THE

# Canada Law Journal.

VOL. XXXI. NOVEMBER 1, 1895. No. 17

A CORRESPONDENT, in drawing attention to one of the matters alluded to at this meeting, suggests the formation of a Solicitors' Benevolent Society, such as exists in England. The time must come when such a society will be formed here, and we shall be glad to hear from our readers on the subject. In the meantime, we should be glad if some beneficent fairy would restore the business of the country so as to give the half-starving solicitors throughout the cities and country some work to do.

---

IF any one will take the trouble to examine the stone balustrade which surrounds the quadrangle in the centre building at Osgoode Hall, he will discover that it is, in many places, ruthlessly disfigured by scratches and indentations, made, apparently, by knives or other sharp instruments. One would have thought that the beauty and elegance of the building might have served to protect it from such wanton mischief, but it seems not; and some are found who think it consistent with decency to loll over this balustrade, and, as they loll, to scrawl over it and dig little excavations in it, which all goes to show that you may put a pig in a palace, but he still remains a pig. Our legal palace, however, should be protected from these two-legged pigs.

---

THE etiquette of the Bar occasionally runs into queer extravagances in England, as witness the remarks of a writer in a legal journal there. He says that at the last Middlesex County Sessions an incident is reported to have occurred of some concern to the Bar

and to the public. "Counsel appeared for the defence of a prisoner. Objection was taken by counsel for the prosecution that the defending counsel was not a member of the s ssions mess, whereupon the chairman said that he would adjourn the case for other counsel to be instructed, or for the counsel appearing to put himself in order by having a junior from the sessions mess. We had supposed that the rules of etiquette of a sessions mess or circuit mess were of merely domestic authority, and that judges would not in any way recognize or enforce them, since to do so would be to cut down the theoretic right of prisoners to the selection of counsel."

---

We would again call attention to the inconvenient, annoying, and misleading practice of reporting cases on appeal in the Supreme Court by giving the name of the appellant first, whether or not he was plaintiff originally. The names are thus frequently transposed, and sometimes names are introduced which were not given in the title of the case in the court below. We have taken the liberty, in publishing the notes of cases of the Supreme Court in this issue, of putting the plaintiff's name first, so that those who have heard of the cases in the previous steges of their existence may be able to recognize them. It is quite time this stupid relic of a dusty past were shelved. We are, of course, aware that the Supreme Court follow, in this respect, the practice of the Privy Council, and it is possible there may be some slight convenience to the court in being able to see at a glance, from the style of the cause, who are, respectively, appellants and respondents: but this does, in fact, appear by the words "appellant" or "respondent" appearing after the name. The point is that the original style of cause should invariably be retained from the beginning to the end of the case. This would be a distinct convenience, and it is very hard to see why so reasonable a concession to convenience and common sense cannot at once be made, both in our Supreme Court and in the Privy Council.

---

A correspondent, in referring to the Intestates Estate Act (58 Vict., c. 21, Ont.), asks the question: "Wherein is the sense or justice of this latest creature of the Solons of the Local

Legislature? If a wife does her duty, or raises children, she gets nothing special; if she provides no issue, she gets $1,000 clear. Does one farrow cow get all the pasture?" As might be supposed from the illustration, our friend is from the country, and there is some fresh and breezy "horse sense" in his criticism.

Whilst the Act to which he refers was, we believe, taken from an English statute, it does not necessarily follow that it is the essence of wisdom. Whilst it was right to make some provision for the widow who had no children, we confess we do not see why the wife who has children should be so much ignored. This is one of the many Acts of the last session of the Ontario Legislature which has fallen under criticism, and we are free to confess that though Ontario legislation, speaking generally, has been good, and much better than in many other Legislatures, last session certainly left the door open to much adverse comment, though some of it has been hypercritical and some unfair.

In the United States biennial sessions have been forced upon many of the Legislatures, and the same system would, in the opinion of many, be a great comfort in Ontario. It is true that there is a great clamour going on for legislation on all sorts of subjects all over the country, but wisdom would point rather to letting matters alone until the effect of legislation should be better understood before any alteration is made. There certainly will be a need next session to explain many things which were enacted during the last, and to correct some errors, clerical and otherwise.

---

We have had many sensational murder cases during the past year, and none more so than those connected with the name of H. H. Holmes, who was recently convicted at Philadelphia for the murder of Benjamin F. Pietzel. If the statements made with regard to this man are true, he is one of the most inhuman monsters that have been seen on earth for many a long day. So far, however, as the recent conviction is concerned, we are inclined to think that his reputation had a good deal to do with it, as the evidence was certainly not of the strongest, and very probably a man of good character would have been given the benefit of the doubt. Judging from the telegraphic newspaper reports, which, however, no one expects in

these days to be very reliable, the management of the case by the counsel for the Commonwealth was not what would have found commendation either in England or Canada. With us, there is expected of Crown counsel a calm and judicial, as well as a logical and exhaustive, though it may be pitiless, presentation of the facts of the case to the jury, combined with such vigorous and searching cross-examination as may be necessary to bring out such facts, rather than the seeking of a conviction by the impassioned and eloquent harangues which are credited to Mr. Graham. The reason of this may possibly be that in the United States they have the elective principle connected with the administration of justice as well as with politics. We notice that one of the newspaper reports says that Mr. Graham is ready and anxious to come to this country to assist in the prosecution of Holmes for the alleged murder of the Pietzel children, should he escape the death penalty in the United States. We would say as to this that we can manage the matter quite well ourselves, and with due regard to what we consider the proper administration of justice, as well as with much more certain results should the defendant be found guilty. We have nothing to learn in such matters from a country where criminals very largely either escape justice altogether or are brutally murdered under the law of Judge Lynch, as was recently the case with the unfortunate negroes in Tennessee and Texas.

THE daily papers treat us to another horrible atrocity in the Southern States—the roasting to death of a negro for the alleged murder of a white woman. The citizens of the "most enlightened nation on the earth" stand by and see things done with impunity by men who are citizens of that great nation, and largely of the same blood as ourselves, which would disgrace savages in the centre of Africa. This may be said to be no business of ours, as a legal journal: but the whole profession is interested in the due administration of justice, and every lawless act is not only a menace to the state where it is committed, but also to every adjoining community, and this is especially the case in regard to the United States and Canada, where we have so much in common—similarity in race and in laws. If this horrible murder were an isolated case, there would be not much harm done: but

it is only one of many similar atrocious acts of lawlessness. It is becoming quite common to note the fact of "another nigger burned at the stake." There was, a short time before, the murder of another negro in Tennessee; after the unfortunate creature was horribly mutilated, and then endured half-an-hour's torture, death by hanging put an end to his agonies. There are many who think that these horrible exhibitions, which are a thousand times worse than those which disgraced the later years of the Roman republic, are an evidence that this great modern republic must soon also fall under the weight of its corruptions. It looks like it. The press of the country panders to the lowest and most vicious tastes; the judiciary, in some places, is under suspicion, and, being elective, is subject to terrible temptations, and is necessarily taken more or less from the ward politician class; their police administration has been said by one well qualified to judge to be "rotten to the core"; the business community make money their god; while, nationally, it cannot be said that their government is any more reliable, or less unscrupulous, than that of countries which have less enlightenment. Whatever may be truth as to these points, we believe that the salvation of the United States in many ways, and to a greater extent than many understand, has been, and will be, its Supreme Court. In other words, that which is the best and most conservative constituent of the legal profession is the great redeeming feature in much that is past praying for in the democratic institutions of the great republic. What the Supreme Court is, the whole profession, in a measure, ought to be, and if the best men at the Bar were, by concerted action, to become—as that most excellent tribunal has proved itself to be—one of the bulwarks of the constitution, much might be done to put an end to acts which are a festering sore in their body politic.

---

## *INCORPORATED LAW SOCIETY OF ENGLAND.*

We copy from our namesake in England a summary of the proceedings of the Incorporated Law Society of England at its recent annual meeting in Liverpool. It will be read with interest, as indicating the position of legal matters in the mother country. It will show also how far in advance of her we are in many things which make for the administration of justice and the convenient

and speedy transfer of, and dealing with, property. The conference, which was held at Liverpool, was one of the most successful on record—the president's address, and the seventeen papers that followed it, covering a wide range of subjects, exciting a considerable amount of discussion. The writer then proceeds :—

"The Council Chamber at the Town Hall, where the conference was held, was crowded when the Lord Mayor rose to welcome the members of the society to Liverpool. His lordship, who had committed his remarks to paper, referred to lawyers in terms far more complimentary than laymen are accustomed to use, and took advantage of the opportunity to trace the history of Liverpool and to dilate upon its greatness.

The presidential address delivered by Mr. Budd—who, as a commercial lawyer, made a most fitting chairman of a gathering of lawyers in a mercantile centre like Liverpool—was unusually long ; its delivery occupied an hour and twenty minutes, but its lucidity and suggestiveness fully atoned for its exceptional length. His brief reference to the legislation of the past year was distinguished by an expression of a desire that the day was not far distant when there would be a general codification of the law. He summarized the arguments that may be urged against a compulsory system of registration of land, and repeated the demand, made last year by Mr. John Hunter at Bristol, that the Government should appoint a committee to consider the whole subject of the transfer of land—a demand the reasonableness of which nobody has ever been found to question. Referring to the report of the committee appointed by the Board of Trade to inquire into the working of the Companies Acts, Mr. Budd expressed a general approval of its recommendations, and, amid the applause of the assembly, singled out for approbation the proposal that directors should be made personally liable if, on behalf of their company, they incurred debts which they had no reasonable prospect of meeting. He alluded with special satisfaction to the growing numbers of university men in the ranks of solicitors. But the part of his address which attracted the greatest amount of attention was that dealing with the subject of legal procedure, his remarks upon which were frequently interrupted by cheers, and were occasionally productive of laughter. It was noticeable that the president's references to "the unedifying spectacle of counsel holding briefs in cases they cannot possibly give atten-

tion to " were allowed to pass in silence. It may be that the feeling of the audience was that the spectacle to which Mr. Budd referred was not frequent enough to justify the nature of his allusion to it.

In proposing a vote of thanks to Mr. Budd for his "able and exhaustive" address, M. C. H. Morton, the president of the Liverpool Law Society, dissented from the view that compulsory membership of the Incorporated Law Society was undesirable. Of the 15,200 solicitors in the country, not more than 7,500 belong to the society. Mr. Morton declared that it was unfair that the maintenance of the interests of the profession should be left to half its members, and expressed an opinion that the drastic and extreme measure of compulsion was inevitable. The vote of thanks was seconded by Mr. R. S. Cleaver, of Liverpool, who was confident that solicitors were prepared to forego their holiday in order that the Long Vacation might be abolished, but was doubtful as to the action of the Bar in the matter. Mr. Budd, having acknowledged the vote of thanks in terms as brief as they were appropriate, directed the attention of the meeting to the address to be delivered by the Lord Chief Justice in Lincoln's Inn Hall, at the commencement of the lectures of the Council of Legal Education at the end of the month, and remarked that it was an open secret that his lordship had for several months past been engaged in investigating the present system of legal education, and that the address could not fail to command the best attention of solicitors throughout the country.

Of the seventeen papers, Mr. Joseph Addison was responsible for the first. It dealt with "Legal Education," and consisted of a plea for a better training of articled clerks in the practical part of a solicitor's business, but was somewhat marred by the absence of a plan by which his views could be carried out. Mr. Ware's paper on "Solicitors' Education" dealt largely with the evils of coaching, and recommended that greater importance should be attached in the examinations to questions relating to office work. At the close of Mr. Style's paper on "Solicitors as Part of the Government," a long discussion ensued on the whole subject of legal education. Mr. F. R. Parker, of London, remarked that coaches were necessary because the examination committee expected in students too great a measure of learning in theoretical law, and urged that subjects other than convey-

ancing, common law, and Chancery should, as of old, be optional. Mr. G. B. Crook, of London, who attached no importance to university teaching, protested against the interference of any outside body in the educational duties of the society. The real duty of education lay upon the solicitors to whom clerks were articled, and in the recognition of this obligation was the only solution of the problem. Mr. Grantham Dodd recommended an increase in the fees payable by articled clerks, and opposed the exemption of students, however great their university attainments, from the final examination. Mr. Saunders, the venerable lawyer who represents Birmingham on the council of the society, pointed out that it was impossible for a solicitor in full practice to give his articled clerks the whole of their legal education, and that if any such obligation were to be imposed no solicitor with whom it was desirable to article a clerk would think of accepting the duty, however high the premium that was offered. He was in favour of the certificates of universities being accepted, but a period of service in a solicitor's office would always be necessary to secure a proper knowledge of practice. He urged the institution of a joint system of education for both branches of the profession, such as existed in the medical profession for physicians and surgeons. He happened to know that Sir Frank Lockwood was strongly in favour of the proposal, and had understood that at his instance a paper on the subject would be read by a York solicitor, but this expectation was not to be realized at the present meeting. He hoped that the subject would be vigorously taken up by Lord Russell, whose forthcoming lecture would mark a return to the ancient practice of allowing the public to attend the lectures in the Inns of Court. He shared with the late Earl of Selborne the belief that a joint system of education would produce between the two branches of the profession a commendable spirit of ambition, and remove any feeling of caste that might exist. Mr. Pennington commented upon the absence of a plan from Mr. Saunders' speech. He was glad to know that the Liverpool educational scheme described by Mr. Ware had succeeded; but a scheme which was successful in Liverpool, where the articled clerks could easily be reached, was not applicable to articled clerks scattered in remote parts of the country. The system of education now carried on by the Incorporated Law Society was, he thought, the best that could be devised.

A tutor instructed the students how to read the books they were required to study—by word of mouth, if the students were resident in London, and by post if they lived in the country. If the advice of the tutor was followed, there was no need for cramming at all. Mr. M'Lellan, of Rochester, having expressed his views at length, Mr. Alsop, of Liverpool, observed that no comparison of any value could be drawn between the profession of medicine and that of law. A university degree in surgery involved a practical knowledge of the subject, inasmuch as the student was required to walk a hospital for some time; but a student who took a degree in law was not expected to be acquainted with the practical part of a conveyance or of an action. Mr. Blyth was desirous of hearing how joint systems of education were worked in foreign countries, and expressed a desire that at some future meeting a paper should be devoted to the matter.

A weakness of voice prevented Mr. William Godden from reading the paper he had prepared on "The Work and Extension of the Society," which was read on his behalf by Mr. Cleaver, of Liverpool. In the discussion to which it gave rise Mr. Atkinson, the president of the Yorkshire Law Society, advised an increase in the extraordinary members of the council, who are chosen from the ranks of country solicitors, and gave expression to the general feeling of the audience by suggesting that the number of papers read at the meeting was too large, a view that was proved to be true on Wednesday afternoon by the arrival of the appointed time for closing before the last three papers in the programme for the day had been read. Mr. Bramley proposed that the deficit of the society should be met by a special fund to be provided by the members, and that the council should head the list of subscriptions; while Mr. Crook was unable to understand why the society should concern itself with legislative matters. No discussion was permissible on Mr. Ward's paper on "The Working of the Limited Liability Acts," on Mr. Reid's paper on "Honest and Dishonest Company Promoters," or on Mr. Loosemore's paper on "The History of the Poor Rate and the Injustice of its Present Incidence," which possessed a rare distinction in a quotation from Tennyson. At the conclusion of his short paper on "Solicitorships for Solicitors," Mr. Harvey Clifton moved a resolution in these terms:

"That all public offices bearing the names and involving the duties of solicitors should be filled up by the appointment of solicitors only, and that the Council be requested to consider the propriety of taking steps to secure an amendment of the existing law, which admits of injustice being done to solicitors, and acts to the detriment of the public." The motion having been seconded by Mr. Grantham Dodd, the president pointed out that there were twenty-four appointments for which members of both branches of the profession were eligible, and that fifteen were held by solicitors and nine by barristers. A very large number of offices were, he added, held exclusively by solicitors, and any attempt to deprive members of the Bar of their right to occupy certain posts would inevitably be followed by a counter demand which it was not expedient to create. Mr. Stanton, of Birmingham, suggested that the resolution should, in view of the explanation of the president and of the small dimensions to which the meeting had been reduced, be withdrawn; but this Mr. Harvey Clifton did not feel himself at liberty to do. The desired result was achieved by Mr. Lake moving the previous question, a course in which he was supported by the meeting.

The papers which attracted most attention on Thursday were "Registration of Title and Conveyancing Reform," by Mr. Lake, and "The Long Vacation," by Mr. Rawle. Upon the former topic the following resolution was moved by Mr. Allen: "Resolved that, if a measure for extending the system of registration of title be again brought forward in Parliament, this meeting requests that the Council of the Incorporated Law Society of the United Kingdom will do its best to have the Act of 1875 repealed, and to provide that, if any system of registration be established, it shall not be compulsory or costly, but shall be made flexible and attractive, with power to remove land from the registry." This motion was seconded by Mr. Crook, and carried unanimously. In the course of the discussion Mr. Howlett stated that the Australian system of registration, which he had examined on the spot, was merely used for curing bad titles, and in no English-speaking country was registration of title compulsory. Mr. Cushing recommended that copies of Mr. Hunter's address at Bristol should be distributed among the owners of land, a recommendation which the president said the council would consider. Mr. Melmoth Walters moved that the

council be requested to put forward amendments of the system of land transfer on the lines indicated by Messrs. Wolstenholme and Hunter. They should, he said, not merely oppose the registration of land, but point out the directions in which the present system of conveyancing could be improved. The adoption of Messrs. Wolstenholme and Hunter's scheme was to secure the facility and safety of land transfer. Mr. Lake, in seconding the resolution, remarked that the object of the framers of the plan was, as far as possible, to make the transfer of land as easy as the transfer of shares and stock; its achievement would possess all the advantages that must attach to the simplification of conveyancing without having any of the demerits of officialism. A registry of distringas could not lead, as some believed, to registration of title; no map would be required, and all that the official would be required to do would be to receive the caveat and to mark the date. Messrs. Roscoe and Pennington opposed the resolution on the ground that the council had requested Mr. Wolstenholme to draw a bill, and that it was undesirable to commit the council to any policy until the bill had been considered and the views of provincial law societies had been obtained. It being evident that this view was shared by the meeting, Mr. Walters withdrew his motion.

No discussion on Mr. Rawle's amusing paper took place until the meeting had listened to Mr. Fullagar's paper, to Mr. Todd's paper on "Commercial Causes and Costs," to Mr. Lowndes' paper dealing with the question, "Should the County Courts be made a Branch of the High Court?" and Mr. Trustram's paper on "County Court Fees," had been taken as read, all these papers being grouped with Mr. Rawle's under the heading "Procedure," and being discussed together. Mr. Blyth declared that in the question of the Long Vacation the interests of the public must be supreme. A system of holidays by rotation was proved to be possible by the ease with which the Long Vacation judges worked in shifts. Mr. Parker moved that the Long Vacation as such should be entirely abolished, and the Courts and offices be open continuously throughout the year, except during the usual short recess at Easter, Whitsuntide, and Christmas, or, say, for a week before Easter Monday and the week after, the last week of August and the first week of September, and the last ten days of December and the first four days of January, and the Bank

Holidays of Whit Monday and August, but that each officer of the Court, from the highest to the lowest, should, by rotation, have a long vacation at a convenient period of the year, to be arranged by the heads of departments. This motion was seconded by Mr. Pennington and opposed by Mr. Melmoth Walters, and was carried by forty against seven. Dealing with Mr. Fullagar's paper, Mr. Morton, president of the Liverpool Law Society, condemned the present assize system, and demanded continuous sittings for Liverpool and Manchester. The difficulty of taking witnesses to London prevented a poor man in Lancashire from obtaining a divorce, and was an obstacle to the administration of justice in other classes of litigation. One-third of the litigation of the country came from Lancashire, and there were ample statistics to show that the time of a judge sitting continuously in Lancashire would be fully occupied. Mr. Tatham, president of the Manchester Law Society, expressed the same view, adding that the junior judge could always be sent to Lancashire, so that no member of the Bench need stay there long enough to be provincialized. Mr. Todd referred to the continuous sittings of judges in provincial towns in Germany and France, and denied that any deterioration took place. Mr. Munton briefly expressed his approval of Mr. Lowndes' proposal that County Courts should be made branches of the High Court. The time for bringing the proceedings to an end having passed, Mr. Pickstone's paper on "One Law for the Rich and another for the Poor" had to be taken as read. The meeting closed with the usual votes of thanks to the various persons who had contributed to the profit and pleasure of the conference."

## *CURRENT ENGLISH CASES.*

HIRE AND PURCHASE AGREEMENT—OPTION TO BUY—HIRER PLEDGING PROPERTY HIRED—PROPERTY IN GOODS.

*Helby* v. *Matthews*, (1895) A.C. 471; 11 R. Aug. 1, although a decision under the English Factors Act, 1889, of which no counterpart exists in Ontario, may, nevertheless, be usefully referred to as casting light on the construction of the hire and purchase agreements now so common. In this case the subject-matter of the contract was a piano, which the owner agreed to

let on hire, the hirer to pay a rent by monthly instalments, and to have the right to terminate the hiring by delivering up the piano to the owner, the hirer remaining liable for all arrears of hire; also that on punctual payment of all the instalments of hire the piano was to become his property, and that until such payment it was to continue the sole property of the owner. The hirer received the piano, and after paying some of the instalments pledged the piano to a pawnbroker. The House of Lords (Lords Herschell, L.C., and Watson, Macnaghten, Morris, and Shand) determined that the legal effect of the instrument was merely to give the hirer an option to purchase the piano, and that he was under no obligation to pay, and that even by putting it out of his power to return the piano he had not become bound to buy it, and that the owner was entitled to recover it from the pawnbroker.

MORTGAGEE—SALE BY MORTGAGEE UNDER POWER—SURPLUS PROCEEDS, LIABILITY OF MORTGAGEE FOR—CONSTRUCTIVE NOTICE—AGENT—FRAUD—TRUSTEE—TRUST PROPERTY OR PROCEEDS "STILL RETAINED"—STATUTE OF LIMITATIONS—(21 JAC. 1, C. 16)—TRUSTEE ACT, 1888 (51 & 52 VICT., C. 59, S. 8)—(54 VICT., C. 19, S. 13, ONT.).

In *Thorne* v. *Heard*, (1895) A.C. 495; 11 R. Aug. 23, the House of Lords (Lords Herschell, L.C., and Ashbourne, Macnaghten, and Davey) has affirmed the judgment of the Court of Appeal, (1894) 1 Ch. 599; and of Romer, J., (1893) 3 Ch. 530 (noted *ante* vol. 30, pp. 90, 452). It may be remembered the action was brought by a subsequent mortgagee against a prior mortgagee to recover the surplus proceeds of the sale of the mortgaged property which remained after satisfying the prior mortgagee's claim. These surplus proceeds the prior mortgagee had suffered to remain in the hands of their solicitor, who conducted the sale in the belief that he would pay them to the parties entitled. He was also the mortgagor's solicitor, and, instead of properly applying the surplus, he, without the knowledge of the prior mortgagees, misappropriated the fund, but continued to lull all suspicion and inquiry by continuing, as the mortgagor's solicitor, to pay interest to the second mortgagee on his mortgage as if it were still subsisting. The sale took place in 1878, but it was not until 1892 that the fraud was discovered. The principal question was whether the Trustee Limitation Act (51 & 52 Vict., c. 59) (see 54 Vict., c. 19, s. 13, Ont.) afforded a defence; this depended

on when the cause of action arose. The plaintiff contended that it did not arise until he discovered the fraud, but their lordships agreed with the court below that the cause of action arose when the surplus proceeds were received by the defendants, and that the concealment of a fraud can only be relied on to take a case out of the Statute of Limitations where the fraud is that of, or in some way imputable to, the person setting up the statute. Their lordships also held that under the circumstances the defendants could not be deemed to be in way parties or privies to the fraud of their solicitor, nor could the surplus proceeds be deemed to be "still retained" by them, and that in committing and concealing the fraud the solicitor was not acting as the defendants' agent, and consequently that there was nothing to prevent the statute from beginning to run in 1878. It did not appear by the evidence that the defendants had any actual knowledge of the existence of the second mortgage, and the knowledge the solicitor acquired of it was not acquired in connection with the sale, but as the mortgagor's solicitor, and Lord Herschell doubts whether such knowledge could be imputed to the defendants so as thereby to make them constructive trustees of the fund for the second mortgagee, but that point he considered it was unnecessary to determine. Such a question under the system of registration of deeds prevailing in Ontario could hardly arise.

## Correspondence.

### *SOLICITORS' BENEVOLENT ASSOCIATIONS.*

*To the Editor of* THE CANADA LAW JOURNAL :

SIR,—I have just read the address of the president of the Incorporated Law Society of England at Liverpool, from which I extract the following :

"Having thus pressed on all members of our profession the importance of their becoming members of this society, let me say one word in favour of two institutions which, at all events, cannot be said to exist or be fostered for any selfish objects. I mean, of course, the Solicitors' Benevolent Association, and the other association whose area is confined to London, namely, the Law Association, for the benefit of widows and families of solicitors in

the metropolis and vicinity. In doing so I cannot do better than quote the very pregnant words of our ex-president, Mr. Hunter, who, during his term of office, made an appeal on behalf of the Solicitors' Benevolent Association to every member of the profession. Mr. Hunter says: 'Having been a director of the Solicitors' Benevolent Association for nearly twenty years, I can speak with confidence on the manner in which its affairs are administered, and also as to the great assistance it is able to give to the poor and necessitous members of the profession and their families. During the time I have been a director, I have been surprised to find how many applications have been made to the association for assistance from societies and relatives of solicitors whom I find personally known as apparently prosperous members of our profession only a short time before, but who had been reduced by misfortune to dependence upon others, and this experience leads me to wish to impress upon every member of the profession to become a subscriber to the association.' I cannot too heartily echo these words of my predecessor, whose name at the foot of such a circular is the best assurance that we could have that the affairs of this charitable institution are administered judiciously and well, and that it deserves our cordial support. The ranks of our profession are, as we all know, overcrowded; how many among us must of necessity, if ill-health overtakes them, be involved in penury; how many there are whose families must be left ill provided for, and under circumstances that help must be required for providing the mere necessaries of existence. What poverty so keen, so hard to endure, as that of those who have been well educated and have known better days? Let those among us who have enough and to spare help this good object—I speak not only of the comparatively very prosperous man, but of the ordinary well-to-do members of our profession. Let each and all of us who come within this category think, not only of ourselves and those dependent on us, but let us devote some small portion at least of our savings to the assistance of those less fortunate among us, who from ill-health and other misfortune have been unable to make that provision for themselves or those depending on them which more favourable circumstances would have enabled them to do, and in no better way can we help the necessitous amongst our profession and their families than by contributing to the funds of these associations."

Now, my idea in writing this is to suggest the establishment of a solicitors' benevolent association in Ontario. We have many members of rank and affluence who might possibly join the society as life members on paying, say, $50 therefor, and the other members of the profession to pay an annual sum to be fixed. Persons getting relief from the funds would not consider it a charity, but a right, having contributed thereto. What say you and your readers?

J. A.

Kincardine, Oct. 29, 1895.

## Notes and Selections.

NEGLIGENCE—DANGEROUS PREMISES—LIABILITY OF OWNER.—In *Richards* v. *Connell*, 63 N.W. Rep. 915, it was held by the Supreme Court of Nebraska that the owner of a vacant lot, upon which is situated a pond of water or dangerous excavation, is not required to fence it or otherwise insure the safety of strangers, old or young, who may resort to said premises, not by invitation, express or implied, but for the purpose of amusement or from motives of curiosity. The court said in part:

The single question presented by the record is whether the owner of a vacant lot, upon which is situated a pond of water or a dangerous excavation, is required to fence it, or otherwise insure the safety of strangers, old or young, who may go upon said premises, not by his invitation, express or implied, but for the purpose of amusement, or from motives of curiosity. The authorities we find to be in substantial accord, and sustain the proposition that, independent of statute, no such liability exists. In *Hargreaves* v. *Deacon*, 25 Mich. 1, which was an action for the death of the plaintiff's son, a child of tender years, by drowning in a cistern left unguarded, it is said: "Cases are quite numerous in which the same questions have arisen, but we have found none which hold that an accident from negligence on private premises can be made the ground of damages, unless the party injured has been induced to come there by personal invitation or by employment which brings him there, or by resorting there as to a place of business or of general resort, held out as open to customers or others whose lawful occasions may lead them to visit there. We find no support for any rule which would protect those who go

where they are not invited, but merely with express or tacit permission, from curiosity or motives of private convenience, in no way connected with business or other relations with the occupant." In *Klix* v. *Nieman*, 68 Wis. 271, 32 N.W. Rep. 223, a case quite similar to that before us, it is said, after an exhaustive review of the authorities: "Upon the facts, we do not think the law imposes the duty upon the defendant of building a fence or guard to prevent children from reaching the pond. He is therefore not liable for the death of the child." In *Ratte* v. *Dawson*, (Minn.) 52 N.W. Rep. 965, an infant three years of age was by an elder sister taken for recreation to a vacant lot, and accidentally killed by the caving in of an embankment caused by excavation for sand, which had been left unfenced. In the opinion of the court it said: "The parties were clearly trespassers. They were not on the premises by plaintiff's invitation, or for any lawful purpose. He owed them no duty to fence or guard his premises to prevent them from entering and exposing themselves to danger." In *Clark* v. *Manchester*, 62 N.H. 578, it is said: "The plaintiff's intestate was not upon the land of the defendant where he was drowned, by express or implied invitation, for any purpose. The fact that the ground was uninclosed, and that the deceased and people at their pleasure went there without objection, was not an invitation, and from that fact alone no license can be inferred. The fact that the person who suffered injury and death was an infant child does not change the question, nor create a liability against the defendants where none would have existed in case of injury to an adult person under similar circumstances." And to the same effect see *Overholt* v. *Vieths*, 93 Mo. 423, 6 S.W. Rep. 74; *Gillespie* v. *McGowan*, 100 Pa. St. 144; *Pierce* v. *Whitcomb*, 48 Vt. 127; *McEachern* v. *Railroad Co.*, 150 Mass. 515, 23 N.E. Rep. 231; *Guy* v. *Railroad Co.*, 159 Mass. 283, 34 N.E. Rep. 186; *Beck* v. *Carter*, 68 N.Y. 283; Cooley, Torts, 606; Shear. & R. Neg., section 505. This class of cases rests upon an entirely different principle from those cases in which the injury resulted from a lawful and proper use of the street or sidewalk adjacent to a dangerous excavation. In the latter cases the law imposes upon the owner or occupant the duty to protect the travelling public, and he will be liable for the consequences of a failure to discharge that duty; while in the former he owes no duty to the general public in that respect. We are

referred to a number of cases which counsel argue sustain the plaintiff's right to recover on the facts alleged, and which may be classified as follows: (1) Cases in which the owner of land has made or permitted a dangerous excavation, embankment, or the like, so near a public highway as to injure one in the rightful use thereof. The principle which underlies this class of cases is, as we have seen, that the owner of land is required to so use it as to not imperil the life or property of another, and they are therefore not authority in case at bar. (2) Cases in which the defendant had negligently left exposed dangerous machinery likely to attract children, and resulting in their injury. Illustrative of this class, which constitute a recognized exception to the rule, are the so-called "turn-table cases." (3) Cases where the plaintiff was injured while upon the defendant's premises by invitation of the latter, and where the negligence consists in a failure to keep such premises in a reasonably safe condition. But in no case cited has a recovery been allowed on a state of facts substantially like those alleged in the petition under consideration.—*Cent. Law Jour.*

---

A VENDOR'S RIGHT TO RESCIND.—Few clauses can be found in any ordinary set of conditions of sale which are now better known than the clause enabling the vendor to annul the sale if the purchaser insists upon any objection or requisition as to title, conveyance, or otherwise which the vendor is unable or unwilling to remove or comply with. It was not always so well known, and it has not become a common form among conveyancers without some reservations. Mr. Justice Pearson, indeed, regarded the clause with much disfavour, and especially such portion of it as enabled the vendor to rescind instead of complying with a requisition as to conveyance made by the purchaser. "I regret exceedingly to hear," said his lordship, "that it is now a common practice to insert a condition providing that if the purchaser shall insist on any objection or requisition as to the conveyance which the vendor shall be unable or unwilling to remove or comply with, the vendor shall be at liberty to rescind the contract for sale" (*Hardman* v. *Child*, 54 Law J. Rep. Chanc. 695; L. R. 28 Chanc. Div. 712), and his lordship added that he thought such a stipulation might be proper only when trustees were selling and wished to provide against the purchaser requiring the vendors to obtain the concurrence of the beneficiaries. The con-

dition, however, before Mr. Justice Pearson in *Hardman* v. *Child* was, in fact, so framed as to relate both to requisitions as to title and to requisitions as to conveyance, and his lordship held that a condition of that kind was intended only to meet the case of a purchaser insisting on an objection which the vendor was absolutely unable to remove, or, if not absolutely unable, the removal of which would throw upon him such an amount of expense as it would be unjust that he should be compelled to pay. The more recent authorities, however, by no means bear out the propositions laid down in *Hardman* v. *Child*, and that case was, in substance, disapproved by the Court of Appeal in *In re Glenton and Saunders* to *Haden*, 53 L.T. 434. The condition in question seems now to have increased in favour with the judges, so much so, indeed, that they seem almost to regret that the use of the condition should be subject to any restrictions. Thus Lord Justice Cotton remarked: "There may be a doubt whether it is quite reasonable to say, when parties have entered into a contract, that the court must consider whether it is unreasonable or not, but the cases do certainly lay down this—that a vendor cannot avail himself of such a condition arbitrarily or unless he shows some reasonable ground for his unwillingness to answer the requisition (*In re Dames and Wood*, 54 Law J. Rep. Chanc. 771; L.R. 29 Chanc. Div. 630). The modern authorities, perhaps, justify us in saying that conditions of the kind in question are at the service of a vendor so long as his exercise of the right they confer is not capricious and is *bona fide* (*In re the Starr-Bowkett Building Society and Sibun's Contract*, 58 Law J. Rep. Chanc. 651; L.R. 42 Chanc. Div. 375; *Woolcot* v. *Peggie*, 59 Law J. Rep. P.C. 44; L.R. 15 App. Cas. 42). But even after reaching that point it is by no means easy sailing for either vendors or purchasers, inasmuch as many cases must constantly occur where it is difficult to draw the line between a capricious exercise, or an exercise not *bona fide*, and a proper exercise of the vendor's right to annul the sale under the condition framed for that purpose. As the law now stands, it certainly seems to be in favour of freedom of contract, but it unquestionably renders the task of a professional adviser much more difficult than it would have been if the observations of Mr. Justice Pearson in *Hardman* v. *Child*, instead of being met with disapproval, had been upheld in their integrity; and it is quite conceivable that in the case of purchasers very many will, rather than face the uncertainty of the law, too tamely yield to a vendor who meets a fair requisition with the threat of rescission.—*Law Journal.*

# Proceedings of Law Societies.

## *LAW SOCIETY OF UPPER CANADA.*

EASTER TERM, 1895.

*Monday, May 20th, 1895.*

Present: Dr. Hoskin in the chair, Sir Thomas Galt, and Messrs. Bayly, Moss, Shepley, Watson, Martin, McCarthy, Douglas, Idington, Barwick, Kerr, Riddell, and Ritchie.

Ordered, that the following gentlemen be called to the Bar: Messrs. W. M. McClemont, James O'Brien, and J. H. Spence.

Ordered, that the following gentlemen receive their certificates of fitness: Messrs. J. M. Godfrey, S. H. McKay, and James O'Brien.

Ordered, that the following gentlemen be entered as students: *Graduate Class.*—Messrs. J. B. T. Caron, J. R. Graham, J. A. McInnes, T. J. Rigney. *Matriculant Class.*—Messrs. J. K. Burgess, C. B. DeMille, N. Hayes, A. W. Holmested, H. G. Myers, and T. E. McKee.

The following gentlemen were called to the Bar: Messrs. W. M. McClemont, S. H. McKay, J. O'Brien, and J. H. Spence, and it was ordered that they be presented to the Court.

Mr. John Porter having asked leave to withdraw his complaint against Mr. A.C.F.B., a Report of the Discipline Committee was adopted granting the request, and recommending that no further proceedings be taken.

The Discipline Committee reported that Mr. G. W. Patterson and Mr. Nicol Jeffrey had appeared before the committee and explained their conduct. The committee recommended that no further proceedings be taken, both having been reprimanded before the committee by the chairman. Adopted.

The Discipline Committee also reported that May 11th, 1895, had been appointed for the investigation in the case against Mr. A. E. K. Greer, who appeared before the committee accompanied by counsel, but no one represented the Minister of Justice, although the committee had requested the Minister to provide counsel to prosecute the complaint made by him against Mr. Greer.

The committee found that Mr. Greer had been guilty of conduct unbecoming a barrister and solicitor, and recommended that he be summoned before Convocation and rebuked in the presence of Convocation by the Treasurer.

The Report was ordered for consideration on Friday, May 31st, 1895, and it was ordered that a copy of the Report be sent to Mr. Greer and his counsel, and that Mr. Greer be notified to attend before Convocation on the day named, when he would be at liberty to show cause why the said Report should not be adopted.

It was also ordered that notices be issued to the Benchers, asking them to attend on the consideration of the Report. A Report of the Discipline Committee on the case of Mr. W. M. Hall was presented, and it was ordered for consideration on Friday, May 31st, 1895. A copy of the Report was directed to be served upon the counsel who appeared on behalf of Mr. Hall at the investigation, and that he be informed that Convocation will

take action on this complaint on that day, at which time he will be at liberty to attend the meeting of Convocation, when he will be at liberty to show cause why the Report should not be adopted. It was also ordered that notices be issued to the Benchers, asking them to attend on the consideration of the said Report.

Ordered, that Messrs. James Millar and W. Jeffers Diamond, solicitors of over ten years' standing, be called to the Bar.

A Rule was read the first time consolidating the Rules relating to the Library, in substitution for Rules 66-69.

On the Report of a committee appointed to examine Mr. W. S. Turnbull, a solicitor of five years' standing, he was called to the Bar, and it was ordered that he be presented to the Court.

*Tuesday, May 21st, 1895.*

Present, Dr. Hoskin, Q.C., in the chair, and Messrs. Moss, Strathy, Bayly, Ritchie, Shepley, Watson, Macdougall, Bruce, Magee, and Douglas.

The revised Rules relating to the Library were read a third time and passed, as follows:

(66) It shall be the duty of the Library Committee to assume the general supervision and management of the Library, its annexes, the Benchers' robing room, and the consultation rooms.

(67) The Librarian shall have the immediate and general charge of the Library, under the superintendence of the Library Committee.

(*a*) The Librarian shall keep an account of all petty Library expenditures made by him out of such sums as the Library Committee may authorize to be advanced to him for that purpose.

(68) Purchases of books for the Library shall be made upon recommendations presented by or through the Librarian only by formal authority of the Library Committee, save in cases of apparent necessity, when the Librarian may, with the authority of two members of the committee, give orders for such purchases. For these purposes, the committee may expend annually such sum as may be included in the estimates approved by Convocation.

(69) The Library Committee shall have power to make regulations not inconsistent with these rules, with respect to all matters relating to the management of the Library, which regulations shall be reported to Convocation at its first meeting after the making thereof.

On the report of a committee appointed to examine Messrs. W. H. Hastings and D. S. McMillan, solicitors of five years' standing, they were called to the Bar, and it was ordered that they be presented in Court. Mr. W. Jeffers Diamond was also called to the Bar.

The sum of $165 was ordered to be paid to the Librarian for his services as Secretary of the Law Reform Convention.

Mr. H. W. Eddis was appointed Auditor for the ensuing year.

*Saturday, May 25th, 1895.*

Present: The Treasurer, and Messrs. Proudfoot, Osler, Martin, Moss, Mackelcan, Hardy, Robinson, Aylesworth, Watson, Teetzel, and Riddell.

Mr. Æmilius Irving, Q.C., was elected Treasurer for the ensuing year.

Ordered, that Mr. Gibson F. T. Arnoldi do receive his certificate of fitness.

Mr. James Millar, a solicitor of over ten years' standing, and Mr. G. W. Patterson were called to the Bar, and it was ordered that they be presented to the Court.

A Report from the County Libraries' Committee recommending that a loan be granted to the County of Grey Law Library Association not exceeding the estimated amount of the next three years' annual grants was adopted.

The Special Committee appointed in that behalf reported the following members of Convocation to form the Standing Committees:

*Finance.*—Messrs. A. B. Aylesworth, Walter Barwick, S. H. Blake, A. Bruce, John Hoskin, Z. A. Lash, E. Martin, W. R. Riddell, C. H. Ritchie, G. F. Shepley, H. H. Strathy, G. H. Watson.

*Library.*—Messrs. A. B. Aylesworth, Walter Barwick, S. H. Blake, W. Douglas, Donald Guthrie, Charles Moss, W. Proudfoot, W. R. Riddell, C. Robinson, G. F. Shepley, H. H. Strathy, G. H. Watson.

*Reporting.*—Messrs. A. B. Aylesworth, B. M. Britton, J. Idington, Colin Macdougall, F. Mackelcan, D. McCarthy, James Magee, B. B. Osler, W. Proudfoot, C. H. Ritchie, G. F. Shepley, J. V. Teetzel.

*Legal Education.*—Messrs. Walter Barwick, R. Bayly, John Hoskin, Z. A. Lash, Colin Macdougall, F. Mackelcan, E. Martin, Charles Moss, W. R. Riddell, C. H. Ritchie, C. Robinson, J. V. Teetzel.

*Discipline.*—Messrs. A. B. Aylesworth, R. Bayly, Alexander Bruce, Donald Guthrie, John Hoskin, J. K. Kerr, F. Mackelcan, James Magee, M. O'Gara, W. R. Riddell, C. Robinson, G. H. Watson.

*Journals and Printing.*—Messrs. Walter Barwick, R. Bayly, John Bell, B. M. Britton, W. Douglas, J. Idington, J. K. Kerr, Z. A. Lash, Colin Macdougall, D. B. Maclennan, M. O'Gara, J. V. Teetzel.

*County Libraries Aid.*—Messrs. B. M. Britton, Alexander Bruce, W. Douglas, D. Guthrie, A. S. Hardy, J. Idington, J. K. Kerr, E. Martin, James Magee, M. O'Gara, B. B. Osler, H. H. Strathy.

*Friday, May 31st, 1895.*

Present: The Treasurer, and Messrs. Hoskin, Moss, Bruce, Barwick, Shepley, Watson, Guthrie, Bayly, Ritchie, Riddell, Aylesworth, McCarthy, S. H. Blake, Robinson, and Osler.

Ordered, that Mr. W. H. Holmes receive his certificate of fitness, and that Mr. James G. Fraser be admitted as a student of the graduate class.

Ordered, on the recommendation of the Legal Education Committee, that Mr. E. Douglas Armour, Q.C., who acted as Principal from the 15th of September, 1894, to the 15th of October, 1894, when the present Principal was appointed, be paid the sum of $208, being the difference for one month between his own salary as Lecturer and the salary paid the former Principal.

The following Report of the Principal of the Law School for the session of 1894-95 was presented:

*Charles Moss, Esq., Q.C., Chairman Legal Education Committee:*

SIR,—I beg to report as follows in regard to the term of the Law School, which closed on the 25th April, 1895:

(1) The number of students entered in the books of the school is as follows:

| | | | |
|---|---|---|---|
| First year | 46 | Average attendance | 40 |
| Second year | 71 | " " | 61 |
| Third year | 62 | " " | 50 |
| Total | 179 | | 151 |

The average attendance in the third year appears smaller than it in fact was, owing to the fact that the number 62 was not reached until after the Christmas vacation. The average number during the whole term was about 57.

In all years the actual attendance was really larger than the figures above given indicate. The rule is to mark as absent all students who come into the room after the lecture has commenced.

(2) The number of lectures delivered was as follows:

By the Principal, 198; Mr. Armour, 128; Mr. Marsh, 117; Mr. King, 112; Mr. Young, 136; total, 691.

In my opinion the conduct and attention is, on the whole, all that could be desired, and the attendance at lectures is quite satisfactory.

It will be noticed that the number of lectures delivered this term is less than in the previous term. This is to be explained as follows:

The number of Moot Courts and Friday lectures was much reduced this year. None were given up to the time when, after my appointment, I was able to draw up a scheme of lectures for the year; and in that scheme the number of Moot Courts was smaller than had previously been the custom. Again, the school term was shortened one week, so as to allow an improved system of examinations to be introduced.

I am not at present satisfied that Moot Courtsare, in practice, quite successful. Theoretically, they would seem to be desirable, but students of the second and third years are, as a rule, much pressed for time, owing to their office work, which is an important part of their professional education, and also owing to the large amount of reading required for the examinations. In addition to these, they require time for arranging and expanding the notes taken at lectures.

They consequently grudge the time required for working up cases for argument, and do not always come well prepared. The interest taken in the discussion by those who are not engaged in it does not seem keen enough to lead one to suppose that the class, as a whole, derives much benefit from it.

(3) In view of the great attention which is now being paid to legal education both in England and the United States, and of the improved methods in vogue in the latter country, it would, in my opinion, be very desirable that I should be deputed to visit one or two of the leading law schools in the United States during their session and to examine their systems.

(4) An improved method of examinations has been adopted in the school this year. A much longer time has been allotted, one paper only having been given at each of the different sessions. This is much fairer for the students, and gives them ample time for treatment of the subjects, and they are all well satisfied with the change.

(5) This change in the examinations, by which in the third year, for instance, eleven days have been allotted, instead of six as heretofore, rendered it necessary to shorten the school term one week in order to enable the students to review their work for examination.

I am of opinion that it would be desirable to make a similar shortening of the term for the future. It is not easy to hold the examinations at a later date than about the 9th of May, the time when they began this year, and a reasonable time must be allowed to the students between the cesser of lectures and the examinations to review their notes and text-books.

(6) I recommend further that a short vacation be sanctioned at Easter; this is, I believe, the practice in all other educational institutions, and would be an advantage to the second and third year students, by giving them a break for arranging and systematizing their notes of lectures.

(7) I recommend further that I be authorized to shorten some of the courses of lectures in the first year, which are at present too drawn out. I do not suppose that it is in my power to do this without the sanction of your committee, or of Convocation, which I desire to obtain.

(8) Other than as above I am not, as at present advised, prepared to recommend any shortening of the school term.

(9) I have heard many complaints as to the heating and ventilation of the lecture rooms. The air ducts are so arranged as to make some of the seats in their vicinity untenantable, and many others uncomfortable, owing to the streams of cold or heated air coming from them. Some readjustment of them seems important before winter comes.

(10) I submit herewith returns of attendance during the past term of the school, and also special reports dealing with students who have not been able to comply with the regulations in this respect.

I have the honour to be,

Your obedient servant,

Dated 23rd May, 1895. N. W. HOYLES, Principal.

The Reporting Committee presented the following Report:

In the Court of Appeal there were twenty-three cases unreported, eight of March, ten of April (r ady), and five of May.

In the High Court, Mr. Harman has one of March (revised). Mr. Lefroy has seventeen, of which seven are of March, six of April, and four of May. Mr. Boomer has six; one of February, which was mislaid in the Queen's Bench Division, two of March (ready), two of April, and one of May. Mr. Brown has one of March (revised). There are fourteen Practice cases, one of February, eight of March, and five of April, which will issue this week.

The Report was received.

The Special Committee appointed in relation to the issue of a new digest presented the following Report:

Your committee, having met and considered the matters referred to them, beg to report as follows:

Your committee transmits herewith, for the fuller information of Convocation, certain memoranda containing particulars of the cost and number of issue of the earlier Digests and the Decennial and Triennial Digests, and also certain correspondence relating to proposed issues.

Your committee recommend that a Quinquennial Digest for the period 1891 to 1895, inclusive, should be issued by the Law Society, and that, if practicable, arrangements should be made therefor with the editor-in-chief as editor, and Mr. E. B. Brown and Mr. R. S. Cassels as compilers.

Your committee is of opinion that this may be arranged for and completed for an issue of 1,000 to 1,100 volumes, at a total cost of something under $3,000, and such issue would then be on hand for disposal to the members of the profession at such price as may be afterwards determ

And your committee is of opinion that the ultimate result should not be more than a slight expense (if any) to the Society. Your committee recommend that the work and issue of a General Digest be not entered upon at present time.

Your committee desires that Convocation should continue the authority of the committee, with power to further consider and report.

The Report was adopted.

A Report was presented from the Discipline Committee upon the case of Mr. W. M. Hall.

Fifteen members of Convocation being present, the Report was read in full to Convocation as so constituted.

The Report sets forth the proceedings, and concludes as follows:

Your committee find that the said William Myddleton Hall received large sums of money under the said agreement referred to; that such moneys were paid to and received by him from corrupt motives and for corrupt and improper purposes, and that the said William Myddleton Hall is guilty of conduct unbecoming a barrister and solicitor, and your committee recommend Convocation to disbar the said William Myddleton Hall, and to resolve that he is unworthy to act as a solicitor.

The notice for a special call of the Bench for this day for the consideration of the above Report was read, also the letter of 25th May addressed by the Secretary to Mr. Hall's counsel, enclosing a copy of the Report, and notifying him that he would be at liberty to attend the meeting and show cause why the said Report should not be adopted.

The Secretary also reported that, on the 25th day of May, 1895, he delivered to Mr. Hall's counsel, at his office, the letter above mentioned and a copy of the Report.

Convocation having awaited the hour of twelve noon, the Secretary proceeded to the corridors, and returning to Convocation reported that neither Mr. Hall nor his counsel was in attendance.

The adoption of the Report was then moved, and the same was carried on a division by a majority of more than two-thirds, and it was ordered accordingly that Mr. William Myddleton Hall be disbarred, and that he is declared unworthy to act as a solicitor. Ordered, also, that steps be taken to strike him off the roll.

The following Report upon the case of Mr. A. E. K. Greer was presented from the Discipline Committee :

"Your committee beg to report that they appointed the eleventh day of May, 1895, to proceed with the investigation, on which occasion Mr. Greer appeared before your committee and accompanied by counsel, but no one represented the Minister of Justice, although your committee requested the Minister to provide counsel to prosecute the complaint made by him against Mr. Greer. Your committee proceeded with the investigation and heard what was said by the said Mr. Greer and his counsel, and found that he, the said A. E. K. Greer, has been guilty of conduct unbecoming a barrister and solicitor, and your committee recommend that he be summoned before Convocation, and that he be rebuked in the presence of Convocation by the Treasurer."

Mr. Greer was then asked by the Treasurer whether he had anything to say. He stated that he had nothing to add to what had been said by counsel at the investigation, and then retired. The Report of the committee was then adopted, and Mr. Greer was called before Convocation and reprimanded by the Treasurer.

*Friday, June 7th, 1895.*

Present : The Treasurer and Sir Thomas Galt, and Messrs. Shepley, Mackelcan, Osler, Bayly, Kerr, Barwick, Moss, Riddell, Hoskin, McCarthy, and Ritchie.

A Report was presented from the Library Committee with respect to a breach of the library regulations by Mr. S., recently brought to its notice.

The Secretary was directed to transmit a copy of the Report to Mr. S., with a request that he lay before Convocation any explanation thereof that he may have to make.

The Special Committee appointed in relation to the new Digest reported that arrangements had been made for the compilation of the Digest upon the following terms as to remuneration : To the Editor, $400 ; to each of the compilers, $550 ; the work to be completed and the book delivered for distribution within six months of the closing of the last volume of Reports to be included in it.

The committee asked for authority to the chairman of the Reporting Committee and the Editor to make arrangements with the publisher. The Report was adopted.

Ordered, that the following gentlemen be called to the Bar : Mr. D. I. Grant, with a silver medal and with honours ; Messrs. F. A. Magee and F. A. C. Redden, with honours ; and Messrs. R. K. Barker, C. W. Beatty, C. J. R. Bethune, W. H. Curle, D. Danis, T. D. Dockray, G. Drewry, J. R. Gundy, F. D. Kerr, F. A. Kerns, J. H. Lamont, F. C. McBurney, H. W. Macomb, G. E. McCraney, J. F. McGillivray, A. E. McLaughlin, W. F. Nickle, R. D'A. Scott, J. Vining, W. M. Whitehead, and S. C. Wood, and that they be presented to the Court.

Ordered, that the gentlemen so ordered to be called to the Bar, with the exception of R. K. Barker, whose service under articles had not yet expired, receive their certificates of fitness.

Ordered, also, that Mr. H. E. Hoskin, who passed Easter, 1895, do receive his certificate of fitness.

Ordered, that Mr. F. E. Perrin be admitted as a student-at-law.

Mr. Moss, Q.C., was elected representative of the Law Society to the Senate of the University of Toronto.

The following gentlemen were then called to the Bar : Mr. D. I. Grant, with silver medal and with honours ; Messrs. F. A. C. Redden

and F. A. Magee with honours; and Messrs. Barker, Beatty, Bethune, Curle, Danis, Dockray, Drewry, Gundy, Kerr, Kerns, Lamont, McBurney, McComb, McCraney, McGillivray, McLaughlin, Nickle, Scott, Vining, Whitehead, and Wood, and it was ordered that they be presented to the Court.

HALF-YEARLY MEETING.

*Tuesday, June 25th, 1895.*

Present: The Treasurer, and Sir Thomas Galt, and Messrs. Guthrie, Martin, Moss, Britton, Shepley, Bruce, Barwick, Strathy, Bayly, Watson, Ritchie, and Kerr.

Ordered, that the following gentlemen be called to the Bar: Mr. V. A. Sinclair, with a bronze medal and with honours; Messrs. W. E. Buckingham, D. C. Ross, and J. H. Tennant, with honours; and Messrs. C. A. Batson, H. F. Hunter, A. L. Lafferty, and H. W. McClive, and it was ordered that they be presented to the Court.

Ordered, that the following gentlemen receive their certificates of fitness: Messrs. R. K. Barker, C. A. Batson, W. E. Buckingham, H. F. Hunter, B. M. Jones (who passed Easter, 1894), A. L. Lafferty, H. W. McClive, D. C. Ross, V. A. Sinclair, and J. H. Tennant.

It was ordered that the following students be allowed their first year examination: Mr. A. M. Stewart, with honours and a scholarship of $100; Mr. W. H. Burns, with honours and a scholarship of $60; Messrs. E. A. Dunbar, W. M. Lash, C. S. McInnes, C. A. Moss, and F. L. Smiley, with honours and a scholarship of $40 each; Messrs. R. G. Affleck, A. A. Carpenter, H. Hartman, L. M. Lyon, G. F. Macdonnell, and A. D. Meldrum, with honours; and Messrs. H. Arrell, J. W. Bain, W. H. Barnum, A. H. Beaton, H. C. Beelier, E. H. Bickford, W. M. Boultbee, S. M. Brown, G. L. T. Bull, E. C. Cattanach, J. H. Campbell, A. E. Christian, E. C. Clark, E. H. Cleaver, J. H. Clarry, J. H. Craig, B. A. C. Craig, W. B. Craig, W. S. Davidson, F. M. Devine, D. Donaghy, G. E. Dunbar: J. C. Elliott, R. W. Eyre, J. E. Ferguson, W. A. Gilmour, F. B. Goodwillie, C. Guillet, G. C. Heward, W. A. Hollinrake, V. J. Hughes, S. A. Hutchison, C. W. S. Kappele, L. J. Kehoe, J. E. Kerrigan, W. B. Laidlaw, W. J. Lander, H. A. Little, F. J. Maclennan, A. D. Meldrum, A. A. Miller, W. H. Moore, M. S. McCarthy, W. McCue, D. A. J. McDougall, J. McFadden, J. G. McKay, E. H. McKenzie, S. J. McLean, J. S. L. McNeely, W. M. H. Nelles, F. B. Osler, J. R. O'Connor, W. J. O'Neall, H. E. B. Robertson, J. A. Scellen, E. W. Sexsmith, H. H. Shaver, A. G. Slaght, A. R. J. Sullens, A. B. Thompson, B. W. Thompson, J. U. Vincent, W. R. Wadsworth, I. E. Weldon, W. J. Withrow, S. B. Woods.

Ordered, that the following gentlemen be allowed their second year examination: Mr. J. D. Phillips, with honours and a scholarship of $100; Mr. H. E. Sampson, with honours and a scholarship of $60; Messrs. A. T. Boles, M. W. Griffin, A. M. Lewis, J. D. Shaw, and C. B. Nasmith, with honours and a scholarship of $40 each; Messrs. W. Finlayson, J. F. Kilgour, J. P. Smith, and P. White, jr., with honours; and Messrs. H. Beattie, H. H. Bicknell, J. C. Brokovski, W. P. Bull, H. E. Choppin, T. Church, L. F. Clarry, J. A. Cooper, W. M. Cram, E. J. Deacon, T. B. German, H. N. German, G. D. Graham, F. W. Griffiths, S. B. Harris, C. C. Hayne, A. Haydon, J. F. Hollis, M. H.

Irish, J. L. Island, E. C. Kenning, J. L. Killoran, F. C. S. Knowles, W. E. Knowles, A. E. Knox, J. M. Laing, E. F. Lazier, J. E. Little, Miss C. B. Martin, A. F. R. Martin, S. S. Martin, S. T. Medd, W. J. Moore, T. P. Morton, H. R. Morwood, F. J. McDougall, J. L. McDougall, P. E. MacKenzie, E. H. McLean, J. E. McMullen, J. E. McPherson, T. J. W. O'Connor, L. V. O'Connor, M. J. O'Reilly, W. R. P. Parker, A. B. Pottinger, C. H. Porter, C. B. Pratt, L. J. Reycraft, W. W. Richardson, P. T. Rowland, M. A. Secord, G. L. Smith, C. A. Stuart, F. W. Tiffin, J. T. C Thompson, and P. E. Wilson.

Ordered, that the following gentlemen be admitted as students-at-law of the graduate classes: Messrs. D. S. Bowlby H. A. Burbidge, A. M. Chisholm, H. A. Clark, E. Gillis, A. R Hamilton, A. C. W. Hardy, A. Hall, W. D. Henry, T. H. Hilliar, C. E. Hollinrake, T. A. Hunt, C. A. Macdougall, J. Montgomery, F. L. Pearson, and S. H. B. Robinson; and that E. C. Jones be admitted as a student of the matriculant class.

The following Report was presented from the Legal Education Committee:

The committee have had under consideration the suggestions or recommendations contained in the Report of the Principal of the Law School, dated the 23rd day of May last, and, with reference thereto, the committee make the following recommendations:

(1) In regard to Moot Courts, the committee think that further information is needed before any action be taken. And they recommend that further action be deferred until the Principal has, by correspondence or conference with the heads of some of the leading Law Schools in the United States and elsewhere, procured and furnished the committee with fuller information with regard to the working and practical results of Moot Courts in other Law Schools.

(2) With regard to the suggestion that the Principal should be deputed to visit one or two of the leading Law Schools in the United States during their session to examine their systems, the committee are of opinion that it would be desirable to adopt this suggestion, and accordingly recommend its adoption.

(3) With regard to the suggestion for shortening the term of the session for the future, the committee are of opinion that the suggestion might be adopted without any prejudice to the efficiency of the school. The committee therefore recommend that the term close upon the last Monday in April instead of, as at present, on the first Monday in May.

(4) With regard to the suggestion in favour of a vacation at Easter, the committee recommend that there be an Easter vacation commencing on the Thursday before Good Friday and concluding at the end of the ensuing week.

(5) With regard to the recommendation that the Principal be authorized to shorten some of the course of lectures in the first year, the committee think that before action is taken there should be further information, and they have requested the Principal to put his proposal in more definite form, specifying the particular course of lectures, and the extent of the proposed shortening of them.

(6) With regard to the heating and ventilation of the lecture rooms, the committee are taking steps to prevent or ameliorate, as far as possible, the causes of complaint mentioned. Dated 21st June, 1895.

The Report was adopted.

A motion for the first reading of a rule founded on the Report of the Legal Education Committee relating to the review of papers of unsuccessful candidates at the examinations, consideration of which had been deferred on September 21st last, was lost.

Ordered, that the correspondence in the matter of closing Osgoode street be referred to the committee now having the matter under consideration, with instructions to continue such negotiations as may be necessary and to report to Convocation on any proposal as to terms on which the street may be closed, and that the Secretary at once write to the Hon the Minister

of Militia and to the Deputy Adjutant-General, informing them that no consent has been given to the closing of this street, and that the Special Committee has been appointed to confer with the parties interested in closing the same and consider the terms on which the street may be closed.

Ordered, that Mr. J. T. Maybee do receive his certificate of fitness.

The following gentlemen were called to the Bar: Messrs. V. A. Sinclair, with honours and a bronze medal; Messrs. W. E. Buckingham, D. C. Ross, and J. H. Tennant, with honours; and Messrs. C. A. Batson, H. F. Hunter, W. H. Holmes, A. L. Lafferty, R. Mitchell, and H. W. McClive, and it was ordered that they be presented to the Court.

The following Report was read from the Secretary:

"The Secretary has the honour to report in relation to his action under the resolution or order of Convocation of May 31st, 1895, whereby Mr. W. M. Hall was disbarred and declared unworthy to act as a solicitor:

That he did on the nineteenth of June, in pursuance of the statute R.S.O. 145, sections 45 and 46, transmit to the Registrar of the Common Pleas Division of the High Court of Justice a copy of the said resolution or order."

Convocation then rose.

## DIARY FOR NOVEMBER.

1. Friday.....All Saints' Day.
2. Saturday .....John O'Connor, J., Q.B., died, 1887.
3. Sunday .....*21st Sunday after Trinity.*
5. Tuesday.....Sir John Colborne, Lieut.-Gov. U.C., 1838. Gunpowder Plot.
7. Thursday.... .T. Galt, C.J. of C.P.D., 1887.
9. Saturday.....Prince of Wales born, 1841.
10. Sunday.. .....*22nd Sunday after Trinity.*
11. Monday.....Battle of Chrysler's Farm, 1813.
12. Tuesday.....Court of Appeal sits. J. H. Hagarty, 4th C.J. of C.P., 1868. W. B. Richards, 10th C.J. of Q.B., 1868.
13. Wednesday.....Adam Wilson, 5th C.J. of C.P., 1878. J. H. Hagarty, 12th C.J. of Q.B., 1878.
14. Thursday.....W. G. Falconbridge, J., Q.B.D., 1887.
15. Friday.....M. C. Cameron, J., Q.B , 1878.
17. Sunday.....*23rd Sunday after Trinity.*
18. Monday.....Michaelmas Term begins. Q.B. and C.P. Divisional Courts. Convocation meets.
19. Tuesday.....J. D. Armour, 14th C.J. of Q.B.D., 1887.
21. Thursday.....J. Elmsley, 2nd C.J. of Q.B , 1796.
22. Friday.... .....Convocation meets.
24. *24th Sunday after Trinity.* Battle of Fort Duquesne, 1758.
25. Monday... ....Marquis of Lorne, Governor-General, 1878.
27. Wednesday.....Frontenac died at Quebec, 1698.
29. Friday. .....Convocation meets.
30. Saturday.....St. Andrew. T. Moss, C.J. of Appeal, 1877; W. P. R. Street, J., Q.B.D., and H. MacMahon, J., C P.D., 1889.

# Notes of Canadian Cases.

## *SUPREME COURT OF CANADA.*

Ontario.] [May 6.

LEWIS *v.* ALEXANDER.

*Municipal corporation—Petition for drain—Use of drain as common sewer—Connection with drain—Nuisance—Liability of householder.*

Ratepayers of a township petitioned, under s. 570 of the Municipal Act of Ontario, for a drain to be constructed "for draining the property" described in the petition. The township was afterwards annexed to the adjoining city, and the drain was thereafter used as a common sewer, it being, as constructed, fit for such use. An action was brought against a householder, who had connected the sewage from his house with said drain, for a nuisance resulting therefrom at its outlet.

*Held*, affirming the decision of the Court of Appeal (21 A. R. 613), TASCHEREAU and GWYNNE, JJ., dissenting, that s. 570 empowered the township to construct a drain not only for draining off surface water, but sewage generally, and the householder was not responsible for the consequences of connecting his house with the drain by permission of the city.

Where a by-law provided that no connection should be made with a sewer except by permission of the city engineer a resolution of the city council grant-

ing an application for such connection on terms which were complied with, and the connection made, was a sufficient compliance with said by-law.

Appeal dismissed with costs.

*McCarthy*, Q.C., and *Fraser* for the appellant.

*Gibbons*, Q.C., and *Cameron* for the respondent.

---

Ontario.] [May 6.

GRANT *v.* NORTHERN PACIFIC JUNCTION RAILWAY CO.

*Railway company--Carriage of goods—Carriage over connecting lines—Contract for—Authority of agent.*

E., in British Columbia, being about to purchase goods from G. in Ontario, signed, on request of the freight agent of the N.P.R.W. Co., in B.C., a letter to G., asking him to ship goods *via* G. T. Ry. and Chicago & N. W., care N. P. Ry. at St. Paul. This letter was forwarded to the freight agent of the N. P. Ry. Co. at Toronto, who sent it to C., and wrote him, "I enclose you card of advice, and, if you will kindly fill it up when you make the shipment to me, I will trace and hurry them through and advise you of delivery to consignee." G. shipped the goods as suggested in this letter, deliverable to his own order in B.C.

*Held*, affirming the decision of the Court of Appeal (21 A. R. 322), and of the Divisional Court (22 O.R. 645), that on arrival of the goods at St. Paul the N.P.R.W. Co. was bound to accept delivery of them for carriage to B.C., and to expedite such carriage; that they were in the care of said company from St. Paul to B.C.; that the freight agent at Toronto had authority so to bind the company; and that the company was liable to G. for the value of the goods which were delivered to E. at B.C. without an order from G., and not paid for.

Appeal dismissed with costs.

*McGregor* for the appellant.

*Wells* and *W. Nesbitt* for the respondents.

---

Ontario.] [May 6.

GRINSTED *v.* TORONTO RAILWAY COMPANY.

*Negligence—Street railway—Ejectment from car—Exposure to cold—Consequent illness—Damages—Remoteness of cause.*

In an action by G. against a street railway company for damages in consequence of being wrongfully ejected from a street car, the evidence was that G. had paid his fare and been transferred to the car from which he was ejected; that he was in a state of perspiration from his altercation with the conductor, and had to wait twenty minutes for another car; and that the weather being severe he caught cold, and was laid up for some time with bronchitis and rheumatism. His medical attendant testified that when he left the car his physical condition was such as would make him liable to contract the illness which ensued. The jury gave a verdict for G., severing the damages, allowing $200 for the ejectment and $300 for the illness, finding that it was a natural and probable result of the ejectment. The company appealed from the assessment of $300.

*Held*, affirming the decision of the Court of Appeal, GWYNNE, J., dissenting, that under the circumstances the jury were justified in finding that the illness was the natural and probable result of the ejectment, and that the cause of damage was not too remote.

Appeal dismissed with costs.

*Bicknell* for the appellant.

*McWhinney* for the respondent.

---

Ontario.] [May 6.

CITY OF TORONTO *v.* TORONTO RAILWAY COMPANY.

*Negligence—Obstruction of street—Accumulation of snow—Question of fact—Finding of jury.*

An action was brought against the city of Toronto to recover damages for injuries incurred by reason of snow having been piled on the side of the streets, and the street railway company was brought in as third party. The evidence was that the snow from the railway tracks was piled upon the roadway, and that from the sidewalks was placed there also. The jury found that the disrepair of the street was the act of the railway company, which was therefore made liable over to the city for the damages assessed. The company contended, on appeal, that the verdict was perverse and contrary to evidence.

*Held*, affirming the decision of the Court of Appeal, that, under the evidence given of the manner in which the snow from the track had been placed on the roadway immediately adjoining, the jury might reasonably be of opinion that, if it had not been so placed there, the accident would not have happened, and therefore the verdict was not perverse.

Appeal dismissed with costs.

*Laidlaw*, Q.C., and *Bicknell* for the appellant.

*Fullerton*, Q.C., for the respondent.

---

Ontario.] [May 6.

GOSNELL *v.* TORONTO RAILWAY COMPANY.

*Negligence—Street railway—Management of car—Excessive speed—Contributory negligence.*

G., while driving a coal cart along one of the streets of Toronto, started to cross a street railway track, and before getting across the cart was struck by a car coming along the track, and G. was thrown out and injured. In an action against the railway company for damages, the evidence was that G. did not look to see if a car was coming before going on the track; that when he went on the car coming was 70 or 80 feet away; and that it was going at an excessive rate of speed. A verdict for G. was sustained by the Divisional Court and Court of Appeal.

*Held*, affirming the decision of the Court of Appeal (21 A. R. 553), GWYNNE, J., dissenting, that the verdict should stand; that persons crossing the tracks had a right to rely on the cars being driven moderately and prudently, and if not so driven the company was responsible for injury resulting therefrom; and that G. was not guilty of contributory negligence, for if he had looked he would have seen that he had time to cross, assuming that the car was going

at a moderate rate of speed, and he should not be in a worse position by not looking than he would have been otherwise.

Appeal dismissed with costs.

*Osler*, Q.C., and *Laidlaw*, Q.C., for the appellant.

*Fullerton*, Q.C., for the respondent.

## *Practice.*

Court of Appeal.] [Oct. 29.

BOULTBEE *v.* COCHRAN.

*Parties—Third party procedure—Relief over—Amendment—Time—Rules 328-332—Order—Discretion—Appeal.*

An action was brought against two defendants for a money demand. One defendant suffered judgment by default. The plaintiff proceeded against the second defendant, claiming by virtue of an assignment from the first of his claim or action against the second, and at the trial the action was dismissed against the second on the ground that the assignment was inoperative. Upon an appeal by the plaintiff to a Divisional Court, an order was made directing that, notwithstanding the assignment, the first defendant should be allowed to amend the pleadings by claiming over against the second defendant, who was to be allowed also to amend, and further evidence was to be taken, if necessary.

*Held*, (1) not a mere discretionary order, but one from which an appeal lay.

*Hately* v. *Merchants' Despatch Transportation Co.*, 12 A.R. 640, followed.

(2) That the order could not be sustained under Rules 328-332 (1313) or otherwise, as it was made at too late a stage, and upon the application of the plaintiff only.

*Moss*, Q.C., for the appellant.

*H. J. Scott*, Q.C., for the respondent.

## *MANITOBA.*

### COURT OF QUEEN'S BENCH.

BAIN, J.] [Oct. 17.

LINES *v.* WINNIPEG ELECTRIC STREET RAILWAY COMPANY.

*Negligence—Street railway company—Liability for accident.*

This was an action in the County Court of Winnipeg, in which the plaintiff sought to recover damages for an injury to herself arising from alleged negligence of the defendants. The plaintiff was sitting in a sleigh, which was standing at the side of the road, a team of horses being attached to the sleigh when another team of horses was coming off a bridge near by just as a car of the defendants was approaching in an opposite direction, and at a high rate of speed, as was alleged. This latter team showed signs of terror, but the motor-

man driving the car did not slacken speed, and the frightened team, as soon as it got clear of the bridge and past the car, got beyond the control of the driver and ran into the plaintiff's team. The result was that she was thrown out and injured. The action was tried by a jury, who gave a verdict for the plaintiff.

On appeal to a judge of the Queen's Bench,

*Held*, that there was sufficient evidence to prevent the judge from withdrawing the case from the jury, and, if their verdict was right on the evidence, the negligence of the motorman in not slackening speed, or stopping when he saw, or should have seen, the frightened team, was the direct cause of the injury to the plaintiff, and that the verdict should not be disturbed.

*Held*, also, that although the street railway company is permitted by its charter to run its cars on the street at high rates of speed, it is not, therefore, relieved from the duty of exercising proper care to prevent accidents.

Appeal dismissed with costs.

*Howell*, Q.C., for the plaintiff.

*Munson*, Q.C., for the defendant.

# Appointments to Office.

SUPREME COURT JUDGES.

Désiré Girouard, of the City of Montreal, Esquire, Q.C., to be a Puisne Judge of the Supreme Court of Canada, *vice* the Honourable Télesphore Fournier, resigned.

SUPERIOR COURT JUDGES (QUEBEC).

*District of Montreal.*

Honourable John Joseph Curran, Q.C., to be a Judge of the Superior Court of the Province of Quebec.

CIRCUIT COURT JUDGES (QUEBEC).

*District of Montreal.*

John Daly Purcell, of Montreal, Advocate, to be Judge of the Circuit Court of the District of Montreal, *vice* Dennis Barry, deceased.

COUNTY COURT JUDGES (ONTARIO).

*County of Halton.*

John Macpherson, Hamilton, Esquire, Judge of the Provisional District of Thunder Bay, to be Judge of the County Court of the County of Halton, *vice* C. G. Snider, transferred to Wentworth.

*County of Wentworth.*

Colin George Snider, Esquire, Judge of the County Court of the County of Wentworth, *vice* J. S. Sinclair, deceased.

*District of Thunder Bay.*

Francis Fitzgerald, of the City of Hamilton, Barrister-at-law, to be Judge of the Provisional Judicial District of Thunder Bay.

POLICE MAGISTRATES.

*Northwest Territories.*

Thomas Ede, of Calgary, N.W.T., Barrister-at-law, to be a Police Magistrate for the Northwest Territories.

# Law Students' Department.

## *LAW SCHOOL.*

### SUPPLEMENTAL EXAMINATIONS: SEPTEMBER, 1895.

#### FIRST YEAR.

#### REAL PROPERTY.

Examiner: A. C. GALT.

1. Explain the terms "general occupant" and "special occupant."

2. What are "emblements," and under what circumstances may a man become entitled to them?

3. Explain what is meant by "barring" an estate tail, and by what means this has been accomplished from time to time in the history of such estates.

4. Distinguish between terms "heir-apparent" and "heir-presumptive."

5. Narrate briefly the origin and effect of the Statute of Uses.

6. Define the terms "reversion" and "remainder," giving an example of each.

7. A., B., and C. being joint tenants of certain lands, A. releases his interest to B. How is C. affected by the transaction?

8. State the various persons, or classes of persons, who may be entitled to redeem mortgaged lands.

9. What is the object of reducing into writing an agreement for the sale of lands, and what are the usual contents of such an agreement?

10. What are the covenants implied in a conveyance by a beneficial owner, under R.S.O., cap. 100, and may such covenants, or any of them, be varied in any manner by the parties to the conveyance?

#### COMMON LAW.

Examiner: W. D. GWYNNE.

1. A. enters into an agreement with B.: one of the terms of which is that no action is to be brought by either party to enforce the contract until C., to whom they agree to submit their differences, has given his award. B. sues without waiting to arbitrate. Can he succeed?

2. Give two instances in which a plaintiff cannot bring an action although he has sustained damage. Explain the principle involved.

3. A. borrows $100 from B., and gives him a mortgage wherein A. agrees that if the money is not paid on the date fixed the land shall belong to B. absolutely. A. fails to pay, but five years afterwards tenders principal and interest, and demands the land. Can he succeed?

4. A. agrees verbally for good consideration to give B. a lease of a house to commence at a future date, but refuses to give him possession when the time comes. Can B. enforce his rights? Explain.

5. Give three instances in which parol evidence will be admitted to explain or vary a written document.

6. A. ships a dog to Hamilton by express, telling the agent that he intends exhibiting him at a show, and that immediate delivery is important. By the company's delay the dog arrives too late. Explain the extent of the damages, if any, that A. can recover.

7. A. digs a pit on his own land adjoining a public road. B., accidentally diverging from the road, falls into the pit and is injured. Can he recover? Explain.

8. What is meant by slander of title, and when is it actionable?

9. State and explain three extraordinary remedies which the Court can afford at common law.

10. Distinguish between a crime and a tort.

## SECOND YEAR.

### PRACTICE.

Examiner: M. H. LUDWIG.

1. What steps must a plaintiff in an action take, and what must he show before the court will strike out the defendant's appearance and allow the plaintiff to sign final judgment under Rule 739.

2. What is meant by a writ of sequestration? Illustrate your answer by an example.

3. Has a creditor a right to examine an employee of his debtor with a view of ascertaining what property the debtor has to satisfy the creditor's claim? If you say he has the right, how would you proceed to procure his examination?

4. Why is it that a plaintiff will, in certain cases, disentitle himself to judgment, under Rule 739, because he claims interest? Answer fully.

5. What defences are open to a defendant in a suit brought in Ontario on a judgment recovered in Quebec where the service of the writ of summons (*a*) was, (*b*) was not, personal?

6. How would you proceed to enter judgment if the defendant has not appeared where the writ is specially endorsed, but a solicitor had accepted service for the defendant? Answer fully.

7. A person resides out of Ontario, and a party to an action requires his evidence for use at the trial. How must he proceed to procure such evidence? Answer fully.

8. What are the provisions of the Judicature Act respecting the time from which a verdict or judgment shall bear interest?

9. Where a judgment is against partners sued in the firm name, out of what property may the plaintiff realize the amount of his judgment?

10. If an action is commenced against a tenant to recover possession of land occupied by the tenant, what steps must the landlord take if he desires to come in and defend?

### PERSONAL PROPERTY.

Examiner: J. H. MOSS.

1. An executor brings in his accounts, claiming credit for payment of a debt of the testator which he admits was to his knowledge barred by the Statute of Limitations. The beneficiaries dispute the item. Should it be allowed?

2. "It is impossible for a man to make a valid grant in law of that in which he has no actual or potential property, but which he only expects to have." How can this statement be reconciled with the prevalent practice of merchants of chattel-mortgaging their future stock-in-trade?

3. What class of vegetable products are known as *emblements*, and in what legal incidents do they differ from other vegetable products?

4. State briefly the rules governing the appropriation of payments by a debtor to his creditor.

5. A testator appoints as his sole executor a person who at the time of the testator's death is under the age of twenty-one years. What course will be adopted by the court in dealing with the estate?

6. Explain briefly what is meant by the right of "stoppage *in transitu*." How may this right be defeated?

7. What is the effect upon the validity of the security of a failure to register a chattel mortgage?

## THIRD YEAR.

### REAL PROPERTY.

Examiner: A. C. GALT.

1. State concisely what should be expressed in a solicitor's abstract drawn in pursuance of an open contract of sale.

2. Which of the parties must bear the expense of such an abstract, in the absence of any stipulation on the subject?

3. How may a purchaser's right to a good title be waived "by matter subsequent to the contract"?

4. Explain the main objects of our Registry Laws, and what constitutes registration.

5. In what respect do Free Grant Lands differ from other lands in Ontario as respects their liability for debts of the locatee,

(*a*) before the issue of the Crown patent,

(*b*) after the issue of the patent?

6. State the provisions of the 4th section of the Statute of Frauds, and explain their effect upon agreements for the sale of land.

7. B., the owner of an unripe crop of *fructus industriales*, agrees with C. for the future delivery of the crop. Is the agreement within statute?

8. Can one of the parties to a contract for the sale of lands act as agent of the other for the purpose of signing the contract?

9. Where a purchaser has been let into possession pending investigation of title, and it afterwards appearing that the contract cannot be completed owing to want of title in the vendor, is the purchaser liable for use and occupation? Explain.

10. Under what circumstances has the purchaser a lien on the land for his deposit?

11. State the general principles which govern the construction of Wills.

12. Having drawn a will for a client, narrate concisely what you would do in order to complete its execution.

13. What is the difference, if any, between a gift to "next of kin" *simpliciter*, and a gift to "next of kin according to the statute"?

14. Can an inchoate right to dower be sold by a sheriff under execution against a married woman during the lifetime of her husband? Give authority for your answer.

15. What period of enjoyment or benefit is requisite, in the case of an easement, in order to entitle a person *prima facie* to an absolute and indefeasible right; and under what circumstances may the claim be defeated?

EVIDENCE.

Examiner: W. D GWYNNE.

1. What is meant by character evidence; when is it admitted, and when not, and what questions may be put?

2. Give Best's definition of judicial evidence.

3. Explain, with illustration, the difference between a presumption of law and a fiction of law.

4. What are the functions of judge and jury respectively in regard to presumptions?

5. Give the chief exceptions to the rule which excludes parol evidence to vary or explain written documents.

6. State fully the law in Ontario as to questions which tend to criminate or expose a witness to a penalty.

7. How may Imperial treaties be proved?

8. What are leading questions? When are they admitted? Answer fully.

9. Give all the statutory instances in which the witness' evidence is required to be corroborated.

10. What matters is it unnecessary to prove?

COMMERCIAL LAW.

Examiner: M. H. LUDWIG.

1. What, apart from statute, is the right of a secured creditor when the debtor makes a voluntary assignment for the benefit of his creditors? Answer fully.

2. "A bill of lading is (*a*) a receipt, (*b*) a contract, (*c*) a muniment of title."

Explain the above quotation fully, and show how (*a*) and (*b*) have been affected by Ontario legislation.

3. A. made a gift to B. in proper form without B.'s knowledge. Can A. revoke the gift before B. becomes aware of the gift in his favour, or, having become aware of it, before he assents to it?

4. Has a merchant any remedy, if he has been induced to sell goods not necessaries to an infant upon the false representations of the infant that he is of age?

(*a*) If the goods are consumed? (*b*) If the goods are still in existence? Answer fully.

5. Why does it sometimes become necessary to determine whether a contract is for the sale of goods or for work done or materials furnished? Answer fully, illustrating your answer by examples.

6. "There may be a constructive acceptance of the goods or part of them to satisfy the Statute of Frauds."

Explain above quotation, and illustrate your answer by two examples.

7. If goods are delivered to a common carrier, is he the bailee of the purchaser or the vendor, and to what extent does he represent the party for whom he is bailee?

8. A. sold B. a specified stock of bark at $40 a cord. Part of it was measured and taken away and paid for. The balance was destroyed by fire. Who must suffer the loss? Why?

9. By false and fraudulent representations as to the solvency of a firm made by A., a member of the firm, B. was induced to sell the firm $10,000 worth of goods on credit.

Has B. any remedy against A.?

10. A wholesale manufacturer of shoes agreed to sell and deliver to a customer a certain number of pairs of shoes of a certain size and shape at a certain price per pair. Nothing was said that the shoes should be of A.'s manufacture. A. delivered the required number of shoes, not of his own make, but equal in every respect with those contracted for.

Has the customer a right to reject the shoes? Give reasons.

11. When is a bill payable on demand?

12. Explain clearly what is meant by a Crossed cheque, General and Special crossings on cheques, Endorsement in blank, Special endorsement. Give an example of each.

13. Can a mortgagor give a valid chattel mortgage on chattels which he intends to procure or purchase, or on chattels not in his possession, custody, or control?

Answer fully, referring to any legislative enactments on the subject.

14. When will the taking of possession of the chattels mortgaged, by the mortgagee, cure formal defects in the mortgage, and entitle him to hold the chattels as against creditors of the mortgagor? Answer fully, and mention any legislation on the subject.

15. What assignments, transfers, and payments by an insolvent person are not void under the Assignment and Preference Act (R.S.O., cap. 124)?

## EQUITY.

Examiner: J. H. Moss.

1. "Trusts framed with the object of imposing restrictions on the alienatic of property are contrary to the policy of the law, and are therefore void."

What exception is there to this rule?

2. What remedy has a trustee who commits a breach of trust at the instigation of a beneficiary for which he is held liable against the instigating beneficiary?

3. What circumstances will justify a trustee in applying to the court for leave to retire from the trust?

4. Under what circumstances is a trustee justified in delegating his duties or power to a stranger or to a co-trustee?

5. How and when may a trustee disclaim the trust office and estate?

6. Is a trustee who, through a *bona fide* mistake and without negligence, who pays trust money to the wrong parties, personally liable to make good the loss?

7. When a trust is for the benefit of several persons in succession, and the trust property is of a wasting nature, what is the trustee's duty?

8. What steps must be taken by a person claiming to be a creditor of a deceased person upon receipt of a notice from the personal representative of the deceased disputing his claim in order to preserve his rights?

9. To what extent is the contract of suretyship *uberrimæ fides*?

10. A. is a surety for a debt owed by B. to C. C. has recovered judgment against B. in an action to which A. was not a party. He now sues A., and seeks to put in his judgment against B. as evidence of the latter's indebtedness to him. Is he entitled to do this?