The Canada Law Journal.

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WE would remind the profession that the annual fees to the Law Society must be paid before the 10th of December.

IT is said that there are not quite so many lawyers in the British House of Commons in this Parliament as in the last. At present there are 143 barristers and 21 solicitors, making a total of 164, or about a quarter of the entire roll of members. Last Parliament there were 150 barristers and 17 solicitors, or a total of 167. Of doctors and surgeons there were only 10, and one clergyman—one too many according to our way of thinking. In this country the medical profession number more in proportion, though we cannot at present give the exact figures. The class known as the "honest yeoman" of the country (a class, by the way, that is not at all more honest than any other class, and peculiarly susceptible when money is about at election times) make much ado about having so many lawyers in the House, but with admirable consistency continue to send them there largely as their representatives.

COMMERCIAL ARBITRATIONS.

We recently called attention (*ante* p. 227) to the evils resulting from the too great facility for appealing from one court or judge to another both in England and in Ontario, and we referred to the mode adopted, with much benefit to all concerned, by the Board of Trade for the settlement of disputes between its members in matters connected with their trade relations.

Something similar to this, but of a more comprehensive character, is being worked out in England by the establishment of a Chamber of Arbitration, or Commercial Court, for the trial of mercantile cases in the city of London. This court or chamber is to be under the management of a joint committee composed of an equal number of members of the Chamber of Commerce and the corporation.

In addition to the delay, uncertainty, expense, and annoyance caused by continuous appeals, litigants in England are frequently further delayed by the congested state of the dockets. It is claimed also that the procedure of the courts and of arbitrators appointed in the usual way has been found to be (from a commercial point of view) unsatisfactory, and disputes which could easily be

settled by a business man familiar with the course of trade in the particular branch affected, in a few hours, often occupy days, or even weeks, when left to a legal arbitrator.

By the scheme to be adopted in London, the parties may have their choice of three different methods of arbitration, namely, by one or by three arbitrators, or by two arbitrators and an umpire. These arbitrators are to be selected as occasion may require, or may be appointed for that purpose from the various trades by the joint committee above mentioned. The parties are to have the right, if they so desire, to call in the aid of a legal assessor. Mr. Philbrick, Q.C., has been appointed registrar of the court, and will, if so desired, act as assessor; and to him is given charge, generally, of the proceedings of the new court. It has been decided to have the sittings private, reporters being only allowed to be present at the special request of all parties interested. This is a step in the right direction. The retailing in the daily press of everybody's private business is becoming a nuisance. The facts are generally incorrectly or only half stated, so that injustice is done, the parties are subjected to annoyance and irritation, and no one benefited, except, perhaps, the newspaper proprietor, who, by thus pandering to a vicious taste, sells a few more papers than he otherwise would.

This tribunal is to be available not only as a voluntary reference, but also for cases referred thereto by the judges of the High Court. Litigants are to have the right, if they so desire, to the benefit of counsel, in this respect differing from arbitration before our Board of Trade, where parties have to conduct their own cases. The proceedings of this court and the development of this mode of adjudication will be watched with much interest.

That the registrar of the court should be a lawyer in good standing in his profession is a fact which appears to have been duly appreciated in England by the appointment of Mr. Philbrick. Greater powers than those usually assigned to a registrar of a court ought to be given him. It seems to us that if the constitution of this new court or chamber of mercantile men had provided that in all matters pertaining to the admissibility of evidence and the decision of purely legal questions the registrar should be the sole judge, and that in these questions the court should be governed by his rulings, much difficulty and litigation would be avoided. It is not to be expected that commercial men can be versed in legal lore. Let them deal exclusively with the facts, leaving all legal points to be decided for them by the registrar, and there would be a court so competent to deal with business matters in a business way that one is unable to suggest any improvement in regard to this radical and desirable step for a speedy and inexpensive mode of settling mercantile disputes. This suggestion, if carried out, would not increase the cost of trial, as the officer in question would necessarily require to be in attendance in any event.

COMMENTS ON CURRENT ENGLISH DECISIONS.

The Law Reports for October comprise (1892) 2 Q.B., pp. 573-586, and (1892) 2 Ch., pp. 461-526.

ROAD—SUMMARY PROCEEDING TO RECOVER FOR REPAIRS TO ROAD RENDERED NECESSARY BY EXTRAORDINARY TRAFFIC—EXECUTOR—ACTIO PERSONALIS MORITUR CUM PERSONA.

Story v. *Sheard* (1892), 2 Q.B. 515, was a summary proceeding brought under 41 & 42 Vict., c. 77, s. 23, whereby a county road surveyor is empowered to recover the expenses of repairing a road consequent upon injury thereto by extraordinary traffic, and it was held by Pollock, B., and Williams, J., that the proceeding was in the nature of an action for a personal tort, and therefore would not lie against the executor of the person by whose order the extraordinary traffic had been conducted, as being within the rule *actio personalis moritur cum personâ*.

CRIMINAL LAW—CONVICTION INSUFFICIENTLY DESCRIBING OFFENCE—CONSPIRACY AND PROTECTION OF PROPERTY ACT, 1875 (38 & 39 VICT., C 86), S. 7—(CANADIAN CRIMINAL CODE, S. 523).

In *The Queen* v. *McKenzie* (1892), 2 Q.B. 519, an application was made to quash a conviction on the ground that it insufficiently described the offence. The prosecution was instituted under the Conspiracy and Protection of Property Act, 1875, s. 7 (Can. Criminal Code, s. 523), which imposes a penalty on any person who wrongfully and without lawful authority, "with a view to compel any other person to abstain from doing . . . any act which such other person has a legal right to do, follows him in a disorderly manner with two or more other persons in any street or road." The defendant was summarily convicted of an offence under this section, and the conviction stated that he wrongfully and without legal authority followed the informant in a disorderly manner, with two or more persons, in certain streets, "with a view to compel him to abstain from doing acts which he had a legal right to do." Collins and Bruce, JJ., held that the conviction was bad for not stating specifically what these acts were, and that this was a defect of substance, and not merely of form, and they therefore quashed the conviction. It appeared from the magistrate's affidavit that it was proved that the defendant had followed the informant in a disorderly manner, and with two or more persons, "with a view to compel him to abstain from following his occupation as the agent of the Shipping Federation (Ltd.), an act which he had a legal right to do." But Collins, J., says: "Obviously, the following of an occupation must consist of a large number of acts, and I think unless the prosecution could specify some particular act which the defendant desired to compel the informant to abstain from doing, and which his disorderly conduct was intended to compel the informant to abstain from doing, it is impossible to say that he was properly convicted of an offence under the section." All of which goes to show the extreme difficulty of framing any statute which the ingenuity of the judicial mind will not nullify in the process of construing.

LIBEL—DEFAMATION—PUBLICATION OF FALSEHOODS—WORDS NOT ACTIONABLE PER SE—SPECIAL DAMAGE, PROOF OF—EVIDENCE.

Ratcliffe v. *Evans* (1892), 2 Q.B. 524, was an action for libel of the plaintiffs' business. The words in question were to the effect that the plaintiffs had ceased to carry on business, and that their firm no longer existed. The words were not actionable *per se*, but it was charged that they were published maliciously. At the trial the plaintiffs proved a general loss of business since the publication of the injurious statement, but they gave no specific evidence of the loss of any particular customer or order by reason of the publication. The jury found the statement was not libellous, but that it was an injurious statement published *malâ fide*, and they gave a verdict for plaintiffs for £120. A motion was made to set it aside and to enter judgment for the defendant, and the Court of Appeal (Lord Esher, M.R., and Bowen and Fry, L.JJ.) dismissed the application. Two extracts from the judgment of the court, delivered by Lord Esher, will serve to show the *rationale* of the decision: "In all actions on the case where the damage actually done is the gist of the action, the character of the acts themselves which produce the damage, and the circumstances under which the acts are done, must regulate the degree of certainty and particularity with which the damage done ought to be stated and proved. As much certainty and particularity must be insisted on, both in pleading and proof of damage, as is reasonable, having regard to the circumstances and to the nature of the acts themselves by which the damage is done." Referring to *Hargrave* v. *Le Breton*, 4 Burr. 2422, he says: "This case shows, what sound judgment itself dictates, that in an action for falsehood producing damage to a man's trade, which in its very nature is intended or reasonably likely to produce a general loss of business, as distinct from the loss of this or that known customer, evidence of such general decline of business is admissible."

INSURANCE—PRINCIPAL AND AGENT—KNOWLEDGE OF AGENT IMPUTED TO PRINCIPAL—MISSTATEMENT IN PROPOSAL FOR INSURANCE.

Bawden v. *The London, Edinburgh, and Glasgow Assurance Co.* (1892), 2 Q.B. 534, was an action on an accident policy, to which the defendants pleaded as a defence that the plaintiff had made a misstatement of fact in his proposal for insurance. It appeared that the plaintiff was an illiterate man, and at the time he applied for insurance he was blind of one eye, which was known to the defendants' agent. In the proposal which the plaintiff signed it was stated, "I have no physical infirmity, nor are there any circumstances that render me peculiarly liable to accidents." By the terms of the policy the defendants bound themselves to pay £500 on permanent total disablement, and "the complete and irrecoverable loss of the sight to both eyes" was declared to be a permanent total disablement within the policy. After the issue of the policy the plaintiff met with an accident which resulted in the complete loss of his other eye, so that he became permanently blind. The jury at the trial having found a verdict of £500 for the plaintiff, the defendants moved for a new trial, but the Court of Appeal (Lord Esher, M.R., and Lindley and Kay, L.JJ.) were of opinion that

Lord Coleridge, C.J., had rightly directed the jury at the trial; that the knowledge of the defendants' agent that the plaintiff was a one-eyed man at the time the insurance was effected must be imputed to the defendants, and that they must be taken to have entered into the contract on that understanding; and, therefore, that the plaintiff was entitled to recover notwithstanding the misstatement in the proposal.

INFANT—CONTRACT—DEBT INCURRED DURING INFANCY—BILL OF EXCHANGE GIVEN AFTER MAJORITY—RATIFICATION OR NEW PROMISE—INFANTS' RELIEF ACT, 1874 (37 & 38 VICT., C. 62), S. 2 (R.S.O., C. 123, S. 6).

Smith v. *King* (1892), 2 Q.B. 543, was an action brought on a bill of exchange, and the question raised was whether the bill was a sufficient ratification of a contract made during infancy. The facts of the case were as follows: The defendant during infancy became, jointly with two others, indebted to a firm of brokers, who brought an action against them after the defendant had attained his majority to recover the debt. That action was compromised by the defendant, giving two acceptances for £50 each, and one of his co-defendants an acceptance for £80, the other defendant being discharged from the action. One of the bills given by the defendant was indorsed by the brokers to the plaintiff, who had acted as the defendant's solicitor in the action, and who took the bill with notice of the circumstances. Day and Charles, JJ., on appeal from the Lord Mayor's Court, held that the transaction only amounted to a promise by defendant to pay a debt contracted during infancy, or to a ratification made by him after full age of a promise or contract made during infancy, and was, therefore, void under the Infants' Relief Act, 1874, s. 2 (R.S.O., c. 123, s. 6). It may, however, be well to note that there is a very important variation between the English statute and R.S.O., c. 123, s. 6. The former concludes with the words, "Whether there shall or shall not be any new consideration for such promise or ratification after full age"; whereas the words are not to be found in the Ontario Act. This omission would very possibly have an important bearing on the question how far this case can be considered as an authority for the construction of the Ontario Act.

REAL PROPERTY LIMITATION ACT, 1874 (37 & 38 VICT., C. 37), S. 8 (R.S.O., C. 111, S. 23)—ACTION TO RECOVER LEGACY—EXPRESS TRUST.

In re Barker, Buxton v. *Campbell* (1892), 2 Ch. 491, was a suit to recover a legacy, to which the Statute of Limitations was set up as a defence. A testatrix who died in June, 1860, by her will bequeathed the legacy in question, and directed it to be paid after the decease of the survivor of herself, her mother, and one John Oakey, and she directed that a sufficient part of her personal estate should be applied in payment of the legacy in priority to any other payment, and, subject to the payment of the legacies, she directed the trustees to hold the residue of the property in trust. On the 9th December, 1860, the mother of the testatrix died, and on the 14th January, 1856, John Oakey died. It was contended that there was an express trust of the legacy, and therefore the Statute of Limitations (37 & 38 Vict., c. 57), s. 8 (R.S.O., c. 111, s. 23) did not apply;

but North, J., decided that there was no express trust within the meaning of the statute, and that the right to recover the legacy was therefore barred. He held that there was a clearly marked distinction between the legacies and the residuary estate, as to which latter it was expressly declared that the trustees were to hold it in trust. He, however, dismissed the case without costs.

INFANT—JURISDICTION—GUARDIAN—RELIGIOUS EDUCATION OF INFANT—GUARDIANSHIP OF INFANTS ACT, 1886 (49 & 50 VICT., C. 27), SS. 2, 3, 6, 13 (R.S.O., C. 137, SS. 13, 14).

In re McGrath (1892), 2 Ch. 496, was an application respecting the guardianship and religious education of infants. The father and mother of the infants were, during the father's life, both Roman Catholics. The father died in 1888, leaving five children who had all been baptized as Roman Catholics, but the father had expressed no wish as to the religious education of his children, and during his lifetime they, to his knowledge, sometimes attended a Protestant Sunday-school and Protestant places of worship. In 1886, the eldest boy, then ten years of age, was, with the father's consent, placed in an industrial school conducted on the principles of the Church of England. The eldest girl, who was born in 1877, was, from 1885 down to the father's death, educated chiefly at a Roman Catholic school, but during the six months immediately preceding his death she attended occasionally a Board school. Two younger girls, born respectively in 1879 and 1881, from November, 1885, to April, 1888, were educated in a Roman Catholic school, and just before the father's death they were placed in a Roman Catholic establishment, but while there they occasionally attended a Protestant school on Sundays. After the father's death, the mother, who was in poor circumstances, under the Guardianship of Infants Act, 1886 (R.S.O., c. 137, s. 14), appointed a benevolent lady, a member of the Church of England, who had befriended her, to be guardian, after the mother's own death, of the three girls and the younger boy, who was born in 1886. In April, 1890, the three girls were taken from the Roman Catholic school at which they had been educated and sent to a Board school. The two younger girls remained there till their mother's death in July, 1891. The elder girl was in December, 1890, by the lady's direction, placed in an industrial home conducted on the principles of the Church of England. Immediately after the mother's death, the other two girls were also sent there. Before her death the mother became a Protestant. The younger boy, after the mother's death, went to live with a maternal uncle, who was a Roman Catholic. In November, 1891, a paternal great-aunt instituted these proceedings, asking that the guardian appointed by the mother might be removed, and two Roman Catholics appointed in her place. The contest was really as to the religion the children should be brought up in. North, J., although of opinion that if the application had been made immediately after the father's death a direction might have then been properly made to bring the children up in their father's religion, yet, having regard to all the circumstances, considered it would not be for the welfare of the children that the guardian should be removed, and that no direction ought to be given as to the religious education of the children. In arriving at this conclusion, he stated that he considered that

he had jurisdiction to remove the guardian appointed by the mother if he should think it for the welfare of the children so to do, and that if it were necessary to exercise that jurisdiction he could do so, notwithstanding the infants were not wards of court.

MASTER AND SERVANT—CLERK—INJUNCTION TO RESTRAIN FORMER SERVANT FROM COMMUNICATING INFORMATION GAINED DURING HIS SERVICE—TRADE SECRETS.

Merryweather v. *Moore* (1892), 2 Ch. 518, was an application for an interim injunction. The defendant had been formerly apprenticed to the plaintiffs, and after completing his apprenticeship was retained in their employment as a paid clerk, but ultimately left their service. Two days before leaving he compiled for his own purposes, and without the plaintiffs' knowledge or consent, a table of the dimensions of various types of engines made by the plaintiffs, and this table he had in his possession when he entered the service of his new employers, who subsequently exposed for sale an engine of, it was said, corresponding dimensions to one manufactured by plaintiffs, although this was denied. Kekewich, J., granted the interim injunction, holding that the compilation of the table under the circumstances was a breach of confidence, and that its publication, or the communication of its contents, ought to be restrained until the trial.

Notes and Selections.

THE *American Law Review* in its last number starts off with a fulsome article on the Hon. W. E. Gladstone, apropos of nothing in particular, written by some ardent admirer of his in England. The Americans are, as a rule, great admirers of that very clever old gentleman, though one of the best informed and far-sighted men among them has stated that he is "the most pernicious man that England has seen for the last 300 years." However, we do not quite see what his political success or otherwise has to do with legal matters. The other articles are: Law and legislation; the concluding portion of the address of Hon. John F. Dillon delivered at the last meeting of the American Bar Association; the validity of contracts and franchises held by quasi-public municipal corporations; English constitutional theories; the proper course of study for American Law Schools, etc.—a bill of fare very theoretical in its character. The notes of recent decisions give to the practising lawyer something of more value.

THE *Albany Law Journal* comments wittily and caustically upon the Columbus craze that is now afflicting the United States, limiting it to that country "because no other part of the western continent seems to take any pride or interest in Columbus." The text for these remarks is the case of *Hampden* v. *Walsh*, 1 Q.B.Div. 189, which was an action against a stakeholder in reference to

a wager that a certain F.R.G.S. could not prove that the earth is round and revolves. The writer suggests that the parties to the suit should be imported by the committee of the World's Fair, and thus help to attract a crowd, "as that is all that Chicago wishes. It is a great pity that Chicago did not exist in Columbus' time. Of course he could not have seen it at the distance of four thousand miles, but he could easily have heard it."

The same journal deals with a certain class of newspapers which, unfortunately, are not peculiar to the United States. The writer thus speaks: "It seems that the Boston *Globe* is trying to catch up with the New York *World* in general depravity. But a stern chase is a long chase. The *Globe's* base and baseless attack on Lizzie Borden has subjected it to universal indignation, and its apology, made as soon as the libel had answered its main purpose of selling the paper, is a very insufficient atonement. If such things are not contempt of court, they ought to be made so. It seems almost a pity that this unfortunate young woman has not a stout brother who, through the medium of a tough horsewhip, could administer a wholesome punishment to the perpetrators of such a shameful and remediless wrong. It is high time that newspaper people should learn that they are not detectives for 'what there is in it,' under the pious pretence of promoting the cause of public justice. If the *Globe's* story had been true, its publication could not have done any good." It would not be proper for a legal journal, perhaps, to suggest the employment by the public of a band of "stout" fellows, armed with "tough horsewhips," to warm the backs of some newspaper men in this country as well as in the United States; but there are too many libels which the law does not reach, and our present stage of civilization provides no remedy other than the one suggested; and there would be plenty to subscribe to pay any fines that might be inflicted.

THE CRIMINAL CODE.—The Irish *Times* says: "The Canadians are the first English-speaking people to enact and possess such a code," that is, a criminal code "utterly freed from technicalities, obscurities, and other defects which experience has disclosed." Guess not. The New York Code of Criminal Procedure and Penal Code answer this description, and the former has been in force eleven years and the latter ten years. If the Canadians have anything better, at least they have nothing older, and, if better, it is merely because they had ours to improve on.—*Albany Law Journal.*

EVIDENCE IN JAPANESE COURTS.—A Japanese journal, describing the manner in which witnesses are sworn and evidence taken in native courts of justice, says that with the Japanese anything to which a man affixes his seal is considered more sacred than what he may say. Hence, each witness is required to make a declaration to the effect that with a mind free from bias in favour of or against either of the litigating parties, and with perfect fairness, he will give evidence, and, after this has

been read out by the recorder of the court and handed to the witness in the form of a document, the latter is expected to affix his seal to it. The same plan is adopted with the statement of facts which, in the course of the examination he undergoes, a witness makes in court. The purport of his evidence is written out by the recorder and before the court he is required to make what corrections are necessary to render the written statement a trustworthy record of his evidence, and to guarantee its correctness by affixing his seal. Though this process occupies a good deal of time, it precludes the possibility of the evidence given being incorrectly reported, which, in trials where the decision of the court depends largely on oral evidence, is a matter of much moment.—*Ex.*

AN ELECTRO-PHOTOGRAPHIC THIEF DETECTOR.—For some time past Mr. Triquet, a cigar merchant, of Toledo, Ohio, has missed cigars from the show case in his office, and although the premises were watched by detectives for several days nothing unusual was observed. As a last resort, he applied to an inventor of a flash-light photographic apparatus worked by electricity. The apparatus was placed in the office and left to itself. A few days later it was found to contain a flash photograph showing two boys opening the glass case. The picture led to their apprehension by the police, and subsequent committal to prison. The apparatus consists of a camera placed in a box, which is closed by a shutter operated by a spring, and escapement released by an electro-magnet. The necessary flash-light is got by means of a match which presses against a rough disc. An electro-magnet on the top of the camera box, when excited by a current, releases a detent, and allows the rough disc to strike a light with the match and ignite the flashing powder. All this occurs in a fraction of a second, and the shutter closes on the camera, retaining the photograph. The current is supplied by a battery, and is started in the circuit by an arrangement of contacts which are unconsciously closed by the thief. Thus the boys in opening the glass case unawares completed the electric circuit, which immediately exposed the camera and kindled the flash-light, much to their amazement.—*Law Journal.*

MR. HENRY FIELDING DICKENS, Q.C.—One of the most popular appointments made in the legal world for some time past is that of Mr. Dickens, Q.C., as Recorder of Maidstone, in succession to the Common Serjeant of the City of London. He occupied for ten years the corresponding position at Deal, and the manner in which he discharged his duties there renders it safe to predict that he will be very successful in administering justice in the larger town. Mr. Henry Fielding Dickens, who is the sixth son of the immortal novelist, was called to the Bar at the Inner Temple nineteen years ago. He was originally intended for the Indian Civil Service, but on several of his sons going abroad Charles Dickens did not like to lose another, and accordingly Henry Fielding became a

pupil in the chambers of Thomas Chitty. His first five years at the Bar were spent in the unremunerative but profitable task of reporting. At the end of that period, having established a reputation at the Kent Quarter Sessions, he became well known in the temple as "devil" to Mr. Winn, and gradually his sound knowledge of law and excellent oratorical gifts attracted a large circle of new clients, who were sorry enough to lose his services as a "junior" when he obtained the honour of "silk" in the early part of the present year. Mr. Dickens' clients enjoy an unique advantage. When they hold a consultation with him, they are able to see one of the most precious tables in the land. It is that on which the author of "David Copperfield" wrote nearly all his great works, and that which appears in the well-known picture of the silent room at Gadshill the morning after the famous writer's death. On this desk Mr. Dickens, Q.C., has prepared the pleadings of nearly all the cases in which he has been engaged. An amusing incident occurred before Mr. Justice Hawkins some few years ago in connection with Mr. Dickens' parentage. It was the learned gentleman's duty to call a witness of the name of Pickwick. On the day on which the action was on the list the junior was unable to attend, and anxious not to lose the pleasure of seeing Dickens examine Pickwick, a well-known Q.C., who dearly loves a laugh, sent up a note to the judge asking him to adjourn the case merely on the ground of Mr. Dickens' absence, and Mr. Justice Hawkins, who readily entered into the spirit of the request, immediately granted it. At last Mr. Dickens was able to appear in court, the case was opened, and he called Mr. Pickwick. Everybody present was delighted with the coincidence. "I do not know, gentlemen," said Mr. Dickens, addressing the jury, "whether Mr. Pickwick will appear in his gaiters." When the eagerly looked-for witness stepped into the box it was generally declared that he was about the thinnest man ever seen in the courts.—*Law Gazette.*

Reviews and Notices of Books.

Ontario Game and Fishing Laws. A Digest, alphabetically arranged, with references to the various Statutes and Orders in Council in force on November 1st, 1892. By A. H. O'Brien, Barrister-at-law. The Toronto News Company, Toronto.

The difficulty of ascertaining the law relating to game animals and birds, as well as fish, is, the compiler states, the reason for the issue of this Digest. It is undoubtedly a fact that very few can know with any certainty what the law upon any point really is, by reason of the multitude of enactments. This pamphlet appears to be a synopsis of the law, and is intended for the use not alone of sportsmen, but also of those who have to try offences under the statutes. Coming, as the book does, very warmly recommended by the Board of Fish and Game Commissioners, it should meet with a ready sale.

The Law of the Canadian Constitution. By W. H. P. Clement, B.A., LL.B. (Tor.), of Osgoode Hall, Barrister-at-Law. Toronto: The Carswell Co. (Ltd.), Law Publishers, etc., 1892.

This work is the latest addition to Canadian bibliography, and will be found one of great value. It might be thought that, with Dr. O'Sullivan's manual and Mr. Doutre's and Mr. Bourinot's books, the writer could have directed his labour with more advantage in another channel. Mr. Clement's book, however, deals with numerous branches of the subject in a manner which has now for the first time been attempted. Mr. Doutre's book is, on the one hand, but an annotat edition of the British North America Act, and the cases thereunder are collected in such a way that the Act may be intelligently read. Seeing, however, that most of the decisions under that Act have been decided since 1880, the date of the last edition of Mr. Doutre's book, there is left for Mr. Clement the larger and more important part of the field, and this he admirably covers. He gives us not only a convenient arrangement of the decided cases themselves, but also a lengthy discussion of the laws upon which they are based, together with the principles which may be deduced from them. O'Sullivan's manual, on the other hand, is designed as a narrative account of what our constitution consists of, without any minute analysis of the principles upon which it is founded, and contains little that is not expressed in statutory form in the British North America Act itself.

Mr. Clement commences his work with a foundation for his subject in an excellent chapter entitled, "Our Political System," in which, firstly, we find fully discussed the principles upon which our constitution is based; and, secondly, our constitution contrasted with the constitutions of the United States and Great Britain. Then follows an account of the various stages of development which we have passed through as a nation with our "pre-Confederation constitutions." Next, we learn our position as a colony of Great Britain, and are told in a chapter entitled, "What Imperial Acts Affect Us," the laws which regulate the validity and force of old Imperial Acts throughout the Dominion, a point on which there has always existed among the profession a considerable degree of haziness.

The rules formulated and the information now collected for us ought, in future, to save much time for the searcher who wishes to know that the structure of his argument is built upon the foundation of a complete knowledge which need fear no wreck from the storm of criticism. After dealing with the prerogatives of the Crown and the Governor-General, the author gives us a knowledge of our position as a colony prepared to receive our Magna Charta. The author then deals with the British North America Act and its amendments, which show clearly the manner of government in the Northwest Provinces, both before and after their entry into Confederation. This work is the first comprehensive and scientific one on the law of our constitution, and will be found valuable throughout the Dominion, both as a text-book for students and a book of reference.

Correspondence.

MANITOBA SCHOOL CASE.

To the Editor of THE CANADA LAW JOURNAL:

From a paragraph in yesterday's *Citizen*, a paper generally well informed and ably conducted, I infer that the Catholic minority of Manitoba, in view of the the decision of the Judicial Committee of the Privy Council that they had at the time of the union no right or privilege which was prejudicially affected by the Provincial School Act of 1890, have made a fresh appeal to the Governor-General in Council, founded on the 93rd section of the B.N.A. Act, to which I referred in my letter of the 14th of September last, printed in THE LAW JOURNAL of the 1st of October, and which section contains (among others), in addition to those repeated in the Dominion Act constituting the Province of Manitoba, and dealt with in the judgment of the Judicial Committee, the following provisions:

"(3) Where in any Province a system of separate or dissentient schools exists at the time of the union, *or is thereafter established by the Legislature of the Province*, an appeal shall lie to the Governor-General in Council from any Act or decision of any Provincial authority affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to education;"

"(4) In case any such Provincial law as from time to time seems to the Governor-General in Council requisite for the due execution of the provisions of this section is not made, or in case any decision of the Governor-General in Council on any appeal under this section is not duly executed by the proper Provincial authority in that behalf, then, and in every such case, and as far only as the circumstances of each case require, the Parliament of Canada may make remedial laws for the due execution of the provisions of this section, and of any decision of the Governor-General in Council under this section."

These provisions differ from those cited by their Lordships from the Act constituting the Province, inasmuch as they do *not* contain the words "or practice" after the words "by law," and *do* contain the words "*or is thereafter established by the Legislature of the Province*" after the word "union" in paragraph (3).

And as neither such insertion or omission in the Act constituting the Province can alter or impair the effect of the B.N.A. Act, then if, as the petitioners assert, the Provincial School Act of Manitoba passed in 1871 conferred on Catholics any right or privilege with respect to separate schools which is injuriously affected by the Provincial School Act of 1890, or any other, they would seem to be entitled to the benefit of the appeal given by the said paragraph (3), and of the provisions for enforcing the same in paragraph (4), subject always to the conditions mentioned in section 93, and the decision of the Governor-General in Council under it, to which the decision of the Judicial Committee does not relate, and which it cannot affect.

OTTAWA, Nov. 8, 1892. W.

Proceedings of Law Societies.

LAW SOCIETY OF UPPER CANADA.

EASTER TERM, 1892.

Saturday, June 4th, 1892.

Convocation met.

Present—The Treasurer and Messrs. Martin, Osler, Irving, Bruce, Ritchie, Robinson, Barwick, and Douglas.

The minutes of the last meeting of Convocation (27th May) were read, approved, and ordered to be signed by the Treasurer.

Mr. Ritchie, from the Committee on Legal Education, presented a Report on the third-year Law School Examination, as follows:

(1) The committee have examined and considered the Examiners' Report on the result of the examinations at the end of the third year course in the Law School, the Reports of the Principal with respect to the attendance upon lectures, and the Report of the Acting Secretary upon the papers of those who were successful upon the examination.

(2) The committee find that the following gentlemen have duly attended the required number of lectures, their papers for call are regular, and they are entitled to be called to the Bar forthwith, viz.: Wm. Cross, W. B. Taylor, G. D. Minty, H. W. Ballantyne, J. H. Rodd, Z. Gallagher, P. S. Lampman, F. C. Jones.

(3) The committee also find that the following gentlemen duly passed the school examination, but failed to attend the required number of lectures. The Principal certifies that such failure was due to illness, their papers for call are regular, and the committee recommend that they be called to the Bar forthwith, viz.: J. H. Moss, G. C. Biggar, M. J. O'Connor, B. E. Swayzie, E. G. Rykert, E. S. Griffin, Jas. Steele.

(4) The following gentlemen who duly passed the school examination, but failed to attend the required number of lectures, which failure has not been certified by the Principal to be due to illness, presented special petitions, praying that their attendance be allowed for the reasons set forth therein, viz.: B. M. Aikens, W. J. Clark, S. D. Schultz. These petitions were referred to the Principal for report as to the general attendance and conduct of the applicants, and he has reported thereon, and the committee find as follows:

(1) Mr. Aikens attended five-sixths of the aggregate number of lectures during the term, but is deficient one lecture on Equity, one lecture on Practice, and one lecture on Commercial Law. He shows that he was prevented by illness from attending the lectures on Practice and Commercial Law, and thinks that the failure of the record as to the Equity lecture was due to his being too late to get his name down.

(2) Mr. Clark has attended 22 lectures, more than five-fifths of the aggregate, but is deficient one lecture on Equity. He accounts for this through unavoidable absence from Toronto.

(3) Mr. Schultz has attended 16 lectures, more than five-sixths of the aggregate number, but is deficient one lecture on Equity. He accounts for this by detention on his journey from British Columbia (where he resides) to Toronto last fall.

Their papers for call to the Bar are regular in other respects. The committee recommend that their attendances upon lectures be allowed as sufficient, and that they be called to the Bar forthwith.

(4) The Examiner's Reports on the results of the pass and honour examinations show that the following of the candidates who passed the school examination in the third year, and competed for honours, received the requisite number of marks, entitling them to honours, their ranking being set forth as follows, viz.:

(1) J. E. Jeffery, 1898 marks.
(2) J. H. Rodd, 1841 "
(3) J. H. Moss, 1807 "
(4) W. Cross, 1783 "

(5) Of these the committtee find that Messrs. Rodd, Moss, and Cross are in due course, and are entitled to be now called to the Bar with honours.

(6) The committee further find that Mr. Jeffery passed his first intermediate in Michaelmas Term, 1889, under the Law Society curriculum, obtaining nineteenth place. No honour examination in connection with the intermediate examinations under the Law Society curriculum were held after Trinity Term, 1889. He passed the second intermediate examination in Easter Term, 1891, with honours. If he had passed the first intermediate with honours, he would be entitled under the Rules to a gold medal.

(7) The committee further find that Mr. Rodd passed both his intermediates under the Law Society curriculum, being exempt from attendance upon lectures of the Law School except in the third year. If he had passed his intermediate with honours, he would be entitled under the Rules to a silver medal. Under the circumstances, the committee think it advisable to refer the award of medals to Convocation.

(8) The committee further find that the following gentlemen who have passed the school examinations, and who have been certified by the Principal to have attended the required number of lectures, and whose service and papers are correct and regular, are entitled to receive Certificates of Fitness as solicitors, viz.: W. B. Taylor, G. D. Minty, H. W. Ballantyne, Z. Gallagher, P. S. Lampman.

(9) The committee further find that the papers and service of the following gentlemen who passed the school examination, but failed to attend the required number of lectures, and as to whom the Principal certifies that such failure was due to illness, and whose period of service has expired, are correct and regular in all other respects, and they recommend that they receive Certificates of Fitness, viz.: G. C. Biggar, B. E. Swayzie, E. G. Rykert, E. S. Griffin.

(10) The following gentlemen who duly passed the school examination, but failed to attend the required number of lectures for causes not certified to by the Principal, presented special petitions, and the committee have already set forth their recommendations upon such petitions. The committee find that their service and papers are correct and regular in all other respects, and recommend that they receive Certificates of Fitness, viz.: B. M. Aikens, S. D. Schultz.

(11) Mr. J. H. Rodd, who has duly passed the examination as above stated, presented a special petition showing that he was articled on the 5th day of June, 1889, and his term of service therefore expires on the night of June 4th, which is the last day on which Convocation meets, and he cannot receive his Certificate of Fitness nor be sworn in as solicitor until the expiration of the term of service under articles; that the last day of Easter Term, 1889, was the 7th of June, that he resides at Windsor, and that if he has to return on or after 28th June it will occasion him considerable expense. He asks that his certificate be granted him on or after the 6th of June instant, on proof of completion of his service.

The committee recommend that he receive his certificate on production to the Acting Secretary of proof of his having completed his service.

(12) The other gentlemen who are certified by the Examiners to have duly passed the school examinations in the third year are not entitled to be called to the Bar or receive certificates at present, and their cases are not dealt with until the time arrives when they are entitled to be called to the Bar and receive Certificates of Fitness as solicitors.

All of which is respectfully submitted.

June 3rd, 1892. CHARLES MOSS, *Chairman.*

Mr. Ritchie moved that the Report be considered forthwith.

Mr. Ritchie moved that the Report be adopted.—*Carried.*

The following gentlemen were, pursuant to the Report, ordered to be called to the Bar with honours forthwith, viz.: Messrs. J. H. Rodd, J. H. Moss, W. Cross.

and the following gentlemen were ordered to be called to the Bar forthwith, viz.: Messrs. W. B. Taylor, G. D. Minty, H. W. Ballantyne, Z. Gallagher, James Steele, G. C. Biggar, M. J. O'Connor, B. E. Swayzie, B. M. Aikens, P. S. Lampman, E. G. Rykert, W. J. Clark, S. D. Schultz, F. C. Jones, E. S. Griffin.

The following gentlemen were ordered to receive Certificates of Fitness as solicitors forthwith, viz.: Messrs. W. B. Taylor, G. D. Minty, A. W. Ballantyne, Z. Gallagher, P. S. Lampman, G. C. Biggar, B. E. Swayzie, E. G. Rykert, E. S. Griffin, B. M. Aikens, S. D. Schultz.

Mr. J. H. Rodd was ordered to receive his Certificate of Fitness on or after the 6th of June instant, on compliance with the last clause of the eleventh paragraph of the Report.

Mr. Bruce moved that Mr. Jeffery is entitled to a silver medal when he is regarded as entitled to be called.—*Carried.*

Mr. Martin moved for leave to introduce a Rule allowing the grant of a gold medal instead of a silver medal to Mr. Jeffery.—*Lost.*

Mr. Bruce moved that Mr. Rodd is entitled to a bronze medal.—*Carried.*

Mr. Ritchie moved for leave to introduce a Rule allowing the grant of a silver medal instead of a bronze medal to Mr. Rodd.—*Carried.*

The Rule was read a first time.

Mr. Ritchie moved that the order be suspended with a view to the reading of the Rule forthwith a second time.—*Carried unanimously.*

The Rule was read a second time and passed, and is as follows:

RULE.—That Mr. J. H. Rodd, who has been called to the Bar with honours, be, in view of the special circumstances set forth in the Report of the Committee on Legal Education, presented with a silver medal.

Mr. Martin moved that Mr. J. H. Moss be entitled to a bronze medal.—*Carried.*

The following gentlemen were called to the Bar, viz.: Messrs. J. H. Rodd, J. H. Moss, and W. Cross, with honours; W. B. Taylor, G. D. Minty, A. W. Ballantyne, Z. Gallagher, J. Steele, G. C. Biggar, M. J. O'Connor, B. E. Swayzie, B. M. Aikens, P. S. Lampman, E. G. Rykert, W. J Clark, S. D. Schultz, F. C. Jones.

A silver medal was granted to Mr. Rodd, and a bronze medal to Mr. J. H. Moss.

Mr. Moss, from the Legal Education Committee, presented a Report on the case of Mr. Wm. Cross, that owing to Mr. J. D. Edgar's absence his certificate of service has not been obtained, but that Mr. J. F. Edgar, his partner, has certified to the service, and the committee recommend that Mr. J. D. Edgar's certificate be dispensed with, that the service be allowed, and that Mr. Cross' examination and attendance being, under the adopted Report, satisfactory he is entitled to his Certificate of Fitness.

Ordered for immediate consideration and adopted.

Ordered, that Mr. Cross do receive his Certificate of Fitness accordingly.

Mr. Martin moved for leave to introduce a Rule to alter the days of meeting of Convocation.—*Carried.*

Mr. Martin moved that the Rule be read a first time.—*Carried.* The same is as follows:

"That Rule 15 be and the same is hereby amended by striking out the word 'Saturday' wherever it occurs therein and substituting the word 'Friday.'"

Ordered to be read a second time at the next meeting of Convocation.

The letters of Mr. Justice Meredith returning thanks for a copy of the new Digest was read.

The letter of Mr. W. S. Battin was read.

Resolved, that in the opinion of Convocation it would be a great convenience to the profession to arrange accommodation for a stenographer and typewriter for their use at Osgoode Hall, and that the matter be referred to the Finance Committee with power to act.

Mr. Barwick laid before Convocation a request from the Joint Committee of the Law Associations that Convocation would authorize a grant of money not exceeding seventy-five dollars to defray the cost of printing a report of the committee on proposed amendments of the general rules of practice.

Mr. Osler moved, seconded by Mr. Martin, that the grant be authorized.—*Carried.*

Convocation adjourned.

Half-Yearly Meeting, 1892.

Tuesday, 28th day of June, 1892.

Convocation met.

Present—Messrs. Moss, Guthrie, Shepley, Strathy, Martin, Irving, Watson, Osler, Teetzel, Barwick, Hoskin, Bruce, Magee, Aylesworth, Hardy, and Mackelcan.

In the absence of the Treasurer, Mr. Irving was appointed chairman.

The minutes of last meeting of Convocation (4th June, 1892) were read and approved.

Mr. Moss, from the Legal Education Committee, presented a Report, as follows:

In the case of E. C. Senkler, recommending that his attendance and examination be allowed, and that he be called to the Bar, and receive a Certificate of Fitness.

Ordered for immediate consideration, adopted, and ordered accordingly.

In the cases of Messrs. J. H. Moss and W. J. Clark, that they had completed their service under articles, that their papers are regular, and that they are entitled to Certificates of Fitness.

Ordered for immediate consideration, adopted, and ordered accordingly.

In the cases of E. W. Drew and I. R. Carling, recommending that they be allowed to attend the supplemental examination in September.

Ordered for immediate consideration, adopted, and ordered accordingly.

Mr. Moss, from the same committee, reported:

That the Acting Secretary had reported to the committee that on the 21st day of June, 1892, a notice of intention to present herself for admission to the Society next Term (Trinity Term, 1892), and a petition and presentation form and $51 (fifty-one dollars) were tendered on behalf of Miss Martin to him, but he declined to accept them in the absence of instructions. The committee refer this matter to the action of Convocation.

Mr. Shepley moved, seconded by Mr. Teetzel, That the matter of passing Rules under the statute passed at the last session of the Legislature entituled, "An Act to provide for the Admission of Women to the Study and Practice of Law," in connection with the application of Miss Clara Brett Martin, and reported to-day by the Legal Education Committee, be considered on the second day of next Term, and that a special call of the Bench be made for that day to consider and deal with the above subject.—*Carried.*

Mr. Moss, from the Legal Education Committee, presented the Report of that committee on the admission of graduates and matriculants as Students-at-Law as of Easter Term, 1892, as follows:

The Legal Education Committee beg leave to report:

(1) The following candidates for admission as students-at-law presented their diplomas as graduates of the universities named, and are entitled to be entered on the books of the Society as Students-at-Law of the Graduate Class as of Easter Term, 1892, pursuant to the provisions of the Rules in that behalf, viz.:

Chas. Allen Stuart, B.A. University of Toronto, 1891, and Rykert Kent Barker, Chas. James Rattray Bethune, John Wellington Graham, Gerald Aloysius Griffin, Francis Dean Kerr, Frederick Arthur Kerns, Antoine Louis Lafferty, John Henderson Lamont, Hugh Walker McClive, George Evan McCraney, John Farquhar McGillivray, Arthur Edward McLaughlin, James Alexander McLean, Frederick Aikens Magee, Duncan Campbell Ross, Victor Albert Sinclair, John Hunter Tennant, Jared Vining, Samuel Casey Wood, jr., all B.A. of University of Toronto, 1892.

The following candidates who have duly given notice of intention to present themselves for admission as students of the Graduate Class have presented certificates showing that they have passed the final examination for Bachelor of Arts at Trinity College, and are entitled to receive that degree at the Convocation to be held on Tuesday, the 28th instant, and their other papers are regular, viz.:

Alexis Francis Ramsay Martin, D'Alton Lally McCarthy, John Frazer Elliott Patterson.

The committee recommend that upon production of proper diplomas to the Acting Secretary within two weeks their names be entered as Students-at-Law of the Graduate Class as of Easter Term, 1892.

The following gentlemen presented certificates showing that they matriculated in the universities and at the dates hereinafter named, and the committee recommend that they be admitted as Students-at-Law of the Matriculant Class as of Easter Term, 1892, viz.:

John Craig Brokovski, U. of T., 1891; Francis Henry Hurley, Trin. Coll., 1892.

All which is respectfully submitted.

June, 27, 1892. CHARLES MOSS, *Chairman.*

The Report was received, read, and adopted.

Ordered, that the above-named gentlemen be admitted as Students-at-law as of Easter Term, 1892.

With reference to the following gentlemen: Alex. Francis Ramsay Martin, D'Alton Lally McCarthy, and John Frazer Elliott Patterson, who have not received their diplomas yet, it was ordered that upon production of proper diplomas to the Acting Secretary within two weeks their names be entered as Students-at-Law of the Graduate Class as of Easter Term, 1892.

Mr. Moss, from the same committee, presented the Report of the Legal Education Committee on the result of the examinations of the first and second years in the Law School, as follows:

(1) They submit herewith the report of the Examiners of the result of the pass and honour examinations of the first year in the Law School.

(2) Of the candidates who obtained the necessary number of marks entitling them to pass, the following are certified by the Principal to have duly attended the required number of lectures during the course, viz.:

J. F. Warne, J. F. Faulds, J. Ashworth, W. N. Tilley, D. J. Sicklesteel, W. Gow, J. Sale, A. W. Briggs, J. M. Godfrey, A. E. Hoskin, R. M. Thompson, R. J. McPherson, A. Fasken, W. Mulock, jr., D. Donald, H. C. Small, H. E. Rose, J. P. White, A. E. Bull, T. E. Godson, J. E. Irving, F. Ford, G. T. Denison, J. T. Loftus, Z. R. C. Lewis, N. Y. Poncher, J. R. Logan, W. N. Ferguson, F. G. Anderson, H. Z. C. Cockburn, C. A. Batson, H. C. Pope, M. H. East, C. T. DesBrisay, T. W. Evans, G. F. T. Arnoldi, J. D. Kennedy, W. H. B. Spotton, F. Langmuir, G. A. M. Young, T. R. Beale, G. H. Ferguson, H. E. Price, R. D. Scott, W. Hanes, W. H. Harris, W. J. Moran, W. A. D. Grant, H. M. Ferguson, J. T. White, W. M. Whitehead, W. A. Lewis, W. S. McCallum, W. A. Robinson, J. G. Burnham, J. Galbraith, E. F. H. Cross, A. N. Middleton, E. G. Stevenson, D. T. Smith.

(3) The Principal certified that the following candidate, who obtained the necessary number of marks to entitle him to pass, failed to attend the required number of lectures, but he has satisfied the Principal that the failure to attend was owing to illness or other good cause, and the committee recommend that his attendance and examination be allowed, viz.: M. H. Roche.

(4) The following candidate who failed to obtain the necessary number of marks to entitle him to pass, also failed to attend the required number of lectures, but he has satisfied the Principal that such failure was owing to illness, viz.: T. D. Dockray.

(5) The following candidates, who obtained the necessary number of marks to entitle them to pass, presented special petitions praying that their attendance be allowed for the reasons set forth therein, viz.:

B. M. Jones, W. F. Gurd, H. L. Watt, R. R. C. Pringle.

These petitions were referred to the Principal for report as to the general attendance and conduct of the applicants, and he has reported thereon, and the committee find as follows:

(1) Mr. Jones' deficiency is five lectures on Real Property. He shows that absence from three of these was due to illness, and as to the other two he was engaged by the Library Committee to act in the Library during the enforced absence of the Librarian, on the 28th and 29th days of April, and was unable to attend the lectures on those days.

(2) Mr. Gurd's deficiency is nine lectures on Contracts. The Principal certifies that attendance on the aggregate was sufficient. He accounts for the failure to attend the requisite number on Contracts by reason of illness for two weeks, preventing from attending for two weeks, as appears by certificate of medical attendant—this covers eight of the above number. The other he accounts for by onerous duties at his office at the time.

(3) Mr. Watt's deficiency is six lectures on Contracts. This occurred during the period between the 7th and 16th of December, 1891. The Principal certifies that his attendance was diligent during the remainder of the term. On his petition presented during Hilary Term, asking to be allowed his attendance notwithstanding his absence from a certain number of lectures by reason of absence from the city attending the trial of election cases, the committee ordered that action be deferred until after the examination, and to be then favourably considered if his future attendance was satisfactory.

(4) Mr. Pringle's deficiency is thirty-one lectures on Equity and thirty-four on Contracts. On his petition, presented before Michaelmas Term, 1891, showing that he applied to the Secretary at the opening of the Law School in October to receive his fee and permit him to attend the lectures, the Secretary had refused to do so because he had not been admitted to the Society (through mistake and oversight), although he was under articles. On 5th December, 1891, Convocation ordered that he be admitted as a Student-at-Law as of Trinity Term, and that he be required to make up any deficiency of lectures for the Term of 1891-2 by diligent attendance in the subsequent years, so far as practicable.

The Principal reports that he commenced attending on 2nd December, and that from that

date his attendance was diligent, being absent only from two lectures out of one hundred and sixty-eight during the residue of the Term.

The Principal further reports that, in view of the very small extent of the deficiencies in many of the cases, and the explanations given in the others, he sees no reason to fear any injury to the discipline of the School from granting the relief asked.

(5) The committee recommend that the attendance and examination of these gentlemen be allowed.

(6) The following candidates, who obtained the necessary number of marks to entitle them to pass, were not required to attend, and did not attend, the lectures of the Term 1891-2, and the committee find that they are entitled to have their examinations allowed, viz.:

J. P. Gundy, F. A. W. Ireland, G. B. Burson, James O'Brien, G. A. Ball, G. Drewry, J. M. Scott, T. K. Allen, M. J. O'Reilly, A. Fleming, T. B. German, L. F. Clarry, Donald Ross, C. R. Webster, A. J. McKinnon, D. O'Connell, D. W. Jamieson, J. E. Cohoe, E. Stevenson, C. Hodge, U. M. Wilson.

(7) The committee also submit the Report of the Examiners on the result of the pass and honour examinations of the second year in the Law School.

(8) Of the candidates who obtained the necessary number of marks to entitle them to pass, the following are certified by the Principal to have attended the required number of lectures during the course, viz.:

J. C. Haight, W. E. Woodruff, W. Douglas, D. Plewes, G. A. Harcourt, G. S. Bowie, H. F. Thompson, G. H. D. Lee, C. O'Connor H. F. McMichael, P. A. C. LaRose, F. M. Brown, T. J. Henderson, A. H. Sinclair, W. H. Holmes, A. B. Carscallen, C. F. E. Evans, J. F. Smellie, W. A. Wilson, G. J. Ashworth, W. L. Phelps, Alex. Smith, J. McEvoy, D. Campbell, N. B. Eagen, R. Bradford.

(9) The Principal certified that the following candidates who obtained the necessary number of marks to entitle them to pass failed to attend the required number of lectures, but they have satisfied him that such failure to attend was owing to illness or other good cause, and the committee recommend that their attendance and examination be allowed, viz.:

A. C. McMaster, W. R. Givens, J. M. Farrell, J. A. McKay, W. A. Fraser, G. M. Kelly, M. P. Vanderwoort, R. J. Bonner, J. Lamont, W. B. Wilkinson, W. Brydone, J. W. Mallon, J. T. Thompson.

(10) The following candidates who obtained the necessary number of marks to entitle them to pass presented special petitions praying that their attendance be allowed for reasons set forth therein, viz.:

W. C. Hall and D. H. McLean.

The petitions were referred to the Principal for report as to the general attendance and conduct of the applicants, and he has reported thereon, and the committee find as follows:

(*a*) Mr. Hall's deficiency consists of six lectures on Practice, five on Torts, and two on Personal Property. He shows he attended from the opening of the Term until the 14th of October, but these have not been credited to him, as he did not pay his fee until the latter date. The Principal states that if he is allowed the lectures between these dates, his deficiency on the aggregate, and also on the subject of Torts, will disappear; but although he appears by the Roll to have been in attendance the Principal thinks he should not recognize such attendance for the purpose of his ordinary report The applicant states that his failure to pay at the commencement of the Term was owing to a veritable lack of funds. He shows that he was ill from the 28th of March to the 2nd day of May, or he could have made up the deficiency.

(*b*) Mr. McLean's deficiency consists of one lecture on Equity. He states that he was present on one occasion, but he was not credited with the attendance on account of being late. The Principal states that his attendance in other respects was good.

(11) The committee recommend that the attendance and examination of these gentlemen be allowed.

All of which is respectfully submitted.

June 27, 1892. CHARLES MOSS, *Chairman.*

Ordered, that the attendance and examinations of the students in the first year be allowed, in accordance with the recommendation contained in the Report, and it was further ordered that so much of the Examiner's Report as relates to honours and scholarships be referred to a Special Committee, to be composed of Messrs. Hoskin, Moss, and Shepley.

The Report of the Examiners on the second-year examinations was read.

Ordered, that the attendance and examinations be allowed in accordance with the recommendation contained in the Report of the committee in so far as regards the second-year candidates; and it was further ordered that so much of the Examiner's Reports as relates to honours and scholarships be referred to the Special Committee composed of Messrs. Hoskin, Moss, and Shepley.

Mr. Moss, from the Legal Education Committee, presented a Report on amendments to Rule 156, as to attendance of students and articled clerks at the Law School, as follows:

During Michaelmas Term, 1891, Convocation, on a report of the committee with reference to the expediency of permitting certain students who, under the existing Rules, were subject to attend the lectures of the third year during the Term of 1891-92, to attend a portion thereof during the Term of 1891-92, and the remainder thereof during the Term 1892-93, passed a Rule enabling this to be done.

Convocation also approved of a suggestion of the committee that the Principal be requested to consider the expediency of extending the idea to other years.

The Principal, having considered the subject, reported in favour of an extension, and at the suggestion of the committee drafted amendments to the Rules embodying his views.

The committee approved of the draft submitted by the Principal, and directed it to be printed and sent to each member of Convocation, with a request for suggestions. None have been received.

The committee recommend the adoption of the changes proposed by the draft, a copy of which is annexed hereto, and that a Rule or Rules be passed for giving effect thereto.

All of which is respectfully submitted.

CHARLES MOSS, *Chairman.*

The following is a copy of the draft amendments referred to in the foregoing Report:

Rule 156 is hereby amended by inserting therein, immediately after the first word thereof, the following words: "To the provisions of the eight next succeeding Rules, and."

Rule 156 (*a*) is hereby repealed, and the following is substituted therefor: 156 (*a*).—Any Student-at-Law or Articled Clerk, not being a graduate, may attend the lectures of the first year of the school course, either in the first, second, or third year of his attendance in Chambers or service under articles, and may present himself for the examination of the first year of the school course at the school examinations which shall be held at the close of the Term in which he shall so have attended such lectures.

156 (*b*).—Any Student-at-Law or Articled Clerk not being a graduate, and not being required to attend the lectures of the first year of the school course, may present himself for the examination of the first year of the said course at the school examinations which shall be held at the close of the Term in the first, second, or third year of his attendance in Chambers or service under articles.

156 (*c*).—Any Student-at-Law or Articled Clerk, not being a graduate, may attend the lectures of the second year of the school course in the second, third, or fourth year of his attendance in Chambers or service under articles, and may present himself for the examination of the second year of the said course at the school examinations which shall be held at the close of the Term in which he shall so have attended such lectures; provided that no student or clerk shall by virtue

of this Rule be permitted to commence his attendance upon the lectures of the second year of the said course until after he shall have duly pased the examination of the first year of the said course.

156 (*d*).—Any Student-at-Law or Articled Clerk, not being at graduate, who shall have duly passed the examination of the first year of the school course before the commencement of the school Term which shall be held in the second year of his attendance in Chambers or service under articles may elect to attend, either during such Term or during the next succeeding Term, the lectures on such of the subjects of the second year of the school course as he may name, provided the number of such lectures shall, in the opinion of the Principal, reasonably approximate one-half of the whole number of lectures pertaining to the said second year of such course, and may complete his attendance upon the lectures of such second year in the following Term by attending the the lectures on the remaining subjects of such second year.

156 (*e*).—Any Student-at-Law or Articled Clerk, not being a graduate, who shall have duly passed the examination of the first year of the school course before the commencement of the school Term which shall be held in the third year of his attendance in Chambers or service under articles may elect to attend in such Term the lectures on such of the subjects of the second year of such course as may, in the opinion of the Principal, reasonably approximate one-half of the whole number of lectures pertaining to the said second year, and may complete his attendance on the lectures of said second year in the following Term by attending the lectures on the remaining subjects of such second year.

156 (*f*).—Any Student-at-Law or Articled Clerk, not being a graduate, who shall have duly passed the examination of the second year of the school course before the commencement of the school Term which shall be held in the fourth year of his attendance in Chambers or service under articles may elect to attend during such Term the lecture on such of the subjects of the third year of the said course as he may name, provided the number of such lectures shall, in the opinion of the Principal, reasonably approximate one-half of the whole number of lectures pertaining to the said third year of such course, and shall complete his attendance on the lectures of the said third year in the following Term by attending the lectures on the remaining subjects of the said third year.

156 (*g*).—Every Student-at-Law and Articled Clerk entitled and desiring to make any such election as aforesaid must, before commencing his attendance on the lectures which he so elects to attend, deliver to the Principal his written election, specifying the subjects of the lectures which he so elects to attend, and obtain the Principal's approval of the same, and must also, before commencing such attendance, pay to the sub-Treasurer the school fee for the Term; and such student or clerk, having paid such fee, and having had his attendance duly allowed in respect of the lectures which he shall so have elected to attend, according to existing Rules, shall not be required to pay any further fee for or in respect of his attendance on the remainder of the lectures pertaining to the same year of the school course.

157 (*h*).—Nothing in the preceding Rules shall be deemed to permit any student or clerk to present himself at the examination of the second or third year of the school course before he shall have duly completed his attendance upon the lectures of the said second or third year, as the case may be.

The Report was received, read, and adopted.

Mr. Moss asked leave to introduce a Rule to give effect to the Report.—*Carried.*

Mr. Moss then moved that the Rule be read a first time.—*Carried.*

Ordered, that the Rule be read a second time on the second day of next Term.

Mr. Martin, on behalf of the County Libraries A id Committee, presented the Annual Report of the Inspector of Legal Offices for 1891 upon the condition of the County Library Associations, and moved that copies of so much of the Report as effects each library and the "general remarks" be forwarded to each Association.

Ordered, that the usual fee for inspection to Mr. Winchester for his services ($150) be paid.

The letter of His Honour Judge Dartnell, asking for the use of the Convocation room for the annual meeting of the County Judges, was read. Ordered, that leave be granted with pleasure.

The letter of the Honourable Chancellor Boyd, returning thanks for a copy of the new Digest, was read.

The letter from Mr. Neil McLean, asking to be furnished with the Reports, he being entitled thereto under the Rules of the Society, was read.

Ordered, that instructions be given the publishers to furnish Mr. McLean with the Reports.

The letter of Mr. Norman McLean was read. Ordered, that the Acting Secretary write Mr. McLean that he should consult a solicitor.

The petition of Evan Griffith Stevenson was received and read. Ordered, that the prayer of the petition be granted.

The following gentleman was then called to the Bar, viz., Edmund Cumming Senkler.

The Report of the Joint Committee of the Finance and Legal Education Committees, and the Report of the sub-Committee, was received and read, as follows:

(1) In view of the death of Mr. Esten, late Secretary and sub-Treasurer of the Society, we felt it our duty to meet in order to consider what suggestions should be made to Convocation, and at our meeting held on the 14th June, 1892, there were present: The Treasurer, and Messrs. Irving, Hoskin, S. H. Blake, Mackelcan, Moss, Ritchie, Meredith, Barwick, Strathy, Bruce, Teetzel, Lash, and Robinson.

(2) The Treasurer reported that he had ascertained that Mr. Esten had been in the Society's service about twenty-three years, and had left a widow with two daughters and an invalid son, all three under age, and that their only resources were a sum of $2,000 belonging to Mrs. Esten, and $2,000 of life insurance; in all, $4,000.

(3) Upon motion of Mr. Meredith, seconded by Mr. S. H. Blake, it was resolved that the committee recommend to Convocation to pay a gratuity of $4,000 for the benefit of Mr. Esten's widow and family.

(4) It was moved by Mr. Meredith, and resolved, That a sub-committee, composed of Messrs. Hoskin, Lash, and Moss, be appointed to suggest, after conference with Mrs. Esten, the terms of a trust for the above gratuity, with a view to its application to the best advantage for the maintenance of the family, and that the report of the sub-committee be made direct to Convocation.

(5) It was moved by Mr. Moss, seconded by Mr. Bruce, and resolved, That, in the opinion of the committee, in view of the altered circumstances, the offices of Secretary and sub-Treasurer, recently divided, should be consolidated.

(6) It was resolved that, in the opinion of the committee, a salary of $1,500 a year, with the residential accommodation formerly specified, would be an adequate salary for the consolidated office.

(7) It was resolved that, in case the present Librarian desires to undertake those duties of the consolidated office which relate to the care of the building and grounds, and are numbered 19 in the Report upon the division of duties of the offices of Secretary and sub-Treasurer submitted to Convocation on the 16th May last, as follows:

"(19) He shall, under the direction of the Finance Committee, have the general charge of those portions of the grounds with the buildings thereon which are or may hereafter be under the control of the Society, and shall, under the same direction, exercise supervision and control over

the Society's servants. He shall, until further order of Convocation, reside in the east wing of Osgoode Hall, in such apartments as shall be assigned to him by the Finance Committee."

It would be advisable to commit these duties to his charge, he receiving in compensation therefor the residential accommodation referred to; and that in that event the salary attaching to the consolidated office should be $1,750 a year, without residential accommodations.

(8) It was resolved that, in the opinion of the committee, a percentage of the salaries of the permanent officers of the Society should be retained and paid out to them on retirement, or, in case of death, to their families, with compound interest; and that this arrangement should be in lieu of all gratuities or allowances, and that the committee recommend a reference to the Finance Cemmittee to settle the details of this plan, and its application to the various officers appointed or to be appointed.

(9) It was resolved that this Report be printed, together with the Report of the sub-committee appointed to confer with Mrs. Esten, and circulated among the Benchers before the next meeting of Convocation.

All of which is respectfully submitted.

June 14th, 1892. EDWARD BLAKE, *Chairman.*

REPORT OF SUB-COMMITTEE.

Your sub-committee, appointed on the 14th day of June, 1892, by the Joint Committee consisting of the members of the Finance and Legal Education Committees, for the purpose of reporting upon a scheme in connection with the proposal to make some provision to assist in the support of the widow and certain of the children of the late Secretary, beg to report:

(1) That after consultation with Mrs. Esten, as to her wishes in the matter, your sub-committee are of opinion that the sum of four thousand dollars ($4,000) proposed to be given for the purpose aforesaid should be paid to the Trusts Corporation of Ontario for the purpose of investment; that the income thereof should be paid to Mrs. Esten during her life, and upon her death the said sum of four thousand dollars ($4,000) should be divided between the three children of the said late Secretary referred to in the report of the Joint Committee, viz.: Charles Hamilton Esten, Catharine Mary Selina Esten, Frederica Hamilton Esten, or such as may be alive, in such manner and proportions and upon such trusts (if any) as may be determined by the then Chairmen of the Finance and Legal Education Committees.

All of which is respectfully submitted.

JOHN HOSKIN,
Z. A. LASH,
CHARLES MOSS.

The Report was ordered for consideration.

The first and second paragraphs were passed over. The adoption of the third paragraph of the Report, which is as follows:

(3) "Upon motion of Mr. Meredith, seconded by S. H. Blake, it was resolved that the committee recommend to Convocation to pay a gratuity of $4,000 for the benefit of Mr. Esten's widow and family," was moved by Mr. Bruce, seconded by Mr. Hoskin.

Mr. Barwick moved in amendment, seconded by Mr. Osler, that in lieu of the recommendation made in the Report the salary of the late Secretary be paid up to the 1st day of September, 1892, and that thereafter two hundred and fifty dollars per annum be paid to Mrs. Esten during her natural life.

Mr. Aylesworth moved in amendment to the amendment, seconded by Mr. Shepley, that clause 3 of the Report be struck out.—*Lost.*

Mr. Barwick's motion was then carried. It was then ordered that the annuity to Mrs. Esten should be paid to her half-yearly on the first days of January and July in each year, and that the first half-year's payment of one hundred and twenty-five dollars be paid to her on the first day of January, 1893.

Convocation then passed to the consideration of the fifth paragraph of the Report, which is as follows: "That in the opinion of the committee, in view of the altered circumstances, the offices of Secretary and sub-Treasurer, recently divided, should be consolidated."

Mr. Osler moved in amendment, seconded by Mr. Barwick:

That the opinion of Convocation, the officers of the Society should be as follows:

(1) A Librarian, sub-Treasurer and Secretary, who shall be senior in the charge of all the affairs of the Society, and whose salary shall be seventeen hundred and fifty dollars per year.

(2) An officer who shall be known as Under-Secretary who shall have charge under the senior officer of the books of the Society, of the correspondence of all matters ordinary falling to a Secretary, and whose salary shall be one thousand dollars per year.

(3) An officer who shall be known as Assistant-Librarian, who under the senior officer shall devote his time to the work in the Library, and whose salary shall be eight hundred dollars per year.

That it be referred to same committee to work out in more detail the above scheme and to report to the next meeting of Convocation.

The sense of Convocation being taken, the motion was declared lost.

Mr. Osler moved, seconded by Mr. Mackelcan, the adjournment of the debate on the consideration of the Report until the first day of Trinity Term.—*Carried.*

Mr. Moss presented the Report of the Special Committee on honours and scholarships, as follows:

The Special Committee to whom was referred the question of honours and scholarships in connection with the first and second years' examinations held in May and June, 1892, beg leave to report as follows:

(1) They find that the following candidates passed the first year's examinations with honours, viz.:

J. F. Warne, J. Ashworth, J. F. Faulds, D. I. Sicklesteel, W. Mulock, W. Gow, J. Sale, W. W. Tilley, B. M. Jones H. C. Small, T. E. Bull, R. M. Thompson, A. E. Hoskin, H. E. Rose, J. P. White, W. M. Ferguson, J. R. Logan, J. M. Godfrey, J. E. Godson.

And that Mr. Warne is entitled to a scholarship of $100; that Mr. Ashworth is entitled to a scholarship of $60; and Messrs. Faulds, Sicklesteel, Mulock, Gow, and Sale are entitled to a scholarship of $40 each.

The committee further find that the following candidates passed the second-year examination with honours, viz.:

J. C. Haight, A. C. McMaster, W. E. Woodruff, W. R. Givens, D. Plewes, W. A. Fraser.

And that Mr. Haight is entitled to a scholarship of $100; that Mr. McMaster is entitled to a scholarship of $60; and that Messrs. Woodruff, Givens, Plewes, and Fraser are entitled to a scholarship of $40 each.

Mr. Shepley, from the Library Committee, presented a Report from that committee, as follows:

That Convocation having referred to it a letter from the Librarian of the Hamilton Law Association with reference to the supply of students' text-books, with instructions to report generally on the questions thereby raised,

The committee beg respectfully to call the attention of Convocation to the provisions of Rules

73 (1), 78, and 81, which seem to make specific provision with regard to the matters referred. It appears to your committee probable that the reference to it in this case instead of to the County Libraries Aid Committee was inadvertent.

The Librarian has collected certain information bearing upon the subject referred to, including the Report of a Special Committee presented to and adopted by Convocation in November, 1890, which your committee is pleased to be able to place at the disposal of Convocation, or of the County Libraries Aid Committee.

Dated 28th June, 1892. GEO. F. SHEPLEY, *Chairman.*

The Report was received and adopted.

Ordered, that the matter be referred to the County Libraries Aid Committee for report.

Mr. Strathy, from the Special Committee on Unlicensed Conveyancers, presented a Report, as follows:

The Special Committee to which were referred the various complaints made in reference to unlicensed conveyancers beg leave to further report as follows:

Your committee, having endeavoured to procure all possible information upon the subject referred and having sought and obtained many suggestions from the various Law Associations and County Bars throughout the Province, all of which have received the best and most careful consideration of your committee, find that no aid can be accorded to the profession except by means of legislation in the Provincial Parliament, and your committee is met there with a difficulty at present insuperable by reason of the opponent feelings of such a large proportion of the members of the Legislature, and the strong influence now used by unlicensed conveyancers throughout the Province. Your committee would therefore suggest that the members of the profession should, in their respective localities, use their influence, which is generally large, to induce their representatives to see that justice is done, and to obtain from them, if possible, some pledge that the interests of the profession should receive the fair consideration of the House.

Your committee suggests that it be continued so that any action that may hereafter appear to be advisable can be taken without any unnecessary delay.

H. H. STRATHY, *Chairman.*

Dated this 28th day of June, 1892. G. H. WATSON, *Vice-Chairman.*

The Report was received and read.

Ordered for immediate consideration and adopted.

Ordered, that the Report be printed and a copy sent to every member of the Society with the Reports.

The special petition of Alexander Henderson was received and read. Ordered, that a duplicate Certificate of Fitness do issue.

The consideration of Mr. Martin's Rule relating to the change of days of meeting of Convocation was deferred to the first day of next Term.

Convocation adjourned.

J. K. KERR,
Chairman Committee on Journals.

DIARY FOR NOVEMBER.

1. Tues.....All Saints' Day.
2. Wed.....O'Connor, J., Q.B., died, 1887.
5. Sat.....Sir John Colborne, Lieut.-Governor of U.C., 1836. Gunpowder Plot.
6. Sun.....*21st Sunday after Trinity.*
8. Tues.....Court of Appeal sits. John Milton died, 1674.
9. Wed.....Prince of Wales born, 1841.
11. Fri.....Battle of Chrysler's Farm, 1813.
13. Sat.....J. H. Hagarty, 4th C.J. of C.P., 1868. W. B. Richards, 10th C.J. of Q.B., 1868. Magna Charta signed, 1215.
13. Sun.....*22nd Sunday after Trinity.* A. Wilson, 5th C.J. of C.P., 1878. J. H. Hagarty, 12th C.J. of Q.B., 1878.
14. Mon.....Falconbridge, J., Q.B.D., 1887.
15. Tues.....M. C. Cameron, J., Q.B., 1875.
19. Sat.....J. D. Armour, 14th C.J. of Q.B., 1887. Thos. Galt, C.J., C.P.D.
20. Sun.....*23rd Sunday after Trinity.*
21. Mon.....Michaelmas Term begins. Q.B. and C.P. Divisions of H.C.J. sittings begin. J. Emsley, 2nd C.J. of Q.B., 1795. Princess Royal born, 1840.
24. Thur.....Battle of Fort Duquesne, 1758.
25. Fri.....Marquis of Lorne, Gov.-Gen., 1878.
27. Sun.....*1st Sunday in Advent.* Frontenac died at Quebec, 1698.
30. Wed.....St. Andrew's Day. Thos. Moss, C.J. of Appeal, 1877. Street, J., Q.B.D., and MacMahon, J., C.P.D., 1887.

Reports.

COUNTY COURT, COUNTY OF ONTARIO.

FLEMMING v. STEPHENSON AND A. WARING

ADMINISTRATORS OF F. WARING,

GARNISHEES.

Motion for receiver—Attachment of legacies—Rule 935.

A legacy due to a judgment debtor and charged upon the testator's estate can be attached, under Rule 935, to answer a judgment against the legatee. *Leeming* v. *Woon*, 7 A.R. 42; *Stewart* v. *Grough*, 15 A.R. 299; *Trust & Loan Co.* v. *Gorsline*, 12 P.R. 654; and *Canadian Cotton Co.* v. *Parmalee*, 13 P.R. 26, 308, considered.

(WHITBY, Nov. 7, 1892.

This was an application for a receiver, on behalf of a judgment creditor of one A. Waring, to collect a legacy in his favour, payable out of the testator's estate upon realization thereof by sale. The administrators, with the will annexed, had not realized at the date of the application. The notice of motion asked in the alternative for such other order as might be thought proper.

G. Y. Smith for the plaintiff.

Doe and *McGillivray* for the administrators.

DARTNELL, J.J.: The questions to be considered are of some difficulty. If the application for a receiver, under the circumstances detailed, be one for equitable relief, then the County Court has no jurisdiction, and the plaintiff would be compelled to bring an action in the High Court, praying for equitable execution. See *Whidden v. Jackson*, 18 A.R. 439; *Re McGugan* v. *McGugan*, 21 O.R. 289. I consider, with some diffidence, however, in the absence of direct authority, that this legacy can be attached under the provisions of Consolidated Rule 935.

The law on this point seems to be in a state of transition. In *Leeming* v. *Woon*, 7 A.R. 42, following *In re Cowans Estate*, 14 Ch.D. 638, it was held that, since the Judicature Act, no distinction would be made between legal and equitable debts with regard to garnishee process. But *Re Cowans Estate* having been overruled in England by *Webb* v. *Stenton*, 11 Q.B.D. 518, *Leeming* v. *Woon* was no longer of authority; and in *Stewart* v. *Grough*, 15 A.R. 299, it was held that there must be a debt due. In that case a receiver was appointed to receive a share of an estate to which the debtor was entitled. An attaching order had previously been made at the instance of another creditor. This order was held to be void, and, although the executors had paid the attaching order, they were ordered to pay the receiver. It is to be noted that this latter case was decided, and the order made therein, before the revision and consolidation of the Rules as at present in force.

In this consolidation, Rule 935 was amended so as to enable the court to attach "all claims and demands of the judgment debtor against the garnishees arising out of trust or contract where such claims could be made available under equitable execution." This Rule, in its original form, is contained in Rule 370, O.J.A. of 1881.

Trust & Loan Co. v. *Gorsline*, 12 P.R. 654, decides that where a debt is attachable an order for a receiver would not be granted. Rule 935 was then in force. It was there contended that the money, if exigible at all, could be reached by garnishee process, and that therefore a motion for a receiver was not a proper proceeding.

There is no doubt that in this case the claim or demand of the debtor arises out of a trust, that is, the administrators hold the share in trust for him, and do now hold in trust for him such amount as will be coming to him after the estate accounts are taken and distribution effected.

The case of *Canadian Cotton Co.* v. *Parmalee*, 13 P.R. 308, so far as it goes, is distinctly in the applicants' favour. See also *Simpson* v. *Chase*, 14 P.R. 280.

The conclusion appears to be that, in view of the facts of this case, it is brought within the scope and intention of Rule 935: "That wherever equitable execution is obtainable (and an appointment of a receiver is in that nature) the moneys can be garnisheed, provided they arise out of trust or contract; that as the debtor would be satisfied by a money payment, a right arises to move for an attaching order."

I therefore refuse an order for a receiver, but the applicants can take an order attaching *pro tanto*, to the amount of plaintiff's debt and costs, the legacy in question in the administrators' hands, payable on realization of the estate; the plaintiff's costs of this application, including the administrators' costs (which he is to pay and add to his own), to be taxed and added to his judgment debt and other costs.

IRELAND.

COURT OF APPEAL.

DELANY *v.* THE DUBLIN UNITED TRAMWAY COMPANY.

Contributory negligence — Rights and duties of tramcar conductors — Intoxicated persons entering a tramcar in motion are trespassers.

[26 Irish L.T. Rep. 122.

The plaintiff, in a state of intoxication, attempted to enter the defendant's tramcar when in motion. He got on the lower step, sustaining himself in that position by holding the upright bar. The conductor intercepted his further ingress. The plaintiff, continuing to hold the bar, was dragged a distance of three yards; he fell to the road, and incurred serious injuries to his spine. The evidence for the plaintiff and that for the defendant was directly opposed as to whether the conductor pushed the plaintiff, thereby causing him to have no support for his feet, and also as to whether, when the conductor first resisted the effort of the plaintiff to enter the car, the plaintiff had not got both his feet on the step. An action for negligence causing damage, estimated at £3,000, brought by Delany, resulted in a disagreement of the jury. A new writ of summons having been issued, a second trial was held, and at the conclusion of his summing-up the judge put the following issues: (1) Did the plaintiff get on the step of the tramcar? (2) If so, did the conductor remove him? (3) Was there negligence on the part of the conductor in the manner in which he removed the plaintiff under the circumstances that existed? (4) If so, were the plaintiff's injuries caused thereby? (5) Could the plantiff, by the exercise of reasonable care on his part, have avoided the consequences of the occurrence? These questions were all answered in favour of the plaintiff, and the damages were assessed at £500. Judgment was entered for the plaintiff. The defendants obtained a conditional order to set aside the verdict, on the ground that the judge ought to have directed a verdict for the company, or, in the alternative, for a new trial. This order was set aside by the Exchequer Division. From this decision the defendants appealed.

Adams, Q.C. (with him *O'Shaughnessy*, Q.C., and *Harrington*, M.P.), for the plaintiff.

Walker, Q.C. (with him *The Macdermott*, Q.C., and *John Gordon*), for the defendants.

Cases cited: *Radley* v. *L. & N.W. Ry. Co.*, 1 App. Cas. 754; *Murgatroyd* v. *Blackburn, etc., Tramway Co.*, 3 *Times* L.R. 451; *The Byewell Castle*, 41 L.T. 747; *Davies* v. *Mann*, 10 M. & W. 546; *Cahill* v. *L. & N.W. Ry. Co.*, 10 W. R. 321; *Coyle* v. *Great Northern Ry. Co. of Ireland*, 20 L.R.I.C.L. 409; *Wakelin* v. *L. & S. W. Ry. Co.*, 12 App. Cas. 41; *Bridge* v. *Grand Junction Ry. Co.*, 2 M. & W. 244; *Flower* v. *Adam*, 2 Taunt. 214; *Rounds* v. *Delaware Ry. Co.*, 64 N.Y. 129; *Seymour* v. *Greenwood*, 7 H. & N. 355.

BARRY, L.J.: It is said that it was the plaintiff's own misconduct that was the primary cause of the injuries; well, that applies to every case of contributory negligence. The law as to repelling trespass is very clear. A man is justified in using force in defence of his person or property, subject to the rule that the force employed to repel trespass must be proportionate to the injury anticipated from the trespass. The question here is, was it for a jury to say whether the conductor, by pushing a drunken man off the step of the tramcar—the car being in motion—to the road on his back, was acting reasonably and properly? If a drunken fellow got up to the roof of the car, would the conductor be justified in flinging him off? Take the case of a stowaway—would the

captain be justified in throwing him overboard? I am of opinion that there was evidence to go to the jury that the conductor did use an excessive mode of getting rid of this man. The jury found that the mode adopted was improper. The judge was satisfied with their finding. I cannot, upon any principle, enter up a verdict for the defendant in the face of that finding by the jury on the evidence.

LORD ASHBOURNE, C.: The plaintiff tried to force his way into the tramcar while in motion, and the plaintiff, being intoxicated, was acting illegally and negligently. What is the duty of a conductor of a tramcar when an intoxicated person tries to force his way into a car? It is to keep him out with reasonable and proper force. The plaintiff was never lawfully in the car. The plaintiff's effort was one and the conductor's effort was one. It was the plaintiff's own act of negligence that caused the injuries, and he was the author of his own wrong.

FITZGIBBON, L.J.: It is impossible to allow the verdict for the plaintiff in this case to stand without breaking the just and salutary rule that no man can recover damages for his own wrongful act. The principle upon which this case should be decided is that on the undisputed evidence the plaintiff's own unlawful or improper act was the direct, operative, and primary cause of his injuries. The occurrence constituted one transaction; throughout it all the plaintiff was a wrongdoer. The conductor, at the worst, acted imprudently, but yet neither wrongfully nor negligently, in endeavouring to discharge his duty towards his employer, and against a man who, by his own act, had placed himself in a position of peril and the conductor in a position of difficulty. If Delany had no right to enter the car, he had no right to stand on the step. He was not to be treated with undue violence; it was lawful to remove him; of course it ought to be done in a reasonable manner. It is said that the company is liable because the conductor did not stop the car. I deny that in dealing with a wrongdoer the company can be held liable for an error of judgment on the part of its servant; and, in the next place, I deny that the conductor was under any obligation to stop the tramcar; the plaintiff was in a position of peril of his own making, and as he got up he was bound to get down.

Appeal allowed.

May 2nd, 1892.

Early Notes of Canadian Cases.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

HIGH COURT OF JUSTICE.

Common Pleas Division.

Div'l Court.] [June 25.

MCLAUGHLIN *v.* HAMMILL.

Interpleader—Claim for rent—Right of sheriff to interplead—Con. Rule 1141.

The express statutory provision giving sheriffs the right to interplead where a claim against the goods is made by a landlord for rent was omitted in the Revised Statutes, it being stated in the appendix thereto that it was superseded by Con. Rule 1141, which provides that the sheriff, etc., may interplead where a claim is made, etc., to any money, goods, or chattels, etc., taken in execution, etc., by any person other than the person against whom the process issued.

Held, that the right to interplead, where a claim for rent is made, still exists.

Aylesworth, Q.C., for the sheriff.

Strathy, Q.C., for the execution creditor.

H. S. Osler for the landlord.

CRANE *v.* RAPPLE.

Sale of land—Parol contract—Possession—Partner's share.

Land owned by two persons in partnership was sold under a parol contract by one of the partners to a purchaser under the belief that the co-partner would agree in the sale and the whole be conveyed, the purchaser being put into possession; but the co-partner refused to carry out the sale.

Held, that the so placing the purchaser in possession was sufficient to prevent the Statute of Frauds being set up as a bar to the proof of the parol contract; and that the purchaser could elect to take the selling partner's share with an abatement of the purchaser's money and specific performance as against him.

Walter Cassels, Q.C., for the plaintiffs.

Watson, Q.C., for the defendant.

MYERS *v.* HAMILTON PROVIDENT AND LOAN COMPANY.

Judgment—Subsequent order to take accounts—Rules 551, 782.

After judgment had been pronounced, in an action therefor, declaring the estate the plaintiff took in certain lands under his father's will, and which he had mortgaged to the defendants, and refusing to restrain the sale thereof under the mortgage the sale was proceeded with and the lands sold. Subsequently, on the plaintiff's application, a judge's order was obtained directing a reference to the clerk in chambers to take the mortgage accounts, and to the taxing officer to tax defendants' costs; and, while this application was pending, the defendants obtained an *ex parte* order to pay the surplus proceeds of the sale into court.

Held, that, without deciding whether, in an application under Rule 782, a petition was necessary, the order to take the accounts, etc., was properly made under Rule 551.

W. H. Blake for the plaintiff.

Hoyles, Q.C., for the defendant.

LAWSON *v.* MCGEOCH.

Bankruptcy and insolvency—Intent to prefer—Presumption—R.S.O., c. 124, 54 Vict., c. 20 (O.)—Chattel mortgage—Prior agreement therefor—Effect of.

The 54 Vict., c. 20 (O.), amending R.S.O., c. 124, enacts that as to transactions coming within the amending Act, if impeached within the limited period, the intent to prefer is presumed, whether the act was done voluntarily or under pressure.

Held, that the proper construction is not that the presumption raised of an intent to prefer is an irrebuttable one, but that the onus of establishing that no such intent existed is cast on the person supporting the transaction.

A chattel mortgage was given in pursuance of a previous agreement therefor, a present advance being then made under the *bonâ fide* belief that it would enable the debtor to pay all his outstanding debts, and that he was solvent, a belief still entertained by the mortgagee when the mortgage was actually given.

Held, that the mortgage was valid.

Kapelle for the plaintiff.

Shilton for the defendant.

KENNIN *v.* MACDONALD.

Solicitor and client—Lien for costs—Taking note and leaving country—Waiver of lien—Replevin—Damages—Form of replevin bond.

The plaintiff, a solicitor, claiming on defendant's papers a lien for costs, settled with him at $225, taking a note therefor payable on demand. He then went to the United States, leaving the note and papers with another solicitor as his agent. The defendant, stating that he required the papers, or some of them, for use in his business, brought replevin proceedings in the Division Court, giving a bond to prosecute the suit with effect and without delay, or to return the property replevined and to pay the damages sustained by the issuing of the writ. There was a breach of the bond in not prosecuting the suit with effect. Under the replevin the defendant only procured some of the papers, which were tendered back to the plaintiff and refused, the defendant stating that they were of no value, the agent having retained the valuable ones. In an action by plaintiff to recover the damages he had sustained by the replevin,

Held, per BOYD, C., that even if any lien existed, which was questionable, by reason of the taking of the note and departure from the country, it was not displaced by the replevin suit; but, in any event, the plaintiff had failed to prove any actual damage, and though there might be judgment for nominal damages and costs there would be a set-off of the defendant's costs of trial, and therefore the better course was to dismiss the action without costs.

Quære as to the amount of damages recoverable.

The fact of the conditions of the bond being in the alternative instead of the conjunctive remarked on.

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

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

Defendant Macdonald in person.

Wallbridge for the defendants, the Johnstons.

Practice.

MR. WINCHESTER.] [Sept. 6.

GALT, C.J.] [Sept. 15.

HOGABOOM *v.* COX.

Discovery—Examination of party in vacation—Production of documents in the hands of a third person.

A party to an action is not bound to attend for examination for discovery during vacation.

Where a party to an action referred in his affidavit on production to certain documents as being in the hands of a third person, who refused to give them up until paid certain charges which were disputed,

Held, by the Master in Chambers, that the opposite party must content himself with inspecting the documents and taking copies, unless he should agree to indemnify his opponent against the cost of obtaining the documents.

W. R. Riddell for the plaintiff.

A. Hoskin, Q.C., for the defendants.

THE MASTER IN CHAMBERS.] [Oct. 12.

GALT C.J.] [Nov. 4.

HARDING *v.* KNUST.

Taxation of costs—Setting aside certificate—Affidavit of disbursements—Review of taxation.

This was an application by the defendant to set aside the certificate of one of the taxing officers at Osgoode Hall, and to disallow certain items in the plaintiff's bill of costs, on the ground of alleged incorrectness of the affidavit of disbursements. It was contended by the defendant that certain witness and counsel fees, alleged to have been paid prior to the making of the affidavit, were not, in fact, actually paid at the date of taxation, and that these fees were allowed by the taxing officer on the strength of the affidavit. The motion before the Master was resisted on the ground that he has no jurisdiction to set aside or modify a taxing officer's certificate, and, on the merits, it was contended that sufficient payment had been made in law to enable the plaintiff to make the affidavit, and that the affidavit was substantially true and correct.

The following cases were referred to: *Cuerrier* v. *White*, 12 P.R. 571; *Langtry* v. *Dumoulin*, 10 P.R. 444; *Re Ponton*, 15 Gr. 355; *Carr* v. *Moffatt*, 9 C.L.J. 52; *Grahame* v. *Anderson*, 2 Chy. Cham. 303; *Graham* v. *Godson*, *ib.*, 472; *Bentley* v. *Jack*, *ib.*, 473; *Hornick* v. *Township of Romney*, 11 C.L.T. 329; *Waterous* v. *Farran*, 6 P.R. 31; and the Judicature Act and Rules.

The learned Master held that he has no jurisdiction to set aside the certificate of the taxing officer, or review the taxation of a bill of costs after the taxing officer has granted his certificate, and dismissed the defendant's motion without costs.

On appeal to GALT, C.J., the order of the Master in Chambers was affirmed, and the appeal dismissed with costs to the plaintiff in the cause.

E. F. B. Johnston, Q.C., and *T. W. Horn* for the plaintiff.

W. R. Smyth for the defendant.

MUIR, Local J.] [Oct. 25.

STEVENSON ET AL. *v.* CRAYSON.

Jury notice—Application to strike out—Remarks as to framing pleadings—Expediting the trial.

This was a motion by the plaintiffs to strike out a jury notice filed by the defendant, for the alleged reason that the case was one over which the Court of Chancery formerly had exclusive jurisdiction, and as provided by s. 77 of the Judicature Act, R.S.O., c. 44, the action should be tried without a jury. The plaintiffs claimed a right of way over lands adjoining their lands, and alleged that in June last the defendant wrongfully caused a fence to be erected enclosing the right of way in dispute, and thereby the plaintiffs and their tenants were prevented from obtaining ingress, egress, etc., and they asked (1) that it might be declared that there exists as appurtenant to their land a right of way through the rear portion of lot 4, etc., the land adjoining; (2) that the defendant might be ordered to remove all obstructions, etc.

MUIR, Local Judge, H.C.J.: I think it may be correctly affirmed that a party to an action is not to have it in his power to change the forum and mode of trial simply by adopting one form of pleading instead of another; at the

same time, I must not be understood as assuming that the attempt to do so has been made in this case. The exclusive jurisdiction referred to, in my humble opinion, means an exclusive jurisdiction over the whole cause of action, and has reference to such an action as, prior to the time mentioned, must of necessity have been tried in the Court of Chancery. From a perusal of numerous decided cases, it is manifest that actions substantially similar to this have been brought in common law courts; see, for example, *Bower* v. *Hill*, 1 Bing. N.C. 549; *Allan* v. *Ormond*, 8 East 4; *Murray* v. *Hall*, 7 C.B. 441. This action, it seems to me, partakes of the character of an ordinary action of trespass. The question of title comes to the fore in the outset, and as a consequence important questions of fact, it may fairly be presumed, will have to be dealt with which may be proper for the determination of a jury.

As to the claim for an injunction, the jurisdiction of the Court of Chancery was not, before 1873, by any means exclusive, for by c. 23 of the C.S. of U.C., the common law courts had power to grant injunctions, and, as would appear, frequently exercised such jurisdiction; see *McNab* v. *Taylor*, 34 U.C.R. 524, which is a case in many respects similar to the one in question.

Usually, applications of this kind are made for the purpose of expediting the trial, as where the sittings of a court without a jury are to be held at an earlier date than a court with a jury; but no such reason can be advanced in this instance. Now, as the trial judge has ample power to deal with the application, and as the whole matter will come before him in a very few days, I think the motion should be enlarged to be taken before him, and that the question of costs should be referred to him also.

J. Bicknell for plaintiffs.

W. F. Burton for defendant.

GALT, C.J.] [Oct. 27.

WEBSTER *v.* CITY OF TORONTO.

Discovery—Examination of officer of municipal corporation—Street foreman.

In an action for damages for negligence in keeping a public way in a state of disrepair,

Held, that a street foreman in the employment of defendants under their street commissioner, who stated that he had general supervision of the roads and sidewalks, was not an officer examinable for discovery under Rule 487.

W. H. P. Clement for the plaintiff.

H. M. Mowat for the defendants.

COLEMAN *v.* CITY OF TORONTO.

Discovery—Examination of officer of municipal corporation—Medical health officer.

The medical health officer of a municipal corporation, though appointed by the council and paid by the corporation, is not an officer of the corporation examinable for discovery under Rule 487.

Forsyth v. *Canniff*, 20 O.R. 478, followed.

R. Boulthee for the plaintiff.

H. M. Mowat for the defendant.

[Nov. 3.

COUSINEAU *v.* PARK.

Costs—Taxation—Final certificate—Objections—Appeal—Interlocutory costs—Rule 1230.

Where, under the judgment in an action, the costs thereof are to be taxed to one party, and under interlocutory orders certain costs are payable to the opposite party in any event on the final taxation, the taxing officer should not close the taxation of the costs of the action and certify the result until the interlocutory costs are taxed, unless there is unreasonable delay in bringing in a bill of the latter costs; and a party should not be deprived of his appeal from the taxation by reason of his having omitted to carry in objections before the taxing officer, as required by Rule 1230, where he has not delayed and has acted in good faith, relying on the officer not issuing his certificate until after the taxation of the interlocutory costs.

Guerrier v. *White*, 12 P.R. 571, distinguished.

Roche for the plaintiffs.

Douglas Armour for the defendants

THE MASTER IN CHAMBERS.] [Nov. 5.

FERGUSON *v.* GOLDING.

Venue—Change of—County Court action—Intituling of papers.

Where a motion is made to a judge of the High Court or the Master in Chambers, under Rule 1260, to change the venue in a County

Court action, the papers should not be intituled in the High Court of Justice, but in the County Court.

Masten for the plaintiff.
C. W. Kerr for the defendant.

FERGUSON, J.]

DELAP *v.* CHARLEBOIS.

Security for costs—Nominal plaintiff—Amount of security.

An action was begun by D. as plaintiff, suing on behalf of himself and all other shareholders in the defendant company, to set aside a judgment obtained by the defendant C. against the company. B., who lived out of the jurisdiction, amended the writ of summons before serving it by adding A., another shareholder, as a plaintiff. Upon a motion by C. for security for costs, A. was examined, and it appeared from his examination that he had never intended bringing any action himself; that he did not know the nature or the position of the action, and that he did not know D. He had, however, written a formal letter authorizing D.'s solicitors to have him added as a plaintiff. It also appeared that A. had no property except some household furniture of trifling value.

Held, that A. was merely a nominal plaintiff, and that C. was entitled to an order for security for costs.

There being reason to suppose that the action would be an expensive one, the plaintiffs were ordered to give security in the sum of $1,000.

Arnoldi, Q.C., for the plaintiffs.
W. M. Douglas for the defendant Charlebois.

MASTER IN CHAMBERS.] [Nov. 8.

MCLENNAN *v.* FOURNIER.

Appearance—Default of—Noting pleadings closed—Rule 393.

Where defendants do not appear, an order may be made, by analogy to Rule 393, directing the proper officer to note the pleadings closed; but without such an order the officer has no power to do so. *Morse* v. *Lambe*, *ante* p. 408, explained.

E. F. Blake for the plaintiff.
J. A. McIntosh for the defendants.

Court of Appeal.]

HOWLAND *v.* DOMINION BANK.

Writ of summons—Extending time for service—Rule 238—Ex parte order—Rescission of—Rule 536—Jurisdiction of Master in Chambers—"Good reason"—Statute of Limitations.

Where an order has been made on the *ex parte* application of the plaintiff, under Rule 238 *(a)*, extending the time for service of the writ of summons, it is open to the defendant to move against it within the time or extended time prescribed by Rule 536, and to show, if he can, that there was no good reason for making it, even though the result of setting it aside may be that the action will be defeated altogether by the operation of the Statute of Limitations.

The Master in Chambers, where he has made such an order, has jurisdiction under Rule 536 to reconsider and rescind it.

The reason offered by the plaintiffs for an extension of the time for service of the writ was that until they should ascertain, by the result of the reference in another pending proceeding, that there had been a fund in the hands of one of the defendants in respect of which it would be worth while to prosecute this action it would be advisable to delay the service of the writ, as, in the event of their being no fund, this action would be useless. There had been delay in prosecuting the reference in the other proceeding, the plaintiffs having the conduct of it. The Master in Chambers, upon the application of the defendants, set aside his own *ex parte* order, extending the time for service of the writ, and his decision was affirmed by a judge in chambers and a Divisional Court.

Held, that the three tribunals could not be said to have been wrong in holding that no good reason was shown for extending the time

Arnoldi, Q.C., for the plaintiffs.
McMichael, Q.C., for the defendants.

BOYD, C.] [Nov. 14.

UHRIG *v.* UHRIG.

Judgment debtor—Examination of—Refusal to be sworn.

Where a judgment debtor attends for examination, but refuses to be sworn, he should be ordered to attend and take the oath and submit to be examined at his own expense; if he makes default, process of contempt may issue on further proof.

E. F. Blake for the plaintiff.