mentioned in the second schedule to this Act, and of such other unions or electoral divisions as may from time to time be settled by the Local Government Board, with the consent of the Lord Lieutenant: Provided that such unions are situate wholly or in part in some county specified in the schedule to the public notice issued by the Commissioners of Public Works in Ireland on the twenty-second day of November one thousand eight hundred and seventy-nine, that is to say, the counties of Donegal, Clare, Cork (West Riding), Kerry, Galway, Leitrim, Mayo, Roscommon, and Sligo.

Each grant shall only be made on the recommendation of the Lord Lieutenant, stating that the Lord Lieutenant is satisfied that the guardians of the union are unable, without unduly burdening the ratepayers, to make adequate provision, by borrowing under the powers conferred upon them by this Act, or otherwise, for the emigration purposes of the union, and that proper arrangements have been made for securing the satisfactory emigration of such persons.

The money required for the purpose of grants under this section shall be paid by the Land Commission to the Commissioners of Public Works, and shall be part of the liabilities of the Land Commission, and be a charge primarily upon the Irish Church Temporalities Fund, and, subject thereto, on the Consolidated Fund, in such manner as may be provided by Parliament.

Rules.

21. The Lord Lieutenant may from time to time make provision that arrangements shall be made for securing the satisfactory emigration of persons for whom means of emigration are provided under this Act, by prescribing rules in relation to such matters, and for the employment of special agents for that

purpose, and otherwise as he thinks expedient. And any grants made under this Act for emigration purposes shall be applicable to defraying the expenses of such arrangements in such manner as the Lord Lieutenant directs.

Power to appoint an additional member of the Land Commission.

22. In addition to the three persons named as commissioners in the Land Law (Ireland) Act, 1881, the Right Honourable the Viscount Monck is hereby constituted a member of the Irish Land Commission, at a salary of three thousand pounds a year, and for the term of two years from the passing of this Act.

Save as aforesaid, the provisions of the Land Law (Ireland) Act, 1881, which relate to the members of the Irish Land Commission, other than the Judicial Commissioner, shall apply to the said the Right Honourable the Viscount Monck, and to every person appointed as herein-after provided to a vacancy in his office, as if he had been named in the said Act a member of the Land Commission other than the Judicial Commissioner.

If and so often as during the said term of two years any vacancy occurs in the office of the said the Right Honourable the Viscount Monck by the death, resignation, inability to act, or otherwise, of the said the Right Honourable the Viscount Monck, or any person appointed in his place, Her Majesty may by warrant under the sign manual appoint some fit person to fill such vacancy; but the person so appointed shall only continue in office until the expiration of the said term of two years: Provided, that any act or matter which under the said Act shall be done or performed, or may be done or performed by three Land Commissioners sitting together, shall and may after the passing of this Act be in like manner done or performed by three of the Land Commissioners.

Rules for carrying Act into effect.

23. The Land Commission shall from time to time circulate forms of application and directions as to the mode in which applications are to be made under this Act, and may from time to time make, and when made may rescind, amend, or add to, rules with respect to the following matters, or any of them:

- (1.) The tribunal, whether Land Commission, civil bill court, sub-commission, or member of the Land Commission or a sub-commission by which such applications are to be heard:
- (2.) The mode of making applications under this Act, and the manner in which the tenant shall set out any property or effects of which such tenant may be possessed or entitled to, and which would be applicable to the satisfaction of any arrears of rent, and the conduct of proceedings before any tribunal hearing applications under this Act:
- (3.) The conditions and circumstances on and in which appeals may be had to the Land Commission where applications have not been heard by the Land Commission:
- (4.) The mode in which the expenses of hearing any application under this Act or of any appeal are to be defrayed:
- (5.) The attendance and discharge of duties by the officers of the civil bill courts before the Land Commission and sub-commissions when holding sittings under this Act:
- (6.) The service of notices on persons interested, and any other matter by this Act directed to be prescribed:
- (7.) The mode of collecting, suing for, recovering, and accounting for charges and instalments of charges, and the procedure for the sale of tenancies to raise the amount of such charges, and for

dealing with the proceeds of such sales under this Act:

- (8.) As to any other matter or thing, whether similar or not to those above mentioned, in respect of which it may seem to the Land Commission expedient to make rules for the purpose of carrying this Act into effect.

Any rules made in pursuance of this section shall be of the same force as if enacted in this Act, and shall be judicially noticed.

Short title of Act. 24. This Act may be cited for all purposes as the Arrears of Rent (Ireland) Act, 1882.

SCHEDULES.

FIRST SCHEDULE.

Powers of Land Law (Ireland) Act, 1881, referred to—  
Section 48 (3).  
Section 49.

SECOND SCHEDULE.

Unions.

Belmullet.  
Newport.  
Swinford.  
Clifden.  
Oughterard.

CAP. XLVIII.

An Act to consolidate the Acts relating to the Reserve Forces. [18th August 1882.]

CAP. XLIX.

An Act to consolidate the Acts relating to the Militia. [18th August 1882.]

CAP. L.

An Act for consolidating with Amendments, enactments relating to Municipal Corporations in England and Wales. [18th August 1882.]

CAP. LI.

An Act to extend the Acts relating to the purchase of small Government Annuities and to assuring payments of money on death. [18th August 1882.]

10 Geo. 4. WHEREAS under the Government  
c. 24. Annuities Acts, 1829 to 1873, the  
2 & 3 WILL. 4. National Debt Commissioners are autho-  
c. 59. rised either directly or through the  
3 & 4 WILL. 4. medium of a savings bank to grant  
c. 24. annuities and to contract for payments  
16 & 17 Viet. on death within the limits and subject to  
c. 45. the conditions in the said Acts mentioned,  
27 & 28 Viet. and it is expedient to make further provision respect-  
c. 43, &c. ing such annuities and contracts:

Be it therefore enacted, &c.,

Short title and construction. 1. This Act may be cited as the Government Annuities Act, 1882.

This Act and the Government Annuities Acts, 1829 to 1873, may be cited together as the Government Annuities Acts, 1829 to 1882.

This Act shall be construed as one with the Government Annuities Act, 1864.

The Act of the session of the twenty-seventh and twenty-eighth years of the reign of Her present Majesty, chapter forty-six, intituled "An Act to provide for the investment and appropriation of all moneys received by the Commissioners for the Reduction of the National Debt on account of deferred life annuities and payments to be made on death," is in this Act referred to and may be cited as the Government Annuities (Investments) Act, 1864.

Limit of grant of annuities.

2. An annuity granted to any one person under the Government Annuities Acts, 1853 and 1864, as amended by this Act (in this Act referred to as a savings bank annuity), may be of any amount not exceeding one hundred pounds a year.

Any such annuity may be granted to any person not under the age of five years.

Contract for endowments and definition of insurance.

3. The National Debt Commissioners may, subject to the limits in this Act mentioned, contract with any person for a payment to be made on the attainment by such person of a specified age, or sooner in case of his death, and the Government Annuities Acts, 1853 and 1864, as amended by this Act (including the provisions punishing false declaration, forgery, and other offences), shall apply in like manner, so far as is consistent with the tenour thereof, as if such contract were a contract for the payment of a sum of money on death; and a contract with a person under the said Acts as amended by this Act for either any such payment to him as above in this section specified, or for a payment at his death, is in this Act referred to as a savings bank insurance.

Limits of insurance.

4. A savings banks insurance granted to one person may be for any amount not exceeding one hundred pounds.

(2.) A savings banks insurance may be granted to a person not over the age of sixty-five years and not under the age of fourteen years, or if the amount does not exceed five pounds, not under the age of eight years.

Tables for annuities and insurances.

5. (1.) The Treasury may on the passing of this Act cause tables to be constructed for the grant of savings banks annuities and insurances.

(2.) Every such table when approved by the Treasury shall, together with a statement of the rules observed in constructing it, be laid before both Houses of Parliament for not less than thirty days, and if any address is presented to Her Majesty by either House of Parliament praying that such table may be cancelled, the table shall be cancelled without prejudice to the framing of another table in lieu of the table so cancelled.

(3.) After the expiration of the said thirty days the Treasury may cause the table, if not cancelled as above provided, to be published in the London Gazette, and the table shall come into operation on the day of that publication or such later day as may be fixed by the Treasury.

(4.) The tables shall be framed in such manner that the fund formed by the receipt of sums in respect of deferred annuities and of insurances and the amounts paid for immediate annuities shall respectively be adequate (after payment of expenses) to meet all claims without causing any loss to the Exchequer.

(5.) The tables shall be framed so that the payments to obtain the annuities and insurances may be made in one sum or in annual or more frequent instalments, and may be made during life or during a limited period,

(6.) The tables may also provide for such variations in the rates for and conditions of annuities and insurances and such surrender of insurances and such other matters as may seem expedient.

(7.) The Treasury may from time to time cause a new table to be constructed under this Act in lieu of any then existing table, and such table shall be laid before Parliament and be subject to be cancelled and be published in manner above provided by this section.

(8.) All savings banks annuities and insurances shall be granted in accordance with the tables for the time being in force in pursuance of this Act, and upon any new table made under this section coming into operation, any previously existing table in lieu of which such new table is expressed to be made shall, whether made before or after the passing of this Act be revoked without prejudice nevertheless to any annuity or insurance granted in accordance therewith.

(9.) If the fund formed by the receipt of sums in respect of insurances is so much in excess of the liabilities that it is possible to reduce the payments made to obtain insurances, and a new table is made under this section for that purpose, the Treasury may provide for giving to the persons entitled to insurances in force at that time such portion of the surplus of the said fund as seems just in such manner as seems expedient.

**Regulations.** 6. The regulations made in pursuance of section sixteen of the Government Annuities Act, 1864, shall provide:—

- (a.) For proofs of age, of identity, and state of health, and such other matters as appear necessary or proper for the grant of annuities and insurances, and in the case of an insurance for such sum not exceeding twenty-five pounds as may be fixed by the regulations, for diminishing the amount to be paid to the insured in the event of any regulations as to medical certificates or any other matters having been dispensed with; and
- (b.) For regulating the time and mode of making the payments to obtain savings banks annuities and insurances, whether granted before or after the passing of this Act, and enabling them to be made out of the deposits in a savings bank; and
- (c.) For crediting the accounts of depositors in a savings bank with the sum due in respect of savings bank annuities or insurances granted to them either before or after the passing of this Act, or otherwise for regulating the mode of payment of such annuities or insurances, or of any annuities granted under any Acts repealed by the Government Annuities Act, 1853, and for regulating the receipts to be given for the same; and
- (d.) For cancelling or varying contracts for the grant of annuities and insurances and correcting errors arising on any such grant; and
- (e.) For enabling a person to whom an insurance is granted to nominate a person to whom the money due under such insurance, not exceeding fifty pounds, is to be paid on the death of such person, and for the discharge to be given for such money; and
- (f.) In the case of minors under the age of twenty-one years for the making of contracts, the making of payments to obtain savings bank annuities and insurances out of the deposits in a savings bank, the giving of receipts and the doing of other acts on their behalf; and the

contracts and payments so made, the receipts so given, and the acts so done shall be valid and binding on the minor.

The regulations shall also make such provisions as seem to the authority making the same necessary or proper for making payments on the death of children under ten years of age subject to the provisions contained in section twenty-eight of the Friendly Societies Act, 1875, in like manner as if c. 60. the same were the payments in that section mentioned.

Regulations may be made, in pursuance of the said section sixteen of the Government Annuities Act, 1864, as amended by this Act, by the National Debt Commissioners, with the approval of the Treasury, so far as regards any annuities and insurances granted by such Commissioners either directly or through any parochial or other society.

**Application of Savings Banks Acts.**

7. Subject to the provisions of this Act and of the regulations made under the Government Annuities Act, 1864, as amended by this Act, all enactments for the time being in force relating to savings banks, and all regulations made in pursuance of those enactments, shall, so far as is consistent with the tenour thereof, apply for the purposes of this Act, and a person to whom a savings bank annuity or insurance has been granted, either before or after the passing of this Act, shall be deemed for the purpose of those regulations and enactments to be a depositor in a savings bank.

Provided that—

- (a.) for the purpose of the immediate purchase of a savings banks annuity or insurance, a deposit to an amount not exceeding the amount to be paid for such annuity or insurance may be deposited in any one savings bank year, in addition to the maximum amount which otherwise is allowed to be deposited in a savings bank in that year, and
- (b.) in computing the maximum amount of deposit allowable for a depositor in a savings bank, any deposit for the above-mentioned purpose and any sum credited to the account of a depositor in respect of any savings bank annuity or insurance shall not be reckoned, and it shall be lawful to credit the account of a depositor with any such deposit or sum: Provided that if, after such deposit or sum has been credited, the aggregate sum standing to the credit of a depositor exceeds the maximum amount which otherwise is allowed to be deposited in a savings bank, either in any one savings bank year or in the aggregate, such excess shall bear no interest, but shall be forthwith applied to the purpose for which it was deposited, or paid over to the depositor.
- (c.) Nothing in the said Acts or this Act shall exempt any person obtaining or becoming entitled to a savings bank insurance from any probate or stamp duty payable by law.

**Trust and joint account.**

8. (1.) Notice of any trust express, implied, or constructive affecting any savings bank annuity or insurance (except such trusts as are from time to time recognised by law in relation to deposits in savings banks, and except such trusts as are provided for by section ten of the Married Women's 33 & 34 Vict., Property Act, 1870, or any enactment c. 93. now or hereafter to be passed relating to the property of married women,) shall not be entered upon any contract for such annuity or insurance, or in any deposit book relating thereto, or be receivable

by the National Debt Commissioners or any savings bank.

(2.) A savings bank annuity or insurance depending on the life of any person may be granted to that person jointly with any other persons to an amount not exceeding in the whole the amount of the annuity or insurance which could have been granted to one person, and the said persons shall be deemed to be entitled to such annuity and insurance as joint tenants.

(3.) The National Debt Commissioners may permit the transfer of any annuity so granted to more persons than one under such regulations, as to such Commissioners seem fit, so however that the person on whose life such annuity is granted shall be transferee, or one of the transferees, and where it is granted on the joint lives of two or more persons, all of those persons, or such of those persons as the National Debt Commissioners think fit, shall be the transferees or included among the transferees.

*Inane or incapacitated grantees.*

9. Where any person entitled to a savings bank annuity or insurance is insane or otherwise incapacitated to act, then (subject to the conditions prescribed by the regulations under section sixteen of the Government Annuities Act, 1864, as amended by this Act) payment of such annuity or insurance may be made at such times and in such sums and to such persons as may seem proper, and the receipt of the said persons shall be a good discharge for the same.

*Amendment of 27 & 28 Vict. c. 43. ss. 8 and 11. as to surrender of policy or assignment of policy after payment of five years premium.*

10. Whereas by the Government Annuities Act, 1864, it is provided that a person who has obtained a savings bank insurance, and has paid the premiums thereon for a period of not less than five years, may (under section eight) surrender his policy or obtain a return in respect of the premiums paid by him (not being less than one-third thereof) or obtain another savings bank insurance or annuity in lieu of such premiums, and (under section eleven) may assign his right and interest in such insurance, and it is expedient to amend the said section: Be it therefore enacted as follows:

A person who has obtained a savings bank insurance, and has paid the premiums thereon for not less than two years, shall have the same right under sections eight and eleven of the Government Annuities Act, 1864, as a person who has paid the premiums for not less than five years, and sections eight and eleven of the said Act shall be construed as if "two years" were therein substituted for "five years," and so much of the said section eight as requires the amount returned to be not less than one-third of the premiums shall be repealed.

*Forfeiture by person holding annuity or insurance exceeding the maximum or making false declaration.*

11. (1.) If any one person by his own act holds or claims to be entitled to any savings bank annuities or insurances, whether granted before or after the passing of this Act, which exceed in the whole the maximum annuity or insurance allowed by this Act to be granted to any one person, such person shall be liable, in the discretion of the National Debt Commissioners, to forfeit the whole or any part of such annuities or insurances.

(2.) Any person who makes a false declaration in relation to any matter or thing required by the Government Annuities Act, 1853 and 1864, or by this Act, or by the regulations made in pursuance of the said Acts, or any of them, or produces any false declaration

or certificate, shall be liable, in the discretion of the National Debt Commissioners, to forfeit the whole or any part of the savings bank annuity or insurance to which such false declaration or certificate related or for the purpose of obtaining which it was made or produced, and all or any part of the money paid for obtaining such annuity or insurance, and the National Debt Commissioners may, in lieu of all or any part of such forfeiture, adjust the contract made by such person so as to be in accordance with what it would have been if such false declaration or certificate had not been made or produced.

(3.) If a person makes any such false declaration as aforesaid knowing the same to be false in any material particular, he shall, in addition to such forfeiture, be liable on conviction to imprisonment, with or without hard labour, for a period not exceeding twelve months.

*Penalty for receiving annuity or insurance in fraud of the Commissioners.*

12. (1.) If any person receives any payment in respect of any savings bank annuity after the death of the person at whose death such annuity is to cease, or receives the amount of any insurance payable at the death of a person before the death of that person, he shall be liable to pay to the National Debt Commissioners double the amount of the sum received, with interest thereon at the rate of five per cent. per annum from the date of the receipt: such sum shall be recoverable in a county court or any other competent court as a debt to Her Majesty.

(2.) If a person receiving any such money as above mentioned receive the same with intent to defraud, he shall, in addition to the above-mentioned payment, be liable on conviction to imprisonment with or without hard labour for a period not exceeding twelve months.

*Application and investments of sums paid for savings bank annuities or insurances.*

13. (1.) All sums paid in order to obtain savings bank annuities and insurances shall be paid into the bank to the account of the National Debt Commissioners, and there carried to such account or accounts and under such title or titles as the National Debt Commissioners from time to time direct, but such current outgoings as herein-after mentioned may be defrayed thereout, either before or after such payment into the bank, and the application thereof herein-after mentioned shall be subject to such defraying of outgoings.

(2.) The sums paid for immediate annuities shall be forthwith applied in the purchase of government annuities (that is to say), of perpetual bank annuities, terminable annuities, exchequer bills, exchequer bonds, or treasury bills, and the securities so purchased shall be forthwith cancelled, and cease to be charged on the Consolidated Fund.

(3.) All immediate annuities granted under this Act shall be charged on the Consolidated Fund and issued thereout, or out of the growing produce thereof, at such times as the Treasury may from time to time direct with a view to the due payment thereof to the persons entitled thereto.

(4.) The Government Annuities (Investments) Act, 1864, shall apply to all sums paid into the bank as aforesaid, other than amounts applicable for immediate annuities as above provided.

(5.) In the event of any contract for a savings bank annuity or insurance being cancelled or varied in pursuance of this Act, or any error therein corrected, the National Debt Commissioners may vary the charge on the Consolidated Fund, and on the fund created under the Government Annuities (Investments) Act, 1864, in such manner as may be necessary for carrying

into effect such cancellation, variation or correction, and the Treasury may, if need be, create new securities in lieu of any securities which have been cancelled, and the securities so created shall be charged on the Consolidated Fund, and payable in like manner, and be subject to the same conditions as the securities which were cancelled.

(6.) The expression "current outgoings" includes all sums payable by the National Debt Commissioners in respect of annuities or insurances from time to time, and also all such expenses of carrying into effect this Act as are payable out of the sums paid by persons to obtain savings bank annuities and insurances.

All expenses incurred by any savings bank in the execution of this Act to such amount as may be from time to time allowed by the National Debt Commissioners (subject to the directions of the Treasury) shall be paid by the National Debt Commissioners, and defrayed by them as part of the expenses of the grant of annuities and insurances.

(7.) The expression "bank" in this section means the Governor and Company of the Bank of England, or the Governor and Company of the Bank of Ireland, as the case requires.

**Definitions.** 14. In this Act, unless the context otherwise requires—

The expression "Treasury" means the Commissioners of Her Majesty's Treasury;

The expression "National Debt Commissioners" means the Commissioners for the Reduction of the National Debt;

The expression "trustee savings bank" means a savings bank to which the Trustee Savings Banks Act, 1863, extends; and

The expression "savings bank" means a trustee savings bank and a post office savings bank.

A savings bank year shall be reckoned as the twelve months ending, in the case of a trustee savings bank, on the twentieth day of November, and in the case of a post office savings bank, on the thirty-first day of December.

**Repeal of Acts and savings.** 15. The Acts specified in the schedule to this Act are hereby repealed as from the commencement of this Act to the extent in the third column of that schedule mentioned, without prejudice to anything previously done or suffered in pursuance of any enactment hereby repealed; and every annuity and insurance granted before such commencement shall, save as may otherwise be provided by this Act or by regulations under the Government Annuities Act, 1864, as amended by this Act, have effect as if the said enactment had not been repealed.

Until revoked in pursuance of this Act, the tables in force at the commencement of this Act shall continue in force as if made in pursuance of this Act.

The regulations in force under any enactment repealed by this Act shall continue in force until revoked or superseded by regulations made in pursuance of section sixteen of the Government Annuities Act, 1864, as amended by this Act.

Where, at the passing of this Act, a person has obtained an annuity or insurance through the medium of a post office, and such person has a deposit in a trustee savings bank, nothing contained in this Act or done thereunder shall render such deposit in a trustee savings bank unlawful or prevent such person from making or receiving any payment in respect of such annuity or insurance by means of the post office savings bank.

**Extension of Acts to Channel Islands and Isle of Man.** 16. The Government Annuities Act, 1853, the Government Annuities Act, 1864, and this Act shall extend to the Channel Islands and the Isle of Man, and the Royal Courts of the Channel Islands shall register the same accordingly.

### SCHEDULE.

#### REPEAL OF ACTS.

**NOTE.**—A description or citation of a portion of an Act is inclusive of the words of the section part first and last mentioned, or otherwise referred to as forming the beginning or as forming the end of the portion comprised in the description or citation.

Session and Chapter	Title	Extent of Repeal
16 & 17 Vic. c. 45.	The Government Annuities Act, 1853.	Section two from "to any amount" down to the end of the section; section four, section five, section six, section seven, section eight, section nine, section twelve, section thirteen, from "may require such proofs" down to "the purposes of this Act and"; section fourteen, section sixteen, down to "remain in force and"; and from "alter, revoke, and recall" down to "Treasury and also"; and from "provided always that the said" to the end of the section; section seventeen, section eighteen, section nineteen, section twenty-two, so far as relates to savings banks; section twenty-three, section twenty-four, section twenty-six, section twenty-seven, from "shall be free" down to "annuities"; section thirty, section thirty-three, and section thirty-five.
27 & 28 Vic. c. 43.	The Government Annuities Act, 1864.	Section one, section two, section four, section five, section six. In section eight the words "not being less than one-third of the premiums paid by him"; section nine, section twelve, section thirteen.

#### CAP. LII.

An Act to continue certain Turnpike Acts, and to repeal certain other Turnpike Acts; and for other purposes connected therewith.

[18th August 1882.]

#### CAP. LIII.

An Act to amend the Law of Entail in Scotland.

[18th August 1882.]

#### CAP. LIV.

An Act to amend the Artizans and Labourers Dwellings Acts.

[18th August 1882.]

BE it enacted, &c.,

#### Preliminary.

**Short title.** 1. This Act may be cited as the Artizans Dwellings Act, 1882.

## PART I.

*Artizans and Labourers Dwellings Improvement Acts, 1875 and 1879.*

Construction of Part I. of Act. 38 & 39 Vict. c. 36.

2. This part of this Act shall be construed as one with the Artizans and Labourers Dwellings Improvement Acts, 1875 and 1879, and those Acts together with this part of this Act may be cited together as the Artizans and Labourers Dwellings Improvement Acts, 1875 to 1882.

Amendment of 38 & 39 Vict. c. 36, s. 6, as to the provision of accommodation for the working classes.

3. Whereas by section five of the Artizans and Labourers Dwellings Improvement Act, 1875, it is provided, amongst other things, that an improvement scheme of a local authority shall provide for the accommodation of at the least as many persons of the working class as may be displaced in the area with respect to which the scheme is proposed in suitable dwellings which, unless there are special reasons to the contrary, shall be situate within the limits of the same area, or in the vicinity thereof:

And whereas by section four of the Artizans and Labourers Dwellings Improvement Act, 1879, it is provided that the above requirements of section five of the Artizans and Labourers Dwellings Improvement Act, 1875, may, if the confirming authority so authorise, be complied with by the provision of equally convenient accommodation at some place other than within the area or the immediate vicinity of the area comprised in such scheme:

And whereas it is expedient to make further provision respecting such accommodation: Be it therefore enacted as follows:

Where an improvement scheme of a local authority comprises an area situate in the Metropolis or the City of London, the confirming authority shall, without prejudice to the powers conferred on it by the said fourth section of the Artizans and Labourers Dwellings Improvement Act, 1879, be authorised (on the application of the local authority, and on a report being made by the officer conducting the local inquiry directed by the confirming authority that it is expedient having regard to the special circumstances of the locality and to the number of artizans and others belonging to the labouring class dwelling within the area, and being employed within a mile thereof, that a modification should be made) to dispense in the provisional order authorising the scheme altogether with the obligation of the local authority to provide for the accommodation of the persons of the working class who may be displaced by their scheme to such extent as he may think expedient, having regard to such special circumstances as aforesaid, but not exceeding one half of the persons so displaced, and where any such improvement scheme comprises an area situate elsewhere than in the Metropolis or the City of London, it shall, if the confirming authority so require (but it shall not otherwise be obligatory on the local authority so to frame their scheme), provide for the accommodation of such number of those persons of the working class displaced in the area with respect to which the scheme is proposed in suitable dwellings to be erected in such place or places either within or without the limits of the same area as the said authority on a report made by the officer conducting the local inquiry may require.

The twelfth section of the Artizans and Labourers Dwellings Improvement Act, 1875, and any other enactment relating to the requirement of the said Act as to the accommodation of the working classes, shall be construed with reference and subject to the modifications made by this Act.

The power by this section given to the confirming authority to dispense altogether with the obligation of the local authority to provide for the accommodation of the persons of the working class who may be displaced by their scheme to an extent not exceeding one half of the persons so displaced may (in the case of any scheme which has, before the passing of this Act, been authorised by a confirming Act) upon the application of the local authority be exercised by the confirming authority by an order made at any time within twelve months after the passing of this Act.

Amendment of 38 & 39 Vict. c. 36, s. 19 as to the valuation of land.

4. Whereas it is expedient to amend section nineteen of the Artizans and Labourers Dwellings Improvement Act, 1875: Be it therefore enacted as follows:

In the estimate of the value of the said lands or interests in the said section in that behalf mentioned any addition to or improvement of the property made after the date of the publication of an advertisement in pursuance of section six of the said Act stating the fact of the improvement scheme having been made shall not (unless such addition or improvement was necessary for the maintenance of the property in a proper state of repairs) be included, nor in the case of any interest acquired after the said date shall any separate estimate of the value thereof be made so as to increase the amount of compensation to be paid for the lands, and the words "and all circumstances affecting such value" in the said section are hereby repealed.

Amendment of schedule to 38 & 39 Vict. c. 36.

5. There shall be repealed so much of the schedule to the Artizans and Labourers Dwellings Improvement Act, 1875, as is comprised under the heading "Proceedings on Arbitration," that is to say, articles numbered (5) to (13) both inclusive, and there shall be substituted therefor the articles contained in the schedule hereto; Provided that such repeal shall not affect anything duly done or suffered under any provision hereby repealed.

Limit of area to be dealt with on official representation.

6. Where an official representation made to the Metropolitan Board of Works in pursuance of the Artizans and Labourers Dwellings Improvement Act, 1875, relates to not more than ten houses, the Metropolitan Board of Works shall not take any proceedings on such representation, but shall direct the officer making the same to report the case to the local authority as defined by the Artizans and Labourers Dwellings Act, 1868, and it shall be the duty of the local authority to deal with such case in manner provided by the last-mentioned Act, and the Acts amending the same.

## PART II.

Construction of Part II. 31 & 32 Vict. c. 180. 42 & 43 Vict. c. 64.

7. This part of this Act shall be construed as one with the Artizans and Labourers Dwellings Act (1868), and the Artizans and Labourers Dwellings Act (1868), Amendment Act, 1879, and those Acts and this part of this Act may be cited together as the Artizans Dwellings Acts, 1868 to 1882.

Power to local authority to purchase houses for opening alleys, &c.

8. (1.) If in any place to which the Artizans and Labourers Dwellings Act, 1868, applies the officer of health finds that any building, although not in itself unfit for human habitation is so situate that by reason of its proximity to or contact with any other buildings it causes one of the following effects, that is to say,—

(1) it stops ventilation, or otherwise makes or con-

duces to make such other buildings to be in a condition unfit for human habitation; or

- (2) it prevents proper measures from being carried into effect for remedying the evils complained of in respect of such other buildings,

in any such case, the officer of health shall make a report to the local authority in writing of the particulars relating to such first mentioned building (in this Act referred to as "an obstructive building"), stating that in his opinion it is expedient that the obstructive building should be pulled down, and shall deliver the report to the clerk of the local authority.

(2.) The local authority shall refer such report to a surveyor or engineer to report thereon, and to report as to the cost of acquiring the lands on which such obstructive building is erected and of pulling down such building.

(3.) The local authority shall take into consideration the reports of the officer of health and of the surveyor, and if they decide to adopt such reports shall cause copies to be given to the owner of the lands on which the obstructive building stands, with notice of the time and place appointed by the local authority for the consideration thereof; and such owner shall be at liberty to attend and state his objections, and after hearing such objections the local authority shall make an order in writing signed by their clerk either allowing the objections or directing that such obstructive building shall be pulled down, and such order shall be subject to appeal in like manner as an order of the local authority under the Artizans and Labourers Dwellings Act, 1868.

(4.) Where an order of the local authority for pulling down an obstructive building is made under this section and is not appealed against, or if appealed against is confirmed, the local authority shall be deemed to be authorised to purchase the lands on which the obstructive building is erected in like manner as if they had been authorised by a special Act to purchase the same; and for the purpose of such purchase the provisions of the Lands Clauses Consolidation Act, 1845, and the Acts amending the same with respect to the purchase and taking of lands otherwise than by agreement shall be deemed to be incorporated in this Act (subject nevertheless to the provisions of this Act), and for the purpose of those provisions this Act shall be deemed to be the special Act and the local authority to be the promoters of the undertaking, and such lands may be purchased at any time within one year after the date of the order, or if it was appealed against after the date of the confirmation.

(5.) The owner of the lands may within one month after notice to purchase the same is served upon him declare that he desires to retain the site of the obstructive building and undertake either to pull down or to permit the local authority to pull down the obstructive building, and in such case the owner shall retain the site and shall receive compensation from the local authority for the pulling down of the obstructive building.

(6.) The amount of such compensation, and also the amount of any compensation to be paid on the purchase of any lands under this section, shall in case of difference be settled by arbitration in manner provided by section seven of the Artizans and Labourers Dwellings Act (1868) Amendment Act, 1879, as amended by this part of this Act.

(7.) Where the owner retains the site or any part thereof section twenty-three of the Artizans and Labourers Dwellings Act, 1868, shall apply to such site.

(8.) Where the lands are purchased by the local

authority the local authority shall pull down the obstructive building or such part thereof as may be obstructive within the meaning of this section, and keep as an open space the whole site, or such part thereof as may be required to be kept open for the purpose of remedying the evils caused by such obstructive building, and may, with the assent of the confirming authority and upon such terms as such authority thinks expedient, permit such portion of the site to be sold as is not required for the purpose of carrying this section into effect.

Where in the opinion of the arbitrator the demolition of an obstructive building adds to the value of such other buildings as are in that behalf mentioned in this section, the arbitrator shall apportion so much of the compensation to be paid for the demolition of the obstructive building as may be equal to the increase in value of the other buildings amongst such other buildings respectively, and the amount apportioned to each such other building in respect of its increase in value by reason of the demolition of such obstructive building shall be deemed to be private improvement expenses incurred by the local authority in respect of such building, and such local authority may, for the purpose of defraying such expenses, make and levy improvement rates on the occupier of such premises accordingly; and the provisions of the Public Health Act, 1875, relating to private improvement expenses and to private improvement rates shall, so far as circumstances admit, apply accordingly in the same manner as if such provisions were incorporated in this Act, and the said provisions shall be deemed to extend to the city of London and to the metropolis, and in the construction of the said provisions as respects the city of London the Commissioners of Sewers, and as respects the metropolis the Metropolitan Board of Works, shall be deemed to be the urban authority.

If any dispute arises between the owner or occupier of any building (to which any amount may be apportioned in respect of private improvement expenses) and the arbitrator by whom such apportionment is made, such dispute shall be settled by two justices in manner provided by the Lands Clauses Consolidation Act, 1845, in cases where the compensation claimed in respect of lands does not exceed fifty pounds.

Amendment of 9. Section seven of the Artizans and  
a. 7 of  
42 & 43 Vict. Labourers Dwellings Act (1868) Amend-  
c. 64. ment Act, 1879, shall be construed as if  
the words "and all circumstances affecting such value" were omitted therefrom.

Expenses of local 10. The expenses of the local authority  
authority. under this part of this Act shall be  
defrayed in like manner as expenses incurred in pur-  
sueance of the Artizans and Labourers Dwellings Act  
(1868) Amendment Act, 1879.

Amendment of 11. Whereas by section twelve of the  
a. 7 of  
42 & 43 Vict. Artizans and Labourers Dwellings Act  
c. 64. s. 12. as to (1868) Amendment Act, 1879, it is pro-  
enforcement  
of Act by provided that in the event of a local authority  
Metropolitan within the metropolis declining or neglect-  
Board of Works. ing for the space of three months after  
receiving a notice from the Metropolitan Board of  
Works requiring such local authority to put in force the  
provisions of the said Act in respect of any premises  
described in such notice, the Metropolitan Board of  
Works shall have the powers therein mentioned, and  
it is expedient to amend the said section: Be it therefore  
enacted as follows:

Where an officer of health in pursuance of the Artizans and Labourers Dwellings Act, 1868, has



reported any premises as unfit for human habitation, or in pursuance of this part of this Act has reported that the pulling down of any obstructive building would be expedient the board of guardians in whose union or parish, or the owner of any property in the neighbourhood of which such premises or buildings are situate, may complain to the Metropolitan Board of Works that the local authority have failed to put in force the provisions of the said Acts in respect of such premises or building, and the Metropolitan Board of Works may, if they think it expedient so to do, thereupon proceed under section twelve of the Artizans and Labourers Dwellings Act (1868) Amendment Act, 1879, and that section shall apply as if it were enacted in this part of this Act and in terms made applicable to the duties of local authorities under this part of this Act.

#### SCHEDULE.

##### AMENDMENT OF SCHEDULE TO 38 & 39 VICT. c. 86.

(1.) In lieu of articles eight to thirteen (both inclusive) of the schedule to the Artizans and Labourers Dwellings Improvement Act, 1875, the following articles shall be substituted; that is to say,

##### *Proceedings on Arbitration.*

(a.) Before any arbitrator enters upon any inquiry he shall, in the presence of a justice of the peace, make and subscribe the following declaration; that is to say,

'I *A. B.* do solemnly and sincerely declare, that I will faithfully and honestly, and to the best of my skill and ability, hear and determine the matters referred to me under the provisions of the Artizans and Labourers Dwellings Improvement Act, 1875.

'*A. B.*

'Made and subscribed in the presence of

And such declaration shall be annexed to the award when made; and if any arbitrator, having made such declaration, wilfully act contrary thereto, he shall be guilty of a misdemeanor.

(b.) As soon as an arbitrator has been appointed as aforesaid, the confirming authority shall deliver to him the maps and schedules deposited at their office, and the local authority shall publish once in each of three successive weeks the following particulars:—

- (1.) The appointment of the arbitrator; and
- (2.) The deposit at the office of the local authority of the copies of such maps and schedules as aforesaid, with a description of the situation of such office, and a statement of the time at which such copies may be inspected by any person desirous of inspecting the same.

(c.) In every case in which compensation is payable under the Artizans and Labourers Dwellings Improvement Act, 1875, by the local authority to any claimant, and which compensation has not been made the subject of agreement (in this Act referred to as "a disputed case"), the arbitrator shall ascertain in such manner as he thinks most convenient the amount of compensation demanded by the claimant, and the amount which the local authority may be willing to pay; and after hearing all such parties interested in each disputed case as may appear before him at a time and place of which notice has been given as in this Act mentioned, he shall proceed to decide on the amount of compensation to which he may consider the claimant to be entitled in each case.

(d.) The arbitrator shall from time to time give notice to the claimants in disputed cases by causing such notice to be published or otherwise in such manner as he thinks advisable, of a time and place at which the difference between the claimants and the local authority in disputed cases as to the

amount of compensation to be paid will be decided by the arbitrator.

(e.) After the arbitrator has arrived at a decision on all the disputed cases brought before him he shall make an award under his hand and seal, and such award shall be final, and be binding and conclusive (subject to the provisions concerning an appeal herein-after contained) upon all persons whomsoever, and no such award shall be set aside for irregularity in matter of form.

(f.) Such award as aforesaid shall be deposited at the office of the confirming authority, and a copy thereof shall be deposited at the office of the local authority, and the local authority shall thereupon publish once in each of three successive weeks notice of the deposit having been made at the office of the local authority of a copy of the award, and a further notice requiring all persons claiming to have any right to or interest in the lands (the compensation to be paid in respect of which is ascertained by such award) to deliver to the local authority on or before a day to be named in such notice (such day not being earlier than twenty-one days from the date of the last publication of the notice), a short statement in writing of the nature of such claim, and a short abstract of the title on which the same is founded; and such statement and abstract shall be paid for by the local authority. Such abstract of title, in the case of a person claiming a fee simple interest in the land, shall commence twenty years previous to the date of the claim, except there has been an absolute conveyance on sale within twenty years, and more than ten years, previous to the claim when the abstract shall commence with such conveyance.

(g.) Any person or local authority dissatisfied with the amount of compensation awarded may, where such amount exceeds one thousand pounds, but not otherwise, appeal in manner provided by article twenty-six of the schedule to the Artizans and Labourers Dwellings Improvement Act, 1875, and that article shall be construed as if one thousand pounds were therein substituted for five hundred pounds.

(h.) The costs, charges, and expenses payable by the local authority under article twenty-eight of the schedule to the Artizans and Labourers Dwellings Improvement Act, 1875, shall not be payable until the amount has been certified by the confirming authority.

(i.) Notwithstanding anything contained in article twenty-nine of the said schedule, the arbitrator shall not be required to certify the amount of costs incurred by any party in relation to the arbitration in any case where he considers that such costs are not properly payable by the local authority.

#### CAP. LV.

An Act to amend the Law with respect to the Charges on and Payments to the Mercantile Marine Fund, and to expenses of Prosecutions for Offences committed at Sea.

[18th August 1882.]

#### CAP. LVI.

An Act to facilitate and regulate the supply of Electricity for Lighting and other purposes in Great Britain and Ireland.

[18th August 1882.]

#### CAP. LVII.

An Act to amend the law relating to Costs and Salaries in County Courts.

[18th August 1882.]

## CAP. LVIII.

An Act to amend the Divided Parishes and Poor Law Amendment Act, 1876; and for other purposes. [18th August 1882.]

## CAP. LIX.

An Act to reorganise the Educational Endowments of Scotland. [18th August 1882.]

## CAP. LX.

An Act to amend and extend the provisions of the Land Law (Ireland) Act, 1881, relating to Labourers Cottages and Allotments.

[18th August 1882.]

WHEREAS it is expedient to amend and extend the provisions relating to labourers cottages and allotments of the Land Law (Ireland) Act, 1881:

Be it enacted, &c.,

1. This Act may be cited for all purposes as the Labourers Cottages and Allotments (Ireland) Act, 1882.

2. In this Act the expression "the principal Act" means the Land Law (Ireland) Act, 1881, and the several words and expressions to which meanings are assigned by that Act shall have the same respective meanings in this Act unless there be something in the context repugnant thereto

3. Where under section eight of the principal Act the landlord and tenant of any holding have agreed and declared, or shall agree and declare, by writing under their hands, what is the fair rent of the holding, and such agreement and declaration has been or shall be filed in court, the Land Commission may at any time within six months from the passing of this Act, or within twelve months from the date of the filing of such declaration and agreement, whichever shall last happen, order the tenant of such holding for the accommodation of the labourers employed thereon to improve any existing cottage or cottages, or build any new cottage or cottages, or assign to any such cottage an allotment not exceeding half an acre, and may by such order fix the terms as to rent and otherwise on which such accommodation is to be provided, and any such order may be made on the application of the landlord, or of the tenant of the holding, or of any labourer bona fide employed and required for the cultivation thereof.

4. Where an order shall be made under this Act, or has been made or is made under section nineteen of the principal Act, for providing accommodation for the labourers employed on any holding, and such order has not been complied with within six months from the date of such order, or six months from the passing of this Act, whichever shall last happen, the person failing to comply with such order shall be liable thenceforth to a penalty of one pound for every week during which such order is not complied with, and such penalty shall be recoverable in a summary manner before two or more justices

in petty sessions in manner provided by the Petty Sessions (Ireland) Act, 1851, upon the complaint of any labourer employed on the holding, and in whose favour such order has been or

shall have been made, and the justices shall award such penalty to the guardians of the poor of the union within which the holding is situate to be applied in aid of the poor rate of such union.

5. Any person who has incurred any penalty under the provisions of this Act may apply to the Land Commission for relief from the same, and the Land Commission may relieve him from the whole or part of such penalty on such terms as to compliance with the order and as to costs or otherwise as the Land Commission thinks fit, and such relief may be granted notwithstanding that an order has been made at petty session for the payment of the penalty.

6. This Act and the principal Act shall be read together and construed as one Act.

## CAP. LXI.

An Act to codify the law relating to Bills of Exchange, Cheques, and Promissory Notes.

[18th August, 1882.]

Be it enacted, &c.,

## PART I.

## PRELIMINARY.

1. This Act may be cited as the Bills of Exchange Act, 1882.

2. In this Act, unless the context otherwise requires,—

- "Acceptance" means an acceptance completed by delivery or notification.
- "Action" includes counter claim and set off.
- "Banker" includes a body of persons whether incorporated or not who carry on the business of banking.
- "Bankrupt" includes any person whose estate is vested in a trustee or assignee under the law for the time being in force relating to bankruptcy.
- "Bearer" means the person in possession of a bill or note which is payable to bearer.
- "Bill" means bill of exchange, and "note" means promissory note.
- "Delivery" means transfer of possession, actual or constructive, from one person to another.
- "Holder" means the payee or indorsee of a bill or note who is in possession of it, or the bearer thereof.
- "Indorsement" means an indorsement completed by delivery.
- "Issue" means the first delivery of a bill or note, complete in form to a person who takes it as a holder.
- "Person" includes a body of persons whether incorporated or not.
- "Value" means valuable consideration.
- "Written" includes printed, and "writing" includes print.

## PART II.

## BILLS OF EXCHANGE.

## Form and Interpretation.

3. (1.) A bill of Exchange is an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a

sum certain in money to or to the order of a specified person, or to bearer.

(2.) An instrument which does not comply with these conditions, or which orders any act to be done in addition to the payment of money, is not a bill of exchange.

(3.) An order to pay out of a particular fund is not unconditional within the meaning of this section; but an unqualified order to pay, coupled with (a) an indication of a particular fund out of which the drawee is to re-imburse himself or a particular account to be debited with the amount, or (b) a statement of the transaction which gives rise to the bill, is unconditional.

(4.) A bill is not invalid by reason—

- (a.) That it is not dated;
- (b.) That it does not specify the value given, or that any value has been given therefor;
- (c.) That it does not specify the place where it is drawn or the place where it is payable.

**Inland and foreign bills.**

4. (1.) An inland bill is a bill which is or on the face of it purports to be (a) both drawn and payable within the British Islands, or (b) drawn within the British Islands upon some person resident therein. Any other bill is a foreign bill.

For the purposes of this Act "British Islands" mean any part of the United Kingdom of Great Britain and Ireland, the islands of Man, Guernsey, Jersey, Alderney, and Sark, and the islands adjacent to any of them being part of the dominions of Her Majesty.

(2.) Unless the contrary appear on the face of the bill the holder may treat it as an inland bill.

**Effect where different parties to bill are the same person.**

5. (1.) A bill may be drawn payable to, or to the order of, the drawer; or it may be drawn payable to, or to the order of, the drawee.

(2.) Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or as a promissory note.

**Address to drawee.**

6. (1.) The drawee must be named or otherwise indicated in a bill with reasonable certainty.

(2.) A bill may be addressed to two or more drawees whether they are partners or not, but an order addressed to two drawees in the alternative or to two or more drawees in succession is not a bill of exchange.

**Receipt required as to payee.**

7. (1.) Where a bill is not payable to bearer, the payee must be named or otherwise indicated therein with reasonable certainty.

(2.) A bill may be made payable to two or more payees jointly or it may be made payable in the alternative to one or two, or one or some of several payees. A bill may also be made payable to the holder of an office for the time being.

(3.) Where the payee is a fictitious or non-existing person the bill may be treated as payable to bearer.

**What bills are negotiable.**

8. (1.) When a bill contains words prohibiting transfer, or indicating an intention that it should not be transferable, it is valid as between the parties thereto, but is not negotiable.

(2.) A negotiable bill may be payable either to order or to bearer.

(3.) A bill is payable to bearer which is expressed to be so payable, or on which the only or last indorsement is an indorsement in blank.

(4.) A bill is payable to order which is expressed to be so payable, or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it should not be transferable.

(5.) Where a bill, either originally or by indorsement, is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order at his option.

**Sum payable.**

9. (1.) The sum payable by a bill is a sum certain within the meaning of this Act, although it is required to be paid—

- (a.) With interest.
- (b.) By stated instalments.
- (c.) By stated instalments, with a provision that upon default in payment of any instalment the whole shall become due.
- (d.) According to an indicated rate of exchange or according to a rate of exchange to be ascertained as directed by the bill.

(2.) Where the sum payable is expressed in words and also in figures, and there is a discrepancy between the two, the sum denoted by the words is the amount payable.

(3.) Where a bill is expressed to be payable with interest, unless the instrument otherwise provides, interest runs from the date of the bill, and if the bill is undated from the issue thereof.

**Bill payable on demand.**

10. (1.) A bill is payable on demand—

- (a.) Which is expressed to be payable on demand, or at sight, or on presentation; or
  - (b.) In which no time for payment is expressed.
- (2.) Where a bill is accepted or indorsed when it is overdue, it shall, as regards the acceptor who so accepts, or any indorser who so indorses it, be deemed a bill payable on demand.

**Bill payable at a future time.**

11. A bill is payable at a determinable future time within the meaning of this Act which is expressed to be payable—

- (1.) At a fixed period after date or sight.
- (2.) On or at a fixed period after the occurrence of a specified event which is certain to happen, though the time of happening may be uncertain.

An instrument expressed to be payable on a contingency is not a bill, and the happening of the event does not cure the defect.

**Omission of date in bill payable after date.**

12. Where a bill expressed to be payable at a fixed period after date is issued undated, or where the acceptance of a bill payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the bill shall be payable accordingly.

Provided that (1) where the holder in good faith and by mistake inserts a wrong date, and (2) in every case where a wrong date is inserted, if the bill subsequently comes into the hands of a holder in due course the bill shall not be avoided thereby, but shall operate and be payable as if the date so inserted had been the true date.

**Ante-dating and post-dating.**

13. (1.) Where a bill or an acceptance or any indorsement on a bill is dated, the date shall, unless the contrary be proved, be deemed to be the true date of the drawing, acceptance, or indorsement, as the case may be.

(2.) A bill is not invalid by reason only that it is ante-dated or post-dated, or that it bears date on a Sunday.

**Computation of time of payment.**

14. Where a bill is not payable on demand the day on which it falls due is determined as follows:

- (1.) Three days, called days of grace, are, in every case where the bill itself does not otherwise provide, added to the time of payment as fixed by the bill, and the bill is due and payable on the last day of grace: Provided that—

(a.) When the last day of grace falls on Sunday, Christmas Day, Good Friday, or a day appointed by Royal proclamation as a public fast or thanksgiving day, the bill is, except in the case hereinafter provided for, due and payable on the preceding business day;

(b.) When the last day of grace is a bank holiday (other than Christmas Day or Good Friday) under the Bank Holidays Act, 1871, and Acts amending or extending it, or when the last day of grace is a Sunday and the second day of grace is a Bank Holiday, the bill is due and payable on the succeeding business day.

34 & 35 Vict.  
c. 17.

- (2.) Where a bill is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run and by including the day of payment.
- (3.) Where a bill is payable at a fixed period after sight the time begins to run from the date of the acceptance if the bill be accepted, and from the date of noting or protest if the bill be noted or protested for non-acceptance, or for non-delivery.
- (4.) The term "month" in a bill means calendar month.

**Case of need.** 15. The drawer of a bill and any indorser may insert therein the name of a person to whom the holder may resort in case of need, that is to say, in case the bill is dishonoured by non-acceptance or non-payment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not as he may think fit.

**Optional stipulations by drawer or indorser.** 16. The drawer of a bill, and any indorser, may insert therein an express stipulation—

- (1.) Negating or limiting his own liability to the holder;
- (2.) Waiving as regards himself some or all of the holder's duties.

**Definition and requisites of acceptance.** 17. (1.) The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer.

(2.) An acceptance is invalid unless it complies with the following conditions, namely:

- (a.) It must be written on the bill and be signed by the drawee. The mere signature of the drawee without additional words is sufficient.
- (b.) It must not express that the drawee will perform his promise by any other means than the payment of money.

**Time for acceptance.** 18. A bill may be accepted.

(1.) Before it has been signed by the drawer, or while otherwise incomplete:

- (2.) When it is overdue, or after it has been dishonoured by a previous refusal to accept, or by non-payment;
- (3.) When a bill payable after sight is dishonoured by non-acceptance, and the drawee subsequently accepts it, the holder in the absence of any different agreement, is entitled to have the bill accepted as of the date of first presentment to the drawee for acceptance.

**General and qualified acceptances.** 19. (1.) An acceptance is either (a) general or (b) qualified.

(2.) A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn.

In particular an acceptance is qualified which is—

- (a.) conditional, that is to say, which makes payment

by the acceptor dependent on the fulfilment of a condition therein stated:

(b.) partial, that is to say, an acceptance to pay part only of the amount for which the bill is drawn:

(c.) local, that is to say, an acceptance to pay only at a particular specified place:

An acceptance to pay at a particular place is a general acceptance, unless it expressly states that the bill is to be paid there only and not elsewhere:

(d.) qualified as to time:

(e.) the acceptance of some one or more of the drawees, but not of all.

**Inchoate instruments.** 20. (1.) Where a simple signature on a blank stamped paper is delivered by the signer in order that it may be converted into a bill, it operates as a prima facie authority to fill it up as a complete bill for any amount the stamp will cover, using the signature for that of the drawer, or the acceptor, or an indorser; and, in like manner, when a bill is wanting in any material particular, the person in possession of it has a prima facie authority to fill up the omission in any way he thinks fit.

(2.) In order that any such instrument when completed may be enforceable against any person who became a party thereto prior to its completion, it must be filled up within a reasonable time, and strictly in accordance with the authority given. Reasonable time for this purpose is a question of fact.

Provided that if any such instrument after completion is negotiated to a holder in due course it shall be valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up within a reasonable time and strictly in accordance with the authority given.

**Delivery.** 21. (1.) Every contract on a bill, whether it be the drawer's, the acceptor's, or an indorser, is incomplete and revocable, until delivery of the instrument in order to give effect thereto.

Provided that where an acceptance is written on a bill, and the drawee gives notice to or according to the directions of the person entitled to the bill that he has accepted it, the acceptance then becomes complete and irrevocable.

(2.) As between immediate parties, and as regards a remote party other than a holder in due course, the delivery—

(a.) in order to be effectual must be made either by or under the authority of the party drawing, accepting, or indorsing, as the case may be:

(b.) may be shown to have been conditional or for a special purpose only, and not for the purpose of transferring the property in the bill.

But if the bill be in the hands of a holder in due course a valid delivery of the bill by all parties prior to him so as to make them liable to him is conclusively presumed.

(3.) Where a bill is no longer in the possession of a party who has signed it as drawer, acceptor, or indorser, a valid and unconditional delivery by him is presumed until the contrary is proved.

#### Capacity and Authority of Parties.

**Capacity of parties.** 22. (1.) Capacity to incur liability as a party to a bill is co-extensive with capacity to contract.

Provided that nothing in this section shall enable a corporation to make itself liable as drawer, acceptor, or indorser of a bill unless it is competent to it so to do under the law for the time being in force relating to corporations.

(2.) Where a bill is drawn or indorsed by an infant, minor, or corporation having no capacity or power to incur liability on a bill, the drawing or indorsement

entitles the holder to receive payment of the bill, and to enforce it against any other party thereto.

Signature essential to liability.

23. No person is liable as drawer, indorser, or acceptor of a bill who has not signed it as such: Provided that
- (1.) Where a person signs a bill in a trade or assumed name, he is liable thereon as if he had signed it in his own name:
  - (2.) The signature of the name of a firm is equivalent to the signature by the person so signing of the names of all persons liable as partners in that firm.

Forged or unauthorised signature.

24. Subject to the provisions of this Act, where a signature on a bill is forged or placed thereon without the authority of the person whose signature it purports to be, the forged or unauthorised signature is wholly inoperative, and no right to retain the bill or to give a discharge therefor or to enforce payment thereof against any party thereto can be acquired through or under that signature, unless the party against whom it is sought to retain or enforce payment of the bill is precluded from setting up the forgery or want of authority.

Provided that nothing in this section shall affect the ratification of an unauthorised signature not amounting to a forgery.

Procurator signatures.

25. A signature by procurator operates as notice that the agent has but a limited authority to sign, and the principal is only bound by such signature if the agent in so signing was acting within the actual limits of his authority.

Person signing as agent or in representative capacity.

26. (1.) Where a person signs a bill as drawer, indorser, or acceptor, and adds words to his signature, indicating that he signs for or on behalf of a principal, or in a representative character, he is not personally liable thereon; but the mere addition to his signature of words describing him as an agent, or as filling a representative character, does not exempt him from personal liability.

(2.) In determining whether a signature on a bill is that of the principal or that of the agent by whose hand it is written, the construction most favourable to the validity of the instrument shall be adopted.

#### *The Consideration for a Bill.*

Value and holder for value.

27. (1.) Valuable consideration for a bill may be constituted by,—

- (a.) Any consideration sufficient to support a simple contract;
- (b.) An antecedent debt or liability. Such a debt or liability is deemed valuable consideration whether the bill is payable on demand or at a future time.

(2.) Where value has at any time been given for a bill the holder is deemed to be a holder for value as regards the acceptor and all parties to the bill who became parties prior to such time.

(3.) Where the holder of a bill has a lien on it, arising either from contract or by implication of law, he is deemed to be a holder for value to the extent of the sum for which he has a lien.

Accommodation bill or party.

28. (1.) An accommodation party to a bill is a person who has signed a bill as drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person.

(2.) An accommodation party is liable on the bill to a holder for value; and it is immaterial whether, when such holder took the bill, he knew such party to be an accommodation party or not.

Holder in due course.

29. (1.) A holder in due course is a holder who has taken a bill, complete and regular on the face of it, under the following conditions; namely,

- (a.) That he became the holder of it before it was overdue, and without notice that it had been previously dishonoured, if such was the fact:
- (b.) That he took the bill in good faith and for value, and that at the time the bill was negotiated to him he had no notice of any defect in the title of the person who negotiated it.

(2.) In particular the title of a person who negotiates a bill is defective within the meaning of this Act when he obtained the bill, or the acceptance thereof, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud.

(3.) A holder (whether for value or not), who derives his title to a bill through a holder in due course, and who is not himself a party to any fraud or illegality affecting it, has all the rights of that holder in due course as regards the acceptor and all parties to the bill prior to that holder.

Presumption of value and good faith.

30. (1.) Every party whose signature appears on a bill is *prima facie* deemed to have become a party thereto for value.

(2.) Every holder of a bill is *prima facie* deemed to be a holder in due course; but if in an action on a bill it is admitted or proved that the acceptance, issue, or subsequent negotiation of the bill is affected with fraud, duress, or force and fear, or illegality, the burden of proof is shifted, unless and until the holder proves that, subsequent to the alleged fraud or illegality, value has in good faith been given for the bill.

#### *Negotiation of Bills.*

Negotiation of bill.

31. (1.) A bill is negotiated when it is transferred from one person to another in such a manner as to constitute the transferee the holder of the bill.

(2.) A bill payable to bearer is negotiated by delivery.

(3.) A bill payable to order is negotiated by the indorsement of the holder completed by delivery.

(4.) Where the holder of a bill payable to his order transfers it for value without indorsing it, the transfer gives the transferee such title as the transferor had in the bill, and the transferee in addition acquires the right to have the indorsement of the transferor.

(5.) Where any person is under obligation to indorse a bill in a representative capacity, he may indorse the bill in such terms as to negative personal liability.

Requisites of a valid indorsement.

32. An indorsement in order to operate as a negotiation must comply with the following conditions, namely:—

(1.) It must be written on the bill itself and be signed by the indorser. The simple signature of the indorser on the bill, without additional words, is sufficient.

An indorsement written on an allonge, or on a "copy" of a bill issued or negotiated in a country where "copies" are recognised, is deemed to be written on the bill itself.

(2.) It must be an indorsement of the entire bill. A partial indorsement, that is to say, an indorsement which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the bill to two or more indorsees severally, does not operate as a negotiation of the bill.

- (3.) Where a bill is payable to the order of two or more payees or indorsees who are not partners all must indorse, unless the one indorsing has authority to indorse for the others.
- (4.) Where, in a bill payable to order, the payee or indorsee is wrongly designated, or his name is misspelt, he may indorse the bill as therein described, adding, if he think fit, his proper signature.
- (5.) Where there are two or more indorsements, on a bill, each indorsement is deemed to have been made in the order in which it appears on the bill, until the contrary is proved.
- (6.) An indorsement may be made in blank or special. It may also contain terms making it restrictive.

**Conditional Indorsement.**

33. Where a bill purports to be indorsed conditionally the condition may be disregarded by the payer, and payment to the indorsee is valid whether the condition has been fulfilled or not.

**Indorsement in blank and special indorsement.**

34. (1.) An indorsement in blank specifies no indorsee, and a bill so indorsed becomes payable to bearer.

(2.) A special indorsement specifies the person to whom, or to whose order, the bill is to be payable.

(3.) The provisions of this Act relating to a payee apply with the necessary modifications to an indorsee under a special indorsement.

(4.) When a bill has been indorsed in blank, any holder may convert the blank indorsement into a special indorsement by writing above the indorser's signature a direction to pay the bill to or to the order of himself or some other person.

**Restrictive indorsement**

35. (1.) An indorsement is restrictive which prohibits the further negotiation of the bill or which expresses that it is a mere authority to deal with the bill as thereby directed and not a transfer of the ownership thereof, as, for example, if a bill be indorsed "Pay D. only," or "Pay D. for the account of X.," or "Pay D. or order for collection."

(2.) A restrictive indorsement gives the indorsee the right to receive payment of the bill and to sue any party thereto that his indorser could have sued, but gives him no power to transfer his rights as indorsee unless it expressly authorise him to do so.

(3.) Where a restrictive indorsement authorises further transfer, all subsequent indorsees take the bill with the same rights and subject to the same liabilities as the first indorsee under the restrictive indorsement.

**Negotiation of overdue or dishonoured bill.**

36. (1.) Where a bill is negotiable in its origin it continues to be negotiable until it has been (a) restrictively indorsed, or (b) discharged by payment or otherwise.

(2.) Where an overdue bill is negotiated, it can only be negotiated subject to any defect of title affecting it at its maturity, and thenceforward no person who takes it can acquire or give a better title than that which the person from whom he took it had.

(3.) A bill payable on demand is deemed to be overdue within the meaning and for the purposes of this section, when it appears on the face of it to have been in circulation for an unreasonable length of time. What is an unreasonable length of time for this purpose is a question of fact.

(4.) Except where an indorsement bears date after the maturity of the bill, every negotiation is *prima facie* deemed to have been effected before the bill was overdue.

(5.) Where a bill which is not overdue has been dishonoured any person who takes it with notice of the dishonour takes it subject to any defect of title at-

taching thereto at the time of dishonour, but nothing in this sub-section shall affect the rights of a holder in due course.

**Negotiation of bill to party already liable thereon.**

37. Where a bill is negotiated back to the drawer, or to a prior indorser or to the acceptor, such party may, subject to the provisions of this Act, re-issue and further negotiate the bill, but he is not entitled to enforce payment of the bill against any intervening party to whom he was previously liable.

**Rights of the holder.**

38. The rights and powers of the holder of a bill are as follows:

- (1.) He may sue on the bill in his own name:
- (2.) Where he is a holder in due course, he holds the bill free from any defect of title of prior parties, as well as from mere personal defences available to prior parties among themselves, and may enforce payment against all parties liable on the bill:
- (3.) Where his title is defective (a) if he negotiates the bill to a holder in due course, that holder obtains a good and complete title to the bill, and (b) if he obtains payment of the bill the person who pays him in due course gets a valid discharge for the bill.

**General Duties of the Holder.****When presentment for acceptance is necessary.**

39. (1.) Where a bill is payable after sight, presentment for acceptance is necessary in order to fix the maturity of the instrument.

(2.) Where a bill expressly stipulates that it shall be presented for acceptance, or where a bill is drawn payable elsewhere than at the residence or place of business of the drawee it must be presented for acceptance before it can be presented for payment.

(3.) In no other case is presentment for acceptance necessary in order to render liable any party to the bill.

(4.) Where the holder of a bill, drawn payable elsewhere than at the place of business or residence of the drawee, has not time, with the exercise of reasonable diligence, to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused, and does not discharge the drawer and indorsers.

**Time for presenting bill payable after sight.**

40. (1.) Subject to the provisions of this Act, when a bill payable after sight is negotiated, the holder must either present it for acceptance or negotiate it within a reasonable time.

(2.) If he do not do so, the drawer and all indorsers prior to that holder are discharged.

(3.) In determining what is a reasonable time within the meaning of this section, regard shall be had to the nature of the bill, the usage of trade with respect to similar bills, and the facts of the particular case.

**Rules as to presentment for acceptance, and excuses for non-presentment.**

41. (1.) A bill is duly presented for acceptance which is presented in accordance with the following rules:

- (a) The presentment must be made by or on behalf of the holder to the drawee or to some person authorised to accept or refuse acceptance on his behalf at a reasonable hour on a business day and before the bill is overdue:
- (b) Where a bill is addressed to two or more drawees, who are not partners, presentment must be made to them all, unless one has authority to accept for all, then presentment may be made to him only:

- (c) Where the drawee is dead presentment may be made to his personal representative:
- (d) Where the drawee is bankrupt, presentment may be made to him or to his trustee:
- (e) Where authorised by agreement or usage, a presentment through the post office is sufficient.
- (2.) Presentment in accordance with these rules is excused, and a bill may be treated as dishonoured by non-acceptance—
- (a) Where the drawee is dead or bankrupt, or is a fictitious person or a person not having capacity or contract by bill:
- (b) Where, after the exercise of reasonable diligence, such presentment cannot be effected:
- (c) Where although the presentment has been irregular, acceptance has been refused on some other ground.
- (3) The fact that the holder has reason to believe that the bill, on presentment, will be dishonoured does not excuse presentment.

**Non-acceptance.** 42. (1.) When a bill is duly presented for acceptance and is not accepted within the customary time, the person presenting it must treat it as dishonoured by non-acceptance. If he do not, the holder shall lose his right of recourse against the drawer and indorsers.

**Dishonour by non-acceptance and its consequences.** 43. (1.) A bill is dishonoured by non-acceptance—

- (a) when it is duly presented for acceptance, and such an acceptance as is prescribed by this Act is refused or cannot be obtained; or
- (b) when presentment for acceptance is excused and the bill is not accepted.

(2.) Subject to the provisions of this Act when a bill is dishonoured by non-acceptance, an immediate right of recourse against the drawer and indorsers accrues to the holder, and no presentment for payment is necessary.

**Duties as to qualified acceptance.** 44. (1.) The holder of a bill may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance may treat the bill as dishonoured by non-acceptance.

(2.) Where a qualified acceptance is taken, and the drawer or an indorser has not expressly or impliedly authorised the holder to take a qualified acceptance, or does not subsequently assent thereto, such drawer or indorser is discharged from his liability on the bill.

The provisions of this sub-section do not apply to a partial acceptance, whereof due notice has been given. Where a foreign bill has been accepted as to part, it must be protested as to the balance.

(3.) When the drawer or indorser of a bill receives notice of a qualified acceptance, and does not within a reasonable time express his dissent to the holder he shall be deemed to have assented thereto.

**Rules as to presentment for payment.** 45. Subject to the provisions of this Act a bill must be duly presented for payment. If it be not so presented the drawer and indorsers shall be discharged.

A bill is duly presented for payment which is presented in accordance with the following rules:—

- (1.) Where the bill is not payable on demand, presentment must be made on the day it falls due.
- (2.) Where the bill is payable on demand, then, subject to the provisions of this Act, presentment must be made within a reasonable time after its issue in order to render the drawer liable, and within a reasonable time after its indorsement, in order to render the indorser liable.

In determining what is a reasonable time, regard

shall be had to the nature of the bill, the usage of trade with regard to similar bills, and the facts of the particular case.

- (3.) Presentment must be made by the holder or by some person authorised to receive payment on his behalf at a reasonable hour on a business day, at the proper place as herein-after defined; either to the person designated by the bill as payer, or to some person authorised to pay or refuse payment on his behalf if with the exercise of reasonable diligence such person can there be found.
- (4.) A bill is presented at the proper place:—
- (a.) Where a place of payment is specified in the bill and the bill is there presented.
- (b.) Where no place of payment is specified, but the address of the drawee or acceptor is given in the bill, and the bill is there presented.
- (c.) Where no place of payment is specified and no address given, and the bill is presented at the drawee's or acceptor's place of business if known, and if not, at his ordinary residence if known.
- (d.) In any other case if presented to the drawee or acceptor wherever he can be found, or if presented at his last known place of business or residence.
- (5.) Where a bill is presented at the proper place, and after the exercise of reasonable diligence no person authorised to pay or refuse payment can be found there, no further presentment to the drawee or acceptor is required.
- (6.) Where a bill is drawn upon, or accepted by two or more persons who are not partners, and no place of payment is specified, presentment must be made to them all.
- (7.) Where the drawee or acceptor of a bill is dead, and no place of payment is specified, presentment must be made to a personal representative, if such there be, and with the exercise of reasonable diligence he can be found.
- (8.) Where authorised by agreement or usage a presentment through the post office is sufficient.

**Excuses for delay or non-presentment for payment.** 46. (1.) Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate presentment must be made with reasonable diligence.

- (2.) Presentment for payment is dispensed with,—
- (a.) Where, after the exercise of reasonable diligence presentment, as required by this Act, cannot be effected.

The fact that the holder has reason to believe that the bill will, on presentment, be dishonoured, does not dispense with the necessity for presentment.

- (b.) Where the drawee is a fictitious person.
- (c.) As regards the drawer where the drawee or acceptor is not bound, as between himself and the drawer, to accept or pay the bill, and the drawer has no reason to believe that the bill would be paid if presented.
- (d.) As regards an indorser, where the bill was accepted or made for the accommodation of that indorser, and he has no reason to expect that the bill would be paid if presented.
- (e.) By waiver of presentment, express or implied.

**Dishonour by non-payment.** 47. (1.) A bill is dishonoured by non-payment (a) when it is duly presented for payment and payment is refused or cannot be obtained, or (b) when presentment is excused and the bill is overdue and unpaid.

(2.) Subject to the provisions of this Act, when a bill is dishonoured by non-payment, an immediate right of recourse against the drawer and indorsers accrues to the holder.

Notice of dishonour and effect of non-notice.

48. Subject to the provisions of this Act, when a bill has been dishonoured by non-acceptance or by non-payment, notice of dishonour must be given to the drawer and each indorser, and any drawer or indorser to whom such notice is not given is discharged; Provided that—

(1.) Where a bill is dishonoured by non-acceptance, and notice of dishonour is not given, the rights of a holder in due course subsequent to the omission, shall not be prejudiced by the omission.

(2.) Where a bill is dishonoured by non-acceptance and due notice of dishonour is given, it shall not be necessary to give notice of a subsequent dishonour by non-payment unless the bill shall in the meantime have been accepted.

Rules as to notice of dishonour.

49. Notice of dishonour in order to be valid and effectual must be given in accordance with the following rules:—

- (1.) The notice must be given by or on behalf of the holder, or by or on behalf of an indorser who, at the time of giving it, is himself liable on the bill.
- (2.) Notice of dishonour may be given by an agent either in his own name, or in the name of any party entitled to give notice whether that party be his principal or not.
- (3.) Where the notice is given by or on behalf of the holder, it ensures for the benefit of all subsequent holders and all prior indorsers who have a right of recourse against the party to whom it is given.
- (4.) Where notice is given by or on behalf of an indorser entitled to give notice as herein-before provided, it ensures for the benefit of the holder and all indorsers subsequent to the party to whom notice is given.
- (5.) The notice may be given in writing or by personal communication, and may be given in any terms which sufficiently identify the bill, and intimate that the bill has been dishonoured by non-acceptance or non-payment.
- (6.) The return of a dishonoured bill to the drawer or an indorser is, in point of form, deemed a sufficient notice of dishonour.
- (7.) A written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the bill shall not vitiate the notice unless the party to whom the notice is given is in fact misled thereby.
- (8.) Where notice of dishonour is required to be given to any person, it may be given either to the party himself, or to his agent in that behalf.
- (9.) Where the drawer or indorser is dead, and the party giving notice knows it, the notice must be given to a personal representative if such there be, and with the exercise of reasonable diligence he can be found.
- (10.) Where the drawer or indorser is bankrupt, notice may be given either to the party himself or to the trustee.
- (11.) Where there are two or more drawers or indorsers who are not partners, notice must be given to each of them, unless one of them has authority to receive such notice for the others.
- (12.) The notice may be given as soon as the bill is dishonoured and must be given within a reasonable time thereafter.

In the absence of special circumstances notice is not

deemed to have been given within a reasonable time, unless—

- (a.) where the person giving and the person to receive notice reside in the same place, the notice is given or sent off in time to reach the latter on the day after the dishonour of the bill.
  - (b.) where the person giving and the person to receive notice reside in different places, the notice is sent off on the day after the dishonour of the bill, if there be a post at a convenient hour on that day, and if there be no such post on that day then by the next post thereafter.
- (13.) Where a bill when dishonoured is in the hands of an agent, he may either himself give notice to the parties liable on the bill, or he may give notice to his principal. If he give notice to his principal, he must do so within the same time as if he were the holder, and the principal upon receipt of such notice has himself the same time for giving notice as if the agent had been an independent holder.
- (14.) Where a party to a bill receives due notice of dishonour, he has after the receipt of such notice the same period of time for giving notice to antecedent parties that the holder has after the dishonour.
- (15.) Where a notice of dishonour is duly addressed and posted, the sender is deemed to have given due notice of dishonour, notwithstanding any miscarriage by the post office.

Excuses for non-notice and delay.

50. (1.) Delay in giving notice of dishonour is excused where the delay is caused by circumstances beyond the control of the party giving notice, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate the notice must be given with reasonable diligence.

- (2.) Notice of dishonour is dispensed with—
- (a.) When, after the exercise of reasonable diligence, notice as required by this Act cannot be given to or does not reach the drawer or indorser sought to be charged;
  - (b.) By waiver express or implied. Notice of dishonour may be waived before the time of giving notice has arrived, or after the omission to give due notice;
  - (c.) As regards the drawer in the following cases, namely, (1) where drawer and drawee are the same person, (2) where the drawee is a fictitious person or a person not having capacity to contract, (3) where the drawer is the person to whom the bill is presented for payment, (4) where the drawee or acceptor is as between himself and the drawer under no obligation to accept or pay the bill, (5) where the drawer has countermanded payment;
  - (d.) As regards the indorser in the following cases, namely, (1) where the drawee is a fictitious person or a person not having capacity to contract and the indorser was aware of the fact at the time he indorsed the bill, (2) where the indorser is the person to whom the bill is presented for payment, (3) where the bill was accepted or made for his accommodation.

Noting or protest of bill.

51. (1.) Where an inland bill has been dishonoured it may, if the holder think fit, be noted for non-acceptance or non-payment, as the case may be; but it shall not be necessary to note or protest any such bill in order to preserve the recourse against the drawer or indorser.



(2.) Where a foreign bill, appearing on the face of it to be such, has been dishonoured by non-acceptance it must be duly protested for non-acceptance, and where such a bill, which has not been previously dishonoured by non-acceptance, is dishonoured by non-payment it must be duly protested for non-payment. If it be not so protested the drawer and indorsers are discharged. Where a bill does not appear on the face of it to be a foreign bill, protest thereof in case of dishonour is unnecessary.

(3.) A bill which has been protested for non-acceptance may be subsequently protested for non-payment.

(4.) Subject to the provisions of this Act, when a bill is noted or protested, it must be noted on the day of its dishonour. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting.

(5.) Where the acceptor of a bill becomes bankrupt or insolvent or suspends payment before it matures, the holder may cause the bill to be protested for better security against the drawer and indorsers.

(6.) A bill must be protested at the place where it is dishonoured: Provided that—

(a.) When a bill is presented through the post office, and returned by post dishonoured, it may be protested at the place to which it is returned and on the day of its return if received during business hours, and if not received during business hours, then not later than the next business day;

(b.) When a bill drawn payable at the place of business or residence of some person other than the drawee, has been dishonoured by non-acceptance, it must be protested for non-payment at the place where it is expressed to be payable, and no further presentment for payment to, or demand on, the drawee is necessary.

(7.) A protest must contain a copy of the bill, and must be signed by the notary making it, and must specify—

(a.) The person at whose request the bill is protested :

(b.) The place and date of protest, the cause or reason for protesting the bill, the demand made, and the answer given, if any, or the fact that the drawee or acceptor could not be found.

(8.) Where a bill is lost or destroyed, or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof.

(9.) Protest is dispensed with by any circumstance which would dispense with notice of dishonour. Delay in noting or protesting is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate the bill must be noted or protested with reasonable diligence.

**Duties of holder as regards drawee or acceptor.** 52. (1.) When a bill is accepted generally presentment for payment is not necessary in order to render the acceptor liable.

(2.) When by the terms of a qualified acceptance presentment for payment is required, the acceptor, in the absence of an express stipulation to that effect, is not discharged by the omission to present the bill for payment on the day that it matures.

(3.) In order to render the acceptor of a bill liable it is not necessary to protest it, or that notice of dishonour should be given to him.

(4.) Where the holder of a bill presents it for payment, he shall exhibit the bill to the person from whom he demands payment, and when a bill is paid the holder shall forthwith deliver it up to the party paying it.

### Liabilities of Parties.

**Funds in hands of drawee.** 53. (1.) A bill, of itself, does not operate as an assignment of funds in the hands of the drawee available for the payment thereof, and the drawee of a bill who does not accept as required by this Act is not liable on the instrument. This subsection shall not extend to Scotland.

(2.) In Scotland, where the drawee of a bill has in his hands funds available for the payment thereof, the bill operates as an assignment of the sum for which it is drawn in favour of the holder, from the time when the bill is presented to the drawee.

**Liability of acceptor.** 54. The acceptor of a bill, by accepting it—

(1.) Engages that he will pay it according to the tenor of his acceptance :

(2.) Is precluded from denying to a holder in due course :

(a.) The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the bill ;

(b.) In the case of a bill payable to drawer's order, the then capacity of the drawer to indorse, but not the genuineness or validity of his indorsement ;

(c.) In the case of a bill payable to the order of a third person, the existence of the payee and his then capacity to indorse, but not the genuineness or validity of his indorsement.

**Liability of drawer or indorser.** 55. (1.) The drawer of a bill by drawing it—

(a.) Engages that on due presentment it shall be accepted and paid according to its tenor, and that if it be dishonoured he will compensate the holder or any indorser who is compelled to pay, provided that the requisite proceedings on dishonour be duly taken ;

(b.) Is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse.

(2.) The indorser of a bill by indorsing it—

(a.) Engages that on due presentment it shall be accepted and paid according to its tenor, and that if it be dishonoured he will compensate the holder or a subsequent indorser who is compelled to pay it, provided that the requisite proceedings on dishonour be duly taken ;

(b.) Is precluded from denying to a holder in due course the genuineness and regularity in all respects of the drawer's signature and all previous indorsements ;

(c.) Is precluded from denying to his immediate or a subsequent indorsee that the bill was at the time of his indorsement a valid and subsisting bill, and that he had then a good title thereto.

**Stranger signing bill liable as indorser.** 56. Where a person signs a bill otherwise than as drawer or acceptor, he thereby incurs the liabilities of an indorser to a holder in due course.

**Measure of damages against parties to dishonoured bill.** 57. Where a bill is dishonoured, the measure of damages, which shall be deemed to be liquidated damages, shall be as follows :

(1.) The holder may recover from any party liable on the bill, and the drawer who has been compelled to pay the bill may recover from the acceptor, and an indorser who has been compelled to pay the bill may recover from the acceptor or from the drawer, or from a prior indorser—

(a.) The amount of the bill :

- (b.) Interest thereon from the time of presentment for payment if the bill is payable on demand, and from the maturity of the bill in any other case:
- (c.) The expenses of noting, or, when protest is necessary, and the protest has been extended, the expenses of protest.
- (2.) In the case of a bill which has been dishonoured abroad, in lieu of the above damages, the holder may recover from the drawer or an indorser, and the drawer or an indorser who has been compelled to pay the bill may recover from any party liable to him, the amount of the re-exchange with interest thereon until the time of payment.
- (3.) Where by this Act interest may be recovered as damages, such interest may, if justice require it, be withheld wholly or in part, and where a bill is expressed to be payable with interest at a given rate, interest as damages may or may not be given at the same rate as interest proper.

Transferor by delivery and transferee.

58. (1.) Where the holder of a bill payable to bearer negotiates it by delivery without indorsing it, he is called a "transferor by delivery."

(2.) A transferor by delivery is not liable on the instrument.

(3.) A transferor by delivery who negotiates a bill thereby warrants to his immediate transferee being a holder for value that the bill is what it purports to be, that he has a right to transfer it, and that at the time of transfer he is not aware of any fact which renders it valueless.

#### Discharge of Bill.

Payment in due course. 59. (1.) A bill is discharged by payment in due course by or on behalf of the drawee or acceptor.

"Payment in due course" means payment made at or after the maturity of the bill to the holder thereof in good faith and without notice that his title to the bill is defective.

(2.) Subject to the provisions hereinafter contained, when a bill is paid by the drawer or an indorser it is not discharged; but

(a.) Where a bill payable to, or to the order of, a third party is paid by the drawer, the drawer may enforce payment thereof against the acceptor, but may not re-issue the bill.

(b.) Where a bill is paid by an indorser, or where a bill payable to drawer's order is paid by the drawer, the party paying it is remitted to his former rights as regards the acceptor or antecedent parties, and he may, if he thinks fit, strike out his own and subsequent indorsements, and again negotiate the bill.

(3.) Where an accommodation bill is paid in due course by the party accommodated the bill is discharged.

Banker paying demand draft whereon indorsement is forged.

60. When a bill payable to order on demand is drawn on a banker, and the banker on whom it is drawn pays the bill in good faith and in the ordinary course of business, it is not incumbent on the banker to show that the indorsement of the payee or any subsequent indorsement was made by or under the authority of the person whose indorsement it purports to be, and the banker is deemed to have paid the bill in due course, although such indorsement has been forged or made without authority.

Accepter the holder at maturity.

61. When the acceptor of a bill is or becomes the holder of it at or after its maturity, in his own right, the bill is discharged.

Express waiver.

62. (1.) When the holder of a bill at or after its maturity absolutely and unconditionally renounces his rights against the acceptor the bill is discharged.

The renunciation must be in writing, unless the bill is delivered up to the acceptor.

(2.) The liabilities of any party to a bill may in like manner be renounced by the holder before, at, or after its maturity; but nothing in this section shall affect the rights of a holder in due course without notice of the renunciation.

Cancellation.

63. (1.) Where a bill is intentionally cancelled by the holder or his agent, and the cancellation is apparent thereon, the bill is discharged.

(2.) In like manner any party liable on a bill may be discharged by the intentional cancellation of his signature by the holder or his agent. In such case any indorser who would have had a right of recourse against the party whose signature is cancelled, is also discharged.

(3.) A cancellation made unintentionally, or under a mistake, or without the authority of the holder is inoperative; but where a bill or any signature thereon appears to have been cancelled the burden of proof lies on the party, who alleges that the cancellation was made unintentionally, or under a mistake, or without authority.

Alteration of bill.

64. (1.) Where a bill or acceptance is materially altered without the assent of all parties liable on the bill, the bill is avoided except as against a party who has himself made, authorised, or assented to the alteration, and subsequent indorsers.

Provided that,

Where a bill has been materially altered, but the alteration is not apparent, and the bill is in the hands of a holder in due course, such holder may avail himself of the bill as if it had not been altered, and may enforce payment of it according to its original tenor.

(2.) In particular the following alterations are material, namely, any alteration of the date, the sum payable, the time of payment, the place of payment, and, where a bill has been accepted generally, the addition of a place of payment without the acceptor's assent.

#### Acceptance and Payment for Honour.

Acceptance for honour supra protest.

65. (1.) Where a bill of exchange has been protested for dishonour by non-acceptance, or protested for better security, and is not overdue, any person, not being a party already liable thereon, may, with the consent of the holder, intervene and accept the bill supra protest, for the honour of any party liable thereon, or for the honour of the person for whose account the bill is drawn.

(2.) A bill may be accepted for honour for part only of the sum for which it is drawn.

(3.) An acceptance for honour supra protest in order to be valid must—

(a.) be written on the bill, and indicate that it is an acceptance for honour:

(b.) be signed by the acceptor for honour:

(4.) Where an acceptance for honour does not expressly state for whose honour it is made, it is deemed to be an acceptance for the honour of the drawer.

(5.) Where a bill payable after sight is accepted for honour, its maturity is calculated from the date of the noting for non-acceptance, and not from the date of the acceptance for honour.

Liability of acceptor for honour.

66. (1.) The acceptor for honour of a bill by accepting it engages that he will, on due presentment, pay the bill accord-

ing to the tenor of his acceptance, if it is not paid by the drawee, provided it has been duly presented for payment, and protested for non-payment, and that he receives notice of these facts.

(2.) The acceptor for honour is liable to the holder and to all parties to the bill subsequent to the party for whose honour he has accepted.

**Presentment to acceptor for honour.** 67. (1.) Where a dishonoured bill has been accepted for honour *suprà* protest, or contains a reference in case of need, it must be protested for non-payment before it is presented for payment to the acceptor for honour, or referee in case of need.

(2.) Where the address of the acceptor for honour is in the same place where the bill is protested for non-payment, the bill must be presented to him not later than the day following its maturity; and where the address of the acceptor for honour is in some place other than the place where it was protested for non-payment, the bill must be forwarded not later than the day following its maturity for presentment to him.

(3.) Delay in presentment or non-presentment is excused by any circumstance which would excuse delay in presentment for payment or non-presentment for payment.

(4.) When a bill of exchange is dishonoured by the acceptor for honour it must be protested for non-payment by him.

**Payment for honour *suprà* protest.** 68. (1.) Where a bill has been protested for non-payment, any person may intervene and pay it *suprà* protest for the honour of any party liable thereon, or for the honour of the person for whose account the bill is drawn.

(2.) Where two or more persons offer to pay a bill for the honour of different parties, the person whose payment will discharge most parties to the bill shall have the preference.

(3.) Payment for honour *suprà* protest, in order to operate as such and not as a mere voluntary payment, must be attested by a notarial act of honour which may be appended to the protest or form an extension of it.

(4.) The notarial act of honour must be founded on a declaration made by the payer for honour, or his agent in that behalf, declaring his intention to pay the bill for honour, and for whose honour he pays.

(5.) Where a bill has been paid for honour, all parties subsequent to the party for whose honour it is paid are discharged, but the payer for honour is subrogated for, and succeeds to both the rights and duties of, the holder as regards the party for whose honour he pays, and all parties liable to that party.

(6.) The payer for honour on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonour is entitled to receive both the bill itself and the protest. If the holder do not on demand deliver them up he shall be liable to the payer for honour in damages.

(7.) Where the holder of a bill refuses to receive payment *suprà* protest he shall lose his right of recourse against any party who would have been discharged by such payment.

#### Lost Instruments.

**Holder's right to duplicate of lost bill.** 69. Where a bill has been lost before it is overdue, the person who was the holder of it may apply to the drawer to give him another bill of the same tenor, giving security to the drawer if required to indemnify him against all persons whatever in case the bill alleged to have been lost shall be found again.

If the drawer on request as aforesaid refuses to give such duplicate bill, he may be compelled to do so.

**Action on lost bill.** 70. In any action or proceeding upon a bill, the court or a judge may order that the loss of the instrument shall not be set up, provided an indemnity be given to the satisfaction of the court or judge against the claims of any other person upon the instrument in question.

#### Bill in a Set.

**Rules as to sets.** 71. (1.) Where a bill is drawn in a set, each part of the set being numbered, and containing a reference to the other parts, the whole of the parts constitute one bill.

(2.) Where the holder of a set indorses two or more parts to different persons, he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed as if the said parts were separate bills.

(3.) Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is as between such holders deemed the true owner of the bill; but nothing in this sub-section shall affect the rights of a person who in due course accepts or pays the part first presented to him.

(4.) The acceptance may be written on any part, and it must be written on one part only.

If the drawee accepts more than one part, and such accepted parts get into the hands of different holders in due course, he is liable on every such part as if it were a separate bill.

(5.) When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereof.

(6.) Subject to the preceding rules, where any one part of a bill drawn in a set is discharged by payment or otherwise, the whole bill is discharged.

#### Conflict of Laws.

**Rules where laws conflict.** 72. Where a bill drawn in one country is negotiated, accepted, or payable in another, the rights, duties, and liabilities of the parties thereto are determined as follows:

(1.) The validity of a bill as regards requisites in form is determined by the law of the place of issue, and the validity as regards requisites in form of the supervening contracts, such as acceptance, or indorsement, or acceptance *suprà* protest, is determined by the law of the place where such contract was made.

Provided that—

(a.) Where a bill is issued out of the United Kingdom it is not invalid by reason only that it is not stamped in accordance with the law of the place of issue:

(b.) Where a bill, issued out of the United Kingdom, conforms, as regards requisites in form, to the law of the United Kingdom, it may, for the purpose of enforcing payment thereof, be treated as valid as between all persons who negotiate, hold, or become parties to it in the United Kingdom.

(2.) Subject to the provisions of this Act, the interpretation of the drawing, indorsement, acceptance, or acceptance *suprà* protest of a bill, is determined by the law of the place where such contract is made.

Provided that where an inland bill is indorsed in a foreign country the indorsement shall as regards

the payer be interpreted according to the law of the United Kingdom.

- (3.) The duties of the holder with respect to presentment for acceptance or payment and the necessity for or sufficiency of a protest or notice of dishonour, or otherwise, are determined by the law of the place where the act is done or the bill is dishonoured.
- (4.) Where a bill is drawn out of but payable in the United Kingdom and the sum payable is not expressed in the currency of the United Kingdom, the amount shall, in the absence of some express stipulation, be calculated according to the rate of exchange for sight drafts at the place of payment on the day the bill is payable.
- (5.) Where a bill is drawn in one country and is payable in another, the due date thereof is determined according to the law of the place where it is payable.

### PART III.

#### CHEQUES ON A BANKER.

**Cheque defined.** 73. A cheque is a bill of exchange drawn on a banker payable on demand.

Except as otherwise provided in this Part, the provisions of this Act applicable to a bill of exchange payable on demand apply to a cheque.

**Presentment of cheque for payment.** 74. Subject to the Provisions of this Act—

- (1.) Where a cheque is not presented for payment within a reasonable time of its issue, and the drawer or the person on whose account it is drawn had the right at the time of such presentment as between him and the banker to have the cheque paid and suffers actual damage through the delay, he is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is a creditor of such banker to a larger amount than he would have been had such cheque been paid.
- (2.) In determining what is a reasonable time regard shall be had to the nature of the instrument, the usage of trade and of bankers, and the facts of the particular case.
- (3.) The holder of such cheque as to which such drawer or person is discharged shall be a creditor, in lieu of such drawer or person, of such banker to the extent of such discharge, and entitled to recover the amount from him.

**Revocation of banker's authority** 75. The duty and authority of a banker to pay a cheque drawn on him by his customer are determined by—

- (1.) Countermand of payment:
- (2.) Notice of the customer's death.

#### Crossed Cheques.

**General and special crossings defined.** 76. (1.) Where a cheque bears across its face an addition of—

- (a.) The words "and company" or any abbreviation thereof between two parallel transverse lines, either with or without the words "not negotiable"; or
  - (b.) Two parallel transverse lines simply, either with or without the words "not negotiable";
- that addition constitutes a crossing, and the cheque is crossed generally.

(2.) Where a cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable," that addition constitutes a crossing, and the cheque is crossed specially and to that banker.

**Crossing by drawer or after issue.** 77. (1.) A cheque may be crossed generally or specially by the drawer.

(2.) Where a cheque is uncrossed, the holder may cross it generally or specially.

(3.) Where a cheque is crossed generally the holder may cross it specially.

(4.) Where a cheque is crossed generally or specially, the holder may add the words "not negotiable."

(5.) Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker for collection.

(6.) Where an uncrossed cheque, or a cheque crossed generally, is sent to a banker for collection, he may cross it specially to himself.

**Crossing a material part of cheque** 78. A crossing authorised by this Act is a material part of the cheque; it shall not be lawful for any person to obliterate or, except as authorised by this Act, to add to or alter the crossing.

**Duties of banker as to crossed cheques.** 79. (1.) Where a cheque is crossed specially to more than one banker except when crossed to an agent for collection being a banker, the banker on whom it is drawn shall refuse payment thereof.

(2.) Where the banker on whom a cheque is drawn which is so crossed nevertheless pays the same, or pays a cheque crossed generally otherwise than to a banker, or if crossed specially otherwise than to the banker to whom it is crossed, or his agent for collection being a banker, he is liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid.

Provided that where a cheque is presented for payment which does not at the time of presentment appear to be crossed, or to have had a crossing which has been obliterated, or to have been added to or altered otherwise than as authorised by this Act, the banker paying the cheque in good faith and without negligence shall not be responsible or incur any liability, nor shall the payment be questioned by reason of the cheque having been crossed, or of the crossing having been obliterated or having been added to or altered otherwise than as authorised by this Act, and of payment having been made otherwise than to a banker or to the banker to whom the cheque is or was crossed, or to his agent for collection being a banker, as the case may be.

**Protection to banker and drawer where cheque is crossed.** 80. Where the banker, on whom a crossed cheque is drawn, in good faith and without negligence pays it, if crossed generally, to a banker, and if crossed specially, to the banker to whom it is crossed, or his agent for collection being a banker, the banker paying the cheque, and, if the cheque has come into the hands of the payee, the drawer shall respectively be entitled to the same rights and be placed in the same position as if payment of the cheque had been made to the true owner thereof.

**Effect of crossing on holder.** 81. Where a person takes a crossed cheque which bears on it the words "not negotiable," he shall not have and shall not be capable of giving a better title to the cheque than that which the person from whom he took it had.

**Protection to collecting banker.** 82. Where a banker in good faith and without negligence receives payment for a customer of a cheque crossed generally or specially to himself, and the customer has no title or a defective title thereto, the banker shall not incur any liability to the true owner of the cheque by reason only of having received such payment.

## PART IV.

## PROMISSORY NOTES.

Promissory note defined.

83. (1) A promissory note is an unconditional promise in writing made by one person to another signed by the maker, engaging to pay, on demand or at a fixed or determinable future time, a sum certain in money, to, or to the order of, a specified person or to bearer.

(2) An instrument in the form of a note payable to maker's order is not a note within the meaning of this section unless and until it is indorsed by the maker.

(3) A note is not invalid by reason only that it contains also a pledge of collateral security with authority to sell or dispose thereof.

(4) A note which is, or on the face of it purports to be, both made and payable within the British Islands is an inland note. Any other note is a foreign note.

Delivery necessary.

84. A promissory note is inchoate and incomplete until delivery thereof to the payee or bearer.

Joint and several notes.

85. (1) A promissory note may be made by two or more makers, and they may be liable thereon jointly, or jointly and severally according to its tenor.

(2) Where a note runs "I promise to pay" and is signed by two or more persons it is deemed to be their joint and several note.

Note payable on demand.

86. (1) Where a note payable on demand has been indorsed, it must be presented for payment within a reasonable time of the indorsement. If it be not so presented the indorser is discharged.

(2) In determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade, and the facts of the particular case.

(3) Where a note payable on demand is negotiated, it is not deemed to be overdue, for the purpose of affecting the holder with defects of title of which he had no notice, by reason that it appears that a reasonable time for presenting it for payment has elapsed since its issue.

Presentment of note for payment.

87. (1) Where a promissory note is in the body of it made payable at a particular place, it must be presented for payment at that place in order to render the maker liable. In any other case, presentment for payment is not necessary in order to render the maker liable.

(2) Presentment for payment is necessary in order to render the indorser of a note liable.

(3) Where a note is in the body of it made payable at a particular place, presentment at that place is necessary in order to render an indorser liable; but when a place of payment is indicated by way of memorandum only, presentment at that place is sufficient to render the indorser liable, but a presentment to the maker elsewhere, if sufficient in other respects, shall also suffice.

Liability of maker.

88. The maker of a promissory note by making it—

(1) Engages that he will pay it according to its tenor;

(2) Is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse.

Application of Part II. to notes.

89. (1) Subject to the provisions in this part and, except as by this section provided, the provisions of this Act relating to bills of exchange apply, with the necessary modifications, to promissory notes.

(2) In applying those provisions the maker of a note shall be deemed to correspond with the acceptor of a bill, and the first indorser of a note shall be deemed to correspond with the drawer of an accepted bill payable to drawer's order.

(3) The following provisions as to bills do not apply to notes; namely, provisions relating to—

(a.) Presentment for acceptance;

(b.) Acceptance;

(c.) Acceptance supra protest;

(d.) Bills in a set.

(4) Where a foreign note is dishonoured, protest thereof is unnecessary.

## PART V.

## Supplementary.

Good faith.

90. A thing is deemed to be done in good faith, within the meaning of this Act, where it is in fact done honestly, whether it is done negligently or not.

Signature.

91. (1) Where, by this Act, any instrument or writing is required to be signed by any person, it is not necessary that he should sign it with his own hand, but it is sufficient if his signature is written thereon by some other person by or under his authority.

(2) In the case of a corporation, where, by this Act, any instrument or writing is required to be signed, it is sufficient if the instrument or writing be sealed with the corporate seal.

But nothing in this section shall be construed as requiring the bill or note of a corporation to be under seal.

Computation of time.

92. Where, by this Act, the time limited for doing any act or thing is less than three days, in reckoning time, non-business days are excluded.

"Non-business days" for the purposes of this Act mean—

(a.) Sunday, Good Friday, Christmas Day;

(b.) A bank holiday under the Bank Holidays Act, 1871, or Acts amending it;

(c.) A day appointed by Royal proclamation as a public fast or thanksgiving day.

Any other day is a business day.

When noting equivalent to protest.

93. For the purposes of this Act, where a bill or note is required to be protested within a specified time or before some further proceeding is taken, it is sufficient that the bill has been noted for protest before the expiration of the specified time or the taking of the proceedings; and the formal protest may be extended at any time thereafter as of the date of the noting.

Protest when not accessible.

94. Where a dishonoured bill or note is authorised or required to be protested, and the services of a notary cannot be obtained at the place where the bill is dishonoured, any householder or substantial resident of the place may, in the presence of two witnesses, give a certificate, signed by them, attesting the dishonour of the bill, and the certificate shall in all respects operate as if it were a formal protest of the bill.

The form given in Schedule 1 to this Act may be used with necessary modifications, and if used shall be sufficient.

Dividend warrants may be crossed.

95. The provisions of this Act as to crossed cheques shall apply to a warrant for payment of dividend.

Repeal.

96. The enactments mentioned in the second schedule to this Act are hereby repealed as from

the commencement of this Act to the extent in that schedule mentioned.

Provided that such repeal shall not affect anything done or suffered, or any right, title, or interest acquired or accrued before the commencement of this Act, or any legal proceeding or remedy in respect of any such thing, right, title, or interest.

**Savings.** 97.—(1.) The rules in bankruptcy relating to bills of exchange, promissory notes, and cheques, shall continue to apply thereto notwithstanding anything in this Act contained.

(2.) The rules of common law including the law merchant, save in so far as they are inconsistent with the express provisions of this Act, shall continue to apply to bills of exchange, promissary notes, and cheques.

(3.) Nothing in this Act or in any repeal effected thereby shall affect—

23 & 24 Vict. c. 97. (a.) The provisions of the Stamp Act, 1870, or Acts amending it, or any law or enactment for the time being in force relating to the revenue :

25 & 26 Vict. c. 89. (b.) The provisions of the Companies Act, 1862, or Acts amending it, or any Act relating to joint stock banks or companies :

(c.) The provisions of any Act relating to or confirming the privileges of the Bank of England or the Bank of Ireland respectively :

(d.) The validity of any usage relating to dividend warrants, or the indentments thereof.

**Saving of summary diligence in Scotland.** 98. Nothing in this Act or in any repeal effected thereby shall extend or restrict, or in any way alter or affect the law and practice in Scotland in regard to summary diligence.

**Construction with other Acts, &c.** 99. Where any Act or document refers to any enactment repealed by this Act, the Act or document shall be construed, and shall operate, as if it referred to the corresponding provisions of this Act.

**Parole evidence allowed in certain judicial proceedings in Scotland.** 100. In any judicial proceeding in Scotland, any fact relating to a bill of exchange, bank cheque, or promissory note, which is relevant to any question of liability thereon, may be proved by parole evidence : Provided that this enactment shall not in any way affect the existing law and practice whereby the party who is, according to the tenor of any bill of exchange, bank cheque, or promissory note, debtor to the holder in the amount thereof, may be required, as a condition of obtaining a sist of diligence, or suspension of a charge, or threatened charge, to make such consignation, or to find such caution as the court or judge before whom the cause is depending may require.

This section shall not apply to any case where the bill of exchange, bank cheque, or promissory note has undergone the sesennial prescription.

**SCHEDULES.**

**FIRST SCHEDULE.**

Section 24. Form of protest which may be used when the services of a notary cannot be obtained.

Know all men that I, *A. B.* [householder], of \_\_\_\_\_ in the county of \_\_\_\_\_ in the United Kingdom, at the request of *C. D.*, there being no notary public available, did on the \_\_\_\_\_ day of \_\_\_\_\_ 188\_\_\_\_ at \_\_\_\_\_ demand payment [or acceptance] of the bill of exchange hereunder written, from *E. F.*, to which demand he made answer [state answer, if any] wherefore I now, in the presence of *G. H.* and *J. K.* do protest the said bill of exchange.

(Signed) *A. B.*  
*G. H.* } Witnesses.  
*J. K.* }

*N.B.*—The bill itself should be annexed, or a copy of the bill and all that is written thereon should be under-written.

**SECOND SCHEDULE.**

**ENACTMENTS REPEALED.**

Session and Chapter.	Title of Act and extent of Repeal.
9 Will. 3. c. 17.	An Act for the better payment of Inland Bills of Exchange
3 & 4 Anne, c. 8.	An Act for giving like remedy upon Promissory Notes as is now used upon Bills of Exchange, and for the better payment of Inland Bills of Exchange.
17 Geo. 3. c. 80.	An Act for further restraining the negotiation of promissory notes and inland bills of exchange under a limited sum within that part of Great Britain called England.
39 & 40 Geo. 3. c. 49.	An Act for the better observance of Good Friday in certain cases therein mentioned.
43 Geo. 3. c. 88.	An Act to restrain the Negotiation of Promissory Notes and Inland Bills of Exchange under a Limited sum in England.
1 & 2 Geo. 4. c. 78.	An Act to regulate Acceptances of Bills of Exchange.
7 & 8 Geo. 4. c. 15.	An Act for declaring the law in relation to Bills of Exchange and Promissory Notes becoming payable on Good Friday or Christmas Day.
9 Geo. 4. c. 24.	An Act to repeal certain Acts, and to consolidate and amend the laws relating to bills of exchange and promissory notes in Ireland, in part ; that is to say, Section two, four, seven, eight, nine, ten, eleven.
2 & 3 Will. 4. c. 98.	An Act for regulating the protesting for non-payment of Bills of Exchange drawn payable at a place not being the place of the residence of the drawee or drawees of the same.

SECOND SCHEDULE—continued.

Session and Chapter	Title of Act and extent of Repeal.
6 & 7 Will. 4. c. 58.	An Act for declaring the law as to the day on which it is requisite to present for payment to Acceptor, or Acceptors supra protest for honour, or to the Referee or Referees, in case of need, Bills of Exchange which have been dishonoured.
8 & 9 Vict. c. 87. - in part.	An Act to regulate the issue of bank notes in Ireland, and to regulate the re- payment of certain sums advanced by the Governor and Company of the Bank of Ireland for the public service, in part; that is to say, Section twenty-four.
19 & 20 Vict. c. 97. in part.	The Mercantile Law Amendment Act, 1856, in part; that is to say, Sections six and seven.
23 & 24 Vict. c. 111. in part.	An Act for granting to Her Majesty certain duties of stamps, and to amend the laws relating to the stamp duties, in part; that is to say, Section nineteen.
34 & 35 Vict. c. 74.	An Act to abolish days of grace in the case of bills of exchange and promissory notes payable at sight or on presentation.
39 & 40 Vict. c. 81.	The Crossed Cheques Act, 1876.
41 & 42 Vict. c. 18.	The Bills of Exchange Act, 1878.
ENACTMENT REPEALED AS TO SCOTLAND.	
19 & 20 Vict. c. 60. in part.	The Mercantile Law (Scotland) Amendment Act, 1856. in part; that is to say, Sections ten, eleven, twelve, thirteen, fourteen, fifteen, and sixteen.

CAP. LXII.

An Act to grant Money for the purpose of Loans by the Public Works Loan Commissioners and the Commissioners of Public Works in Ireland and the Irish Land Commission; and for other purposes relating to Loans by those Commissioners.  
[18th August 1882.]

of the schedule to this Act are, to the extent specified in column two of that schedule, limited to expire on the thirty-first day of December one thousand eight hundred and eighty-two:

And whereas it is expedient to provide for the continuance as in this Act mentioned of such Acts, and of the enactments amending the same:

Be it therefore enacted, &c.,

CAP. LXIII.

An Act to amend the Acts regulating the pay of certain officers of the Royal Irish Constabulary Force, and for other purposes connected therewith.  
[18th August 1882.]

Short title.

1. This Act may be cited as the Expiring Laws Continuance Act, 1882.

Continuance of Acts in schedule.

2. The Acts mentioned in column one of the schedule to this Act, in so far as they are temporary in their duration, shall, to the extent in column two of the said schedule mentioned, be continued until the thirty-first day of December one thousand eight hundred and eighty-three, and any enactments amending or affecting the enactments continued by this Act shall, in so far as they are temporary in their duration, be continued in like manner.

CAP. LXIV.

An Act to continue various expiring Laws.  
[18th August 1882.]

WHEREAS the several Acts mentioned in column one

SCHEDULE.

1. Original Acts.	2. How far continued.	3. Amending Acts.
(1) 5 & 6 Will. 4. c. 27. Linen, Hempen, Cotton, and other Manufactures (Ireland).	The whole Act so far as it is not repealed.	3 & 4 Vict. c. 91. (except ss. 18 and 23.) 5 & 6 Vict. c. 68. 7 & 8 Vict. c. 47. 30 & 31 Vict. c. 60.
(2) 3 & 4 Vict. c. 89. Poor Rates, Stock in Trade Exemption.	The whole Act.	—
(3) 4 & 5 Vict. c. 35. Copyhold, Inclosure, and Tithe Commissioners.	So much as relates to the appointment of and the period for holding office by Commissioners and other officers.	14 & 15 Vict. c. 53. 25 & 26 Vict. c. 73.
(4) 4 & 5 Vict. c. 59. Application of Highway Rates to Turnpike Roads.	The whole Act.	—

SCHEDULE—*continued.*

1. Original Acts.	2. How far continued.	3. Amending Acts.
(5) 10 & 11 Vict. c. 32. Landed Property Improvement (Ireland).	As to powers of Commissioners.	12 & 13 Vict. c. 59. 13 & 14 Vict. c. 31. 25 & 26 Vict. c. 29. 29 & 30 Vict. c. 40.
(6) 10 & 11 Vict. c. 98. Ecclesiastical Jurisdiction.	As to provisions continued by 21 & 22 Vict. c. 50.	—
(7) 11 & 12 Vict. c. 32. County Cess (Ireland).	The whole Act.	20 & 21 Vict. c. 7.
(8) 14 & 15 Vict. c. 104. Episcopal and Capitular Estates Management.	The whole Act so far as it is not repealed.	17 & 18 Vict. c. 116. 21 & 22 Vict. c. 94. 22 & 23 Vict. c. 46. 23 & 24 Vict. c. 124. 31 & 32 Vict. c. 114, s. 10.
(9) 17 & 18 Vict. c. 102. Corrupt Practices Prevention.	The whole Act so far as it is not repealed.	21 & 22 Vict. c. 87. 26 & 27 Vict. c. 29. 31 & 32 Vict. c. 125.
(10) 23 & 24 Vict. c. 19. Dwellings for Labouring Classes (Ireland).	The whole Act.	—
(11) 24 & 25 Vict. c. 109. Salmon Fishery (England) Act.	As to appointment of Inspectors, s. 31.	—
(12) 26 & 27 Vict. c. 105. Promissory Notes.	The whole Act.	—
(13) 27 & 28 Vict. c. 20. Promissory Notes and Bills of Exchange (Ireland).	The whole Act.	—
(14) 28 & 29 Vict. c. 46. Militia Ballots Suspension.	The whole Act.	—
(15) 28 & 29 Vict. c. 33. Locomotives on Roads.	The whole Act so far as it is not repealed.	41 & 42 Vict. c. 58. 41 & 42 Vict. c. 77. (Part II.)
(16) 29 & 30 Vict. c. 52. Prosecution Expenses.	The whole Act.	—
(17) 31 & 32 Vict. c. 125. Election Petitions and Corrupt Practices.	The whole Act.	42 & 43 Vict. c. 75.
(18) 32 & 33 Vict. c. 21. Election Commissioners Expenses.	The whole Act.	34 & 35 Vict. c. 61.
(19) 32 & 33 <sup>a</sup> Vict. c. 56. Endowed Schools (Schemes).	As to the powers of making schemes, and as to the payment of the salaries of additional Charity Commissioners and additional secretary.	36 & 37 Vict. c. 87. 37 & 38 Vict. c. 87.
(20) 34 & 35 Vict. c. 37. Sunday Observance Prosecutions.	The whole Act.	—
(21) 35 & 36 Vict. c. 33. Parliamentary and Municipal Elections (Ballot).	The whole Act	38 & 39 Vict. c. 40. (Municipal Elections.)
(22) 36 & 37 Vict. c. 48. Regulation of Railways.	The whole Act.	37 & 38 Vict. c. 40. (Part II.)
(23) 38 & 39 Vict. c. 43. Police Expenses.	The whole Act.	—
(24) 38 & 39 Vict. c. 84. Returning Officers Expenses.	The whole Act.	—
(25) 39 & 40 Vict. c. 21. Juries (Ireland).	The whole Act.	—
(26) 41 & 42 Vict. c. 41. Returning Officers Expenses (Scotland).	The whole Act.	—
(27) 41 & 42 Vict. c. 72. Sale of Liquors on Sunday (Ireland).	The whole Act.	—
(28) 43 Vict. c. 18. Parliamentary Elections.	The whole Act except so far as it continues any other Act.	—



## CAP. LXV.

An Act to make provision respecting certain Prison Charities. [18th August 1882.]

## CAP. LXVI.

An Act to amend the Laws relating to Licences to retail Intoxicating Liquors on Passenger Vessels in Scotland. [18th August 1882.]

## CAP. LXVII.

An Act to further amend the Law relating to Turnpike Roads in South Wales. [18th August 1882.]

## CAP. LXVIII.

An Act to suspend for a limited period, on account of Corrupt Practices, the holding of an Election of a Member or Members to serve in Parliament for certain cities and boroughs. [18th August 1882.]

## CAP. LXIX.

An Act to amend the Intermediate Education (Ireland) Act, 1878. [18th August 1882.]

## CAP. LXX.

An Act to amend the Supreme Court of Judicature Act (Ireland), 1877. [18th August 1882.]

40 & 41 Vic. c. 57. WHEREAS by section seventy-three of the Supreme Court of Judicature Act (Ireland), 1877 (herein-after called the principal Act), it is enacted that subject to the provisions in that Act contained as to existing officers of the courts whose jurisdiction had been thereby transferred to the Supreme Court, the Lord Chancellor, the Chief Justice, the Chief Justice of the Common Pleas, and the Chief Baron, or any two of them, of whom the Lord Chancellor should be one, with the concurrence of the Treasury, should within two years from the commencement of the Act determine what officers, clerks, or other persons holding subordinate positions requisite for the permanent organization of the official staff of the Supreme Court, and every court and division thereof should be retained or employed; and might with the like concurrence abolish any unnecessary office, or reduce or in case of additional duties increase the salary of an office, or alter the duties or designation thereof, notwithstanding that the patronage thereof might be vested in an existing judge:

And whereas doubts have arisen as to whether the said powers or any of them can be exercised after the expiration of the said period of two years from the commencement of the said Act, and also whether such powers, though not subject to such limitation in point of time, can be exercised so as to abolish, or reduce or increase the salary of, or alter the designation or duties of an office determined to be requisite, or the salary, designation, or duties which have been once fixed in pursuance of the above recited section:

And whereas it is expedient that such doubts should be removed, and that the exercise of the said powers or any of them should not be in anywise limited or restricted as aforesaid:

Be it therefore declared and enacted, &c., .

**Short title.** 1. This Act may be cited as the Supreme Court of Judicature (Ireland) Act, 1882.

**Interpretation of "office."** 2. The word "office" shall for the purposes of this Act include any clerkship or subordinate employment held by any person in the Supreme Court of Judicature in Ireland, or any division or office thereof.

**Amendment of a. 78. of 40 & 41 Vict. c. 57.** 3. The Lord Chancellor, the Chief Justice, the Chief Justice of the Common Pleas, and the Chief Baron, or any three

of them, of whom the Lord Chancellor shall be one, with the concurrence of the Treasury, may from time to time, as occasion may require, exercise all or any of the powers conferred by the said section of the principal Act as fully as if no time had been prescribed in that behalf in the said section, notwithstanding that any office affected thereby may have been previously determined to be requisite, or that the salary, designation, or duties of any office may have been previously fixed under the powers conferred by the principal Act or by this Act, and also notwithstanding that the patronage thereof may be vested in an existing judge: Provided always, that no existing officer shall receive a less salary than heretofore, and that no officer to be hereafter appointed shall, during his tenure of office, have his salary reduced; and provided also, that any rights preserved by the principal Act to any officers existing at the commencement of that Act shall not be affected by this Act.

## CAP. LXXI.

An Act to apply a sum out of the Consolidated Fund to the service of the year ending on the thirty-first day of March one thousand eight hundred and eighty-three, and to appropriate the Supplies granted in this Session of Parliament. [18th August 1882.]

## CAP. LXXII.

An Act for amending the Laws relating to Customs and Inland Revenue, and Postage and other Stamps, and for making further provision respecting the National Debt and charges payable out of the public revenue or by the Commissioners for the Reduction of the National Debt; and for other purposes. [18th August 1882.]

## CAP. LXXIII.

An Act for the better protection of Ancient Monuments. [18th August 1882.]

## CAP. LXXIV.

An Act to amend the Post Office Acts with respect to the Conveyance of Parcels. [18th August 1882.]

WHEREAS the Postmaster-General, with the consent of the Treasury, has made an arrangement with the railway companies named in the First Schedule to this Act whereby the Postmaster-General will pay to the said railway companies and such other railway companies as become parties to the arrangement under this Act the remuneration to railway companies for services

rendered by them in relation to the conveyance of parcels, and the said railway companies, through the medium of the London Railway Clearing Committee, will apportion such remuneration among the different railway companies, and such remuneration will consist of the sums herein-after mentioned:

And whereas the Treasury propose, on the representation of the Postmaster-General to make regulations in pursuance of the Acts relating to the Post Office with respect to the posting, forwarding, conveyance and delivery of parcels, and to provide that parcels of the weights mentioned in the Second Schedule to this Act shall be carried at the rates in that schedule mentioned, and on different conditions from ordinary postal packets:

And whereas it is expedient to make the provisions herein-after appearing respecting such parcels and for carrying into effect the said arrangement:

And whereas the Bill for this Act has, so far as the same affects the railway companies named in the First Schedule to this Act, been assented to by them:

Be it therefore enacted, &c.,

**Short title.** 1. This Act may be cited as the Post Office (Parcels) Act, 1882.

**Remuneration to railway companies for carriage of parcels.** 2. In the event of any regulations being made by the Treasury in pursuance of the Post Office Acts and providing for the conveyance of parcels by post on different conditions from ordinary postal packets, the following provisions shall, subject to the provisions of this Act, have effect:

(1.) The Postmaster-General shall from time to time pay to the railway companies parties to the arrangement under this Act the amount herein-after mentioned as the remuneration of all railway companies in respect of the conveyance of parcels by such companies, and the amount so paid (in this Act referred to as the railway remuneration) shall be in substitution for any other remuneration in respect of the conveyance of such parcels, and every railway company shall render in respect of such parcels the services required by this Act, and shall accept the said payment in full satisfaction and discharge for the said services.

(2.) The amount of the railway remuneration shall be eleven-twentieth parts of the gross receipts of the Postmaster-General from such of the said parcels as are conveyed by railway;

Provided that if at any time in pursuance of regulations of the Treasury the weights of or rates of postage for parcels differ from those mentioned in the Second Schedule to this Act, the railway companies parties to the arrangement under this Act may, by notice under the hand of the secretary to the London Railway Clearing Committee, require a revision of the amount of the railway remuneration, and the amount as determined on such revision shall be substituted for the above-mentioned eleven-twentieth parts of the gross receipts, subject nevertheless, in the event of any further change in the weights of or rates of postage for parcels, to another revision on notice requiring the same given either by the railway companies or by the Postmaster-General, and so on from time to time.

(3.) In the case of a revision the amount of railway remuneration shall be a sum to be paid to the companies collectively in manner provided by this Act, and if such amount is not determined by agreement between the Postmaster-General and the railway companies, parties to the arrangement under this Act, the amount shall be referred to arbitration in manner provided by this Act.

(4.) The provisions of this section (in this Act referred to as the arrangement under this Act) shall continue in force during a period of twenty-one years next after the said regulations come into operation, and thereafter until the expiration of twelve months notice to determine the same given by the Postmaster-General on the one side, or by the railway companies on the other, either before or after the expiration of the said twenty-one years.

**Services to be rendered by railway companies.** 3. During the continuance of the arrangement under this Act the railway companies shall render the following services:—

(1.) Every railway company shall convey by any train by which passengers, goods, or parcels are conveyed all such parcels as may be tendered for conveyance by such train, whether such parcels be under the charge of a person appointed by the Postmaster-General or not, and notwithstanding that no notice has been given to the company with respect to the conveyance of such parcels:

Provided that the conveyance of parcels by mail and express trains shall be limited so as not to affect prejudicially the convenient and punctual working of those trains.

(2.) Every railway company shall afford all reasonable facilities for the receipt and delivery of the sacks, hampers, boxes, or other receptacles containing the parcels at any of their stations without requiring them to be booked or interposing any other delay, and shall perform the service of transferring such sacks, hampers, boxes, or other receptacles to and from the vehicles of the Postmaster-General at the outwards and inwards railway stations.

(3.) Every railway company shall convey, free of charge, but in a manner convenient to them but not interfering with his custody of the parcels, any servant of the Postmaster-General appointed to take charge of the parcels during their conveyance by railway; but if such person during the conveyance receives any injury, and the company pay any sum for damages or costs in respect of such injury, or on account of death arising from such injury, the Postmaster-General shall pay to the company one half of such sum, but if the sum is paid by the company under agreement or by way of compromise of any claim, the Postmaster-General shall not be liable to pay one half unless his written consent has been previously given to the payment of such sum.

(4.) If the parcels are in charge of a person appointed by the Postmaster-General every railway company shall permit such person, if he thinks fit, by himself or his assistants, to deliver and receive the parcels at any station at which the train by which the sacks, hampers, boxes, or other receptacles containing the parcels are intended to be or are conveyed is appointed to stop and during the time limited for such stoppage, but nevertheless shall, if required by such person, assist him in transferring the sacks, hampers, boxes, or other receptacles to and from the vehicles of the Postmaster-General.

(5.) Every railway company shall, if the Postmaster-General so require, provide in every train, not being an express or mail train, a special parcels van or other separate accommodation for sorting parcels carried by such train, and the Postmaster-General shall pay to such company in respect of the said van or accommodation such amount as may be agreed on, or, in case of difference, be determined by arbitration.

Calculation  
of gross  
receipts.

4. The gross receipts of the Postmaster-General from parcels conveyed by railway for the purposes of this Act—
- (a.) shall be calculated without any deduction whether for the cost of stamps, or otherwise; and
  - (b.) shall not include such extra charges (over and above the usual rate of postage) as may be from time to time fixed by the said regulations; and
  - (c.) shall include the rates of postage which would be chargeable for Government parcels, if they were sent by private persons, notwithstanding that the same may be conveyed without being stamped; and
  - (d.) As regards foreign parcels shall be taken to be the same amount as would have been the gross receipts of the Postmaster-General in respect of such parcels if they had been inland parcels of the same weight.

Payments to  
Clearing  
Committee.

5. (1.) The Postmaster-General shall from time to time, and at least once in every three months, and, within seven weeks after the expiration of the period to which such accounts respectively relate, render to the railway companies parties to the arrangement under this Act, through the medium of the London Railway Clearing Committee, such accounts as may be reasonably necessary to show the sums due to railway companies in respect of railway remuneration under this Act, and shall keep all such accounts as are reasonably necessary for that purpose, and shall afford reasonable inspection thereof to the secretary to the London Railway Clearing Committee on behalf of the railway companies, and shall as soon as may be, and at least within one week after the delivery of the account pay to the railway companies through the medium of the said committee the amount appearing from the said accounts to be so due, and may pay the same out of moneys for the time being to the credit of the Postmaster-General at the Bank of England; but such payments shall be charged in the accounts of the Post Office to the gross receipts in respect of parcels.

(2.) The receipt of the secretary to the London Railway Clearing Committee shall be a full discharge for all sums paid by the Postmaster-General in respect of railway remuneration, and the Postmaster-General shall not be required to take any part in or otherwise be responsible for the division amongst the railway companies of the amount so paid.

Apportionment of  
amount  
received by  
committee.

6. (1.) The railway companies parties to the arrangement under this Act shall from time to time apportion the railway remuneration received from the Postmaster-General among all the railway companies in accordance with the provisions set forth in the Third Schedule to this Act, which provisions shall have effect as if they were enacted in the body of this Act.

(2.) For the purpose of facilitating such apportionment the Postmaster-General shall for one week in each half year keep, and within twenty-eight days thereafter deliver to the secretary to the London Railway Clearing Committee, records of the number of the parcels conveyed by railway and forwarded from the different post towns in the United Kingdom during the week for which such account shall be so kept.

Conditions  
as to con-  
veyance of  
parcels by  
railway.

7. During the continuance of the arrangement under this Act the following provisions shall have effect with reference to the parcels conveyed for the Postmaster-General by railway companies:

- (1.) He shall direct his officers from time to time to distribute, so far as practicable, the parcels

between the different railways, so that the expense to any railway company of carrying the parcels may, with due regard to the public convenience, be proportionate to that company's share of the receipts divisible among the railway companies under this Act:

- (2.) He shall direct his officers to secure so far as practicable the delivery of the parcels at the outwards railway station a reasonable time before the departure of the trains, and to be so far as practicable in attendance at the inwards station to meet on arrival any train by which parcels are expected to arrive:
- (3.) The parcels shall be placed by the officers of the Postmaster-General for each separate railway station in sacks, hampers, boxes, or other receptacles, and in such reasonably convenient manner for delivery to and for transfer and conveyance by the railway companies as the Postmaster-General may from time to time direct.
- (4.) The railway companies shall not be required to carry, under this Act, any such explosive or dangerous articles as they, independently of this Act, for the time being refuse to carry as a parcel by passenger trains.
- (5.) The parcels shall, with regard to security and compensation for loss or otherwise, be treated as letters sent by post, and no company shall incur or be subject to any liability in respect of the conveyance or loss of or damage to any of the parcels, but the railway companies shall take all reasonable care for the security of the parcels while under their charge.

Arbitration  
under Act.

8. Where during the continuance of the arrangement under this Act the amount of railway remuneration or other matter of difference between the Postmaster-General and the railway companies parties to the said arrangement or any matter of difference between the Postmaster-General and any single railway company or any company or person or persons owning any steam vessel in respect of any services under this Act, is in pursuance of this Act referred to arbitration, the arbitration shall be in accordance with s. 53. the Railway Companies Arbitration Act, 1859, and the Acts amending the same, and where it is between the Postmaster-General and the companies parties to the arrangement under this Act shall be conducted in like manner as if the said companies were one party to the arbitration on the one side and the Postmaster-General were a company party to the arbitration on the other side, and if each side appoints an arbitrator, one arbitrator only shall be appointed on behalf of the said companies under the hand of the secretary to the London Railway Clearing Committee.

Railway  
companies  
parties to  
arrangement  
and remuneration to  
company not  
party to  
arrangement.

9. (1.) The following railway companies shall be deemed to be railway companies parties to the arrangement under this Act:—

- (a.) the railway companies named in the First Schedule to this Act; and
  - (b.) every railway company who in pursuance of this Act elects to become a party to the arrangement under this Act; and
  - (c.) as regards any railway authorised after the passing of this Act, the railway company working such railway.
- (2.) Any railway company in the United Kingdom not being one of the parties to the arrangement under

this Act may serve a notice in writing and under seal on the Postmaster-General, and on the secretary to the London Railway Clearing Committee, expressing the desire of such company to become one of the parties to the arrangement under this Act, and upon the service of such notice the company shall be deemed to have elected to become one of the parties to the arrangement under this Act.

(3.) Any railway company in the United Kingdom not being one of the parties to the arrangement under this Act shall, nevertheless, when required by the Postmaster-General, render the services with respect to the conveyance of parcels which are required by this Act to be rendered by railway companies, and shall be entitled as remuneration for such services to receive from the railway companies parties to the arrangement under this Act the proper proportion of the railway remuneration, and if a difference arises with respect to the amount of such remuneration and is not determined by agreement between such company and the railway companies parties to the arrangement under this Act, acting through the medium of the London Railway Clearing Committee, the difference shall be referred to arbitration; and the award on such arbitration shall determine the difference and the amount due to such company in respect of the said services, and such amount shall be paid out of the railway remuneration by the railway companies parties to the arrangement under this Act:

Provided that where a railway company is not one of the parties to the arrangement under this Act, nothing in this section shall authorise the Postmaster-General to require such company to carry parcels on any railway worked by such company on which the company does not carry any parcels traffic within the meaning of the Third Schedule to this Act.

(4.) An arbitration under this section shall be conducted in accordance with the Railway Companies Arbitration Act, 1859, and any Act amending the same, in like manner as if the companies parties to the arrangement under this Act were one party to the arbitration, but the arbitrator shall, on application under the hand of the secretary to the London Railway Clearing Committee, be appointed by the Lord Chief Justice of England, but if no such application is made and each side appoints an arbitrator, one arbitrator only shall be appointed on behalf of the companies parties to the arrangement under this Act under the hand of the secretary to the London Railway Clearing Committee.

Application of law upon determination of arrangement under this Act.

10. Upon the determination of the arrangement under this Act the enactments then in force in relation to the conveyance of other postal packets by railway, and the remuneration to be paid for the services of the railway companies as regards such conveyance and the determination of such remuneration (in the absence of agreement) by arbitration, shall apply in the case of parcels in like manner as in the case of other postal packets.

Saving of existing rights.

11. Nothing in this Act shall in any way prejudice or affect on the one hand the rights or powers of any railway company, either in the conveyance of parcels for the public on the company's own account, or the charges or conditions to be made or imposed in respect of such conveyance, or on the other hand the right of the Postmaster-General under his powers with respect to the conveyance of mails by railway, and every company shall be entitled to be paid for all services in respect of the conveyance of mails other than parcels wholly

irrespective of and without reference to the provisions of this Act.

Mode of acting by Postmaster-General and Clearing Committee.

12. (1.) Every agreement under this Act by the Postmaster-General shall, in accordance with the Post Office Acts, be made with the consent of the Treasury.

(2.) Any notice or document required for the purposes of this Act to be served on the Postmaster-General may be served by the delivery thereof to the Postmaster-General or to any of the secretaries or assistant secretaries to the Post Office, or by sending the same by post addressed to the Postmaster-General at the General Post Office.

(3.) For any purpose connected with railway remuneration in pursuance of the arrangement under this Act, any notice or document to be given or served to, on, or by the railway companies parties to the arrangement under this Act shall be given or served to, on, or by the secretary to the London Railway Clearing Committee, and the railway companies parties to the arrangement under this Act may collectively sue and be sued in the name of the said secretary; and during the continuance of the arrangement under this Act, the Postmaster-General in dealing (for the purposes of railway remuneration) with the railway companies parties to the arrangement under this Act may deal only with such companies collectively through the medium of the London Railway Clearing Committee, and shall not be required to deal, as regards railway remuneration, with any of such companies individually.

(4.) All accounts to be rendered or notices given to or served on the railway companies with reference to railway remuneration shall be rendered, given, or served by sending the same through the post to, or leaving the same at, the office of the London Railway Clearing Committee, addressed to the secretary to such committee.

Application of Act to steam vessels.

13. Where any railway company own or work any steam vessel, the provisions contained in this Act with respect to the conveyance of parcels by railway shall, so far as they are applicable, extend to the conveyance of parcels by such steam vessels, and the expressions in this Act shall be construed accordingly; and expressions referring to railway stations shall refer to places where steam vessels depart, call, or arrive:

Provided that where any such steam vessel carries on communication between a port in the United Kingdom and any place out of the United Kingdom, the remuneration for services rendered by such steam vessel in respect of the conveyance of parcels shall not be included in the railway remuneration, but shall be such as may be determined by agreement between the Postmaster-General and the company owning or working the steam vessel, or in case of difference be determined by arbitration, and the amount so determined shall be paid direct to the company, and the parcels conveyed by such steam vessel shall not, in respect of that conveyance, be deemed to be parcels conveyed by railway.

Where any steam vessel carries on regular communication between a port in the United Kingdom and any other port or place within the United Kingdom, or is a home-trade ship as defined by the Merchant Shipping Act, 1854, and such steam vessel is neither owned nor worked by any railway company, the company or person or persons by whom such steam vessel is owned or worked shall, from and after the passing of this Act, be bound to convey parcels; and the remuneration due for the services rendered by such steam vessel, in respect of the conveyance of parcels, shall be determined by agreement between the Postmaster-General and

the company or person or persons owning or working such steam vessel, or in case of difference such remuneration shall be determined by arbitration, and the amount so determined shall be paid direct to such company or person or persons, and the parcels conveyed by such steam vessel shall not in respect of that conveyance be deemed to be parcels conveyed by railway.

Application of  
Customs Acts to  
foreign parcels.

14. (1.) Subject to any exceptions and modifications made by regulations under this section, the provisions of the Acts for the time being in force relating to the Customs (in this Act referred to as Customs enactments) shall apply to goods contained in foreign parcels, in like manner, so far as is consistent with the tenor thereof, as they apply to any other goods; and persons may be punished for offences against the said enactments, and goods may be examined, seized, and forfeited, and the officers examining and seizing them shall be protected, and legal proceedings in relation to the matters aforesaid may be taken, accordingly under the said enactments.

(2.) The Treasury, on the recommendation of the Commissioners of Customs and the Postmaster-General, may from time to time make, and, when made, revoke and vary, regulations for the purpose of modifying or excepting the application of any of the Customs enactments to foreign parcels, and for the purpose of securing, in the case of such parcels, the observance of the Customs enactments, and for enabling the officers of the Post Office to perform, for the purpose of those enactments and otherwise, all or any of the duties of the importer and exporter, and for carrying into effect any treaty, convention, or arrangement with any foreign State or the government of any British possession with reference to foreign parcels, and for punishing any contravention of the Customs enactments or of the regulations under this section.

(3.) The Postmaster-General shall have the same right of recovering any sums paid, in pursuance of the Customs enactments or otherwise under the said regulations, in respect of any foreign parcel, as he would have if the sum so paid were a rate of postage.

(4.) A contravention of the regulations in force under this section shall be deemed to be a contravention of the Customs enactments, and shall involve accordingly the like punishment of persons guilty thereof, and the like forfeiture of goods.

Application of  
Act to Channel  
Islands and  
Isle of Man.

15. This Act shall apply to the Channel Islands and Isle of Man as if they were part of the United Kingdom, subject to the following provisions:—

(1.) Save as provided by regulations made under this section, it shall not be lawful, by means of any inland parcel, to export or remove from the Channel Islands or Isle of Man, or import or bring into the United Kingdom, or to export or remove from the United Kingdom or import or bring into the Channel Islands or Isle of Man, any goods on the exportation, importation, removal, or bringing in of which there is for the time being any prohibition or restriction, or any Customs duty payable.

(2.) Regulations under this section may be made for permitting and regulating the exportation, importation, removal, or bringing in of any such goods as above mentioned to the extent provided by the regulations.

(3.) Subject to any exceptions or modifications made by the regulations under this section, the provisions of this Act with respect to the application of the Customs enactments to foreign parcels shall

apply in like manner as if the inland parcels sent between the United Kingdom, Channel Islands, and the Isle of Man were foreign parcels, and for the purpose of such application any goods for the time being prohibited by this section from being imported, exported, brought in, or removed shall be deemed to be so prohibited by the said Customs enactments.

(4.) The Treasury may from time to time, on the recommendation of the Commissioners of Customs and the Postmaster-General, make, and, when made, revoke and vary, regulations for carrying into effect this section.

(5.) All laws of those islands punishing offences committed in relation to post letters or post letter bags shall apply as if parcels were post letters, and sacks, hampers, boxes, and other receptacles containing parcels were post letter bags.

Application of  
Post Office Acts.

16. This Act shall be deemed to be a Post Office Act within the meaning of 7 Will 4. & 1 Vict. c. 36. the Post Office (Offences) Act, 1837, and, subject to the provisions of this Act, the Post Office Acts shall apply to parcels within the meaning of this Act in like manner as they apply to other postal packets.

Definitions.

17. In this Act, unless the context otherwise requires—

The expression "British possession" does not include the Channel Islands or the Isle of Man, but includes all other territories and places forming part of Her Majesty's dominions.

The expression "parcel" means all such postal packets as by the regulations of the Treasury made in pursuance of the Post Office Acts are defined to be parcels:

The expression "inland parcels" means parcels posted within the United Kingdom and addressed to some place in the United Kingdom:

The expression "foreign parcels" means parcels either posted in the United Kingdom and sent to a place out of the United Kingdom, or posted in a place out of the United Kingdom and sent to a place in the United Kingdom, or in transit through the United Kingdom to a place out of the United Kingdom:

The expression "railway company" means any person or body of persons corporate or unincorporate working a railway:

The expression "Treasury" means the Commissioners of her Majesty's Treasury:

The expression "London Railway Clearing Committee" means the Clearing Committee mentioned in the Railway Clearing Act, 1850.

18 & 14 Vict.  
c. xxxiii.

## FIRST SCHEDULE.

### RAILWAY COMPANIES PARTIES TO ARRANGEMENT.

Aylesbury and Buckingham.	Caledonian.
Ballycastle.	Cambrian.
Ballymena and Larne.	Central Wales and Carmarthen Junction.
Belfast and County Down.	Cheshire Lines Committee.
Belfast and Northern Counties.	City of Glasgow Union.
Belfast, Holywood, and Bangor.	Cleathor and Workington Junction.
Bishop's Castle.	Cockermouth, Keswick, and Penrith.
Brecon and Merthyr Tydvil Junction.	Coine Valley and Halstead.
Bristol Port Railway and Pier.	Cork and Bandon.
	Cork, Blackbrook, and Passage.

Cornwall, the lessees of.  
 Dnblin, Wicklow, and Wexford.  
 East and West Junction.  
 Fleetwood, Preston, and West Riding.  
 Finn Valley.  
 Furness.  
 Garstang and Knotend.  
 Glasgow and South-western.  
 Great Eastern.  
 Great North of Scotland.  
 Great Northern.  
 Great Northern, Ireland.  
 Great Southern and Western of Ireland.  
 Great Western.  
 Gwendraeth Valleys.  
 Highland.  
 Lancashire and Yorkshire.  
 Liskeard and Caradon.  
 London and North-western.  
 London and South-western.  
 London, Brighton, and South Coast.  
 London, Chatham, and Dover.  
 London, Tilbury, and Southend.  
 Londonderry, and Lough Swilly.  
 Lynn and Fakenham.  
 Macclesfield Committee.  
 Manchester and Milford.  
 Manchester, Sheffield, and Lincolnshire.  
 Manchester, South Junction and Altrincham.  
 Maryport and Carlisle.  
 Midland.  
 Midland Great Western of Ireland.  
 Mid Wales.  
 Neath and Brecon.  
 Newry, Warrenpoint, and Rostrevor.  
 Northampton and Banbury Junction.  
 North British.  
 North-eastern.  
 North London.  
 North Staffordshire.  
 Oldham, Ashton-under-Lyne, and Guide Bridge Junction.  
 Pembroke and Tenby.  
 Portpatrick.  
 Preston and Wyre, the lessees of.  
 Rhymney.  
 Severn and Wye and Severn Bridge.  
 Sheffield and Midland Railway Company's Committee.  
 Sligo, Leitrim, and Northern Counties.  
 South-eastern.  
 Southwold.  
 Swindon, Marlborough, and Andover.  
 Taff Vale.  
 Tendring Hundred.  
 Waterford and Central Ireland.  
 Waterford and Limerick.  
 Waterford and Dramore.  
 Waterford, Dungarvan, and Lismore.  
 Watlington and Prince's Risborough.  
 West Lancashire.  
 West Riding and Grimsby.  
 Wigtownshire.  
 Wrexham, Mold, and Connaught's Quay.

## SECOND SCHEDULE.

## WEIGHTS AND RATES OF PARCELS.

For an Inland Parcel of a Weight	The rate of Postage shall be
Not exceeding 1 lb.	8d.
Exceeding 1 lb. and not exceeding 3 lbs.	6d.
Exceeding 3 lbs. and not exceeding 5 lbs.	9d.
Exceeding 5 lbs. and not exceeding 7 lbs.	1s.

## THIRD SCHEDULE.

## APPORTIONMENT AMONG THE RAILWAY COMPANIES.

1. All sums paid by the Postmaster-General under this Act to the railway companies parties to the arrangements under this Act shall be apportioned amongst the railway companies entitled to share therein by the London Railway Clearing Committee half-yearly up to the thirtieth day of June and the thirty-first day of December in each year, or to such other half-yearly days as the parcels accounts between the companies may for the time being be made up by the London Railway Clearing Committee.

2. The share of each railway company shall bear the same ratio to the whole sum divisible as that company's gross receipts from local and through parcels traffic for each half-yearly period bear to the gross receipts from local and through parcels traffic of all the companies for the same period: Provided that where upon an arbitration with any company not a party to the arrangement under this Act any sum is awarded to be paid to

such company, such sum shall be so paid in lieu of the share ascertained as aforesaid.

Each company shall render to the London Railway Clearing Committee the necessary returns of their parcels traffic certified by their accountant, such returns to be subject to audit and inspection of books by the London Railway Clearing Committee.

(3.) If at any time after the expiration of three years from the passing of this Act, or if at any time in pursuance of regulations of the Treasury the weights or rates of postage for parcels differ from those mentioned in the Second Schedule to this Act, any one or more of the companies consider that the apportionment of the receipts from parcels traffic above provided by this Act (hereinafter called "the prescribed apportionment") is inequitable, such company or companies (without prejudice to any right conferred by this Act on a company not represented by the committee) may forward to the London Railway Clearing Committee a statement in writing of the grounds of objection to the prescribed apportionment, and thereupon the following provisions shall have effect:

(a.) The secretary to the London Railway Clearing Committee shall convene a special meeting of the general managers of the railway companies parties to the arrangement under this Act (hereinafter called "the conference") for the purpose of taking such statement into consideration, and shall give not less than fourteen days notice of such special meeting.

(b.) The conference shall at such special meeting take the said statement into consideration and determine by a majority of its members present at such meeting whether a *prima facie* case has been shown for altering the prescribed apportionment.

(c.) If the conference determine that a *prima facie* case has not been shown for altering the prescribed apportionment no further proceedings shall be taken, and the prescribed apportionment shall continue in force until further complaint be made under this article.

(d.) If the conference determine that a *prima facie* case has been shown for altering the prescribed apportionment, it shall proceed either at such meeting or any adjournment or adjournments thereof, or at any other meeting specially convened for the purpose as herein-before provided, to consider a fair and equitable revision of the prescribed apportionment.

(e.) The conference may by a majority of its members present at any such meeting and representing companies whose aggregate share capital is for the time being not less than three-fourths of the aggregate share capital represented at such meeting determine upon a revision of the prescribed apportionment.

(f.) If the conference, for the space of three months after they have decided that a *prima facie* case for revision has been shown, fail to determine by the requisite majority upon a revision of the prescribed apportionment, then the question of revising the prescribed apportionment shall be referred to an arbitrator appointed under this schedule, who shall have power to determine whether any, and, if any, what revision of the prescribed apportionment is required to remedy any inequality or injustice which may in his opinion be established upon due inquiry before him.

(g.) The conference or the arbitrator shall, in considering a revision of the prescribed apportionment, have power to deal with any complaint of inequality or injustice which may be submitted to them or him by any of the companies, and may adopt in revising the prescribed apportionment such basis of division or such data as to them or him shall seem just.

(h.) Any decision of the conference or of the arbitrator shall be final and conclusive upon the companies,

and shall, unless any further alteration is made in the weights and rates of postage of the parcels in pursuance of regulations of the Treasury, continue in force for the period of three years and thereafter until any further complaint shall be made under this enactment.

- (i.) The selection by the Postmaster-General of any route or routes for the transmission of parcels in preference to any competing route or routes shall in no case be a reason for revising the prescribed apportionment.

4. Parcels traffic for the purposes of the apportionment shall (unless and till otherwise determined by the conference, who shall have power to add to or take from the following list of excepted articles,) include all such traffic as according to the practice for the time being of the London Railway Clearing Committee is included in that expression, except—

Mails, other than parcels; fish, meat, and poultry for markets; milk; carriages; cattle, horses, dogs, and other animals; corpses; and specie.

5. The conference shall have power from time to time to make, and if necessary, to revoke and alter all such rules and regulations as may be necessary for the purpose of giving full effect to this Act with respect to—

- (a.) The forms to be used by the companies in dealing with parcels traffic as above defined;  
 (b.) The returns to be made by the companies for the purposes of this Act;  
 (c.) The verification of any such returns; and  
 (d.) Any matters of detail necessary or proper for carrying this schedule into effect;

and all such rules and regulations shall be binding on the companies.

6. The arbitrator to determine any question between the companies under the provisions of this schedule shall be appointed when such question arises by the Lord Chief Justice of England, on the application of the London Railway Clearing Committee, and the Railway Companies Arbitration Act, 1859, shall apply to any such arbitration.

### CAP. LXXV.

An Act to consolidate and amend the Acts relating to the Property of Married Women.

[18th August 1882.]

WHEREAS it is expedient to consolidate and amend the Act of the thirty-third and thirty-fourth Victoria, chapter ninety-three, intituled "The Married Women's Property Act, 1870," and the Act of the thirty-seventh and thirty-eighth Victoria, chapter fifty, intituled "An Act to amend the Married Women's Property Act (1870)";

Be it enacted, &c.,

1. (1.) A married woman shall, in accordance with the provisions of this Act, be capable of acquiring, holding, and disposing by will or otherwise, of any real or personal property as her separate property in the same manner as if she were a feme sole, without the intervention of any trustee.

(2.) A married woman shall be capable of entering into and rendering herself liable in respect of and to the extent of her separate property on any contract, and of suing and being sued, either in contract or in tort, or otherwise, in all respects as if she were a feme sole, and her husband need not be joined with her as plaintiff or defendant, or be made a party to any action or other legal proceeding brought by or taken against her; and any damages or costs recovered by her in any such action or proceeding shall be her separate property; and any damages or costs recovered against her in any such action or proceeding shall be payable out of her separate property, and not otherwise.

(3.) Every contract entered into by a married woman shall be deemed to be a contract entered into by her with respect to and to bind her separate property, unless the contrary be shown.

(4.) Every contract entered into by a married woman with respect to and to bind her separate property shall bind not only the separate property which she is possessed of or entitled to at the date of the contract, but also all separate property which she may thereafter acquire.

(5.) Every married woman carrying on a trade separately from her husband shall, in respect of her separate property, be subject to the bankruptcy laws in the same way as if she were a feme sole.

2. Every woman who marries after the commencement of this Act shall be entitled to have and to hold as her separate property, and to dispose of in manner aforesaid all real and personal property which shall belong to her at the time of marriage, or shall be acquired by or devolve upon her after marriage, including any wages, earnings, money, and property gained or acquired by her in any employment, trade, or occupation, in which she is engaged, or which she carries on separately from her husband, or by the exercise of any literary, artistic, or scientific skill.

3. Any money or other estate of the wife lent or entrusted by her to her husband for the purpose of any trade or business carried on by him, or otherwise, shall be treated as assets of her husband's estate in case of his bankruptcy, under reservation of the wife's claim to a dividend as a creditor for the amount or value of such money or other estate after, but not before, all claims of the other creditors of the husband for valuable consideration in money or money's worth have been satisfied.

4. The execution of a general power by will by a married woman shall have the effect of making the property appointed liable for her debts and other liabilities in the same manner as her separate estate is made liable under this Act.

5. Every woman married before the commencement of this Act shall be entitled to have and to hold and to dispose of in manner aforesaid as her separate property all real and personal property, her title to which, whether vested or contingent, and whether in possession, reversion, or remainder, shall accrue after the commencement of this Act, including any wages, earnings, money, and property so gained or acquired by her as aforesaid.

6. All deposits in any post office or other savings bank, or in any other bank, all annuities granted by the Commissioners for the Reduction of the National Debt or by any other person, and all sums forming part of the public stocks or funds, or of any other stocks or funds transferable in the books of the Governor and Company of the Bank of England, or of any other bank, which at the commencement of this Act are standing in the sole name of a married woman, and all shares, stock, debentures, debenture stock, or other interests of or in any corporation, company, or public body, municipal, commercial, or otherwise, or of or in any industrial, provident, friendly, benefit, building, or loan society, which at the commencement of this Act are standing in her name, shall be deemed, unless and until the contrary be shown, to be the separate property of such married woman; and the fact that any such deposit, annuity, sum forming part of the public stocks or funds, or of any other stocks

Execution of general power.

Property acquired after the Act by a woman married before the Act to be held by her as a feme sole.

As to stock, &c., to which a married woman is entitled.

Property of a woman married after the Act to be held by her as a feme sole.

or funds transferable in the books of the Governor and Company of the Bank of England or of any other bank, share, stock, debenture, debenture stock, or other interest as aforesaid, is standing in the sole name of a married woman, shall be sufficient *prima facie* evidence that she is beneficially entitled thereto for her separate use, so as to authorise and empower her to receive or transfer the same, and to receive the dividends, interest, and profits thereof, without the concurrence of her husband, and to indemnify the Postmaster General, the Commissioners for the Reduction of the National Debt, the Governor and Company of the Bank of England, the Governor and Company of the Bank of Ireland, and all directors, managers, and trustees of every such bank, corporation, company, public body, or society as aforesaid, in respect thereof.

As to stock, &c. to be transferred, &c. to a married woman. 7. All sums forming part of the public stocks or funds, or of any other stocks or funds transferable in the books of the Bank of England or of any other bank, and all such deposits and annuities respectively as are mentioned in the last preceding section, and all shares, stock, debentures, debenture stock, and other interests of or in any such corporation, company, public body, or society as aforesaid, which after the commencement of this Act shall be allotted to or placed, registered, or transferred in or into or made to stand in the sole name of any married woman shall be deemed, unless and until the contrary be shown, to be her separate property, in respect of which so far as any liability may be incident thereto her separate estate shall alone be liable, whether the same shall be so expressed in the document whereby her title to the same is created or certified, or in the books or register wherein her title is entered or recorded, or not.

Provided always, that nothing in this Act shall require or authorise any corporation or joint stock company to admit any married woman to be a holder of any shares or stock therein to which any liability may be incident, contrary to the provisions of any Act of Parliament, charter, byelaw, articles of association, or deed of settlement regulating such corporation or company.

Investments in joint names of married women and others. 8. All the provisions herein-before contained as to deposits in any post office bank, annuities granted by the Commissioners for the Reduction of the National Debt or by any other person, sums forming part of the public stocks or funds, or of any other stocks or funds transferable in the books of the Bank of England or of any other bank, shares, stock, debentures, debenture stock, or other interests of or in any such corporation, company, public body, or society as aforesaid respectively, which at the commencement of this Act shall be standing in the sole name of a married woman, or which, after that time, shall be allotted to, or placed, registered, or transferred to or into, or made to stand in, the sole name of a married woman shall respectively extend and apply, so far as relates to the estate, right, title, or interest of the married woman, to any of the particulars aforesaid which, at the commencement of this Act, or at any time afterwards, shall be standing in, or shall be allotted to, placed, registered, or transferred to or into, or made to stand in, the name of any married woman jointly with any persons or person other than her husband.

As to stock, &c. standing in the joint names of a married woman and others. 9. It shall not be necessary for the husband of any married woman, in respect of her interest, to join in the transfer of any such annuity or deposit as aforesaid,

or any sum forming part of the public stocks or funds, or of any other stocks or funds transferable as aforesaid, or any share, stock, debenture, debenture stock, or other benefit, right, claim, or other interest of or in any such corporation, company, public body, or society as aforesaid, which is now or shall at any time hereafter be standing in the sole name of any married woman, or in the joint names of such married woman and any other person or persons not being her husband.

Fraudulent investments with money of husband. 10. If any investment in any such deposit or annuity as aforesaid, or in any of the public stocks or funds, or in any other stocks or funds transferable as aforesaid, or in any share, stock, debenture, or debenture stock of any corporation, company, or public body, municipal, commercial, or otherwise, or in any share, debenture, benefit, right, or claim whatsoever in, to, or upon the funds of any industrial, provident, friendly, benefit, building, or loan society, shall have been made by a married woman by means of moneys of her husband, without his consent, the Court may, upon an application under section seventeen of this Act, order such investment, and the dividends thereof, or any part thereof, to be transferred and paid respectively to the husband; and nothing in this Act contained shall give validity as against creditors of the husband to any gift, by a husband to his wife, of any property, which after such gift, shall continue to be in the order and disposition or reputed ownership of the husband or to any deposit or other investment of moneys of the husband made by or in the name of his wife in fraud of his creditors; but any moneys so deposited or invested may be followed as if this Act had not passed.

Moneys payable under policy of assurance not to form part of estate of the insured. 11. A married woman may by virtue of the power of making contracts herein-before contained effect a policy upon her own life or the life of her husband for her separate use; and the same and all benefit thereof shall enure accordingly.

A policy of assurance effected by any man on his own life and expressed to be for the benefit of his wife, or of his children, or of his wife and children, or any of them, or by any woman on her own life, and expressed to be for the benefit of her husband, or of her children, or of her husband and children, or any of them, shall create a trust in favour of the objects therein named, and the moneys payable under any such policy shall not, so long as any object of the trust remains unperformed, form part of the estate of the insured, or be subject to his or her debts: Provided, that if it shall be proved that the policy was effected and the premiums paid with intent to defraud the creditors of the insured, they shall be entitled to receive, out of the moneys payable under the policy, a sum equal to the premiums so paid. The insured may by the policy, or by any memorandum under his or her hand, appoint a trustee or trustees of the moneys payable under the policy, and from time to time appoint a new trustee or new trustees thereof, and may make provision for the appointment of a new trustee or new trustees thereof, and for the investment of the moneys payable under any such policy. In default of any such appointment of a trustee, such policy, immediately on its being effected, shall vest in the insured and his or her legal personal representatives, in trust for the purposes aforesaid. If, at the time of the death of the insured, or at any time afterwards, there shall be no trustee, or it shall be expedient to appoint a new trustee or new trustees, a trustee or trustees or a new trustee or new trustees may be appointed by any court having jurisdiction under the



18 & 14 Vict.  
c. 60.

provisions of the Trustee Act, 1850, or the Acts amending and extending the same. The receipt of a trustee or trustees duly appointed, or, in default of any such appointment, or in default of notice to the insurance office, the receipt of the legal personal representative of the insured shall be a discharge to the office for the sum secured by the policy, or for the value thereof, in whole or in part.

Remedies of  
married woman  
for protection  
and security of  
separate property.

12. Every woman, whether married before or after this Act, shall have in her own name against all persons whomsoever, including her husband, the same civil remedies, and also (subject, as regards her husband, to the proviso hereinafter contained) the same remedies and redress by way of criminal proceedings, for the protection and security of her own separate property, as if such property belonged to her as a feme sole, but, except as aforesaid, no husband or wife shall be entitled to sue the other for a tort. In any indictment or other proceeding under this section it shall be sufficient to allege such property to be her property; and in any proceeding under this section a husband or wife shall be competent to give evidence against each other, any statute or rule of law to the contrary notwithstanding: Provided always, that no criminal proceeding shall be taken by any wife against her husband by virtue of this Act while they are living together, as to or concerning any property claimed by her, nor while they are living apart, as to or concerning any act done by the husband while they were living together, concerning property claimed by the wife, unless such property shall have been wrongfully taken by the husband when leaving or deserting, or about to leave or desert, his wife.

Wife's ante-  
nuptial debts  
and liabilities.

13. A woman after her marriage shall continue to be liable in respect and to the extent of her separate property for all debts contracted, and all contracts entered into or wrongs committed by her before her marriage, including any sums for which she may be liable as a contributory, either before or after she has been placed on the list of contributories, under and by virtue of the Acts relating to joint stock companies; and she may be sued for any such debt and for any liability in damages or otherwise under any such contract, or in respect of any such wrong; and all sums recovered against her in respect thereof, or for any costs relating thereto, shall be payable out of her separate property; and, as between her and her husband, unless there be any contract between them to the contrary, her separate property shall be deemed to be primarily liable for all such debts, contracts, or wrongs, and for all damages or costs recovered in respect thereof: Provided always, that nothing in this Act shall operate to increase or diminish the liability of any woman married before the commencement of this Act for any such debt, contract, or wrong, as aforesaid, except as to any separate property to which she may become entitled by virtue of this Act, and to which she would not have been entitled for her separate use under the Acts hereby repealed or otherwise, if this Act had not passed.

Husband to be  
liable for his  
wife's debts con-  
tracted before  
marriage to a  
certain extent.

14. A husband shall be liable for the debts of his wife contracted, and for all contracts entered into and wrongs committed by her, before marriage, including any liabilities to which she may be so subject under the Acts relating to joint stock companies as aforesaid, to the extent of all property whatsoever

belonging to his wife which he shall have acquired or become entitled to from or through his wife, after deducting therefrom any payments made by him, and any sums for which judgment may have been bonâ fide recovered against him in any proceeding at law, in respect of any such debts, contracts, or wrongs for or in respect of which his wife was liable before her marriage as aforesaid; but he shall not be liable for the same any further or otherwise; and any court in which a husband shall be sued for any such debt shall have power to direct any inquiry or proceedings which it may think proper for the purpose of ascertaining the nature, amount, or value of such property: Provided always, that nothing in this Act contained shall operate to increase or diminish the liability of any husband married before the commencement of this Act for or in respect of any such debt or other liability of his wife as aforesaid.

Suits for ante-  
nuptial liabilities.

15. A husband and wife may be jointly sued in respect of any such debt or other liability (whether by contract or for any wrong) contracted or incurred by the wife before marriage as aforesaid, if the plaintiff in the action shall seek to establish his claim, either wholly or in part, against both of them; and if in any such action, or in any action brought in respect of any such debt or liability against the husband alone, it is not found that the husband is liable in respect of any property of the wife so acquired by him or to which he shall have become so entitled as aforesaid, he shall have judgment for his costs of defence, whatever may be the result of the action against the wife if jointly sued with him; and in any such action against husband and wife jointly, if it appears that the husband is liable for the debt or damages recovered, or any part thereof, the judgment to the extent of the amount for which the husband is liable shall be a joint judgment against the husband personally and against the wife as to her separate property; and as to the residue, if any, of such debt and damages, the judgment shall be a separate judgment against the wife as to her separate property only.

Act of wife liable  
to criminal  
proceedings.

16. A wife doing any act with respect to any property of her husband, which, if done by the husband with respect to property of the wife, would make the husband liable to criminal proceedings by the wife under this Act, shall in like manner be liable to criminal proceedings by her husband.

Questions be-  
tween husband  
and wife as to  
property to be  
decided in a  
summary way.

17. In any question between husband and wife as to the title to or possession of property, either party, or any such bank, corporation, company, public body, or society as aforesaid in whose books any stocks, funds, or shares of either party are standing, may apply by summons or otherwise in a summary way to any judge of the High Court of Justice in England or in Ireland, according as such property is in England or Ireland, or (at the option of the applicant irrespectively of the value of the property in dispute) in England to the judge of the county court of the district, or in Ireland to the chairman of the civil bill court of the division in which either party resides, and the judge of the High Court of Justice or of the county court, or the chairman of the civil bill court (as the case may be) may make such order with respect to the property in dispute, and as to the costs of and consequent on the application as he thinks fit, or may direct such application to stand over from time to time, and any inquiry touching the matters in question to be made in such manner as he shall think fit: Provided always, that any

order of a judge of the High Court of Justice to be made under the provisions of this section shall be subject to appeal in the same way as an order made by the same judge in a suit pending or on an equitable plaint in the said court would be; and any order of a county or civil bill court under the provisions of this section shall be subject to appeal in the same way as any other order made by the same court would be, and all proceedings in a county court or civil bill court under this section in which, by reason of the value of the property in dispute, such court would not have had jurisdiction if this Act or the Married Women's Property Act, 1870, had not passed, may, at the option of the defendant or respondent to such proceedings, be removed as of right into the High Court of Justice in England or Ireland (as the case may be), by writ of certiorari or otherwise as may be prescribed by any rule of such High Court; but any order made or act done in the course of such proceedings prior to such removal shall be valid, unless order shall be made to the contrary by such High Court: Provided also, that the judge of the High Court of Justice or of the county court, or the chairman of the civil bill court, if either party so require, may hear any such application in his private room: Provided also, that any such bank, corporation, company, public body, or society as aforesaid, shall, in the matter of any such application for the purposes of costs or otherwise, be treated as a stakeholder only.

**Married woman as an executrix or trustee.** 18. A married woman who is an executrix or administratrix alone or jointly with any other person or persons of the estate of any deceased person, or a trustee alone or jointly as aforesaid of property subject to any trust, may sue or be sued, and may transfer or join in transferring any such annuity or deposit as aforesaid, or any sum forming part of the public stocks or funds, or of any other stocks or funds transferable as aforesaid, or any share, stock, debenture, debenture stock, or other benefit, right, claim, or other interest of or in any such corporation, company, public body, or society in that character, without her husband, as if she were a feme sole.

**Saving of existing settlements, and the power to make future settlements.** 19. Nothing in this Act contained shall interfere with or affect any settlement or agreement for a settlement made or to be made, whether before or after marriage, respecting the property of any married woman, or shall interfere with or render inoperative any restriction against anticipation at present attached or to be hereafter attached to the enjoyment of any property or income by a woman under any settlement, agreement for a settlement, will, or other instrument; but no restriction against anticipation contained in any settlement or agreement for a settlement of a woman's own property to be made or entered into by herself shall have any validity against debts contracted by her before marriage, and no settlement or agreement for a settlement shall have any greater force or validity against creditors of such woman than a like settlement or agreement for a settlement made or entered into by a man would have against his creditors.

**Married woman to be liable to the parish for the maintenance of her husband.** 20. Where in England the husband of any woman having separate property becomes chargeable to any union or parish, the justices having jurisdiction in such union or parish may, in petty sessions assembled, upon application of the guardians of the poor, issue a summons against the wife, and make and enforce such order against her for the maintenance of her husband out of such separate property as by the thirty-third section of the Poor Law Amendment Act, 1868, they may now make and en-

force against a husband for the maintenance of his wife if she becomes chargeable to any union or parish. Where in Ireland relief is given under the provisions of the Acts relating to the relief of the destitute poor to the husband of any woman having separate property, the cost price of such relief is hereby declared to be a loan from the guardians of the union in which the same shall be given, and shall be recoverable from such woman as if she were a feme sole by the same actions and proceedings as money lent.

**Married woman to be liable to the parish for the maintenance of her children.** 21. A married woman having separate property shall be subject to all such liability for the maintenance of her children and grandchildren as the husband is now by law subject to for the maintenance of her children and grandchildren: Provided always, that nothing in this Act shall relieve her husband from any liability imposed upon him by law to maintain her children or grandchildren.

**Repeal of 33 & 34 Vict. c. 93. 37 & 38 Vict. c. 50.** 22. The Married Women's Property Act, 1870, and the Married Women's Property Act, 1870, Amendment Act, 1874, are hereby repealed: Provided that such repeal shall not affect any act done or right acquired while either of such Acts was in force, or any right or liability of any husband or wife, married before the commencement of this Act, to sue or be sued under the provisions of the said repealed Acts or either of them, for or in respect of any debt, contract, wrong, or other matter or thing whatsoever, for or in respect of which any such right or liability shall have accrued to or against such husband or wife before the commencement of this Act.

**Legal representative of married woman.** 23. For the purposes of this Act the legal personal representative of any married woman shall in respect of her separate estate have the same rights and liabilities and be subject to the same jurisdiction as she would be if she were living.

**Interpretation of terms.** 24. The word "contract" in this Act shall include the acceptance of any trust, or of the office of executrix or administratrix, and the provisions of this Act as to liabilities of married women shall extend to all liabilities by reason of any breach of trust or devastavit committed by any married woman being a trustee or executrix or administratrix either before or after her marriage, and her husband shall not be subject to such liabilities unless he has acted or intermeddled in the trust or administration. The word "property" in this Act includes a thing in action.

**Commencement of Act.** 25. The date of the commencement of this Act shall be the first of January one thousand eight hundred and eighty-three.

**Extent of Act.** 26. This Act shall not extend to Scotland.

**Short Title.** 27. This Act may be cited as the Married Women's Property Act, 1882.

### CAP. LXXVI.

An Act to amend the Merchant Shipping Acts, 1854 to 1880, with respect to Colonial Courts of Inquiry. [18th August 1882.]

### CAP. LXXVII.

An Act to amend the Law of Citation in Scotland. [18th August 1882.]

CAP. LXXVIII.

An Act to establish a Fishery Board for Scotland.  
[18th August 1882.]

CAP. LXXIX.

An Act to make provision for the arrangement of Accounts between the Commissioners of Her Majesty's Treasury and the Secretary of State in Council of India in respect of Certain Home Charges for Her Majesty's Forces serving in India.  
[18th August 1882.]

CAP. LXXX.

An Act for the Extension of Allotments.  
[18th August 1882.]

CAP. LXXXI.

An Act for disannexing the Rectory of Somersham from the Office of Regius Professor of Divinity in the University of Cambridge, and for making better provision for the Cure of Souls within the said Rectory; and for other purposes.  
[18th August 1882.]

CAP. LXXXII.

An Act for amending the Lunacy Regulation Acts.  
[18th August 1882.]

WHEREAS it is expedient to amend the Lunacy Regulation Acts:

Be it enacted, &c., . . . . .

1. This Act may be cited for all purposes as the Lunacy Regulation Amendment Act, 1882.

Construction of Act.  
16 & 17 Viet. c. 70.

2. This Act shall be construed as one with the Lunacy Regulation Acts, 1853 and 1862, and unless there is something in the subject matter or context repugnant to such construction, the expression "The Lord Chancellor intrusted as aforesaid," and all other expressions having a special or defined meaning in the last-mentioned Acts, or either of them, shall have the same meaning in this Act.

Power of Lord Chancellor where property of lunatic does not exceed £2,000, or £100 per annum.

3. Section twelve of the Lunacy Regulation Act, 1862, is hereby amended so as to have effect as if the words "two thousand pounds in value" had been inserted therein instead of the words "one thousand pounds in value," and the words "one hundred pounds per annum" instead of "fifty pounds per annum."

All Chancery lunatics to be visited twice a year.

4. Whereas by section twenty of the Lunacy Regulation Act, 1862, it is enacted that "every lunatic shall be personally visited and seen by one of the said visitors four times at least in every year, and such visits shall be so regulated as that the interval between successive visits to any such lunatic shall in no case exceed four months: Provided always, that lunatics who are resident in licensed houses, asylums, or registered hospitals shall not necessarily be visited by any of the said visitors more than once in the year, unless the Lord Chancellor intrusted as aforesaid shall otherwise direct": Be it enacted, that the said section shall be construed as if the words "twice" had been inserted therein instead of the words "four times," and as if the words "eight months" had been inserted therein instead of the words "four months," and as if instead of the proviso therein there had been inserted the following words: Provided always, that every lunatic resident in a private house shall, during the two years next following inquisition, be so visited at least four times in every year.

# INDEX

TO THE

## PUBLIC GENERAL STATUTES,

45° & 46° VICTORIA—A.D. 1882.

NOTE.—The capital letters placed after the chapter have the following signification:—

E.	that the Act relates to	England (and Wales, if it so extend).
S.	" "	Scotland exclusively.
I.	" "	Ireland exclusively.
W.	" "	Wales exclusively.
E. & I.	" "	England and Ireland.
E. & S.	" "	England and Scotland.
U.K.	" "	Great Britain and Ireland (and Colonies, if it so extend).
C.	" "	The Colonies, or any of them.

	Cap. Relating to		Cap. Relating to
<b>A</b>			
<b>ACTS OF PARLIAMENT CONTINUANCE. See EXPIRING LAWS CONTINUANCE. TURNPIKE ACTS CONTINUANCE.</b>		<b>ARMY; to provide, during twelve months, for the Discipline and Regulation of the Army - - - - - (p. 1)</b>	7 U.K.
<b>ADMINISTRATION OF JUSTICE. See BILLS OF EXCHANGE, &amp;c. BILLS OF SALE. CITATION LAW AMENDMENT. CIVIL IMPRISONMENT. CONVEYANCING. COPYRIGHT. COUNTY COURTS. DOCUMENTARY EVIDENCE. ENTAIL LAW AMENDMENT. INFERIOR COURTS JUDGMENTS EXTENSION, INTERMENTS (PELODESE). LUNACY. MARRIED WOMEN'S PROPERTY. PETTY SESSIONS, IRELAND. PREVENTION OF CRIME. SETTLED LAND. SUPREME COURT OF JUDICATURE.</b>		<b>See also ARTILLERY RANGES. INDIA. MILITARY MANUEVRES. MILITIA. RESERVE FORCES.</b>	
<b>ADMIRALTY; for the acquisition of Property and the provision of new Buildings for the Admiralty and War Office - - (p. 18)</b>	32	<b>ARRARS OF RENT; to make provision respecting certain Arrears of Rent in Ireland - - - - - (p. 34)</b>	47 I.
<b>ALBANY (DUKE OF); to enable Her Majesty to provide for the Establishment of His Royal Highness the Duke of Albany and Her Serene Highness Princess Helen Frederica Augusta of Waldeck and Pyrmont, and to settle an Annuity on Her Serene Highness - - - - - (p. 1)</b>	5	<b>ARTIZANS AND LABOURERS DWELLINGS ACTS; to amend the Artizans and Labourers Dwellings Acts (38 &amp; 39 Vic. c. 36. and 42 &amp; 43 Vict. ca. 63, 64.) - - (p. 59)</b>	54 U.K.
<b>ALLOTMENTS; for the Extension of Allotments. - - - - - (p. 71)</b>	80	<b>ASSESSMENT (POOR RATE); to amend the Poor Rate Assessment and Collection Act, 1869 (32 &amp; 33 Vict. c. 41.) - - (p. 3)</b>	20 E.
<b>See also LABOURERS' COTTAGES, &amp;c.</b>		<b>See also HIGHWAY RATE ASSESSMENT.</b>	
<b>ANCIENT MONUMENTS PROTECTION; for the better protection of Ancient Monuments (p. 61)</b>	73	<b>ATTORNEYS AND SOLICITORS; for further improving the Practice of Conveyancing; and for other purposes - - (p. 30)</b>	39 E. & I.
<b>ANNUITIES, GOVERNMENT; to extend the Acts relating to the purchase of small Government Annuities and to assuring payments of money on death - - (p. 39)</b>	51	<b>B</b>	
<b>ANNUITY TO DUKE OF ALBANY. See ALBANY (DUKE OF).</b>		<b>BATHS AND WASH HOUSES; to amend the Baths and Wash Houses Acts (p. 16)</b>	30 E.
<b>APPEALS. See COUNTY COURTS.</b>		<b>BEER DEALERS RETAIL LICENCES; to amend the Beer Dealers Retail Licences Act, 1880 (43 Vict. c. 6) - - (p. 18)</b>	34 E.
<b>APPROPRIATION OF SUPPLIES; to apply the sum of £34,357,774 out of the Consolidated Fund to the Service of the year ending the 31st day of March, 1883, and to appropriate the supplies granted in this Session of Parliament - - - - (p. 61)</b>	71	<b>BILLS OF EXCHANGE, &amp;c.; to codify the law relating to Bills of Exchange, Cheques, and Promissory Notes - - (p. 46)</b>	61 U.K.
<b>ARKLOW HARBOUR; for the Improvement of Arklow Harbour - - - - (p. 2)</b>	13	<b>BILLS OF SALE; to amend the Bills of Sale Act, 1878 (41 &amp; 42 Vict. c. 31.) - (p. 33)</b>	43 E.
		<b>BOARD OF WORKS. See METROPOLITAN BOARD OF WORKS.</b>	
		<b>BOILER EXPLOSIONS; to make better provision for Inquiries with regard to Boiler Explosions - - - - - (p. 3)</b>	22 U.K.
		<b>BOMBAY CIVIL FUND; to make provisions for the transfer of the Assets and Liabilities of the Provident Branch of the Bombay Civil Fund and other funds to the Secretary of State for India in Council - - (p. 33)</b>	45 U.K.
		<b>BOSTON ELECTION. See CORRUPT PRACTICES.</b>	
		<b>BUILDING ACTS AMENDMENT; to confer further powers upon the Metropolitan Board of Works with respect to Streets and Buildings in the Metropolis - (p. 2)</b>	14 E.

	Cap. Relating to
<b>C</b>	
CAMBRIDGE UNIVERSITY. <i>See</i> SOMERSEHAM RECTORY.	
CANTERBURY ELECTION. <i>See</i> CORRUPT PRACTICES.	
CASUAL POOR; to amend the Pauper Inmates Discharge and Regulation Act, 1871 (84 & 85 Vict. c. 108) - - - (p. 18)	36 E.
CHARITIES; to make provision respecting certain Prison Charities - - - (p. 61)	65 E.
CHEQUES, &c.; to codify the law relating to Bills of Exchange, Cheques, and Promissory Notes - - - (p. 46)	61 U.K.
CHESTER ELECTION. <i>See</i> CORRUPT PRACTICES.	
CITATION LAW AMENDMENT; to amend the Law of Citation in Scotland - (p. 70)	77 S.
CIVIL IMPRISONMENT; to amend the Law relating to Civil Imprisonment in Scotland (p. 83)	42 S.
COFFEE, IMITATIONS OF. <i>See</i> CUSTOMS AND INLAND REVENUE.	
COLONIAL COURTS OF INQUIRY; to amend the Merchant Shipping Acts, 1854 to 1880 (17 & 18 Vict. c. 104., &c.), with respect to Colonial Courts of Inquiry - (p. 70)	76 U.K.
COMMISSIONERS OF PUBLIC WORKS. <i>See</i> INLAND REVENUE BUILDINGS, PUBLIC WORKS LOANS.	
COMMONABLE RIGHTS COMPENSATION; to provide for the better application of Moneys paid by way of Compensation for the compulsory acquisition of Common Lands and extinguishment of Rights of Common (p. 2)	15 E.
COMMUTATION OF PENSIONS; to authorise the Commutation of a portion of a Pension in pursuance of the Pensions Commutation Act, 1871 (31 & 35 Vict. c. 36.) - (p. 33)	44 U.K.
CONSOLIDATED FUND; to apply the sum of £318,270 out of the Consolidated Fund to the Service of the year ending the 31st day of March 1883 - - - (p. 1)	1 U.K.
— to apply the sum of £7,218,342 14s. 10d. out of the Consolidated Fund to the Service of the years ending the 31st day of March 1881, 1882, and 1883 - (p. 1)	4 U.K.
— to apply the sum of £9,282,485 out of the Consolidated Fund to the Service of the year ending the 31st day of March 1883 (p. 1)	8 U.K.
— to apply the sum of £5,708,891 out of the Consolidated Fund to the Service of the year ending the 31st day of March 1883 (p. 15)	28 U.K.
— to apply the sum of £34,857,774 out of the Consolidated Fund to the Service of the year ending the 31st day of March 1883, and to appropriate the Supplies granted in this Session of Parliament (p. 61)	71 U.K.
CONSTABULARY. <i>See</i> ROYAL IRISH CONSTABULARY.	
CONVEYANCING; for further improving the Practice of Conveyancing; and for other purposes - - - (p. 30)	39 E. & I.
COPYRIGHT; to amend the law of Copyright relating to Musical Compositions - (p. 33)	40 U.K.
CORN RETURNS; to amend the Law respecting the obtaining of Corn Returns (p. 18)	37 E.
CORPORATIONS, MUNICIPAL; for Consolidating, with Amendments, enactments relating to Municipal Corporations in England and Wales - - - (p. 39)	50 E.
CORRUPT PRACTICES (SUSPENSION OF ELECTIONS); to suspend for a limited period, on account of Corrupt Practices, the holding of an Election of a Member or Members to serve in Parliament for certain cities and	

	Cap. Relating to
boroughs [Boston; Canterbury; Chester; Gloucester; Macclesfield; Oxford; Sandwich] - - - (p. 61)	68 E.
COUNTY COURTS; to amend the law relating to Costs and Salaries in County Courts (p. 45)	57 E.
— to amend the Acts relating to the County Courts in Ireland, and to make better provision for Appeals under the said Acts - - - (p. 15)	29 I.
CRIME IN IRELAND; for the prevention of Crime in Ireland - - - (p. 5)	25 I.
CUSTOMS AND INLAND REVENUE; to grant certain Duties of Customs and Inland Revenue, to alter other Duties, and to amend the Laws relating to Customs and Inland Revenue [Tea; Imitations of Coffee, &c.; Income Tax] - - - (p. 83)	41 U.K.
— <i>See also</i> REVENUE, FRIENDLY SOCIETIES, AND NATIONAL DEBT.	
CUSTOMS AND INLAND REVENUE BUILDINGS; for the transfer of Property in Ireland held for the Service of Her Majesty's Customs and of the Inland Revenue to the Commissioners of Public Works in Ireland; and for other purposes relating thereto - (p. 3)	17 I.

**D**

DISCIPLINE OF THE ARMY. <i>See</i> ARMY.	
DIVIDED PARISHES, &c., AMENDMENT ACT; to amend the Divided Parishes and Poor Law Amendment Act, 1876 (39 & 40 Vict. c. 61); and for other purposes - (p. 46)	58 E.
DOCUMENTARY EVIDENCE; to amend the Documentary Evidence Act, 1868 (31 & 32 Vict. c. 37), and other enactments relating to the evidence of documents by means of copies printed by the Government Printers (p. 2)	9 U.K.

**E**

EDUCATION; to amend the Intermediate Education (Ireland) Act, 1878 (41 & 42 Vict. c. 66) - - - (p. 61)	69 I.
EDUCATIONAL ENDOWMENTS; to reorganise the Educational Endowments of Scotland (p. 46)	59 S.
ELECTION OF REPRESENTATIVE PEERS; to amend the Law relating to the Election of Lords Temporal to serve in Parliament for Ireland - - - (p. 15)	26 I.
ELECTIONS OF MEMBERS OF PARLIAMENT SUSPENSION. <i>See</i> CORRUPT PRACTICES.	
ELECTRIC LIGHTING; to facilitate and regulate the supply of Electricity for Lighting and other purposes in Great Britain and Ireland - - - (p. 45)	56 U.K.
ENDOWMENTS, EDUCATIONAL; to reorganise the Educational Endowments of Scotland (p. 46)	59 S.
ENTAIL LAW AMENDMENT; to amend the Law of Entail in Scotland - - - (p. 42)	53 S.
EVIDENCE (DOCUMENTARY); to amend the Documentary Evidence Act, 1868 (31 & 32 Vict. c. 37), and other enactments relating to the evidence of documents by means of copies printed by the Government Printers (p. 2)	9 U.K.
EXPIRING LAWS CONTINUANCE; to continue various expiring Laws - - - (p. 69)	64 U.K.
EXPLOSION OF BOILERS; to make better provision for Inquiries with regard to Boiler Explosions - - - (p. 3)	22 U.K.
EXTENSION OF ALLOTMENTS; for the Extension of Allotments - - - (p. 71)	80 E.
— <i>See also</i> LABOURERS COTTAGES, &c.	

	Cap. Relating to		Cap. Relating to
<b>F</b>			
<b>FELO DE SE</b> ; to amend the law relating to the interment of any person found <i>felo de se</i> (p. 8)	19	E.	
<b>FISHERY BOARD, SCOTLAND</b> ; to establish a Fishery Board for Scotland (p. 71)	78	S.	
<b>FRIENDLY SOCIETIES</b> ; to amend so much of the Friendly Societies Act, 1875 (38 & 39 Vict. c. 60) as relates to quinquennial returns of sickness and mortality (p. 18)	35	U.K.	
— See also <b>REVENUE, FRIENDLY SOCIETIES, AND NATIONAL DEBT.</b>			
<b>FRUIT PICKERS LODGINGS</b> ; to extend the Public Health Act, 1875 (38 & 39 Vict. c. 55), to the making of Byelaws for Fruit Pickers (p. 5)	23	E.	
<b>G</b>			
<b>GENERAL POLICE AND IMPROVEMENT</b> ; to amend the law in regard to Householders under the General Police and Improvement Acts in Scotland (p. 1)	6	S.	
<b>GLOUCESTER ELECTION</b> . See <b>CORRUPT PRACTICES.</b>			
<b>GOVERNMENT ANNUITIES</b> : to extend the Acts relating to the purchase of small Government Annuities and to assuring payments of money on death (p. 39)	51	U.K.	
<b>GOVERNMENT PRINTERS</b> . See <b>DOCUMENTARY EVIDENCE.</b>			
<b>GUNPOWDER, USE OF IN SLATE MINES</b> ; to amend the law relating to the use of Gunpowder in Slate Mines (p. 1)	3	U.K.	
<b>H</b>			
<b>HEALTH (PUBLIC)</b> . See <b>PUBLIC HEALTH.</b>			
<b>HERRING FISHERY</b> . See <b>FISHERY BOARD, SCOTLAND.</b>			
<b>HIGHWAY RATE ASSESSMENT, &amp;c.</b> ; to extend certain provisions of the Poor Rate Assessment and Collection Act, 1869 (32 & 33 Vic. c. 41.), to the Highway Rate, and for other purposes (p. 15)	27	E.	
<b>HOUSEHOLDERS IN SCOTLAND</b> . See <b>GENERAL POLICE AND IMPROVEMENT.</b>			
<b>I</b>			
<b>IMPRISONMENT, LAW OF</b> ; to amend the law relating to Civil Imprisonment in Scotland (p. 38)	42	S.	
<b>INCOME TAX</b> . See <b>CUSTOMS AND INLAND REVENUE.</b>			
<b>INDIA (HOME CHARGES ARREARS)</b> ; to make provision for the arrangement of Accounts between the Commissioners of Her Majesty's Treasury and the Secretary of State in Council of India in respect of certain Home Charges for Her Majesty's Forces serving in India (p. 71)	79	U.K.	
<b>INFERIOR COURTS JUDGMENTS EXTENSION</b> ; to render Judgments obtained in certain inferior Courts in England, Scotland, and Ireland respectively, effectual in any other part of the United Kingdom (p. 16)	31	U.K.	
<b>INLAND REVENUE</b> ; to grant certain Duties of Customs and Inland Revenue, to alter certain other Duties, and to amend the laws relating to Customs and Inland Revenue (p. 33)	41	U.K.	
— See also <b>REVENUE, FRIENDLY SOCIETIES, AND NATIONAL DEBT.</b>			
<b>INLAND REVENUE BUILDINGS</b> ; for the transfer of Property in Ireland held for the Service of Her Majesty's Customs and of the Inland Revenue to the Commissioners of Public Works in Ireland; and for other purposes relating thereto (p. 3)	17	I.	
<b>INTERMEDIATE EDUCATION</b> ; to amend the Intermediate Education (Ireland) Act, 1878 (41 & 42 Vict. c. 66.) (p. 61)	69	I.	
<b>INTERMENTS (FELO DE SE)</b> ; to amend the law relating to the interment of any person found <i>felo de se</i> (p. 3)	19	E.	
<b>INTOXICATING LIQUORS, SALE OF</b> . See <b>PASSENGER VESSELS LICENCES.</b>			
<b>IRELAND, ACTS RELATING EXCLUSIVELY TO</b> . See <b>ARKLOW HARBOUR. ARREARS OF RENT. COUNTY COURTS. CUSTOMS AND INLAND REVENUE BUILDINGS. ELECTION OF REPRESENTATIVE PEERS. INLAND REVENUE BUILDINGS. INTERMEDIATE EDUCATION. IRISH REPRODUCTIVE LOAN FUND. LABOURERS COTTAGES, &amp;c. PETTY SESSIONS. PREVENTION OF CRIME. ROYAL IRISH CONSTABULARY. SUPREME COURT OF JUDICATURE.</b>			
<b>IRISH CONSTABULARY</b> . See <b>ROYAL IRISH CONSTABULARY.</b>			
<b>IRISH LAND COMMISSION</b> . See <b>PUBLIC WORKS LOANS.</b>			
<b>IRISH REPRODUCTIVE LOAN FUND</b> ; to amend the Irish Reproductive Loan Fund Act, 1874 (37 & 38 Vict. c. 86.) (p. 2)	16	I.	
<b>ISLE OF MAN (OFFICERS)</b> ; to amend the Isle of Man (Officers) Act, 1876 (39 & 40 Vict. c. 43.) (p. 34)	46	U.K.	
<b>J</b>			
<b>JUDGMENTS (INFERIOR COURTS)</b> ; to render Judgments obtained in certain Inferior Courts in England, Scotland, and Ireland respectively, effectual in any other part of the United Kingdom (p. 16)	31	U.K.	
<b>JUDICATURE, COURT OF</b> ; to amend the Supreme Court of Judicature Act (Ireland), 1877 (40 & 41 Vict. c. 57.) (p. 61)	70	I.	
<b>JUSTICE, ADMINISTRATION OF</b> . See <b>BILLS OF EXCHANGE, &amp;c. BILLS OF SALE. CITATION LAW AMENDMENT. CIVIL IMPRISONMENT. CONVEYANCING. COPYRIGHT. COUNTY COURTS. DOCUMENTARY EVIDENCE. ENTAIL LAW AMENDMENT. INFERIOR COURTS JUDGMENTS EXTENSION. INTERMENTS (FELO DE SE). LUNACY. MARRIED WOMEN'S PROPERTY. PETTY SESSIONS, IRELAND. PREVENTION OF CRIME. SETTLED LAND. SUPREME COURT OF JUDICATURE.</b>			
<b>L</b>			
<b>LABOURERS COTTAGES, &amp;c.</b> ; to amend and extend the provisions of the Land Law (Ireland) Act, 1881 (44 & 45 Vict. c. 49.), relating to Labourers Cottages and Allotments (p. 46)	60	I.	
<b>LABOURERS DWELLINGS ACTS</b> ; to amend the Artizans and Labourers Dwellings Acts (38 & 39 Vict. c. 36. and 42 & 43 Vict. cc. 63., 64.) (p. 42)	54	U.K.	
<b>LAND LAW (IRELAND)</b> . See <b>ARREARS OF RENT. LABOURERS COTTAGES.</b>			
<b>LAND, SALE, &amp;c., OF</b> . See <b>SETTLED LAND.</b>			
<b>LICENCES (BEER DEALERS)</b> ; to amend the Beer Dealers' Retail Licences Act, 1880 (43 Vict. c. 6.) (p. 18)	34	E.	
<b>LICENCES FOR SALE OF LIQUORS</b> ; to amend the Law relating to Licences to retail Intoxicating Liquors on Passenger Vessels in Scotland (p. 61)	66	S.	
<b>LIGHTING BY ELECTRICITY</b> ; to facilitate and regulate the supply of Electricity for Lighting and other purposes in Great Britain and Ireland (p. 45)	56	U.K.	
<b>LOANS</b> . See <b>PUBLIC WORKS LOANS.</b>			

	Cap. Relating to		Cap. Relating to
<b>M</b>			
<b>MAOULESFIELD ELEOTION.</b> <i>See</i> CORRUPT PRACTICES.			
<b>MAN, ISLE OF;</b> to amend the Isle of Man (Officers) Act, 1876 (39 & 40 Vict. c. 48) (p. 34)	46	U.K.	
<b>MARRIED WOMEN'S PROPERTY;</b> to consolidate and amend the Acts relating to the Property of Married Women (p. 67)	75	E. & I.	
<b>MERCANTILE MARINE FUND.</b> <i>See</i> MERCHANT SHIPPING.			
<b>MERCHANT SHIPPING;</b> to amend the Law with respect to the Charges on and Payments to the Mercantile Marine Fund, and to Expenses of Prosecutions for Offences committed at Sea (p. 45)	55	U.K.	
— to amend the Merchant Shipping Acts, 1854 to 1880 (17 & 18 Vict. c. 104, &c.), with respect to Colonial Courts of Inquiry (p. 70)	76	U.K.	
<b>METROPOLIS MANAGEMENT AND BUILDING ACTS AMENDMENT;</b> to confer further powers upon the Metropolitan Board of Works with respect to Streets and Buildings in the Metropolis (p. 2)	14	E.	
<b>METROPOLITAN BOARD OF WORKS;</b> further to amend the Acts relating to the raising of Money by the Metropolitan Board of Works; and for other purposes (p. 18)	33	E.	
— <i>See also</i> METROPOLIS MANAGEMENT AND BUILDING ACTS AMENDMENT.			
<b>MILITARY MANŒUVRES;</b> for making provisions for facilitating the Manœuvres of Troops to be assembled during the Summer of 1882 (p. 2)	10	E.	
<b>MILITIA;</b> to consolidate the Acts relating to the Militia (p. 39)	49	U.K.	
<b>MILITIA STOREHOUSES;</b> to amend the Law relating to the application of moneys arising from the Sale of Militia Storehouses (p. 2)	12	E.	
<b>MINES;</b> to amend the Law relating to the use of Gunpowder in Slate Mines (p. 1)	3	U.K.	
<b>MONUMENTS, ANCIENT;</b> for the better protection of Ancient Monuments (p. 61)	73	U.K.	
<b>MUNICIPAL CORPORATIONS;</b> for consolidating with Amendments, enactments relating to Municipal Corporations in England and Wales (p. 39)	50	E.	
<b>MUSICAL COMPOSITIONS;</b> to amend the law of Copyright relating to Musical Compositions (p. 33)	40	U.K.	
<b>N</b>			
<b>NATIONAL DEBT;</b> for amending the Laws relating to Customs and Inland Revenue, and Postage and other Stamps, and for making further provision respecting the National Debt, and charges payable out of the Public Revenue or by the Commissioners for the Reduction of the National Debt; and for other purposes (p. 61)	72	U.K.	
<b>O</b>			
<b>OFFENCES AT SEA.</b> <i>See</i> MERCHANT SHIPPING.			
<b>OXFORD ELEOTION.</b> <i>See</i> CORRUPT PRACTICES.			
<b>P</b>			
<b>PARCELS (POST OFFICE);</b> to amend the Post Office Acts with respect to the Conveyance of Parcels (p. 61)	74	U.K.	
<b>PASSENGER VESSELS LICENCES;</b> to amend the Law relating to Licences to retail Intoxicating Liquors on Passenger Vessels in Scotland (p. 61)	66	S.	
<b>PAUPER INMATES DISCHARGE, &amp;C. ACT, 1871;</b> to amend the Pauper Inmates Discharge and Regulation Act, 1871 (34 & 35 Vict. c. 108.) (p. 18)	36	E.	
<b>PENSIONS COMMUTATION;</b> to authorize the Commutation of a portion of a Pension in pursuance of the Pensions Commutation Act, 1871 (34 & 35 Vict. c. 36.) (p. 33)	44	U.K.	
<b>PETTY SESSIONS, IRELAND;</b> to amend the Petty Sessions (Ireland) Act, 1851 (14 & 15 Vict. c. 93.) (p. 5)	24	I.	
<b>PLACES OF WORSHIP SITES;</b> to amend the Places of Worship Sites Act, 1873 (36 & 37 Vict. c. 50.) (p. 3)	21	E.	
<b>POOR.</b> <i>See</i> CASUAL POOR.			
<b>POOR LAW AMENDMENT;</b> to amend the Divided Parishes and Poor Law Amendment Act, 1876 (39 & 40 Vict. c. 61.); and for other purposes (p. 46)	58	E.	
<b>POOR RATE ASSESSMENT, &amp;C.;</b> to amend the Poor Rate Assessment and Collection Act, 1869 (32 & 33 Vict. c. 41.) (p. 3)	20	E.	
— <i>See also</i> HIGHWAY RATE ASSESSMENT.			
<b>POST OFFICE;</b> to authorize the use of Reply Post Cards (p. 1)	2	U.K.	
— to amend the Post Office Acts with respect to the Conveyance of Parcels (p. 61)	74	U.K.	
— <i>See also</i> REVENUE, FRIENDLY SOCIETIES, AND NATIONAL DEBT.			
<b>PREVENTION OF CRIME;</b> for the prevention of Crime in Ireland (p. 5)	25	I.	
<b>PRISON CHARITIES;</b> to make provision respecting certain Prison Charities (p. 61)	65	E.	
<b>PROMISSORY NOTES, &amp;C.;</b> to codify the law relating to Bills of Exchange, Cheques, and Promissory Notes (p. 46)	61	U.K.	
<b>PROPERTY OF MARRIED WOMEN;</b> to consolidate and amend the Acts relating to the Property of Married Women (p. 67)	75	E. & I.	
<b>PUBLIC HEALTH (FRUIT PICKER'S LODGINGS);</b> to extend the Public Health Act, 1875 (38 & 39 Vic. c. 55), to the making of Byelaws for Fruit Pickers (p. 5)	23	E.	
<b>PUBLIC HEALTH;</b> to amend the Public Health (Scotland) Act, 1867 (30 & 31 Vic. c. 101.) (p. 2)	11	S.	
<b>PUBLIC OFFICES SITE;</b> for the acquisition of Property and the provision of new Buildings for the Admiralty and War Office (p. 13)	32	E.	
<b>PUBLIC SCHOOLS TEACHERS;</b> to regulate the procedure of School Boards in Scotland in the dismissal of Teachers (p. 3)	18	S.	
<b>PUBLIC WORKS LOANS;</b> to grant Money for the purpose of Loans by the Public Works Loan Commissioners and the Commissioners of Public Works in Ireland and the Irish Land Commission; and for other purposes relating to Loans by those Commissioners (p. 59)	62	U.K.	
<b>R</b>			
<b>REGIUS PROFESSORSHIP OF DIVINITY.</b> <i>See</i> SOMERSHAM RECTORY.			
<b>REGULATION OF THE ARMY.</b> <i>See</i> ARMY.			
<b>RENT, ARREARS OF;</b> to make provision respecting certain Arrears of Rent in Ireland (p. 34)	47	I.	
<b>REPLY POST CARDS;</b> to authorize the use of Reply Post Cards (p. 1)	2	U.K.	
<b>REPRESENTATIVE PEERS;</b> to amend the Law relating to the Election of Lords Temporal to serve in Parliament for Ireland (p. 15)	26	I.	
<b>REPRODUCTIVE LOAN FUND;</b> to amend the Irish Reproductive Loan Fund Act, 1874 (37 & 38 Vict. c. 86.) (p. 2)	16	I.	
<b>RESERVE FORCES;</b> to consolidate the Acts relating to the Reserve Forces (p. 39)	48	U.K.	
<b>RETURNS (FRIENDLY SOCIETIES).</b> <i>See</i> FRIENDLY SOCIETIES.			

REVENUE, FRIENDLY SOCIETIES, AND NATIONAL DEBT; for amending the Laws relating to Customs and Inland Revenue, and Postage and other Stamps, and for making further provision respecting the National Debt and charges payable out of the public revenue or by the Commissioners for the Reduction of the National Debt; and for other purposes. - (p. 61) 72 U.K.

RIGHTS OF COMMON; to provide for the better application of Moneys paid by way of Compensation for the compulsory acquisition of Common Lands and extinguishment of Rights of Common. - (p. 2) 15 E.

ROADS. See TURNPIKE ACTS CONTINUANCE. TURNPIKE ROADS IN SOUTH WALES.

ROYAL IRISH CONSTABULARY; to amend the Acts regulating the pay of certain officers of the Royal Irish Constabulary Force, and for other purposes connected therewith (p. 59) 69 I.

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SALMON FISHERY. See FISHERY BOARD, SCOTLAND.

SANDWICH ELECTION. See CORRUPT PRACTICES.

SCOTLAND, ACTS RELATING EXCLUSIVELY TO. See CITATION LAW AMENDMENT. CIVIL IMPRISONMENT. EDUCATIONAL ENDOWMENTS. ENTAIL LAW AMENDMENT. FISHERY BOARD. GENERAL POLICE AND IMPROVEMENT. PASSENGER VESSELS LICENCES. PUBLIC HEALTH. PUBLIC SCHOOLS. TEACHERS.

SETTLED LAND; for facilitating Sales, Leases, and other dispositions of Settled Land, and for promoting the execution of Improvements thereon. - (p. 18) 38 E. & I.

SHIPPING. See MERCHANT SHIPPING.

SITES FOR PLACES OF WORSHIP; to amend the Places of Worship Sites Act, 1873 (36 & 37 Vict. c. 50). - (p. 3) 21 E.

SLATE MINES; to amend the Law relating to the use of Gunpowder in Slate Mines (p. 1) 3 U.K.

SOLICITORS. See ATTORNEYS AND SOLICITORS.

SOMERSHAM RECTORY; for disannexing the Rectory of Somersham from the Office of Regius Professor of Divinity in the University of Cambridge, and for making better provision for the Cure of Souls within the said Rectory; and for other purposes. - (p. 71) 51 E.

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