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COMMISSION OF REAL ESTATE AGENTS.

THE real estate agent is of comparatively recent origin. Formerly, when a land-owner wished to dispose of his landed property, and desired to be free from the trouble of personally attending to its sale, he left the business in the hands of his solicitor, and the latter found the purchaser, and carried the matter to completion. Now, however, that work is very largely done through agents, whose employment it is to find purchasers for those who entrust them with the sale of real estate, or to find property for those who wish to purchase. The volume of business done by these agents is yearly increasing, and as their services are almost invariably paid for by a commission on the value of the property which changes hands, some knowledge of the law governing their commissions is desirable. We purpose, therefore, to review shortly, for the benefit of those concerned, some of the leading cases on this subject.

To entitle a real estate agent to commision for the sale of lands, or, what is perhaps more usual, and almost the same in effect, for finding a purchaser, he must be employed by the person sought to be charged. The vendor is not liable for the voluntary introduction to him, by the agent, of a purchaser: *Re Baby & G. W. R. R. Co.*, 13 Q. B. 291. But employment may be implied from the acts of the parties, if the principal adopts the acts of the agent as his own. Though there was no previous employment, such conduct will entitle the agent to his commission: *Pettigrew* v. *Doyle*, 17 U. C. C. P. 34; *Dominion Bank* v. *Knowlton*, 25 Chy. 128. Where, as sometimes happens, a sale results from the efforts of an agent, who brought the purchaser and vendor together, and was present to assist them in coming to terms; but the vendor supposed that the agent was employed by, and acting for, the purchaser, there would be no such adoption of the agent's acts as to render the vendor liable. From the *American Law Review* we find that this was decided in *Atwater* v. *Lockwood*, 39 Conn. 45. The American cases also lay down the following propositions: where a principal accepts a contract made for him by an agent, after the period for which the latter was employed had ended, the circumstances would naturally be such that the acceptance of the contract would be construed as a continuance of the agent's employment. When there is no express provision to the contrary in the agreement between them, either the principal or the agent may revoke the agency of the latter at any time; but if the agent had incurred expense, or performed labour, in seeking to sell the estate, and the agency was revoked sooner than he might reasonably be expected to effect a sale, he would have a right to be reimbursed for his outlay. In case, however, he performs services which entitle him

to commission, the revocation of his agency after the services are performed, and before the completion of the sale on which the commision is conditioned, will not deprive him of his right to that commission Wholly unsuccessful services do not entitle the agent to any remuneration.

The agent must comply with the terms of the contract in order to have a claim for commission; but if the principal alters the terms of sale in such a way as to make a literal compliance, on the part of the agent, impossible, his right to commission is not thereby defeated: *Green* v. *Hayes*, 33 L. T. N. S. 91. When, for example, the sale is to be for a fixed price, but to prevent the agent from claiming commission, a reduction is made from that price, the agent can recover if he is able to show that the buyer was ready and willing to buy at that price. An agent employed to effect a sale, who has found a purchaser able and willing to buy on the stipulated terms, has earned his commission.

Justice Cox, in the recent American case of *Ryen* v. *McGee*, 1 Am. Law Mag. 351, says: "We think that a general authority to an agent to sell real estate, is simply an authority to find a purchaser, and it is not an authority to conclude and execute a contract of sale which shall bind the principal." If, however, the agent is empowered not merely to sell, but also to sell and convey, his power extends much further, and he has authority to receive the purchase money: *Farquharson* v. *Williamson*, 1 Chy. 93. And if he is empowered to receive money as the agent of another, he must, in the ordinary course of business, be his agent to give a receipt for it: *Bedson* v. *Smith*, 10 Chy. 292. If the principal consents to an exchange instead of a cash sale, as agreed upon with the agent, he will be liable for commission on the exchange: see *Kock* v. *Emmerling*, 22 How. 69; *Morgan* v. *Mason*, 4 E. D. S. 636.

What constitutes the agent the procuring cause of the sale? "In very many cases the services performed are of the very slightest possible kind; they consist merely of bringing the vendor and purchaser together—often by a line written, or a word spoken": *Mansell* v. *Clements*, L. R. 9. C. P. 139 See, also, *Earp* v. *Cummins*, 54 Pa. St. 394. In *Lincoln* v. *McClatchie*, 36 Conn. 136, the defendant placed a house in the plaintiff's hands for sale. The defendant was to have the right to sell it himself, in which case the plaintiff was not to have any commission. G. was looking for a house for his friend B., and learned from the plaintiff that the defendant's house was for sale, not casually, but by going to find what information the plaintiff could give him. B., knowing how the information had been procured, acted on it, and without communicating with the agent, became the purchaser. It was held that the agent could recover his commission for effecting the sale, as he was the procuring cause of it.

The connection of the agent with the sale must not, however, be merely remote and indirect. The plaintiffs were employed by the defendant to sell an estate for him upon commission on the amount of such sale. The estate was divided into lots, some of which were purchased by A. The authority of the plaintiffs to sell was revoked, and their commission paid. A subsequently purchased the remainder from the defendant by private contract. It was decided that the plaintiff could not recover commission on the latter sale: *Lumley* v. *Nicholson*, 34 W. R. 716.

In the American courts, where an agent advertised land at his own expense, under an agreement to find a purchaser, and a person who had seen the advertisement directed the buyer to the owner, the latter was liable for the commission.

In *Mansell* v. *Clements*, L. R. 9 C. P. 139, the plaintiffs were instructed by the defendants to offer a leasehold house for sale, for which they were to receive a commission if they found a purchaser, but only a guinea for their trouble, if the premises were sold without their intervention. The particulars were entered in the plaintiffs' books, and they gave a few cards to view. One W., who had observed on passing that the house was for sale, but without having examined it, called at the plaintiffs' office and obtained a card to view the premises in question, amongst others, the terms being written by the plaintiffs' clerk on the back of the card. W. went to the house, thought the price (£2,000) too high, and went away; but subsequently he, without the further intervention of the plaintiffs, renewed his negotiations with a friend of the defendants, and became the purchaser for £1,700. It was held that there was evidence for the jury that W. had become the purchaser of the premises through the plaintiffs' intervention, and the latter were entitled to commission. *Semble*, that it was proper to ask the purchaser whether he would have made the purchase if he had not got the card from the plaintiff. His answer to the question was in the negative.

The rule of equity which prevents an agent from acquiring any benefit for himself, other than his commission, from any transaction in which the agency is concerned, is strictly enforced in all dealings in regard to the sale of real estate for commission. The position of the agent being one of trust, he cannot lawfully place himself in a situation where he may be tempted to act against the interests of the principal, either for his own advantage, or that of some third person. An agent had been employed to sell or exchange certain lands; this, however, he had been unable to do, and the property was shortly afterwards offered for sale by auction under a power of sale in a mortgage. The agent bid, and became the purchaser. In an action impeaching the purchase, the court (SPRAGGE, C.) declared the agent a trustee for the principal: *Thompson* v. *Holman*, 28 Chy. 35. The grantee of the Crown executed a power of attorney in favour of an agent, authorizing him to sell or mortgage all her lands in Upper Canada, and subsequently went to England, where she continued to reside until her death. During her residence there she urged the agent to dispose of the property, and in the course of the correspondence stated that she would be willing to accept £1,000 for it. The agent, in 1844, having directed the property to be sold by auction, his sister became the purchaser for £628, having authorized the person who attended to bid at the sale on her behalf, to go as high as £800 for the property. Upon a bill filed by the son and heir of the owner, in 1858, the court set aside the sale by auction as having been made at a price not warranted by the agent's authority: *Kerr* v. *Lefferty*, 7 Chy. 412.

The case of an agent acting for both parties, either on an exchange or otherwise, is not unknown, and leads to unpleasant complications. If an agent employed on commission to purchase real estate receive or agree to receive from the

vendor any remuneration or commisssion contingent on the sale of the property, he acts in contravention of his duty to his principal and forfeits his right to commission from the latter: *Kersteman* v. *King*, see *ante*, vol. 15, p. 140.

Even in the event of an exchange of lands, the agent is not entitled, under some colourable pretext, to receive remuneration from the person with whom he bargains on behalf of his principal. *Culverwell* v. *Compton et al.*, 39 C. P. 342, is a case in point. The plaintiff, a real estate agent, was employed by the defendants to sell certain land at a stipulated price. In the course of his employment, and after negotiating with an intending purchaser, an exchange was made, certain other lands being taken by the defendant as part payment. The plaintiff demanded commission from the purchaser for bringing about the exchange. This demand was acceded to by the latter, though without acknowledging the right of the plaintiff to make it, and a sum of money was paid over to the plaintiff, who, however, contended afterwards that it was not paid as a commission but as a gratuity. The decision affirmed that such a sum, whether received as commission, strictly so-called, or as a gratuity, was a profit directly made in the course of, and in connection with, the plaintiff's employment, and would, therefore, belong to the defendant as his employer. But as it appeared that the defendants knew that the plaintiff had received the money, and they made no objection to his retaining it, but with full knowledge thereof, carried on negotiations for a settlement of his claim for remuneration for his services, they could not afterwards, in an action by the plaintiffs to recover for the services to them in disposing of the land, offset his claim by the amount which he had received from the other party.

All the conditions covenanted to be performed by the agent must be fulfilled to enable him to succeed in an action for his commission. When a plaintiff claimed commission on sale of land by A to the defendant, one term of the plaintiff's contract was that A's title should be approved by the defendant's solicitor. The defendant broke off the sale of his own accord, so that the title was not submitted to the defendant's solicitor. The plaintiff could not recover without proving that the defendant's solicitor had approved A's title, or else that such a title was submitted to him as it was unreasonable for him to disapprove: *Clark* v. *Wood*, 9 Q. B. D. 276. The following case, though not relating to dealings with lands, illustrates the same general principle: A having a ship to sell, told W that if he was the means of introducing a purchaser, a commission would be paid to him. W having an offer through B, A agreed that if successful, W and B should share the commission. The first offer fell through, also a second from C through B. C, after some time, wrote direct to A, introducing another person, who eventually bought. It was held that C, as agent of the purchaser, having acted on information received from B, W was entitled to his commission, the chain of connection being sufficiently established: *Wilkinson* v. *Alston*, 48 L. J. Q. B. 733.

COMMENTS ON CURRENT ENGLISH DECISIONS.

THE *Law Reports* for May comprise 20 Q. B. D. pp. 597-721; 13 P. D. pp. 73-88; 37 Chy. D. pp. 539-721 and 13 App. Cas. pp. 1-240.

SALE OF GOODS—STOPPAGE IN TRANSITU—DELIVERY ON BOARD SHIP.

Very few of the cases in the Queen's Bench Division seem to require notice here. In *Bethell* v. *Clark*, 20 Q. B. D. 615, the Court of Appeal (Lord Esher, M.R. and Fry and Lopes, L.JJ.), affirmed the decision of the Divisional Court, 19 Q. B. D. 553, which we noted *ante* vol. 23, p. 408. In this case, goods were purchased by London merchants of a firm in Wolverhampton, and the purchasers requested the vendors to consign the goods "to the *Darling Downs*, to Melbourne, loading in the East India Docks." The goods were delivered to the carriers to be forwarded to the ship. Subsequently the vendors, having heard of the purchasers' insolvency, notified the carriers not to deliver the goods, and the carriers notified the lightermen, but too late to prevent the shipment of the goods on the *Darling Downs*. The ship sailed with the goods on board for Melbourne, but before she arrived the vendors claimed the goods from the ship-owners as their property; and it was held that the transit was not at an end till the goods reached Melbourne, and, therefore, that the vendors had the right to stop them in transitu, and that the notice to the ship-owners was in time. The result of the decision of the Court of Appeal seems to be summed up concisely in the following passage from the judgment of Lopes, L.J., viz.:—

"When a place is fixed by the directions given by the buyer to the seller as the ultimate destination of the goods, and, *a fortiori* if there is an express stipulation as to their destination in the contract of sale, the transit is not at an end until the goods reach that place."

LIBEL—PUBLICATION—COMMUNICATION OF LIBEL BY HUSBAND TO WIFE—DEFACING WRITTEN CHARACTER OF A SERVANT—DAMAGES.

Wennak v. *Morgan*, 20 Q. B. D. 635, was an action against a husband and wife for libel and for malicious damage to a document. The injury complained of consisted in the defendant having written upon a written character, on the faith of which he had employed the plaintiff as a domestic servant, a statement to the effect that the plaintiff had been dismissed from the defendant's employment for staying out at night without leave. The character had been handed to the plaintiff, on his leaving the defendant's employment, by the defendant's wife. At the trial, Mathew, J., held that the defamatory matter had not been published by the husband handing it to his wife, and, therefore, as regards the alleged libel the action failed for want of proof of publication, and this view was sustained by the Divisional Court (Huddleston, B., and Manisty, J.). And as regards the injury to the testimonial of character, Mathew, J., held that the plaintiff could only recover nominal damages, and a verdict was entered for one shilling; but on this point the Divisional Court overruled him, holding that it should be left to the jury to say whether the character had been left with the defendant so as to pass the

property in it, or whether it had been left with him, merely on deposit to be returned to the plaintiff; and secondly, that the amount of damages was for the jury to assess, and that they would, if they found the injury had been maliciously done, be justified in giving substantial damages. A new trial on this point was therefore ordered.

None of the other cases in the Queen's Bench Division, and none of those in the Probate Division, appear to require notice here.

COMPANY—MISREPRESENTATION IN PROSPECTUS—LEGAL FRAUD—DECEIT—MEASURE OF DAMAGES.

Proceeding now to the cases in the Chancery Division, the important case of *Peek* v. *Derry*, 37 Chy. D. 541, demands attention. This was an action brought by a shareholder, against the directors of a tramway company, to recover damages for alleged fraudulent misrepresentations in a prospectus, whereby the plaintiff had been induced to take shares in the company The alleged misrepresentation consisted in its having been stated in the prospectus, that the company had been authorized, by special Act of Parliament, to use steam or other mechanical motive power, instead of horses. The Act referred to, however, merely authorized the use of steam or other mechanical power with the consent of the Board of Trade, which body, on subsequently being applied to, refused permission to use steam, except over a small portion of the road; and the result was the company was unable to carry on its proposed undertaking, and was wound up. Stirling, J., being of the opinion that though the representation in question was untrue, yet, if the true state of facts had been set forth, the plaintiff would probably have bought the shares all the same, dismissed the action. But the Court of Appeal reversed this decision holding that it was enough to entitle the plaintiff to recover, that the representation was a material and an untrue one, and that it had some, though not the sole, influence, in inducing him to buy the shares. The measure of damages was held to be, not the difference between the price paid for, and the market value of, the shares, at the time of the purchase, because the market value might thus have been inflated by reason of the misrepresentations in the prospectus, but the difference between the price paid and the real value of the shares at the time of the purchase, judged by the light of subsequent events, including the result of the winding up of the company. This is likely to become a leading case on the effect of misrepresentations in prospectuses, and generally in actions of deceit.

WILL—CONSTRUCTION—RESIDUARY GIFT TO CHARITIES—DIRECTION TO PAY OUT OF PURE PERSONALTY.

In re Arnold, Ravenscroft v. *Workman*, 37 Chy. D. 637, is a case upon the construction of a will, whereby the testatrix gave all her real and personal estate to trustees, upon trust, to convert, and out of the proceeds pay her debts, funeral and testamentary expenses, and certain legacies to private individuals, and directed that all such should be primarily payable out of the proceeds of the sale of her "real and leasehold estate, if any." And she directed the trustees to

divide the residue into three parts, and pay the same to certain charities, and directed that "the foregoing charitable legacies" be paid "exclusively" out of such part of her pure personal estate as was legally applicable for that purpose. The testator had no real or leasehold estate in England, but was possessed of land in the Cape of Good Hope, the value of which was less than the amount of the general legacies, and of pure and impure personalty. It was held by Kay, J., that the direction as to the payment of the charitable legacies was equivalent to a direction that the residue should consist exclusively of pure personalty, and therefore operated as a direction to marshal the assets in favour of the charities; that the general legacies were primarily payable out of the land in the colony, and that the debts and funeral and testamentary expenses, and costs of action, and the unpaid portion of the general legacies, must be paid in the first place out of the impure personalty, so as to leave the pure personalty, as far as possible, to constitute the residue.

SUPPOSED LUNATIC—INTERIM RECEIVER.

In re Pountain, 37 Chy. D. 609, pending an application for an inquisition as to the lunacy of a supposed lunatic, the court appointed a receiver *ex parte* of the estate of the supposed lunatic, the case being urgent.

PRACTICE—ADDING PERSON AS PLAINTIFF—ORD. 16, R. 2—(ONT. RULE 103 *b*.)

In Besley v. *Besley*, 37 Chy. D. 64, a *cestui que trust* sought to add his trustee as a co-plaintiff with himself, the trustee refused to consent to be added, and it was held by North, J., that the case was no exception to Ord. 16, r. 2 (Ont. rule 103 *b*), which requires the consent of a party sought to be added as a plaintiff to be first obtained.

SIMPLE CONTRACT DEBT—STATUTE OF LIMITATIONS—ACKNOWLEDGMENT—PAYMENT OF INTEREST BY DEVISEE FOR LIFE.

A new point was raised *In re Hollingshead, Hollingshead* v. *Webster*, 37 Chy. D. 651, as to whether payment of interest on a simple contract debt by a devisee of realty for life, would keep the debt alive as against the remaindermen, the debt in question not being charged upon the realty. The question was further complicated by the fact that the devisee for life was also the executrix of the testator's estate. Mr. Justice Chitty held that the payments were made in her capacity of tenant for life, and that the effect of the payment was to keep alive the claim of the creditor as against the remainderman. The following is the rule laid down by Chitty, J., at p. 659: "The right principle to adopt is, that so far as the real estate is concerned, there is no one else but the tenant for life to pay the interest; that in making such payment he represents the whole estate; that the payment is an admission of the liability to the debt affecting the real estate of which he is in possession; it is a sufficient evidence of a continuance of the testator's contract to pay the debt. For (if it be necessary to have recourse to the somewhat subtle doctrine of a promise to pay), it is a promise to pay out of

such real estate, which he, as the person in possession of such real estate, is competent to give on behalf of the real assets generally, and so as to bind those who take in remainder."

WILL—CONSTRUCTION—BEQUEST OF LEASEHOLD—CONTRACT BY TESTATOR TO PURCHASE REVERSION—LIABILITY OF LEGATEE OF LEASHOLD TO PAY PURCHASE MONEY.

In re Kershaw, Drake v. *Kershaw*, 37 Chy. D. 674, draws one's attention to the fact that *Locke King's Act* (R. S. O. c. 109, s. 37), as originally passed, did not apply to leaseholds, and by 40 & 41 Vict. c. 34, s. 1, this defect has been remedied in England, but no such amendment has as yet been made to the Ontario Act.

WILL—MORTGAGE DEBT—LOCKE KING'S ACT (R. S. O. c. 109, s. 37—CONTRARY INTENTION.

In re Fleck, Colston v. *Roberts*, 37 Chy. D. 677, is another case upon the construction of *Locke King's Act* (R. S. O. c. 109, s. 37). In this case, a testator directed his private debts to be paid out of the proceeds of certain life policies; he devised his real estate in trust and bequeathed his residue to his son, subject to the payment of his trade debts; after the date of his will, he deposited the title deeds of his real estate with his bankers, to secure an overdrawn bank account, and the question was whether the devisee of the real estate was bound to satisfy this charge thereon, and North, J., was of opinion that he was not. His reasoning may be gathered from the following passage: "What the testator has done is to provide very carefully for the payment of different debts out of different parts of his estate. He says that his private debts are to be paid out of the proceeds of certain policies; and further on in his will he disposes of his residue 'after and subject to the bequests and provisions in regard thereto hereinbefore contained, and to the payment of my trade debts (which I hereby declare shall be a charge on my personal estate).' I take that to be a clear direction that the trade debts are to be paid out of a particular fund; and that it is only the surplus beyond that sum which is to go for the benefit of the son."

PARENT AND CHILD—ADVANCEMENT—CONTRACT FOR PURCHASE BY SON—PAYMENT BY PARENT OF PART OF PURCHASE MONEY—PROMISSORY NOTES OF PARENT FOR PART OF PURCHASE MONEY.

In re Whitehouse, Whitehouse v. *Edwards*, 37 Chy. D. 683, a son of a testator entered into a contract for the purchase of a business, part of the purchase money was paid down by the testator, who was no party to the contract, and for the residue, the joint promissory notes of the son and the testator were given to the vendor. The testator's will provided that all sums of money advanced to his sons in his lifetime should be brought into account before they should participate under his will. After the testator's death, his executors under pressure from the vendor paid the promissory notes. It was held by Stirling, J., that the purchase of the business created no resulting trust in favour of the testator, but that the payment on account of the purchase money therefor made by the testator, was an advancement to the son, but that the subsequent payments of the notes by

his executors were not in the nature of "advancements" on account of the son's share, but that as to these latter payments the executors were entitled either to claim repayment from the son on the ground that the testator was merely liable on the notes as surety for the sons, or were entitled to stand in the place of the vendor, whose debt they had paid, and that the executors were entitled to elect which of these two positions they would take. If they elected to stand upon the original contract of principal and surety, they would be entitled to retain the amounts paid on the notes out of the income of the share coming to the son; but if they elected to stand in the place of the vendor, they would have to proceed against the son's estate, which he had assigned for the benefit of creditors, and would be bound by the proof of the claim made by the vendor and the release which the vendor, along with his other creditors, had given the son. The share bequeathed by the testator to the son was to be held in trust to pay only the income to him for life, without power of anticipation, and after his death to hold the capital and income of his share in trust for his children, and the question arose whether the sum "advanced" by the testator could be deducted from the corpus or only from the income; and the learned judge held that the word "share" meant not the income of the fund given to the son, but the corpus of the share itself, and that the "advancement" must be deducted from the corpus.

JOINT STOCK COMPANY—WINDING UP—CONTRIBUTORY.

In re Hall, 37 Chy. D. 712, was an application to place the holders of certain shares in a joint stock company on the list of contributories, under the following circumstances: In October, 1881, the company was formed, as stated in the articles of association, for the purpose of buying the business of A. W. H. & Co., for *inter alia* a sum to be paid in fully paid up shares. One Neilson, who was A. W. H.'s solicitor, prepared the articles of association, and to some extent acted as solicitor for the company. The shares were duly allotted, and certificates for them were issued to A. W. H., stating that the full amount had been paid up thereon; but the contract, under which the shares were issued, was not registered as required by the Companies Act. A. W. H., being indebted to a lady, subsequently, to secure the indebtedness, transferred some of these shares to the trustees of her marriage settlement, one of these trustees being Neilson, who prepared the transfer, but according to the evidence Neilson did not know that the particular shares transferred were vendor's shares, and the other trustees relied on statements made by him, that the shares were fully paid up, the company was afterwards ordered to be wound up, and the present application was against the trustees of the settlement; and Stirling, J., held, following *Berkinshaw* v. *Nicolls*, 3 App. Cas. 1004, that as the certificates of the shares contained a statement by the company, that such shares were fully paid up, the onus of proving that the trustees had notice that they were not fully paid up lay on the liquidator, and that Neilson had not been guilty of gross and culpable negligence in omitting to enquire whether the shares in question were vendor's shares, or whether the contract had been duly registered, and consequently that the trustees were not liable for calls.

WILL—CONSTRUCTION—BEQUEST TO "CHILDREN"—ILLEGITIMATE CHILDREN—"REPRESENTATIVES."

In re Horner, Eagleton v. *Horner*, 37 Chy. D. 695, is an illustration of the exception to the general rule that, under a bequest to children, illegitimate children are not entitled to take. In this case the testator bequeathed a fund "to my sister Charlotte, the wife of Thomas H.," during her life, and after her death to divide the share among all her "children" who should be living at her death, and the "representatives" of such of them as should have died in her lifetime, having attained twenty-one. Charlotte never was the wife of Thomas H., but for twenty-three years prior to the will she had, to the testator's knowledge, cohabited with him, and had had issue four children by him, two of whom were living at the date of the will, and at that date she was presumably past child-bearing. Thomas H., during all that time, and up to his death, had a lawful wife who survived him. The testator recognized the illegitimate children of his sister Charlotte as his nephews and nieces. Stirling, J. held that the testator in describing his sister Charlotte as the "wife" of Thomas H., when he knew she was not so, and in using correlatively with that expression the term "children" to describe the offspring of a woman whom he knew not to be lawfully married, had shown that he did not use the word "children" in its strict legal sense, and that the illegitimate children were entitled to the gift. He also held that the word "representatives" in the gift must be construed to mean either "the next of kin," or "descendants" of the deceased children, and not their "executors or administrators."

DEED OF ONE PARTNER, WHEN IT BINDS THE FIRM.

I. General Rule Requiring Special Authority.
II. Parol or Verbal Authority, when Sufficient.
III. Previous Assent or Subsequent Ratification.
IV. Instrument Equally Operative Without a Seal.
V. Partners who Executed Bound, though Others not.
VI. The Scope and Extent of the General Rule.
VII. Cases Exhibiting its Limits and Exceptions.

I. *General Rule Requiring Special Authority.*—It is a well settled, though technical, rule of the common law, that one partner cannot bind his copartner by the execution of a deed,* unless his authority to do so is itself under seal.† In one case,‡ it was thought that if the terms of the partnership agreement

*Anthony *v.* Butler, 13 Pet. (U. S.) 423.

†Donaldson *v.* Kendall, 2 Ga. Dec. 227; Trimble *v.* Coons, 2 A. K. Marsh. (Ky.) 375; Snyder *v.* May, 19 Pa. St. 235; Napier *v.* Catron, 2 Humph. (Tenn.) 534; Lambden *v.* Sharp, 9 *Id.* 224; Morris *v.* Jones, 4 Harr. (Del.) 428.

‡Blackburn *v.* McCallister, Peck (Tenn.) 371.

authorized it, one partner could bind the firm by a sealed instrument executed in its name.* But Lord Kenyon, in a case where it was contended that the partnership having been instituted by writing under seal, that fact gave authority to each partner to bind the others by deed, said: "But I deny that consequence; . . . for a general partnership agreement, though under seal, does not authorize the partners to execute deeds for each other, unless a particular power be given for that purpose. This would be a most alarming doctrine to hold out to the mercantile world; if one partner could bind the others by such a deed as the present, it would extend to the case of mortgages, and would enable a partner to give to a favourite creditor a real lien on the estates of the other partners"† The conveyance, as well as the descent of realty is regulated by statute, and is not affected by any general law of partnership, wherefore the acting partner of a mercantile partnership cannot transfer the real property of the firm in the same manner as its personal property.‡ For the same reason, one partner cannot execute a bond under seal, in the partnership name, so as to bind the other partner;§ and the plea of *non est factum* will be sustained in an action against the firm on a bond so executed, even though it was executed under an authority from the copartner, not under seal, to execute a note in his name.‖ In short, at common law, one partner cannot do any act under seal to affect the interests of his copartner, unless it is to release a debt.¶

II. *Parol or Verbal Authority, when Sufficient.*—In a well-considered case, decided in the Superior Court of the City of New York,** Jones, C.J., after reviewing the English and American cases on this subject, says: "The principle that a partner cannot, by virtue of the authority he derives from the relation of copartnership, bind his copartner by deed, has been too long settled to be now shaken. It is the technical rule of the common law applicable to deeds which has been engrafted into the commercial law system of the law of partnership. . . . The reasons for the restrictions are not very satisfactory, for all the mischiefs which the expositors of the rule ascribe to the authority of members of a copartnership to seal for their copartners, may flow almost as extensively, and nearly with equal facility, from the use of the name and signature of the copartnership. The dangers of allowing the use of a seal to the members of a copartnership are supposed to consist in these two attributes of the seal: that it imports a consideration, and that it is competent to convey absolutely, or to

* In Napier *v.* Catron, however, cited in the preceding note, where in the agreement of partnership, under seal, each partner was authorized to bind his copartners by deed, and such agreement expired by its own limitation, and was continued by a written agreement, not under seal, it was held that the continuance did not carry with it the power, and that a mortgage of real estate, executed by one of the firm to secure the partnership, did not bind the other members.

† Harrison *v.* Jackson, 7 T. R. 207, 210.

‡ Platt *v.* Oliver, 3 McLean (U. S.), 27; affirmed on other grounds, 3 How. 333.

§ Gerard *v.* Basse, 1 Dall. (U. S.) 119; Hart *v.* Withers, 2 Penn. (N. J.) 285; Button *v.* Hampson, Wright (Ohio), 93; McDonald *v.* Eggleston, 26 Vt. 154; Pierson *v.* Hooker, 3 Johns. (N. Y.) 68.

‖ Henry County *v.* Gates, 26 Mo. 315.

¶ McBride *v.* Hagan, 1 Wend. (N. Y.) 326.

** Gram *v.* Seton, 1 Hall (N. Y.), 262.

charge and encumber real estate. But negotiable paper, by which the partner may bind the firm, equally imports a consideration with a seal; and, upon general principles, the use of the seal of the copartner, equally with the signature of the copartnership, would, if permitted, be restricted to copartnership purposes and copartnership operations solely, and the joint deed of the copartners, executed by the present for the absent members, be held competent to convey or to encumber the copartnership property alone, and to have no operation upon the private funds or separate estate of the copartners. With these restrictions upon the use and operation of the seal, is not the power of a partner to bind his copartner and to charge and encumber his estate as great and as mischievous, without the authority to use the seal of the absent partner, as it would be with that authority? Those powers undeniably place the fortune of the members of a general copartnership, to a great degree, at the disposal of any one of the copartners; but it is necessary to the beneficial management of the joint concern that extensive powers should be vested in the members who compose it; and when the copartners live remotely from each other, their joint business concerns cannot be advantageously conducted or carried on without a latitude of authority in each which is inconsistent with the perfect safety of the other copartners. It cripples the operation of a partner, whose distant residence precludes a personal co-operation, to deny him the use of the seal of his copartner for instruments requiring it, and which the exigencies of their joint concerns render expedient or beneficial to them. He must be clothed with the power to execute deeds for his copartners when necessarily required for the purposes of the trade; and if that authority is not inherent in the copartnership, it must be conferred by letter of attorney, and it must be general, or it will be inadequate to the ends of its creation. A copartnership especially which is employed in foreign trade, and has occasion to employ ships for the transportation of merchandise, or to borrow money on respondentia, if its members are dispersed, as is often the case, must be seriously embarrassed in its operations by the application of the rule that requires every copartner who is to be bound by the charter party or the respondentia bond, to seal it personally, or by attorney duly constituted for that specific purpose, with its own seal. Similar difficulties would arise out of the same rule when the operations of the house required the copartnership to execute other deeds. Can it then be that this stern rule of the common law, which has its appropriate sphere of action, and a most salutary operation on those relations of society where men not otherwise connected are the owners of undivided property, is to be applied in all its force, and to govern with unbending severity in the concerns of copartners whose intimate connection and mutual interest require such large power and ample confidence in the integrity and prudence of each other, to give to their operations efficiency, vigour and success? The pressure of these considerations has induced a relaxation of the common-law rule to adapt it to the exigencies of commercial copartnerships, and other associations of individuals operating with joint funds for the common benefit. The rule itself remains, but the restrictions it imposes are qualified by the application of other

principles. The general authority of a partner, for example, derived from his relation to his copartners, does not empower him to seal an instrument for them, so as to make it binding upon them without their assent and against their will. This is the fair import of the modern cases, and is, I apprehend, the principle courts are disposed to apply to the use of a seal in joint contracts for copartnership purposes. An absent partner is not bound by a deed executed for him by his copartners, without his previous authority or permission, or his subsequent assent and adoption. But the previous authority or permission of one partner to another to seal for him, or his subsequent adoption of the seal as his own, will impart efficacy to the instrument as his deed; and that previous authority or subsequent adoption may be by parol. These are the results which I deduce from the judicial decisions, especially those of our own courts on the subject; and, if I am correct in my deduction, the conclusion must be favourable to the validity of this charter party as the deed of both the partners."* Thus it has been held that an attachment bond signed and sealed by one partner in the firm name, and authorized or ratified by parol, is valid.† In Alabama, however, a deed by one partner in the firm-name, conveys only his interest, though subsequently the other partners orally assent.‡

III. *Previous Assent or Subsequent Ratification.*—The result of an examination of the cases undoubtedly is, that the great weight of authority, in this country, is to the effect that, while one partner cannot bind his associates by deed by virtue of the contract of partnership, yet where he executes a sealed instrument in the name of the firm, under a prior verbal authority, or subsequent verbal ratification, it is binding on the firm,§ and that the assent of the other partner, or partners, may be implied from circumstances.‖

But the previous authorization or assent, or the subsequent ratification, must be proved by him who seeks to enforce the instrument against the other partner,¶

*See, also, to the effect that the authorization may be by parol, Grady *v.* Robinson, 28 Ala. 289; Herbert *v.* Hanrick, 16 Ala. 581; Drumwright *v.* Philpot, 16 Ga. 424; Haynes *v.* Seachrest, 13 Iowa, 455; Pike *v.* Bacon, 20 Me. 280; Cady *v.* Sheperd, 11 Pick. (Mass.) 400; Clement *v.* Brush, 3 Johns. (N. Y.) Cas. 180; Swan *v.* Stedman, 4 Metc. (Mass.) 548; Fox *v.* Norton, 9 Mich. 207; Gwinn *v.* Rooker, 24 Mo. 290; Smith *v.* Kerr, 3 N. Y. 144; Bond *v.* Aitkin, 6 Watts & S. (Pa.) 165; Johns. *v.* Rattin, 30 Pa. St. 84; Lowery *v.* Drew, 18 Tex. 786; Wilson *v.* Hunter, 14 Wis. 683.

† Jeffreys *v.* Coleman, 20 Fla. 536.

‡ Bumson *v.* Morgan, 76 Ala. 593.

§ Grady *v.* Robinson, 23 Ala. 289; Herbert *v.* Hanrick, 16 Ala. 581; Gibson *v.* Wardon, 14 Wall. (U. S.) 244; Drumwright *v.* Philpot, 16 Ga. 424; Haynes *v.* Seachrest, 13 Iowa, 455; Ely *v.* Hair, 16 B. Mon. (Ky.) 230; Pike *v.* Bacon, 20 Me. 280; Cady *v.* Sheperd, 11 Pick. (Mass.) 400; Clement *v.* Brush, 3 Johns. (N. Y.) Cas. 180; Swan *v.* Stedman, 4 Metc. (Mass.) 548; Fox *v.* Norton, 9 Mich. 207; Gwinn *v.* Booker, 24 Mo. 290; Smith *v.* Kerr, 3 N. Y. 144; Bond *v.* Atkins, 6 Watts & S. (Pa.) 165; Johns. *v.* Rattin, 30 Pa. St. 84; Lowery *v.* Drew, 18 Tex. 786; Wilson *v.* Hunter, 14 Wis. 683.

‖ Person *v.* Carter, 3 Murph. (N. C.) 321; Layton *v.* Hastings, 2 Harr. (Del.) 147; Doe *v.* Tupper, 4 Sm. & M. (Miss.) 261; Morse *v.* Bellows, 7 N. H. 549; Lucas *v.* Saunders, 1 McMull. (S. C.) 311; Lee *v.* Onstott, 1 Ark. 206; Montgomery *v.* Boon, 2 B. Mon. (Ky.) 244; M'Cart. *v.* Lewis, *Id.* 267; Cummings *v.* Carsily, 5 *Id.* 47; Bentrin *v.* Zierlien, 4 Mo. 417; Turbeville *v.* Ryan, 1 Humph. (Tenn.) 113.

¶ Shirley *v.* Fearne, 33 Miss. 653.

for otherwise the deed will only pass the individual interest of the partner who executes it.*

It would seem, however, that a declaration alleging that the partners "made their certain writing obligatory signed by their firm-name," "and sealed with their seal," etc., is good on demurrer; if it was the deed of but one, it must be shown by plea on the part of the partner who did not execute the bond.†

The instrument may also become binding on the other partners on the principles of estoppel and ratification,‡ and the bringing of an action upon it, by the firm, is an adoption of the instrument, and the defendant cannot object that it is not the deed of the partnership.§

Again, such a deed is binding on the partner who does not execute it, if he is present and sees the other partner execute it and does not object; his acquiescence, with full knowledge of the act done, amounts to consent.‖

IV. *Instrument Equally Operative Without a Seal.*—Where an instrument executed by one partner, in the firm-name, and sealed, would be equally operative without a seal, the rule does not apply, *e.g.*, in the case of a sealed bill of sale of partnership property.¶ Thus, an eminent English jurist, in a bankruptcy case, remarked: "As to the objection that the security, being effected by a deed executed by one partner, could not bind the firm, it might be true that the instrument would not take effect as the deed of the firm; but the transaction itself was one within the authority of the partner, and the circumstance of a deed being executed would not invalidate the contract."** Accordingly, one partner

* Walton *v.* Tosten, 49 Miss. 569. See, however, Kasson *v.* Brocker (47 Wis. 79), where, on an appeal from the disallowance of a claim of partners in their firm-name, the appeal bond was executed in the firm-name, and the court held that the presumption was, in the absence of all proof, that it was so executed as to bind both partners, and the mode of execution was approved. *Contra*, Butterfield *v.* Hemsley, 14 Gray (Mass.) 226.

† Massey *v.* Pike, 20 Ark. 92.

‡ Mann *v.* Etna Ins. Co., 40 Wis. 549; Baldwin *v.* Richardson, 33 Tex. 16.

§ Dodge *v.* M'Kay, 4 Ala. 346.

‖ Kasson *v.* Brocker, 1 N. W. Rep. (N. S.) 418; Anthony *v.* Butler, 13 Pet. (U. S.) 423; Baldwin *v.* Richardson, 33 Tex. 16; Bentrin *v.* Zierlien, 4 Mo. 417; Blackburn *v.* McCallister, Peck (Tenn.), 371; Button *v.* Hampson, Wright (Ohio), 93; Cummins *v.* Cassidy, 5 B. Mon. (Ky.) 74; Day *v.* Lafferty, 4 Ark. 450; Doe *v.* Tupper, 12 Miss. 261; Donaldson *v.* Kendell, 2 Ga. Dec. 227; Fitchburn *v.* Boyer, 5 Watts (Pa.), 159; Fleming *v.* Dunbar, 2 Hill (S. C.), 532; Gerard *v.* Basse, 1 Dall. (U. S.) 119; Hart *v.* Withers, 2 N. J. L. 285; Henderson *v.* Barbee, 6 Blackf. (Ind.) 26; Hodson *v.* Porter, 2 Colo. 224; James *v.* Bostwick, Wright (Ohio), 142; Lambden *v.* Sharp, 9 Humph. (Tenn.) 224; Layton *v.* Hastings, 2 Harr. (Del.) 147; Lee *v.* Onstott, 1 Ark. 206; Little *v.* Hazard, 5 Harr. (Del.) 191; Lucas *v.* Saunders, 1 McMull. (S. C.) 311; Mackay *v.* Bloodgood, 9 Johns. (N. Y.) 285; M'Cart. *v.* Lewis, *Id.* 267; McDonald *v.* Eggleston, 26 Vt. 154; Modisett *v.* Lindley, 2 Blackf. (Ind.) 119; Montgomery *v.* Boone, 2 B. Mon. (Ky.) 244; Morris *v.* Jones, 4 Harr. (Del.) 428; Morse *v.* Bellowes, 7 N. H. 550; Napier *v.* Catron, 2 Humph. (Tenn.) 534; Person *v.* Carter, 3 Murph. (N. C.) 321; Pettes *v.* Bloomer, 21 How. (N. Y.) Pr. 317; Pierson *v.* Hooker, 3 Johns. (N. Y.) 68; Posey *v.* Bullitt, 1 *Id.* 99; Price *v.* Alexander, 2 Gr. (Iowa), 427; Snyder *v.* May, 19 Pa. St. 235; Trimble *v.* Coons, 2 A. K. Marsh. (Ky.) 375; Turbeville *v.* Ryan, 1 Humph. (Tenn.) 113; United States *v.* Astley, 3 Wash. (U. S.) 508.

¶ Patten *v.* Kavanagh, 11 Daly (N. Y.), 348; S. P., Keller *v.* West. 39 Hun (N. Y.), 348; Everit *v.* Strong, 5 Hill (N. Y.), 163.

** *Ex parte* Bosanquet, DeGex, 432.

may transfer personal property of the firm in payment of a *bona fide* firm debt, even though he do so by deed under seal.* In *Forkner* v. *Stuart*,† where one partner, in the absence of his copartner, executed a bill of sale, under seal, of all the partnership effects, the sale being *bona fide*, and for the full value of the property, and made to pay a pressing debt of the absent partner, it was held that the sale was binding upon the absent partner, and passed the whole title of the firm to the property. So, where a partner executes a bond in the name of the firm, and, upon being informed that it did not bind the partners, with the consent of the obligor, removes the seal, and re-delivers it, with the intent to bind the company, it is effectual as their promissory note.‡

Other well-considered cases, however, hold that a bond given in the partnership name, by one of the partners, for a simple contract debt due by the firm, does not extinguish the original debt as to the firm.§ So also, it has been decided that a sealed lease executed by one partner only, in the name of the partnership, though for a term which required no seal, does not pass the estate of the other partners, without evidence of previous authority or subsequent ratification by them.‖

The true rule is thus stated by Chief Justice Marshall in *Anderson* v. *Tompkins*:¶ "It is said this transfer of property is by a deed, and that one partner has no right to bind another by deed. For this a case is cited which, I believe, has never been questioned in England or in this country.** I am not, and never have been satisfied with the extent to which this doctrine has been carried. The particular point decided in it is certainly to be sustained on technical reasoning, and perhaps ought not to be controverted. I do not mean to controvert it. That was an action of covenant on a deed; and if the instrument was not the deed of the defendants, the action could not be sustained. It was decided not to be the deed of the defendants, and I submit to the decision. No action can be sustained against the partner, who has not executed the instrument, on the deed of his copartner. No action can be sustained against the partner which rests on the validity of such a deed, as to the person who has not executed it. This principle is settled. But I cannot admit its application in a case where the property may be transferred by delivery, under a parol contract, where the right of sale is absolute, and the change of property is consummated by delivery. I cannot admit that a sale so consummated, is annulled by the circumstance that it is attested by, or that the trusts under which it is made are described in a deed. No case goes thus far, and I think such a decision could not be sustained on principle."

V. *Partner who Executed Bound, though Others not.*—When one partner, without the consent of his copartner, gives the security of the firm, under seal,

* Hodges *v.* Harris, 6 Pick. (Mass.) 362.

† 6 Gratt. (Va.) 197.

‡ Horton *v.* Child, 4 Dev. (N. C.) L. 460.

§ Flemming *v.* Lawhorn, Dudley (S. C.), 360; Dickinson *v.* Legare, 1 Dessau. (S. C.) 537; Bond *v.* Aitkin, 6 Watts & S. (Pa.) 165. But see Jacobs *v.* M'Bee, 2 McMull. (S. C.) 348.

‖ Dillon *v.* Brown, 11 Gray (Mass.), 179.

¶ Brock. (U. S.) 456, 462.

** Harrison *v.* Jackson, 7 T. R. 207.

for a partnership debt, and the creditor afterwards releases the copartner from all partnership debts, the simple debt being merged in the specialty, the copartner is released, but the specialty still binds the partner who signed the partnership name.* Thus, where two of three partners were present, and one wrote and the other sealed a note, given in the name of the firm, it is competent to go to the jury on the joint execution. It is not material to the liability of the two that they used the name of the firm without the third partner's assent.† Again, partners are tenants in common of land owned by the firm, and a deed by all the firm, but executed by one partner only, is effectual to convey that partner's undivided interest.‡ Such a conveyance, by one member of a solvent firm, of his undivided interest in the real estate of the partnership, to a stranger, whether made upon a sale, or by way of payment of his individual debt, is valid as against the copartners; and they cannot maintain an action to have it set aside, on the ground that it was made without their consent and impairs the credit of the firm.§ But in *Fisher* v. *Perden*,‖ where, upon the face of the instrument, it appeared that one signed, sealed and delivered it, in order to bind the firm of which he was a member, and not as his own individual deed, it was held that he was not individually bound. The case, however, in the opinion of the present writer, is not i accord with the trend of the well-considered adjudications.

VI. *The Scope and Extent of the General Rule.*—This rule, of common law origin and still continuing vigour, prevents one partner from binding the other to execute a deed with covenants of a particular kind, as of warranty.¶ Even a surviving partner cannot, alone, convey realty belonging to the firm he represents.** Again, a bond given for the purpose of obtaining a dissolution of an attachment of partnership property, and executed in the name of the firm, by only one of two partners named as principals therein, cannot be enforced against a surety without evidence of the assent of the other partner to its execution.†† And where one partner signs the partnership name to a forthcoming bond, in a case in which the partnership is defendant, the bond is void as to the partners not signing it.‡‡ So, also, one partner cannot bind his copartner by warrant of attorney, under seal, in the firm-name, without authority;§§ or by executing an appeal bond for both, under his general authority.‖‖

VII. *Cases of Exhibiting its Limits and Exceptions.*—The adjudications upon this subject are not, however, so harmonious as not to leave the question still, to some extent, an open one in some few jurisdictions. Thus it has been held that one partner may execute a power of attorney,¶¶ or a charter party under seal,***

* Clement *v.* Brush, 3 Johns. (N. Y.) Cas. 180; S. P., Williams *v.* Hodgson, 2 Harr. & J. (Md.) 474.

† Potter *v.* McCoy, 26 Pa. St. 458.

‡ Jackson *v.* Standford, 19 Ga. 14; Layton *v.* Hastings, 2 Harr. (Del.) 147; Jones *v.* Neale, 2 Patt. & H. (Va.) 339.

§ Treadwell *v.* Williams, 9 Bosw. (N. Y.) 649.

‖ 7 Jones (N. C.) L. 483.

¶ Ruffner *v.* McConnell, 17 Ill. 212.

** Galbraith *v.* Gedge, 16 B. Mon. (Ky.) 631.

†† Russell *v.* Annable, 109 Mass. 72.

‡‡ Doe *v.* Tupper, 4 Sm. & M. (Miss.) 261; Turbeville *v.* Ryan, 1 Humph. (Tenn.) 113.

§§ Ellis *v.* Ellis, 18 Vr. (N. J.) 69.

‖‖ People *v.* Judges of Dutchess, 5 Cow. (N. Y.) 34; Charman *v.* McLane, 1 Oreg. 339.

¶¶ *Re* Barrett, 2 Hughes (U. S.), 444.

*** Straffin *v.* Newell, T. U. P. Charlt. (Ga.) 163.

or a deed of composition, or release of a debt due the firm,* so as to bind his copartner, or the firm to which he belongs. So, it is said that a bond by two of three partners, to one of them as obligee, may be obligatory on the third partner;† that a bond given by one partner for the rent of real estate leased for the use of the partnership, is properly payable out of the partnership effects; and having been so paid, creditors of another partner cannot be substituted to the rights of the landlord on the bond;‡ that one partner, by an instrument under seal, may authorize a third person to discharge a debt due to the firm;§ and that under urgent circumstances, one partner, to prevent the sacrifice of the firm's real estate, may give a deed of trust thereof to secure a firm debt.‖

In *Durant* v. *Rogers*,¶ the property of a firm was levied upon under a judgment against a portion only of the partners, for a trespass committed by the active and managing partners, who, to save the property, procured plaintiff to unite with them in an appeal bond, whereby he was compelled to pay the judgment. The court held that each member of the firm became liable to him for the amount so paid to their use, whether they all united in the appeal or not, and that no proof of a promise to pay on the part of one of them not sued, and who did not join in the appeal, was necessary, as the law implied a promise, and that in such case the validity of the judgment appealed from was wholly immaterial.

In *Murrell* v. *Murrell*,** it is decided that one partner may convey property of the firm to his wife, in satisfaction of her claim for her paraphernal funds held by the firm.

And in *Gates* v. *Pollock*,†† where one of two partners, who had entered into a contract to do a job of work according to specifications, executed an instrument under seal, certifying that the contract was forfeited on their part, and that there had been a settlement and payment to him of a certain sum as a "present," it was held that such instrument amounted to a release, and took away the cause of action as to both partners. This last case, however, is within the rule, being simply the release of a debt due the firm.‡‡—*American Law Review.*

* Bruen v. Marquand, 17 Johns. (N. Y.) 58; Smith v. Stone, 4 Gill & J. (Md.) 310; Pierson v. Hooker, 3 Johns. (N. Y.) 68; Morse v. Bellows, 7 N. H. 549; Beach v. Ollendorf, 1 Hilt. (N. Y.) 41; Crutwell v. DeRossett, 5 Jones (N. C.), L. 263.

† O'Bannon v. Simrall, 1 B. Mon. (Ky.) 287.

‡ Christian v. Ellis, 1 Gratt. (Va.) 396.

§ Wells v. Evans, 20 Wend. (N. Y.) 251 22 *Id.* 324.

‖ Breen v. Richardson, 6 Colo. 605.

¶ 87 Ill. 508.

** 33 La. Ann. 1233.

†† 5 Jones (N. C.), L. 344.

‡‡ See *supra*, note (9).

DIARY FOR JUNE.

3. Sun.....*1st Sunday after Trinity.*
4. Mon....Lord Eldon born, 1751.
5. Tues...Maritime Court sits.
9. Sat.....H. C. J. sit. end. L. S. Easter Term ends.
10. Sun.....*2nd Sunday after Trinity.*
11. Mon....York C. C. sit, for motions begin.
12. Tues...Gen. Sess. and C. C. sit. for trial except I. York.
15. Fri.....Magna Charta signed, 1215.
16. Sat.....York C. C. sit, for motions end.
17. Sun.....*3rd Sunday after Trinity.*
18. Mon....Battle of Waterloo, 1815.
20. Wed....Accession of Queen Victoria, 1837.
22. Fri.....Longest day. Slavery declared contrary to law of England, 1772.
24. Sun.....*4th Sunday after Trinity.* St. John Baptist.
25. Mon....Sir M. C. Cameron died, 1887.
28. Thur...Coronation of Queen Victoria, 1838.
29. Fri.....St. Peter.

Early Notes of Canadian Cases.

SUPREME COURT OF CANADA.

McKENNA *v.* McNAMEE.

Contract—Consideration—Failure of—Impossibility of performance.

McN. & Co. had been contractors for the construction of certain public works in British Columbia, which the Government of the Province had taken out of their hands Believing that they could effect a restoration, they entered into an agreement with McK. & M. by which the latter were to complete the work and receive 90 per cent. of the profits, McN. & Co. to be still the recognized contractors with the Government, there being a clause in the contract against subletting. McK. & M. were fully aware of the state of affairs, and had examined all the provisions of the contract.

M. went to British Columbia and endeavoured to obtain the restoration of the contract, but failed to do so, and it not being restored, McK. & M. brought an action against McN. & Co. for breach of contract to take them into their service, and claiming for damages and moneys expended in the work, $125,000.

Held, affirming the judgment of the Court of Appeal for Ontario (14 Ont. App. Rep. 339), HENRY, J., dissenting, that as the agreement was made with a view to the restoration of the contract, and, as such restoration failed without fault on either side, the defendants were not liable.

McCarthy, Q.C., and *Mahon*, for the appellants.

O'Gara, Q.C., for the respondents.

CITY OF LONDON FIRE INSURANCE COMPANY *v.* SMITH.

Fire Insurance—Description of property—Mutuality of contract—Estoppel—Statutory condition—Variation.

The agent of an insurance company filled in an application, on behalf of S., for insurance on the building of the latter, which he described as being built of boards. The word, "boards," was very badly written, but the character of the building was sufficiently designated on a diagram on the back of the application, which the agent was instructed to fill in, marking a brick building in red and a frame building in black—in this case it being marked in black. There was no special rate of premium for a building built of boards, and the rate charged to S. was that specified in the tariff of the company for a brick building, he having authority to fix such rate.

The application was sent to the head office, and a policy issued thereon, describing the building as brick, the word written "boards" in the application being read by mistake as "brick." The mistake was not brought to the notice of the head office until the insured premises was destroyed by fire, and a claim was made for the amount of the loss under the policy, but after receiving notice of the error the company, under a clause in the policy, caused such claim to be submitted to arbitration, but refused to pay the amount awarded to S. on the ground that, owing to the mistake in the policy, there had been no mutuality of contract between them and S., and no valid contract ever existed between them.

Held, affirming the judgment of the Court of Appeal for Ontario (14 Ont. App. R. 328), that there was a valid contract existing between the company and the assured, but even if there were not, the company could not set up want of mutuality, after treating the contract as existing, by the submission to arbitration and in other ways.

By the 17th statutory condition of the Act relating to insurance companies, R. S. O. c. 62, a loss shall not be payable until thirty days after the completion of proofs, unless otherwise provided by statute or agreement of the parties.

Held, that this was a privilege accorded to the company which could not extend the time

limited by a variation of the condition under sec. 4 of the above Act, though such period might be shortened.

Per STRONG, J., that inserting a clause in a policy extending the time for payment of loss to sixty days, in the form prescribed by said sec. 4, is not a variation by agreement of the parties within the meaning of the statutory condition.

Robinson, Q.C., and *Millar* for the appellants.

McCarthy, Q.C., for the respondents.

MOLSON *et al. v.* LAMBE *es qual.*

Prohibition—Licensed brewers—Quebec License Act—41 Vict. c. 3—Constitutionality of.

R., a drayman in the employ of J. R. M. & Bros., duly licensed brewers under 43 Vict. c. 19 (Q.), was charged before the Court of Special Sessions of the Peace at Montreal with having sold beer outside of the business premises of J. R. M. & Bros., but within the revenue district of Montreal, in contravention to the Quebec License Act, 41 Vict. c. 3. On a writ of prohibition issued by the Superior Court, at the instance of appellants, claiming *inter alia* that, being licensed brewers under the Dominion Statute, they had the right of selling beer by and through their employees and draymen without a Provincial license, and that the Quebec License Law of 1873 and its amendments were unconstitutional, and if constitutional did not authorize the complaint and prosecution against R.

Held, reversing the first holding of the court below, that the Court of Special Sessions was the proper tribunal to take cognizance of the alleged offence of R., and therefore a writ of prohibition did not lie in the present case (TASCHEREAU and GWYNNE, JJ., dissenting).

2. Affirming the judgment of the court below, that the Quebec License Act of 1878, 41 Vict. c. 3 (Q.), is constitutional; GWYNNE, J., dissenting on the ground that the Quebec License Act, 1878, imposed no tax on brewers, and therefore the prohibition should be ordered to be issued absolutely.

Appeal allowed with costs.

Kerr, Q.C., for appellants.

Geoffrion, Q.C., for respondent.

QUEBEC STREET RAILWAY COMPANY *v.* CORPORATION OF THE CITY OF QUEBEC.

Street Railway—By-law—Construction of—Notice—Six months.

The Quebec Street Railway Company were authorized, under a by-law passed by the Corporation of the City of Quebec, and an agreement executed in pursuance thereof, to construct and operate in certain streets in the city a street railway for a period of forty years, but it was also provided that "at the expiration of twenty years (from the 9th of February, 1865) the corporation may, after a notice of six months to the said company, to be given within the twelve months immediately preceding the expiration of the said twenty years, assume the ownership of said railway upon payment," etc., etc. On the 9th of January, 1884, the Corporation of the City of Quebec gave a notice to the company of their intention to take possession, but afterwards gave a second notice, on the 21st of November, 1884, whereby the corporation informed the company that the previous notice was annulled, and that after the 9th of February, 1885, at the expiration of the time and in the manner prescribed by the by-law, they would assume possession, and subsequently, on the 21st of May, they tendered $23,806.30 for the property.

In an action brought to declare the tender valid, and for a decree declaring the corporation entitled to take possession,

Held, reversing the judgment of the court below, FOURNIER, J., dissenting, that the company were entitled to a full six months' notice prior to the 9th of February, 1885, to be given within the twelve months preceding the 9th of February, 1885, and therefore the notice relied on was defective.

Appeal allowed with costs.

Irvine, Q.C., and *Stuart*, for appellants.

P. Pelletier, Q.C., for respondents.

KLOCK *v.* CHAMBERLAIN *et al.*

Sale by wife to secure debts due by her husband—Simulated deeds—Art. 1301 C. C. (Q.)

Where the sale of real estate by the wife, duly separated as to property from her husband, to her husband's creditor is shown to have been intended to operate as a security

only for the payment of her husband's debts, such sale will be set aside as a contravention of Art. 1301 C. C. (Q.) STRONG, J., dissented on the ground that the trial judge's finding that the deeds of sale in this case were not simulated, should be affirmed.

Appeal dismissed with costs.

Flemming, Q.C., for appellant.

Aylen, for Respondent.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

HIGH COURT OF JUSTICE FOR ONTARIO.

Queen's Bench Division.

Armour, C. J.] [May 18.

CLARKSON *v.* ATORNEY-GENERAL OF CANADA.

Customs duties—Lien of Crown—Writ of extent—Preference of Crown over subject—R. S. O. (1887) c. 94.

On the 3rd Febuary, 1887, B., a coal merchant, made an assignment to the plaintiff for the benefit of his creditors under 48 Vict. c. 26, and there passed thereunder to the plaintiff a quantity of coal in B.'s yards. By permission of the Customs Department, B. had sold before the assignment certain other coal, imported by him, without first paying the duty upon it.

Held, 1. That there was nothing in the Customs Act, R. S. C. c. 32, nor in law, giving the Crown the right of lien upon the coal assigned to the plaintiff, for duty payable by B. in respect of the other coal sold by him.

2. That the issue of a writ of extent by the Crown against B. on the 19th Febuary, 1887, for the recovery of the duty so payable in respect of such other coal would have availed the Crown nothing, so far as the property assigned to the plaintiff was concerned, for it could not have been seized under such extent, having previously become vested in the plaintiff.

3. That the claim of the Crown for the duty payable by B. in respect of such other coal was not payable by the plaintiff out of the proceeds of the property assigned to him in preference to the claims of other creditors; the principle that when the right of the Crown and the subject came into competition that of the Crown is to be preferred, has been applied in winding-up proceedings instituted under statutes which did not bind the Crown, and where the property was not divested out of the Crown debtor by the proceedings; but the principle is not applicable to claims upon estates in bankruptcy, or estates assigned in trust for creditors; in any case the principal has now no existence in Ontario, because the effect of R. S. O. (1887) c. 94, is to do away with any distinction between debts due from a subject to the Crown and debts due from subject to subject, and to place them all on the same footing.

Lash, Q.C., and *R. S. Cassels*, for the plaintiff.

Robinson, Q.C., and *Wickham*, for defendants.

Common Pleas Division.

REGINA *v.* LEE.

Canada Temperance Act, 1878—Police magistrate appointed for county exclusive of city—Right to sit in city to hear offence arising in county—Appointment "during pleasure"—Necessity for place set apart to hear offences—Alternative jurisdiction—Constitutional law—Appointment of police magistrates.

On 17th November, 1886, G. was appointed by the Lieutenant-Governor of Ontario, police magistrate of the county of Brant, exclusive of the city of Brantford, during pleasure. On 14th March, 1887, an information was laid before him, as such police magistrate, charging that defendant at the township of South Dumfries, in the county of Brant, on 31st day of January, 1887, contrary to the Canada Temperance Act, did unlawfully sell intoxicating liquors, etc., upon which G. issued, at the city of Brantford, a summons requiring defendant to appear at his (G.'s) office, "Court House, Brantford," before him, or such justices of the peace for the said county as may then be there, to answer said charge. On application for a prohibition to prohibit G. from hearing the complaint,

Held, by ROBERTSON, J., that under 49 Vict. c. 4, s. 9 (O.) and sub-secs., G. had authority to adjudicate and determine the matter of the complaint at the city of Brantford.

Held, also, that G.'s commission was properly issued during pleasure; and that it was not necessary under ss. *b*, s. 103 of the Canada Temperance Act, that the town of Paris should be excluded from the operation of the commission; but *quære*, whether the police magistrate could try an offence arising within the said town.

Held, also, that there was nothing in the statute which requires the police magistrate to exercise the functions of his office at a police court set apart and appointed by law therefor. However, a room in the Court House was set apart by the county council, when not required for other purposes; and also under 48 Vict. c. 17, s. 4 (O.), G. had the right to occupy the court room.

Quere, whether it was intended that G. should hear the complaint, or whether there was power to give alternative jurisdiction to do so; but this was not a ground for prohibition.

Held, also, that the appointment of police magistrates is not *ultra vires* of Legislature of Ontario.

Regina v. *Bennett*, 1 O. R. 441 followed.

On appeal to the Division Court, the judgment was affirmed.

McKenzie, Q.C., for plaintiff.

Delamere, for Crown.

SMITH *v.* MILLIONS.

Survey—Plan, part of description in deed—Effect of.

The rule of construction in cases of private plans, where a deed or plan is referred to as part of the description, is to read it into the deed.

Carter v. *Graselt*, 10 S. C. R. 105, followed.

In an action to determine the boundary between certain lots on a plan, the defendant's surveyor, instead of being governed by the plan, went behind it, making a new survey; and also took the apparent angles on the plan instead of the measurements.

Held, erroneous.

W. Cassels, Q.C., for plaintiff.

C. Miller, for defendant.

RYAN *v.* MCKERRAL.

Bills of exchange and promissory notes—Third person becoming party after maturity without any consideration—Liability—Endorsement of payment of interest on back of note—Extension of time of payment—Discharge of surety.

Where, after a note is completed, so far as the intention of the parties is concerned, it is signed by a third person, or is so signed by him after maturity, without any consideration moving directly to such third person, or any agreement to extend the time of payment, such third person is not liable thereon.

Crofts v. *Beale*, 11 C. B. 172, followed; and *Currie* v. *Misa*, L. R. 10 Ex. 153, 1 App. Cas. 554, and *McLean* v. *Clydesdale Banking Co.*, 3 App. Cas. 95, distinguished.

An endorsement on the back of a note of the payment of interest up to a future date beyond the maturity of the note, in the absence of evidence of mistake, is to be deemed an extension of time for the payment of the note to such date, so as to discharge a party thereto who is merely a surety for the payment thereof.

Houston, for plaintiff.

Aylesworth, contra.

THE CORPORATION OF THE COUNTY OF VICTORIA *v.* THE CORPORATION OF THE COUNTY OF PETERBOROUGH.

Municipal corporations—Boundary line roads—Deviations—Adjoining counties—Liability.

The counties of Victoria and Peterborough adjoin each other, and up to 1863, when they were disunited, were united for municipal and other purposes. The boundary line road between these counties deviated in several places, owing to natural obstructions. At the place in question, where the deviation was wholly in the township of Verulam, in the county of Victoria, which deviation was recognized as a deviation from the boundary line, two bridges were built, during the union, at the joint expense, and were treated as subject to the joint control and liability. By 42 Vict. c. 47 (O.), which came into force on 5th March, 1880, a portion of the township of Harvey, in the county of Peterborough, adjoining Veru-

lam, including the part opposite to the place in question, was detached from Harvey and oined to Verulam for municipal and other purposes, as is enacted, as if it had always been part of Verulam. In 1879 a new bridge was built at the said place, and an arbitration had between the counties, and on May 18th, 1880, after the said Act came into force, an award was made settling defendants' share of the cost, which they paid. In 1887, the bridges having got into disrepair, the plaintiffs appointed their arbitrator to settle the cost of repair, etc.; but defendants refused to join in the arbitration, contending that sin e the 42 Vict. no liability therefor was cast on them. The inhabitants of certain portions of the adjoining townships in Peterborough continued to use these bridges, which were their only means of access to their county town and market.

Held, that the road at the said place must still be considered the boundary line road, and defendants were liable for the maintenance and repair of the bridges.

Moss, Q.C., and *Hudspeth*, Q.C., for plaintiffs.

Lash, Q.C., and *Edwards*, for defendants.

WILKINSON *v.* HARVEY *et al.*

Sheriff—Liability of execution creditors for wrongful seizure—Solicitor and client—Liability for acts of solicitor.

The defendants, who lived in Hamilton, and had a claim against W. at Ingersoll, issued a writ therefor through their solicitors C. & B., which was served by C., who went to Ingersoll under special instructions from defendants to do so, and to take such steps as they might think best to recover the claim. A judgment was afterwards obtained, and an execution against W.'s goods issued. The sheriff sent his officer to execute the writ, who was informed by W. that he had no goods, which the officer believed to be true, and so informed the sheriff, who accordingly notified C. & B. C. & B. refused to accept this, and wrote to the sheriff in effect that he had acted improperly in not seizing the goods on *ex parte* statements, and that he must take such action as would enable him to test the truth of the statements he had acted on. The sheriff then seized the goods and applied for an interpleader order. The goods were proved to be the plaintiff's. In an action to recover damages occasioned by the seizure,

Held, that the sheriff must be assumed to have seized, under the circumstances, under instructions from the defendant's solicitors, and as the solicitors were acting under special instructions from the defendants, the latter were liable to the plaintiff. *Smith* v. *Keal*, 9 Q. B. D. 340 distinguished.

G. T. Blackstock, and *Walsh*, for plaintiff.

P. Denovan, for defendants.

THE CORPORATION OF THE TOWNSHIP OF OXFORD *v.* GAIR *et al.*

Principal and surety—Municipal corporations—Bond—Release of surety—New bond.

A bond, intended to be a joint and several bond, was drawn up, to be executed by G., who was plaintiff's treasurer, and by L. and A., as his sureties. A. executed the bond on the 16th December, 1886, on the supposition and understanding that it should not be binding on him until executed by the others. On 27th December, to enable him to run as a councillor, A. requested the council to release him from the bond, which was agreed to, and on 17th January, 1887, a formal resolution was passed accepting H. as surety in his place, and stating that a new bond had been executed by G., L., and H. On the same day the first bond, which had not been executed by G. or L., was then executed by them. In an action against A. on the first bond,

Held, that he was not liable thereon.

Osler, Q.C., and *Kydd* (of Ottawa), for the plaintiffs.

French and *Saunders*, for the defendant Anderson.

THE BRITISH AND CANADIAN LOAN AND INVESTMENT COMPANY *v.* WILLIAMS.

Mortgage—Acquiremet of equity of redemption by mortgagee—Release of mortgagor—Intention—Evidence of.

The defendant executed a mortgage on certain land to the plaintiffs, dated November 5th, 1881, to secure $2,200 and interest, and on May 8th, 1882, conveyed the land to L., subject to the mortgage. On May 12th, 1883, L. conveyed to the plaintiffs. Afterwards the plaintiffs en-

tered into an agreement with C. for the sale of the land to him for a sum less than the amount due them, which was followed by a conveyance to him. Subsequently, the plaintiffs brought an action against defendant on the covenant in his mortgage to them to recover the deficiency thereon, contending that the agreement made with L., when they took the conveyance from her, was that defendant should not be discharged thereby, as was evidenced by certain correspondence put in by them.

Held, that whether there was such an agreement or not, it would not be binding on defendant, for he having sold to L., subject to the mortgage, it was L.'s duty to indemnify him against it, and plaintiffs took with knowledge of this, and never communicated with him; and, moreover, by their subsequent sale to C. they put it out of the defendant's power to redeem.

North of Scotland Mortgage Co. v. *Udell*, 46 U. C. R. 511, and *North of Scotland Mortgage Co.* v. *German*, 31 C. P. 349, commented on.

J. K. Kerr, Q.C., for plaintiff.

FORWARD *v.* THE CORPORATION OF THE CITY OF TORONTO.

Municipal corporations—Ice on sidewalk—Water running down lane in front of sidewalk and freezing—Evidence of negligence.

By reason of ice on the sidewalk on Yonge Street, in the city of Toronto, the plaintiff, who was walking along that street about six o'clock in the afternoon, slipped and fell, sustaining damage. The place in question was in front of a lane which ran between two stores, the walls of the stores forming the sides of lane, which sloped toward the sidewalk, the ice being caused by the water from rain and melting snow running down the lane on to the sidewalk and then freezing. There was ice on the sidewalk at the time of the accident, but there was no evidence of its having accumulated there, nor did it appear how long it had been there.

Held, that there was no evidence of negligence on the part of the defendants.

J. K. Kerr, Q.C., and *J. R. Roaf*, for plaintiff.

Robinson, Q.C., for defendant.

BRUNELL *v.* THE CANADIAN PACIFIC RAILWAY CO.

Master and servant—Railways—Accident—Negligence—"Workmen's Compensation for Injuries Act"—49 Vict. c. 28, s. 3, ss. 5. (O.).

B., the plaintiff's son, was employed as fireman on a locomotive engine which was in charge of a driver named R., B. being under his orders. B. was severely scalded by the bursting of the boiler of the engine, which resulted in his death. The accident was apparently caused by the sudden influx of cold water into the boiler, which had been allowed to run too low. There was no evidence to show to whom the negligence was attributable; but it was proved that, though the company held the driver responsible as regards the engine, it was the duty of the fireman, for which he was responsible to the company, to attend to the supply of water, which was part of his education to fit him for the superior position of driver, and that from his position he had greater facilities for opening the valve than those possessed by the driver; and from a report put in by one of the defendant's officials, it appeared that B. had charge of the water at the time of the accident. In an action against defendants for damages under "The Workmen's Compensation for Injuries Act," 49 Vict. c. 28, s. 3, ss. 5 (O.).

Held, that the defendants were not liable.

J. K. Kerr, Q.C., and *Carson*, for plaintiff.

G. T. Blackstock, for defendants.

ARNOLD *v.* CUMMER.

Limitations, Statute of—Entry by owner—Life lease to one of several in possession—Effect of.

In 1860, D. M., the then owner of certain lands, conveyed to A., who in 1861 conveyed to N., through whom the plaintiff claimed. D. M. continued in possession, and, at his request, his sister, M. B., came and resided with him, and took charge of the house and their sister, S. M., who was subject to fits, which to some degree affected her mind. In 1862, D. M. died, the two sisters remaining in possession, M. B. taking charge and control. In 1868, defendant, the sisters' nephew, came to reside with them, M. B. giving him charge of the

place, upon which he subsequently erected buildings. In 1875, N. went upon the land in assertion of his title as owner, having previously threatened to bring ejectment, and was induced to execute a life lease in favour of M. B. and S. M., which was accepted by S. M., who executed the lease, but not by M. B., who refused to do so; S. M., M. B., and defendant still continuing to reside on the premises. M. B. died in 1879 and S. M. in 1886. The defendant continued to reside thereon. In 1887, the plaintiff brought ejectment against defendant, who claimed a title by possession.

Held, that N., having entered and taken possession, and placed S. M. in possession as his tenant under him, her possession was his and his successors in title, and, therefore, plaintiff was entitled to recover.

Pelly, for plaintiff.

Atkinson, Q.C., for defendant.

BETTS *v.* SMITH *et al.*

Contract—Tender—Evidence of prior agreement—Guarantee—Reference to advertisement.

The defendants, acting as a committee to superintend the reception of a large number of persons, and being desirous, in addition to providing accommodation for them, to make a profit for themselves, advertised for tenders in a newspaper, in which it was stated that there would be a large number of persons present at the proposed assemblage, for whom meals would be required, and tenderers were invited to submit a bill of fare which they would guarantee to furnish for $1 a day, and the tenders were to state what amount would be paid for such privilege. The plaintiff was applied to personally by M., one of the committee, to know whether he would tender, and certain statements as to the number of persons to be present, were then made to him, and other particulars of defendants' requirements were given to him, his attention being called to the above advertisement, which, however, he did not see. He subsequently saw one B., by whom the tenders were to be received, who had been sent to him by M., and who, in addition to the particulars already mentioned, stated that they would guarantee 1,500 persons a day, but would require the plaintiff to provide for 2,000. The plaintiff then wrote his tender, by which he was to get 75 cents a day for every three meal ticket, and the committee were to charge $1, which tender was accepted in writing. Very few persons took their meals from the plaintiff, who, in consequence, lost a large amount by the contract.

At the trial, the advertisement and requirements were put in as evidence for the plaintiff, subject to objection.

In an action to recover the amount of the plaintiff's loss from the defendants,

Held (MACMAHON, J., dissenting), that the tender and acceptance constituted the whole contract; and there was nothing in them to render defendants liable.

Per MACMAHON, J.—The advertisement and requirements must, under the circumstances, be incorporated into the tender and acceptance, and so form part thereof, so as to render the defendants liable.

McNeely v. *McWilliams*, 13 A. R. 324, and *Lindley* v. *Lacey*, 17 C. B. N. S. 578, commented on.

Lount, Q.C., for plaintiff.

Bigelow, for defendant.

MCGILL *v.* WALTON.

Malicious prosecution—Reasonable and probable cause—Evidence of—Non-statement of full facts to solicitor and police magistrate.

The plaintiff, at Brantford, having corresponded with the defendant, at Hamilton, as to purchasing ice, defendant, on 7th September, notified plaintiff by telegram that the ice would not be sent unless plaintiff telegraphed money to cover freight and ice, to which plaintiff answered that the money was paid to the express company, and to send a full car, which was done. No money had, however, been paid to the express company. On the 9th September, defendant telegraphed plaintiff, asking what he meant. The plaintiff replied that he had paid the bank the day before, and to send a car for Monday morning. The defendant, relying on this representation, shipped same to plaintiff on the following day. The plaintiff had, on 9th September, deposited $30 with a bank in Brantford to defendant's credit, supposing it would be transmitted to defendant.

which was not done. On 1st October, defendant wrote plaintiff that unless he sent the full amount of account, defendant would have to take criminal proceedings. On 7th October, the defendant not having received a reply from plaintiff, consulted his solicitor, who, defendant said, advised that plaintiff was guilty of a criminal offence, and to have him arrested. The defendant accordingly went to Brantford, laid information before the police magistrate, who issued a warrant under which plaintiff was arrested. On the case coming before the police magistrate, the plaintiff's statement as to the deposit of the money in the bank was proved to be true, whereupon the magistrate stated that there was no ground for the arrest, and dismissed the case. In an action for malicious arrest, the jury found that the defendant believed the plaintiff had not deposited the money with the express company or with the bank, but that he had not reasonable grounds for so believing, and did not take reasonable means to prove the truth of the plaintiff's statement; and also that it was doubtful whether defendant truly represented the facts to his solicitor, and that he did not do so to the police magistrate.

Held (reversing the judgment of CAMERON, J., at the trial), under the circumstances, there was a want of reasonable and probable cause, and the plaintiff was entitled to recover.

McCarthy, Q.C., for plaintiff.

Teetzel, for defendant.

PRIESTMAN *v.* BRADSTREET.

Dismissal — Stock speculations.

The defendants carry on the business of a commercial agency of which the plaintiff was general manager. By the terms of his engagement plaintiff was to be paid a salary of $5,000, and was to devote his whole time, influence and talents to the successful promotion of the business, the failure of either party to keep the agreement rendered it void. In the discharge of plaintiff's duties in rating merchants when found speculating, their rating would be lowered. The plaintiff having engaged in speculating on margins in the stock and grain exchanges through brokers and bucket shops, sunk all his private means, and had become indebted to a large extent beyond his ability to pay, and thereby brought the company into disrepute. He was requested by defendants to give up these practices, which he refused to do, saying that if his doing so was a condition of his remaining with the company he would dissolve his connection therewith. Whereupon he was dismissed.

Held, that the company were justified in dismissing him.

C. H. Ritchie, for plaintiff.

Osler, Q.C., for defendant.

BLACK *v.* TORONTO UPHOLSTERING CO.

Meaning of contract — Actual first cost.

The defendants, carrying on business in manufacturing and upholstering goods, entered into an agreement with plaintiff, whereby plaintiff was to manufacture all the upholstered goods sold by defendants at an advance of eleven per cent. upon the actual first cost of goods made and shipped from Toronto, the percentage to pay cost of packing and shipping the goods, and material used as packing should be charged at cost price. The plaintiff to buy all goods required for manufacture (except such frames as plaintiff should make himself) from defendants, and the price charged for the goods should be understood as the actual first cost, and the actual first cost value of the goods so manufactured for defendants should be computed from the price charged by defendants to the said plaintiff.

Held, under the agreement, the "actual first cost" on which plaintiff was to charge an advance of eleven per cent. was the price of material used and the wages paid.

Lount, Q.C., and *Reeve*, for plaintiff.

Shepley, for defendant.

CASEY *v.* CANADIAN PACIFIC RAILWAY CO.

Liability for accident — Negligence.

The defendants' station at A is [illegible] what was known as the side track, between which and the main track there was a platform for passengers alighting from and getting on to trains on the main track. The plaintiff had come to the station to meet a friend, and ascertaining from her that she had left her rubbers in the car, he attempted to cross over the side track and reach the platform, when the engine and tender, which had been detatched from the rest of the train and were backing down the

side track to pick up a car some fifty yards distant, ran on the plaintiff and injured him. The plaintiff was looking in the opposite direction from that in which the engine and tender were coming, and therefore did not see them; and it appeared that had he been looking out he must have seen them before he attempted to cross and so avoided the accident, as it was only a second or two from the time he left the platform until he was struck, and there was no obstruction to this view.

Held, that the accident having been caused by the plaintiff's own negligence and want of care, the defendants were not liable.

Quære, whether an engine and tender constitute a train within s. 52 of R. S. C. c. 109, so as to require a man to be stationed on the rear car to warn persons of their approach, but in any event there was a man so stationed here who did give warning.

Held, also, that the statutory obligation to ring the bell or sound the whistle only applies to a highway crossing and not to an engine shunting on defendants' own premises.

J. Reeve, for plaintiff.

G. S. Mackintosh, for defendant.

DUNCAN *v.* ROGERS.

Way—Easement appurtenant to land conveyed, etc.—Prescriptive right to—Recoverable because—Agreement, construction by court of.

Some years prior to 1847, J. D., plaintiff's father, became the owner of lot 18 in the 5th concession of York, and built the house in which he lived up to the time of his death, on the north-west half and near the 6th concession line. In 1847 J. D. purchased lot 19, adjoining lot 18 on the north, the occupiers of the eastern portion of which, prior thereto, and J. D.'s tenants since, used a trail or road running from the northerly part of the east half of 19, where plaintiff's house stands, across the west half of 19 to the boundary of 18 and 19, where there were several trails or roads across the west half of 18 to a permanent lane leading in a westerly direction past J. D.'s house to the 6th concession. The trails ran through bush land, and no one thereof was solely or exclusively used, but as was convenient. In 1860 J. D. conveyed the east half of 19 to plaintiff, and plaintiff also acquired by devise from his father, who died in 1877, the north-east quarter of 18, which adjoined the east half of 19 on the south. The west half of 19 J. D. devised to his daughter, who had ever since been in occupation thereof, and the north-west half of 18 to his son W., who was living with him at his death, and who conveyed the same to defendant. Shortly after J. D. conveyed the east half of 19 to plaintiff, he, with J. D.'s permission, cut a new roadway on the southerly side of the woods on lot 18, connecting thereby with the lane to the 6th concession. In 1877, by an agreement entered into between plaintiff and W. D., in consideration of certain privileges granted to W. D., W. D. covenanted to permit plaintiff to have a right of way along the said lane from the 6th concession and extending forty rods east of the centre of the lot, so as to allow plaintiff free communication from lot 19 along said lane to the 6th concession.

Held, that there was no defined right of way in 1860 over the west half of 18 appurtenant to the east half of 19, so as to enable plaintiff to claim an easement therein as granted under the words therefor in the conveyance of 1860; that the user of the roadway cut in 1860 being merely a license, was revocable at any time, and was revoked by the father's death, and thereafter the user, as the evidence showed, was merely permissive, which was acceded to by plaintiff in 1877 by his entering into the agreement of that date.

Per MACMAHON, J.—The jury are to find questions of fact, to which the court must apply the law on the facts so formed. The construction of the agreement was for the court, and its meaning was that the old lane was to be extended easterly in a straight line for forty rods.

Fullerton, for plaintiff.

Tilt, for defendant.

ANDREWS *v.* BANK OF TORONTO.

Deed of composition and discharge—Covenant not to sue.

On 1st September, 1883, B. & Co. drew on plaintiff at four months for $783.50, the amount his indebtedness, which plaintiffs accepted,

and B. & Co. discounted with defendants. The draft, not being paid at maturity, was protested by the bank. On 7th January, 1884, B. & Co. made an assignment for the benefit of their creditors; and, on 25th January, plaintiff, also becoming embarrassed, procured his creditors, including B. & Co.'s estate, to execute a deed of composition and discharge, whereby the creditors agreed to accept 50 cents on the dollar on their respective debts, payable 30 days from the date of the deed, one D. being surety for the said payment within the time limited.

There was a covenant by plaintiff and his surety to pay the several creditors, on or before the 25th February, the said 50 cents; and by the creditors with plaintiff not to sue for their several debts; that if plaintiff and his surety should observe and perform the covenants and agreements on their part, the creditors would release and deliver up the bills, notes, etc., held by them; and that if any of the creditors should sue for their debts, the deed might be pleaded in bar. The bank refused to execute the deed of composition. They proved against B. & Co.'s estate, and received a dividend of 40 cents, which they applied on the paper discounted by B. & Co., and upon which a customer was accommodation guarantor. The bank afterwards sued or threatened to sue plaintiff for the amount of the draft, and he not knowing that the bank had received the dividend, paid them in full; but, on discovering the fact, brought this action to recover the amount received by them. The plaintiff had not paid B. & Co. the 50 cents, or any part thereof.

Held, that the covenant not to sue on the deed of composition and discharge was not absolute, but merely conditional on payment being made within thirty days; and as plaintiff had not paid B. & Co. within the thirty days, he could not have claimed a release and set up the covenant as a bar to the action; that the bank were trustees for B. & Co. to the extent of 40 cents on the dollar of the amount received from the plaintiff; and B. & Co. could compel the bank to refund such amount to them; and therefore plaintiff had no right of action against the bank.

Lash, Q.C., for plaintiff.

Robinson, Q.C., and *T. P. Galt*, for defendants.

Chancery Division.

Boyd, C.] [April 9.

THE CORPORATION OF THE VILLAGE OF WESTON *v.* CONRON *et al.*

Principal and surety—Surety for treasurer—Treasurer being allowed to receive taxes instead of a collector being appointed—Liability of.

The defendant, C., was appointed treasurer of the plaintiffs in 1882, and continued in office until 1887.

He was also the clerk of municipality, and as such, in 1885, received certain taxes from the ratepayers for two months of that year. In an action against C. and N., who were sureties for C., in which year it was sought to charge both defendants with all moneys come to C.'s hands, and not accounted for, it was

Held, on appeal from a referee's report, that that temporary function was not of such a nature as to terminate C.'s duties as treasurer by implication, and that when the money came to his hands with which he charged himself, as treasurer, the responsibility of the surety began, and that he should not be charged with any sums which did not appear in his books, as treasurer, and which were referable to taxes otherwise received by him.

Foy, Q.C., and *J. Mason*, for the appeal.

J. K. Kerr, Q.C., contra.

Boyd, C.] [April 26.

BANKS *et al. v.* ROBINSON *et al.*

Agreement to sell—Property not to pass—Stipulation for taking possession—After acquired property—Registration—R. S. O. c. 125.

J. R., by an instrument in writing, agreed in 1880 to sell his business and stock-in-trade to his sons, and provided that all the existing stock was to remain his property until it was paid for, and all after-acquired property brought in by way of substitution for existing stock was to become his property for the purposes of the security for the purchase money, and that on default he should have the right to re-enter and take possession. Default having been made, he took possession in January, 1888, and began selling off by auction. The

sons made an assignment for the benefit of creditors in March, 1888. In action brought by the assignor and some creditors of the sons to restrain J. R. from selling, it was

Held, that the legal operation of the instrument of 1880 was to retain the property in the existing stock in the vendor, and to confer upon him an equitable title in the stock to be afterwards acquired, and to give him the right to take possession for default in payment. Default having been made and possession taken, that Act clothed him with the legal title in the after-acquired goods, which was not affected by the assignment for creditors subsequently executed.

Held, also that the instrument did not need to be registered to make it operative against subsequent creditors. The Bills of Sale and Chattel Mortgages Act, R. S. O. c. 125, was not intended to cover the case of agreements creating equitable interests in non-existing and future acquired property. The effect of the transaction in this case, and the advisability of making provision for giving publicity by registration to such dealings commented on.

Barker v. *Leeson*, I. O. R. 114, not followed.

Reeve, Q.C., and *Neville*, for plaintiffs.

Maclennan, Q.C., for defendant, Joseph Robinson.

Boyd, C.] [April 27.

THE OAKWOOD HIGH SCHOOL CASE.

High School—Application to municipality for grant—R. S. O., 1887, c. 226, s. 35.

Prior to August 1st, 1887, the Oakwood High School Board made application to the council of the municipality for a grant of $4,000 for school purposes, and asked further the privilege of building the new building contemplated on township property. This application was negatived by the municipal council by four to one on July 18th, whereupon the school trustees present at the meeting said they would forego their claim to the benefit sought over and above the $4,000, and would at the next meeting bring forward a by-law for the $4,000 alone. They did so at the next council meeting, on August 8th, when a by-law authorizing the grant was voted, with the result of three votes against it and two votes for it.

Held, that under R. S. O., 1887, c. 226, s. 35, this was not a refusal of the application, but by the interpretation put on that section, was an affirmance and an acceptance of the requisition of the High School Board, and the council could not afterwards pass a by-law repealing it, and refuse to give the money.

Before the passing of the original of the above enactment, a municipal council had not option to reject, but were under parliamentary obligation to raise by assessment the amount required for school purposes, even though the money was to be applied towards the erection of a new building. The present legislation relieves them from this necessity only when there is a two-thirds vote of the members present at the meeting of the council for considering the by-law in that behalf. Such a by-law, if not negatived by a two-thirds vote of the council, fixes the municipal district with liability to raise the amount required, and cannot be repealed, as in the case of an ordinary by-law, before it is acted on.

Watson and *J. M. Clark*, for the Oakwood High School Board.

Moss, Q.C., and *D. J. MacIntyre*, for the township of Mariposa.

McMahon, J.] [April 25.

In re THE CENTRAL BANK OF CANADA AND WELLS AND MACMURCHY.

Winding-up Act, R. S. C. c. 129—Deposit made in bank the day it closed its doors—Recovery of same—Fraud.

Where a deposit was made in the bank on November 15th, and it was shown that at a directors' meeting, held the evening previous, the necessity of seeking outside assistance or suspending payment had been considered, and a resolution passed to suspend payment if such assistance were refused, and that when the bank closed on that afternoon, it did not open again, and notice of suspension of payment was given on the following morning, it was

Held, that the depositors were entitled to be repaid the amount of their deposit as obtained from them by fraud, and the liquidators were ordered to pay the same with interest from the date of deposit.

S. H. Blake, Q.C., for the petitioners.

Foster, Q.C., for the liquidators.

Practice.

Street, J.] [Mar. 12.
Q. B. Division Court.] [May 22.

LOWDEN *v.* MARTIN.

Promissory note—Proposal to renew in part refused—Effect of acceptance of cheque for balance—Judgment under Rule 80.

At maturity of certain promissory notes made by the defendants, and held by the plaintiffs, the defendants sent the plaintiffs a proposal for a renewal in part, accompanied by a cheque for part of the amount due, and two renewal notes for the balance, the total amount including a sum for interest on the renewals. The plaintiffs returned the renewal notes, but retained the cheque, and brought this action upon the original notes, giving credit for the amount of the cheque.

Held, by STREET, J., in Chambers, refusing a motion for judgment under Rule 80, that although there was no obligation on the part of the creditors to assent to the debtors' proposal, yet by receiving the cheque and keeping it they must be taken to have applied it in the manner in which the debtors, when tendering it, stipulated, and as it included interest in advance upon the renewals, the creditors were bound to give the debtors the benefit of the time for which the renewals were drawn.

Held, by the Divisional Court on appeal, that on the state of facts presented, the plaintiffs were not entitled to the indulgence of a speedy judgment and execution.

Kappele, for the plaintiffs.

F. W. Garvin, for the defendants.

Rose, J.] [May 22.

BANK OF LONDON *v.* GUARANTEE COMPANY OF NORTH AMERICA.

Payment into Court—Withdrawal of part of claim—Dismissing action—Costs—Rules 170, 218.

The plaintiffs claimed in this action $3,249.36, amount of defalcation of J., and $90.55 for certain expenses connected therewith, in all, $3,339.91. The defendants paid into court $3,273, claiming by their notice of payment in that it was sufficient to satisfy the plaintiffs' claim. There was no specific application of the money paid in to any part of the claim. The plaintiffs did not deliver a statement of claim, and upon notice of a motion under Rule 203 to dismiss the action being served by the defendants, the plaintiffs gave a notice under Rule 170 of withdrawal of balance of their claim.

Held, that the plaintiffs had no power under Rule 170 to withdraw; the portion of Rule 170 relating to the withdrawal of part of the alleged cause of complaint is applicable only where the part sought to be withdrawn can be severed from the rest of the claim; and an order dismissing the action was proper.

Semble, that the plaintiffs not having, under Rule 218, accepted the money in full satisfaction of their claim, were liable to pay the whole costs of the action; but the disposition of costs by the local judge who made th order was not interfered with on appeal.

Aylesworth, for the plaintiffs.

H. J. Scott, Q.C., for the defendants.

Law Students' Department.

LOAN OF BOOKS TO STUDENTS BY LAW SOCIETY.

TO THE EDITOR OF THE LAW JOURNAL:

Sir,—At present a rule obtains in the management of that part of the Osgoode Hall Library which has hitherto been available to students, which requires each student, in addition to furnishing a certificate that he is a "fit and proper person" to receive books, to deposit with the Treasurer the sum of $10 as security for their due return.

It is proposed to advance some reasons why this obnoxious rule should be abated.

1. It is a penalty, and virtually prohibits deserving students from the privileges of the library, which is all the more distasteful in view of the fact that students are accorded but too few privileges already.

2. It is unnecessary. The law students are as a class an honourable set of young fellows, who would scorn to make a dishonourable use of the privileges of the library; moreover the books of the library are so stamped to indicate they are the property of the Law Society, that to turn them to personal use is virtually an impossibility.

3. The amount of the deposit should not in any case be so excessive. The average value of the books which are taken out by students does not exceed $5.00, and one book only is allowed out at a time. The imposition of a $10 deposit would seem to indicate that the Society are unnecessarily apprehensive and suspicious for the return of the books.

4. The Law Society has jurisdiction over the proper conduct of its members, among whom are the students, and this can be actively enforced; and if a student, after having given a written receipt for a book, and having de-

posited a certificate signed by the solicitor with whom he is articled that he is a proper person, fails to return a book in due course, the solicitor is morally responsible and the student is in fact responsible, and can be called upon to make a return of the book or its equivalent at once, or be not granted a certificate of fitness or admitted to the Bar.

5. The Law Society has also the powers incident to any corporation where its property is wrongfully diverted. For these and other reasons, which are as obvious as they are cogent, it is respectfully submitted that the imposition of such condition precedent to students being allowed to use that portion of the library which is composed of text-books on the examinations should be abolished, and their privileges restored as formerly. "LEX."

Appointments to Office.

MINISTER OF AGRICULTURE.

Hon. Chas. Drury, Crown Hill, Simcoe, Minister of Agriculture of Ontario (19 May 1888).

JUNIOR JUDGE.

Northumberland and Durham.

J. Ketchum, Colborne, Junior Judge of the County Court, and Local Judge of High Court of Justice (2 May, 1888).

Miscellaneous.

LITTELL'S LIVING AGE.—The numbers of *The Living Age* for the weeks ending May 19th and 26th, contain Kaspar Hausar, *Quarterly;* Reminiscences of Cardinal Mazarin, *Westminster;* Islam and Civilization, *Contemporary;* Hymns and Hymnals, and among the Islands of the South Pacific; Fiji, *Blackwood;* Marino Faliero, and Dickens' Characters and their Prototypes, *Temple Bar;* The Topographical Instinct in Animals, and Ruskin's Forge, *Leisure Hour;* Matthew Arnold, Reality and Romance, and The Cashiering of the Tin Soldier, *Spectator;* Old Naval Families, *St. James's;* Boyish Freaks, *Chambers';* Mr. Matthew Arnold's Earliest Publication, *Athenæum;* Scientific Progress in Elementary Schools, *Nature;* Death of Matthew Arnold, and Elements and Meta-Elements, *Times;* with "The Polruan Ferryboat," "The Hermit of Le Croisic," and poetry.

For fifty-two numbers of sixty-four large pages each (or more than 3,300 pages a year), the subscription price ($8), is low; while for $10.50 the publishers offer to send any one of the American $4.00 monthlies or weeklies with *The Living Age* for one year, both postpaid. Littell & Co., Boston, are the publishers.

Law Society of Upper Canada.

CURRICULUM.

1. A Graduate in the Faculty of Arts, in any University in Her Majesty's Dominions empowered to grant such Degrees, shall be entitled to admission on the Books of the Society as a Student-at-law, upon conforming with Clause four of this curriculum, and presenting (in person) to Convocation his Diploma or proper Certificate of his having received his Degree, without further examination by the Society.

2. A Student of any University in the Province of Ontario, who shall present (in person) a Certificate of having passed, within four years of his application, an examination in the Subjects prescribed in this Curriculum for the Student-at-law Examination, shall be entitled to admission on the Books of the Society as a Student-at-law, or passed as an Articled Clerk (as the case may be) on conforming with Clause four of this Curriculum, without any further examination by the Society.

3. Every other Candidate for admission to the Society as a Student-at-law, or to be passed as an Articled Clerk, must pass a satisfactory examination in the subjects and books prescribed for such examination, and conform with Clause four of this Curriculum.

4. Every Candidate for admission as a Student-at-law or Articled Clerk, shall file with the Secretary, four weeks before the Term in which he intends to come up, a Notice (on prescribed form), signed by a Bencher, and pay $1 fee; and on or before the day of presentation or examination file with the Secretary, a petition, and a presentation signed by a Barrister (forms prescribed) and pay prescribed fee.

5. The Law Society Terms are as follows:—

Hilary Term, first Monday in February, lasting two weeks.

Easter Term, third Monday in May, lasting three weeks.

Trinity Term, first Monday in September, lasting two weeks.

Michaelmas Term, third Monday in November, lasting three weeks.

6. The Primary Examinations for Students-at-law and Articled Clerks will begin on the third Tuesday before Hilary, Easter, Trinity, and Michaelmas Terms.

7. Graduates and Matriculants of Universities will present their Diplomas and Certificates on the third Thursday before each Term at 11 a.m.

8. Graduates of Universities who have given due notice for Easter Term, but have not obtained their Diplomas in time for presentation on the proper day before Term, may, upon the production of their Diplomas and the payment of their fees, be admitted on the last Tuesday in June of the same year.

9. The First Intermediate Examination will begin on the second Tuesday before each Term at 9 a.m. Oral on the Wednesday at 2 p.m.

10. The Second Intermediate Examination will begin on the second Thursday before each Term at 9 a.m. Oral on the Friday at 2 p.m.

11. The Solicitors' Examination will begin on the Tuesday next before each Term at 9 a.m. Oral on the Thursday at 2.30 p.m.

12. The Barristers' Examination will begin on the Wednesday next before each Term at 9 a.m. Oral on the Thursday at 2.30 p.m.

13. Articles and assignments must not be sent to the Secretary of the Law Society, but must be filed with the Registrar of the Queen's Bench or Common Pleas Divisions within three months from date of execution, otherwise term of service will date from date of filing.

14. Full term of five years, or, in the case of Graduates, of three years, under articles must be served before Certificates of Fitness can be granted.

15. Service under Articles is effectual only after the Primary Examination has been passed.

16. A Student-at-law is required to pass the First Intermediate Examination in his third year, and the Second Intermediate in his fourth year, unless a Graduate, in which case the First shall be in his second year, and his Second in the first seven months of his third year.

17. An Articled Clerk is required to pass his First Intermediate Examination in the year next but two before his Final Examination, and his Second Intermediate Examination in the year next but one before his Final Examination, unless he has already passed these examinations during his Clerkship as a Student-at-law. One year must elapse between the First and Second Intermediate Examination, and one year between the Second Intermediate and Final Examination, except under special circumstances, such as continued illness or failure to pass the Examinations, when application to Convocation may be made by petition. Fee with petition, $2.

18. When the time of an Articled Clerk expires between the third Saturday before Term, and the last day of the Term, he should prove his service by affidavit and certificate up to the day on which he makes his affidavit, and file supplemental affidavits and certificates with the Secretary on the expiration of his term of service.

19. In computation of time entitling Students or Articled Clerks to pass examinations to be called to the Bar or receive Certificates of Fitness, Examinations passed before or during Term shall be construed as passed at the actual date of the Examination, or as of the first day of Term, whichever shall be most favourable to the Student or Clerk, and all Students entered on the books of the Society during any Term, shall be deemed to have been so entered on the first day of the Term.

20. Candidates for call to the Bar must give notice signed by a Bencher, during the preceding Term.

21. Candidates for Call or Certificate of Fitness are required to file with the Secretary their papers, and pay their fees, on or before the third Saturday before Term. Any Candidate failing to do so will be required to put in a special petition, and pay an additional fee of $2.

22. No information can be given as to marks obtained at Examinations.

23. An Intermediate Certificate is not taken in lieu of Primary Examination.

FEES.

Notice Fee	$1 00
Student's Admission Fee	50 00
Articled Clerk's Fee	40 00
Solicitor's Examination Fee	60 00
Barrister's Examination Fee	100 00
Intermediate Fee	1 00
Fee in Special Cases additional to the above	200 00
Fee for Petitions	2 00
Fee for Diplomas	2 00
Fee for Certificate of Admission	1 00
Fee for other Certificates	1 00

BOOKS AND SUBJECTS FOR EXAMINATIONS.

PRIMARY EXAMINATION CURRICULUM, For 1888, 1889, and 1890.

Students-at-Law.

1888.	Xenophon, Anabasis, B. I. Homer, Iliad, B. IV. Cæsar, B. G. I. (1-33.) Cicero, In Catilinam, I. Virgil, Æneid, B. I.
1889.	Xenophon, Anabasis, B. II. Homer, Iliad, B. IV. Cicero, In Catilinam, I. Virgil, Æneid, B. V. Cæsar, B. G. I. (1-33.)

1890. Xenophon, Anabasis, B. II.
Homer, Iliad, B. VI.
Cicero, Catilinam, II.
Virgil. Æneid, B. V.
Cæsar, Bellum Britannicum.

Paper on Latin Grammar, on which special stress will be laid.

Translation from English into Latin Prose, involving a knowledge of the first forty exercises in Bradley's Arnold's composition, and re-translation of single passages.

MATHEMATICS.

Arithmetic: Algebra, to end of Quadratic Equations: Euclid, Bb. I. II., and III.

ENGLISH.

A paper on English Grammar.
Composition.
Critical reading of a selected Poem:—
1888—Cowper, The Task, Bb. III. and IV.
1889—Scott, Lay of the Last Minstrel.
1890—Byron, The Prisoner of Chillon; Childe Harold's Pilgrimage, from stanza 73 of Canto 2 to stanza 51 of Canto 3, inclusive.

HISTORY AND GEOGRAPHY.

English History, from William III. to George III. inclusive. Roman History, from the commencement of the second Punic War to the death of Augustus. Greek History, from the Persian to the Peloponnesian Wars, both inclusive. Ancient Geography—Greece, Italy, and Asia Minor. Modern Geography—North America and Europe.

Optional subjects instead of Greek:—

FRENCH.

A Paper on Grammar.
Translation from English into French Prose.
1888, 1890: Souvestre, Un Philosophe sous le toits.
1889: Lamartine, Christophe Colomb.

or NATURAL PHILOSOPHY.

Books—Arnott's Elements of Physics, and Somerville's Physical Geography; *or*, Pecks' Ganot's Popular Physics, and Somerville's Physical Geography.

Articled Clerks.

In the years 1888, 1889, 1890, the same portions of Cicero, *or* Virgil, at the option of the candidate, as noted above for Students-at-law.

Arithmetic.
Euclid, Bb. I., II., and III.
English Grammar and Composition.
English History—Queen Anne to George III.
Modern Geography—North America and Europe.
Elements of Book-keeping.

RULE *re* SERVICE OF ARTICLED CLERKS.

From and after the 7th day of September, 1885, no person then or thereafter bound by articles of clerkship to any solicitor, shall, during the term of service mentioned in such articles, hold any office, or engage in any employment whatsoever, other than the employment of clerk to such solicitor, and his partner or partners (if any) and his Toronto agent, with the consent of such solicitors in the business, practice, or employment of a solicitor.

First Intermediate.

Williams on Real Property, Leith's edition; Smith's Manual of Common Law; Smith's Manual of Equity; Anson on Contracts; the Act respecting the Court of Chancery; the Canadian Statutes relating to Bills of Exchange and Promissory Notes; and Cap. 117, Revised Statutes of Ontario and amending Acts.

Three Scholarships can be competed for in connection with this Intermediate by Candidates who obtain 75 per cent. of the maximum number of marks.

Second Intermediate.

Leith's Blackstone, 2nd edition; Greenwood on Conveyancing, chaps. on Agreements, Sales, Purchases, Leases, Mortgages and Wills; Snell's Equity; Broom's Common Law; Williams on Personal Property; O'Sullivan's Manual of Government in Canada, 2nd edition; the Ontario Judicature Act, Revised Statutes of Ontario, chaps. 95, 107, 136.

Three Scholarships can be competed for in connection with this Intermediate by Candidates who obtain 75 per cent. of the maximum number of marks.

For Certificate of Fitness.

Armour on Titles; Taylor's Equity Jurisprudence; Hawkins on Wills; Smith's Mercantile Law; Benjamin on Sales; Smith on Contracts; the Statute Law and Pleading and Practice of the Courts.

For Call.

Blackstone, Vol. I., containing the Introduction and Rights of Persons; Pollock on Contracts; Story's Equity Jurisprudence; Theobald on Wills; Harris's Principles of Criminal Law; Broom's Common Law, Books III. and IV.; Dart on Vendors and Purchasers; Best on Evidence; Byles on Bills, the Statute Law, and Pleadings and Practice of the Courts.

Candidates for the Final Examination are subject to re-examination on the subjects of the Intermediate Examinations. All other requisites for obtaining Certificates of Fitness and for Call are continued.

Trinity Term, 1887.