# Canada Law Journal.

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## DIARY FOR JUNE.

1. Sun.....*Whit Sunday*. Parliament first met in Toronto, 1797.
2. Mon.....Fenian attack, 1866.
3. Tues....Maritime Court Sittings.
7. Sat.....Easter Sittings of Common Law Division, H. C. J. end.
8. Sun.....*Trinity Sunday*. Parliament first met at Ottawa, 1866.
9. Mon.....County Court Term and Surrogate Court Term (York).
10. Tues...General Sessions and County Court (ex. York).
14. Sat.....County Court and Surrogate Terms (York), end.
15. Sun.....*1st Sunday after Trinity*. Magna Charta signed 1215.

*TORONTO, JUNE* 1, 1884.

BY a slip of the printer in our last number we see that in the twelfth line from the top of page 194, in our report of the case of *Re Murray Canal, Lawson* v. *Powers*, the small but important word "not" has been inserted. We must apologize to our readers for this *addendum* of the printer, and *corrigendum* of our own.

IT was not in vain that Mr. Oscar Wilde visited Canada last year. But yesterday we came upon two gentlemen taxing bills of costs, and each bearing large bundles of lilies of the valley in their respective button-holes. For our own part we should have thought it doubtful policy thus to call out the softer feelings of the taxing master, for fear they should take the form of commiseration for the unfortunate client. However, as a study for the painter, the subject might well make a companion picture to that of the other gentleman, emigrant to Manitoba, who was discovered "tooling" a team of oxen over the prairie with an eye-glass stuck in his eye.

WHEN the critic of the *Canadian Law Times* made the brilliant remark that the subject of *addenda et corrigenda* had been "exhausted by previous authors," he had no doubt in view the last editions of Daniel's Practice, in which there are 100 pp. of *addenda et corrigenda*, or rather more than 5 pp. for every 100 pp. of text; or Seton on Decrees, where we find 40 pp. of *addenda et corrigenda*, or 2½ pp. for every 100 pp. of text. One would imagine from his objection to tables of *addenda*, etc., that our contemporary must have secured for its critic the same sapient individual who recently in the pages of an American periodical affirmed that a table of cases appended to a aw book is as superfluous as the hair on the end of a man's nose.

WE have received from Ottawa the report of the Commissioners appointed to consolidate and revise the Statutes of Canada. This report comprises the drafts of sixty-two chapters, "forming a large proportion," as the Commissioners say, "of the work entrusted to them," but the Acts relating to subjects of more especial interest to lawyers, such as banks and banking, and bills of exchange and promissory notes, have not yet been reached. The list, however, includes an Act respecting the Liability of Carriers by Water, an Act respecting Controverted Elections of members of the House of Commons, and an Act to provide for more effectual inquiry into the existence of corrupt practices at elections of members of the House of Commons. Lastly is included an Act respecting indictable offences. As to this the Commissioners report as follows:—"With respect to the consolidation of the

criminal law, the attention of the Commission was naturally called to the draft criminal code appended to the report of the Royal Commission appointed in 1878 by Her Majesty, to consider the law relating to indictable offences, and to the bill to establish a code of indictable offences, founded on the draft code and submitted to the Imperial Parliament in 1879 and 1880. In considering the draft code and comparing it with the provisions of the present Criminal Law of Canada, it was thought advisable to prepare and submit, for the consideration of Parliament, a Bill to constitute a code of indictable offences for Canada, in the preparation of which advantage could be taken of the labours of the English Commission." These remarks suggest to one how useful it would be if, in consolidating those Acts which relate to matters of law, strictly so-called, rather than to matters of administration, the commissioners were to make a marginal reference to any corresponding English enactments. The same remark applies to our Ontario Statutes. We have few enactments on our statute books relating to matter of pure law which are not taken from some English statute; though, in certain acts, such as those relating to patents, America has furnished, to some extent, a model. It would be a great assistance to the practising lawyer if, in consolidating these statutes, as well as in the original volumes in which they are first published, there was a marginal reference to the source from which they come. It is needless to dwell upon the facility this would give in finding authorities bearing upon their construction.

## *RECENT ENGLISH DECISIONS.*

The May number of the *Law Reports* comprise 12 Q. B. D. pp. 309-489; 9 P. D. 45, 66; and 25 Ch. D. pp. 663-786.

Arbitrator—Revocation of authority—R. S. O. c. 50, s. 216.

In the first of these the first case, *In re an arbitration between Fraser & Co., and Ehrensperger and Eckenstein*, was the subject of some remarks which will be found at p. 164 of the May 1st number of this Journal. The point decided may be again briefly stated here, viz.: that where there is an agreement to refer a dispute to two arbitrators, one to be appointed by each party, but no agreement to make the submission a rule of court, and the submission has not been made a rule of court, and, one of the parties having failed to appoint an arbitrator, the other party by virtue of s. 13 of the Common Law Procedure Act, 1854, (R. S. O. c. 50, s. 216) appoints his arbitrator to act as sole arbitrator, the authority of such arbitrator may be revoked by either party before an award is made. The M. R. points out that an arbitrator so appointed to act alone is not a judge, but a mandatory, what may be called "a statutory mandatory," and as much an arbitrator as any other arbitrator, and equally liable as any other to have his authority revoked, there being nothing in the statute prohibiting this being done.

Appellate court—Longstanding decision.

Before leaving this case attention may also be called to a *dictum* of the M. R. with reference to Appellate Courts reviewing decisions of inferior courts which are of old standing, and have been frequently acted upon. Referring to the decision in *re Rouse and Meier*, L. R. 6 C. P. 212, he says: "We have, it is true, the power of reviewing that decision, but where there is a decision as that is on the course of procedure which has been made more than twelve years ago, and which therefore

must necessarily have been frequently acted on during that time, and no one has gone to the Legislature to have it altered, this Court of Appeal, even if it differed from such decision, would not now be disposed to over-rule it.

CRIMINAL INFORMATION—LIBEL ON DECEASED FOREIGN NOBLEMAN.

The next case, *The Queen* v. *Labouchere*, p. 320, was an application for a rule calling upon the defendant to shew cause why a criminal information should not be filed against him for a libel upon the deceased, father of the applicant, who was the Duke of Vallembrosa. The libel complained of, it may be remembered was a paragraph in *Truth* stating that the father of the applicant had been "an army contractor who was nearly hanged on the charge of supplying as meat to a French army corps the flesh of soldiers who had died in the hospital or who had been killed in battle." In his judgment Lord Coleridge, C.J., states that acting under the power conferred by the Judicature Acts, he had brought together five judges of the High Court, to establish, if possible, upon unusual authority some principles for the guidance of the Court in future in respect to criminal informations. The result arrived at by the concurrent judgment of all the judges is that criminal informations should be granted only in cases which come fairly within the language of Sir W. Blackstone when he says (Book iv. c. 23, p. 309):—"The objects of the other species of information filed by the master of the Crown Office upon the complaint or relation of a private subject are, any gross and notorious misdemeanours, riots, batteries, libels, and other immoralities of an atrocious kind not peculiarly tending to disturb the government (for these are left to the care of the Attorney-General), but which, on account of their magnitude or pernicious example, deserve the most public animadversion." Therefore the application was refused in the present case, the applicant being a private person, and the libel in question not falling within the above language of Sir W. Blackstone. It was observed also that the fact that the applicant did not reside in England was a strong reason for rejecting the application, and moreover that weight of authority was in favour of the view that an application for a criminal information for a libel upon a deceased person made by his representative will not be granted. Denman, J., finally, takes occasion to observe that he could not accept the passage from Blackstone as being quite an exhaustive description of the cases in which the Court ought to interfere. "For example," he says, "if a newspaper or an individual were to shew by repeated attacks, and by wide circulation of those attacks, upon a private individual, whether a British subject or a foreigner, whether resident in England or abroad, a persistent determination to persecute, as at present advised I should think it would be the duty of the Court to protect the individual by granting a rule, and even, in case of further persistance, by making it absolute."

Next follows certain practice cases which will be noted in the proper place, and certain decisions on the subject of parliamentary and municipal franchise, the income tax, and certain special English acts which it is not necessary to mention, and the only remaining case which it seems important to note among the Queen's Bench Division cases, is *The Queen* v. *Master Manley Smith*, p. 481.

MANDAMUS—PETITION OF RIGHT.

In this case the question is raised whether a mandamus should be granted to an applicant, when it was open to him to seek his remedy by a petition of right; in other words whether a petition of right was such a specific legal remedy that the existence of it should prevent the issuing

of a writ of mandamus. As to the particular circumstances under which the mandamus was sought in this case, it is sufficient to say, it was to compel the Commissioners of Inland Revenue to return a certain portion of over paid probate duty. It was conceded that a mandamus ought not to be granted if there is any other legal remedy, but the Queen's Bench Division decided that a petition of right was not such a legal remedy as is intended in that proposition; because it depends upon the fiat of the Crown, and is not an absolute legal remedy. The Court of Appeal overruled this decision. At p. 475 Brett, M.R., says—"where there is no specific remedy by which justice can be done, the Court will grant a mandamus, but when there is a specific remedy by which the subject will get justice by a judicial decision of the Court, then it is within the reason of the rule, that if there is such a remedy a mandamus ought not to issue. I am of opinion that a remedy by a petition of right would enable the prosecutor to obtain satisfaction by means of a judicial decision of the Courts of this country, and that therefore it is within the rule. I leave the question at present open, if the fiat were refused what would be done? Whether the Queen's Bench Division might not issue a mandamus, if a petition of right could not be maintained, I do not in this case decide." And Bowen, L.J., in an interesting passage at p. 478-9, summarises the matter: "A writ of mandamus, as everybody knows, is a high prerogative writ, invented for the purpose of supplying defects of justice. By Magna Charta the Crown is bound neither to deny justice to anybody, nor to delay anybody in obtaining justice. If, therefore, there is no other means of obtaining justice, the writ of mandamus is granted to enable justice to be done. The proceeding, however, by mandamus, is most cumbrous and most expensive; and from time immemorial accordingly the Courts have never granted a writ of mandamus when there was another more convenient, or feasible remedy within the reach of subject. It was not to his interest that it should be granted, and the reason for asking for it had ceased. A petition of right when the Crown is willing to grant its fiat is as good a means of getting justice against the Crown as any that could be conceived. All the procedure, or almost all the procedure, can be applied to a proceeding by way of a petition of right that is available to the subject in an ordinary action against another subject; and there is no destinction at all in the case of a debt claimed against the Crown, so far as facility of procedure is concerned, between a petition of right and an ordinary action by one subject against another, except this, that the fiat of the Crown must be obtained before the Crown is harassed by a suit; but everybody knows that that fiat is granted as a matter, I will not say of right, but as a matter of invariable grace by the Crown whenever there is a shadow of claim, nay, more, it is the constitutional duty of the Attorney-General not to advise a refusal of the fiat unless the claim is frivolous."

MANDAMUS—APPEAL.

Attention may also be called to the point that this case shews that the exercise of the discretion of the Court in granting or refusing a mandamus is an appealable matter, as to which Smith, J., at p. 467 seems to express some doubt.

In the number of the Probate Division for May only one case calls for mention, viz.: *In the goods of L. H. Homan*, at p. 61.

ADMINISTRATION—SISTER—WIDOW.

Here in a contest for administration with the will annexed the Court preferred the sister of the testator to the widow, as it appeared that the sister, as a legatee, had the larger interest in the property to be distributed.

Proceeding now to the May number of the Chancery Division, the first case, *Carter* v. *White*, p. 666, raises a curious point.

BILL OF EXCHANGE—PRINCIPAL AND SURETY.

In 1874 White lent £500 to Randle, and certain stock were deposited by Noble as security. Randle also gave White two Bills of Exchange for £250 each, accepted by him, but with the drawer's name in blank. Randle died without either of the bills being presented, and without the name of the drawer being inserted. Moreover, the statute of limitations had run against the bills. Noble now claimed that his stock should be treated as discharged from all claim of White. It was proved that Noble knew all through that the bills were acceptances only, and not perfect bills. The Court of Appeal now sustained Kay, J. (20 Ch. D. 225), in dismissing the action, holding (1) that the Bills of Exchange could be filled up and perfected by the insertion of Randle's name as drawer, though Randle was dead, for the power which White had to fill up the acceptances was not in consequence of White being appointed by Randle his agent to fill them up on his behalf, but in consequence of a contract that the person to whom they were given, or anyone authorized by him, should be at liberty to fill them up, which contract was not put an end to by the death of the acceptor; (2) the fact that the bills were not presented for payment, and no notice of payment was given to Noble, did not discharge the latter, but there is a well-decided difference in this respect between those who are sureties for the payment of a bill and those who are parties to it; and a man merely guaranteeing the payment of a bill, but not a party to it, is not discharged by the neglect of the holder to give him notice of dishonour, unless he has been actually prejudiced by such neglect; (3) the surety was not discharged by reason of the omission to sue on the bills until the statute of limitations had run, for the surety could at any time pay off the debt and sue the debtor in the name of the creditor, or call on him to sue.

MORTGAGOR AND MORTGAGEE—LEASE SUBSEQUENT TO MORTGAGE.

The next case requiring mention here is *Corbett* v. *Plowden*, p. 678. This illustrates this point of law—that one who holds under a lease, or an agreement for a lease, from a mortgagor, made subsequently to the mortgage and without the privity of the mortgagee, and who is afterwards called upon by the mortgagee to pay his rent to him by virtue of the latter's paramount title as mortgagee, ceases thereupon to hold under the lease from the mortgagor and forthwith becomes merely a tenant from year to year of the mortgagee, liable to pay the previously existing rent to the mortgagee. Consequently where in this case one entered under an agreement for a lease for twenty-one years, and afterwards, on demand of the mortgagees by virtue of their superior title, paid his rent to them and then gave a proper notice to determine his tenancy as a tenant from year to year, and the mortgagees and mortgagor forthwith commenced an action for specific performance to compel him to take a lease for twenty-one years, as agreed with the mortgagor. The Court of Appeal dismissed the action on the ground that the notice given by the mortgagees to the tenant to pay the rent to them, had put an end to the agreement between the tenant and the mortgagor. Lord Selborne, L.C., observes: "I am very sorry that in such a case as this the law should be that no privity can be presumed between the mortgagor and mortgagee as to leases subsequent to the mortgage, but so the law is." And he says that the mortgagees having asserted their paramount right, it was too late for them to adopt the agreement between the mortgagor and tenant and bring an action to enforce it against the tenant. It is inti-

mated that it would have been different if, instead of asserting their independent superior title as mortgagees, the latter had claimed to receive the rents merely as agents of the mortgagor.

TRUSTS—COSTS OF ACTIONS BROUGHT BY TRUSTEES.

The case of *Stott* v. *Milne*, p. 710, may be noticed on account of two propositions which it illustrates and enforces: (1) That it does not follow that because an action is advised by counsel it is always and necessarily one which trustees may properly bring, and consequently one the costs of which are properly payable out of the estate. The advice of counsel is not an absolute indemnity to trustees in bringing an action, though it may go a long way towards it. (2) The right of trustees to indemnity against all costs and expenses properly incurred by them in the execution of the trust, is a first charge on all the trust property, both income and *corpus;* and the trustees accordingly have a right to retain them out of the income until provision can be made for raising them out of the *corpus*.

ORDER FOR SALE—CONVERSION.

In the case of *Hyett* v. *Mekin*, again, at p. 735, the point of law decided may be briefly mentioned, and in the language of Kay, J., is as follows: "If, in an action for administration of an estate the Court in the exercise of its undoubted jurisdiction makes an order for the sale of the estate, the order for sale will amount in itself to a conversion," and consequently if one of those entitled to share in the estate die subsequently to the order for sale, and before the actual sale, his share will pass to his personal representatives and not to his legal heir.

COMPANY—RESPONSIBILITY OF DIRECTORS.

Lastly must be noticed the case of *In re Denham & Co.*, p. 752, which is a case of great interest to directors of companies in these days of roguery. In the words of the head note the case shews that an innocent director of a company is not liable for the fraud of his co-directors in issuing to the shareholders false and fraudulent reports and balance-sheets, if the books and accounts of the company have been kept and audited by duly appointed and responsible officers, and he has no ground for suspecting fraud, and consequently, if such a director has received, together with the other shareholders, dividends declared and paid in pursuance of such reports and balance-sheets, such dividends having been in fact, payments out of capital, he cannot be called upon to repay the dividends so paid, nor even the dividends received by himself. The following passages from the judgment of Chitty, J., who decided the case show clearly the view he took of the law: "A report of directors to shareholders, and a prospectus issued to the public for the purpose of obtaining subscriptions stand obviously upon a different footing. Speaking generally, a prospectus purports to be issued by all the directors whose names appear on the face of it; and it may well be that an ignorant director who has not really been personally engaged in issuing the prospectus is bound on the ground of his ratification; and such ratification may, when circumstances justify it, be inferred from his abstaining from taking any steps to inform the public that he was not a party to issuing the prospectus. But the report of directors, at a general meeting is issued under the powers of the articles and is generally, as it certainly was here, made by the board acting as such. The shareholders in this company knew, or must be deemed to have known, the provisions of the articles that two directors were to be a quorum, and therefore they were not justified, in my opinion, in accepting the report as the act of all the directors. Mr. C. (the director proceeded against) was not under any obliga-

tion to disclaim the reports and balance sheets, and the attempt to fix him personally for them, in my opinion, fails. Neither, in my opinion, is he liable in respect of one particular dividend because he moved the formal resolution for it at a general meeting. . . No man is bound to presume a fraud, and, as Lord Hatherley said in the case of *Land Credit Company of Ireland* v. *Lord Fermoy*, L. R. 5 Ch. 772, "whatever may be the case with a trustee, a director cannot be held liable for being defrauded; to do so would make his position intolerable." It is sufficient if directors appoint a person of good repute and competent still to audit the accounts and have no ground for suspecting that anything is wrong. The directors are not bound to examine entries in the company's books. As the late M. R., Sir George Jessel, said in *Hallmark's case*, L.R. 9 Ch. D. 332, "I know no case except *ex parte Brown*, 19 Beav. 97, which shows that it is the duty of a director to look at the entries in any of the books, and it would be extending the doctrine of constructive notice far beyond that or any other case to impute to this director the knowledge which it is sought to impute to him in this case."

The remaining cases in the May Law Reports requiring notice, are on points of practice, and will be noted among Recent English Practice Cases.

A. H. F. L.

## SELECTIONS.

### *A REASONABLE TIME.*

*In General.*—With the adoption of the common law in this country, came also many grave obstacles. Among them is the rule requiring certain acts to be performed in a reasonable time. If anything is to be done, as goods to be delivered and the like, and no time is mentioned in the contract when the delivery shall take place, the common law then steps in and says, it is presumed that the parties intended that fulfilment shall take place in a reasonable time, * and then we are left in the dark again. Here we grope, endeavouring to find some ray of light or something tangible to lay hold of which will in any way assist us to a rule of law, by which we may decide for ourselves, whether in a given case a reasonable time would be one day or two; two years or four. But we have some rules tending, no doubt, to define the term "reasonable time," and we are equally safe in asserting they were made with a view to enlightening the subject. Thus it is said, a reasonable time is such a time as preserves to each party the rights and advantages he possesses and protects each party from losses that he ought not to suffer. A reasonable time is defined by the Kentucky courts to be "so much time as is necessary, under the circumstances, to do conveniently what the contract requires

* To the effect that when no time is specified in the contract, it must be a reasonable time. Adams *v.* Adams, 26 Ala. 272; Luckhart *v.* Ogden, 30 Cal. 547; Wright *v.* Maxwell. 9 Ind. 192; Waterman *v.* Dutton, 6 Wis. 265; Cocker *v.* Franklin, 3 Sumn. 530; Watts *v.* Sheppard, 2 Ala. 425; Sawyer *v.* Hammatt, 15 Me. 40; Little *v.* Hobbs, 34 Id. 357; Howe *v.* Huntington, 15 Id. 350; Atkinson *v.* Brown, 20 Id. 67; Lindsey *v.* Police Jury, 16 La. Ann. 389; Atwood *v.* Clark, 2 Me. 249; Warren *v.* Wheeler, 8 Met. 97; Wiswall *v.* McGowan, 1 Hoff. 125; Roberts *v.* Beatty, 2 Pa. 63; Butler *v.* O'Hear, 1 Desau. (S. C.) 387; Atwood *v.* Cobb, 16 Pick. 297; Phillips *v.* Morrison, 3 Bibb, 105; Ellis *v.* Thompson, 3 M. & W. 445; Clark *v.* Remington, 11 Met. 361; Startup *v.* McDonald, 6 M. & G. 593; Hales *v.* N. W. R. Co., 4 B. & S. 66; Graves *v.* Ashlin, 3 Camp. 426. See, also, Kingsley *v.* Wallis, 14 Me. 57; Wilson *v.* Stange, 17 Mich. 201.

to be done." * Reasonable time does not begin to run until some one interested in the matter calls for something to be done concerning it. † It should be fixed according to the customs of business and circumstances, or to the intent of the contracting parties. But here, however, another question presents itself, whether or not extrinsic evidence is admissable to prove the time contemplated in these contracts. If the language of a contract has a settled legal meaning, no evidence can be admitted to construe it. For instance a promise to pay money, no time being expressed, means a promise to pay it on demand, and evidence that payment on a future day was intended is not admissible. ‡ But a promise to do something other than pay money, no time being expressed, means a promise to do it within a reasonable time, as we have already seen. In such a case it seems that a contemporaneous verbal agreement that the matter stipulated for in the written agreement should be done at a particular time, would be inadmissible as it would tend to vary the contract, § unless it be in connection with other circumstances going to show what a reasonable time is under the facts of the case. ‖ The contract of marriage, if no time is specified for performance, is in law a contract to marry in a reasonable time after request, and in case either party refuses to perform his or her agreement, the other may have an action for damages. The Roman law very properly provided that the term of two years was amply sufficient for the duration of the contract of betrothment. ¶ On a contract to deliver a certain article to the plaintiff as required by him, it is not necessary that it be demanded in a reasonable time, but only as he requires it. ** But since it is so well settled that a reasonable time in which to perform the contract is the rule, it is unnecessary to pursue the inquiry any further in this direction, and we will proceed to note when reasonable time is a question of law.

*When Reasonable Time is a Question of Law.*—It has been the cause of some perplexity in the courts to determine whether the question of reasonable time was one of law or of fact, and they are not even now quite harmonious. No doubt it is desirable that the court decide the question, when it can be done, without trespassing on the province of the jury, and most courts are inclined to this view. Says Lord Coke: "Reasonable time shall be adjudged by the discretion of the justices, before whom the cause dependeth; and so it is of reasonable fines, etc.; for reasonableness in these cases, belongeth to the knowledge of the law, and therefore, to be decided by the justices. Nothing that is contrary to reason is consonant to law." * The great difficulty, however, seems to lie in this; that the facts are so often, so completely imbedded in the question of law, that it is almost impossible to separate them and when this is the case, the whole question is left to the jury. It is said, if by the application of legal principle the court may determine the question as reasonableness of time, then it ought to do so. In *Luckhart* v. *Ogden* † Mr. Justice Curry attempts to define the separate duties of court and jury in the determination of this question by saying, "The term reasonable time, is a technical and legal expression which, in the abstract, involves matter of law as well as matter of fact. Whenever any rule or principle of law, applies to the special facts proved in evidence, and determines their legal quality, its application is a matter of law. . . . When the law itself prescribes what shall be considered to be a reasonable time in respect to a given subject, the question is one of law, and the duty of the jury is confined to finding the simple facts. When, on the other hand, the law does not, by the operation of any principle or established rule, decide upon the legal quality of the simple facts, or *res gestæ*, it is for the jury to draw the general inference of reasonable or unreasonable in point of facts. In

* Blackwell *v.* Fosters, 1 Met. (Ky.) 95. See also, Hill *v.* Hobart, 16 Me. 168.

† Cameron *v.* Wells, 30 Vt. 633; Graham *v.* Van Diemans Land Co., 30 E. L. & Eq. 573.

‡ Pars. on Cont., p. 551, Vol. II.

§ Shaw, C. J., in Attwood *v*, Cobb. 16 Pick. 231; Wilson *v.* Stange, 17 Mich, 341; Simpson *v.* Henderson, Mood. & M. 300; Barringer *v.* Sneed, 3 Stew. 201; Sewall *v.* Wilkins, 14 Me. 168.

‖ Cocker *v.* Franklin, 3 Sumn. 530; Ellis *v.* Thompson, *supra*.

¶ Cod. Lib. 5 Tit. 1 2.

** Jones *v.* Gibbons, 8 Ex. 920.

* Co. Lit. 56 b.

† 30 Cal. 547. See also, Starkie Ev.

such cases the legal conclusion follows the inference of fact; in other words, the question of reasonable time etc., is one of fact, and the time is reasonable or unreasonable in point of law, according to the finding of the jury in point of fact." While the doctrine enunciated in Sarkey does not meet with the entire approval of Shepley, J., still he says in *Howe* v. *Huntington*, * "When there is a certain epoch after which the act is to be performed, as soon as it may be conveniently without regard to one's interest or to the course of trade or to other matters, not within the control of human agency, the court may be able to come to a satisfactory conclusion for itself without the assistance of a "jury."

Another statement of the principles which aid in solving the question is contained in the opinion of Hubbard, J., in *Spoor* v. *Spooner*. † He says, "So also as to contracts, when something is to be performed, and the contract is silent on the subject, what is a reasonable time for performance, is held to be a matter of law. ‡ And so when the facts are agreed, reasonable time is a matter of law. But when the facts are controverted, and the motives of the parties are involved in the question, reasonable time is a question for the jury. § In the case at bar the facts were in dispute, and the conduct of the several parties was to be considered, and we are of opinion, that the question of the plaintiff's negligence, under all the circumstances in evidence was properly submitted to the jury." In regard to rescinding a contract for fraud, it has been held in Indiana that "when there are no facts involved but the simple one of length of time elapsed, it is a question of law. But when disputed facts involving questions of excuse, of time of discovery of the fraud, etc., as in this case are to be passed upon, the question, like that of due diligence in the prosecution of an assigned promissory note, is a mixed one of law and fact, and is for the jury." || It will be seen that substantially the same rule has been adopted in all the cases referred to. If the question of reasonable time can be settled in any particular case by applying principles of law, without passing judgment on the facts it is for the court to decide; otherwise it must be left to the jury with appropriate instructions.

*Application of the Rule to Negotiable Instruments.*—Most frequently are courts required to pass upon the question of reasonable time, in cases arising from the non-payment of bills and notes; whether or not there has been due diligence in the presentment of bills and notes, payable on a certain number of days after sight or on demand. It is easy to see how difficult it is to lay down any precise rule in relation to this subject. Distance, means of communication and other matters equally outside human control, may each have a bearing upon the question of reasonable time in a given case. Thus it is said in cases of guaranty if the principal fails to pay when he should, the guarantor must be informed of the failure, within a reasonable time; that is, he should be informed soon enough to give him ample opportunity to do what might be necessary to save himself from loss. If the notice were delayed but a short time the guarantor might lose the opportunity of obtaining indemnity, and be damaged, and in consequence be discharged from his obligation. On the other hand, the delay might be for days, months and perhaps years, and yet he might not be injured by the delay, and if it be evident that the guarantor could not have been benefited by earlier notice, he will be held. † In *Mullick* v. *Radikissen*, ‡ it is said the rule of a reasonable time in relation to the presentment of bills and notes, is adopted for want of a better, the law not defining the time precisely when they should be presented, and that the question is a mixed one of law and of fact. In *Bank* v. *Caverley*, § it was held, that,

* 15 Me. 350.

† 12 Met. 284.

‡ Atwood *v.* Clark, 2 Greenl. 249.

§ Hill *v.* Hobart, 16 Me. 164; Ellis *v.* Thompson, 3 M. & W. 445.

|| Holbrook *v.* Burt, 22 Pick. 546; Kingsley *v.* Wallis, 14 Me. 57; Kelsey *v.* Ross, 6 Blackf. 356.

* Gatling *v.* Newell, 9 Ind. 577; See Hays *v.* Hays, 10 Rich. 421.

† Clark *v.* Remington, 11 Met. 361; Craft *v.* Isham, 13 Conn. 28; Thomas *v.* Davis, 14 Pick, 353; Talbot *v.* Gay, 18 Id. 534.

‡ 28 Eng. Law & Eq. 86. See Mellish *v.* Rawdon, 9 Bing. 423.

§ 7 Gray. 217.

SELECTIONS.

whether a presentment was made in a reasonable time or not, partakes both of law and fact, but in case the facts are uncontradicted it is for the court to determine whether a reasonable time has been exceeded. * Mr. Byles maintains that what is a reasonable time is a question of law." † Mr. Edwards also says, "the question is one of law to be decided by the court," ‡ and several New York authorities have approved the doctrine. § In Pennsylvania the cases have not been uniform, ‖ but they incline to the view, that where the facts are not in dispute, due diligence in communicating the fact of non-payment to the guarantor, is a question of law. Mr. Justice Story takes a somewhat different view, and certainly his opinion is entitled to great respect. In *Wallace* v. *Argy*, ¶ he makes use of the following language, in speaking of reasonable time: "What that reasonable time is, depends upon the circumstances of each particular case, and no definite rule has as yet been laid down, or indeed can be laid down, to govern all cases. The question is one of fact for the jury, and not of law for the abstract decision of the court. Such, as I take it, is the doctrine of the authorities." This seems to be a better view of the matter, and is based on safe ground. The prevailing doctrine, however, is that the question is a mixed one of law and fact, and if the facts are admitted, or agreed upon, or found by special verdict, the court may decide what is a reasonable time for presentment or notice, otherwise the question should be left to the jury. **

*Application to Other Cases.*—The rule of reasonable time is substantially the same in its application to other cases that it is to negotiable instruments, but a reference to a few cases where the question has been decided in particular instances may not be out of place. In *Parker* v. *Palmer*, † it was left for the jury to say whether the vendee of goods sold by sample had redeemed them within a reasonable time after discovering they did not correspond with the sample. Again, owing to conflicting testimony, it was left to the jury whether tithe corn was left on the premises a reasonable time for comparison with the whole corn; ‡ and the time in which to sell good after distress; § and when in defence of an action brought for carrying away the plaintiff, against his will, on the defendant's vessel, it was left for the jury to say, whether he had delayed his departure from the vessel an unreasonable time after being warned that she was about to sail. ‖

In the following cases reasonable time was held to be a question of law. Where the question was as to the time allowed a tenant at will to remove his family and goods; ¶ as to the time allowed a patentee to file a disclamer of an improvement included in his patent, of which he does not claim to be the author; ** where the question was whether one entitled to claim letters of administration had lost precedence by delay; †† whether the executor of a lessee for life had a reasonable time after his death to remove his goods, where six days time was held reasonable; ‡‡ where the

* Gilmore *v.* Wilbur, 12 Pick. 124; Holbrook *v.* Burt, 22 Id. 555; Spoor *v.* Spooner, *supra*; 1 Dan Neg. Ins., sec. 466.

† Byles on Bills, 163.

‡ Edw. Bills. 391.

§ Mohawk Bank *v.* Broderick, 10 Wend. 304; Gough *v.* Staats, 13 Id. 549; Elting *v.* Brinkerhoff, 2 Hall, 459; Vantrot *v.* McCulloch, 2 Hilt. 272 and cases; Middletown Bank *v.* Morris, 28 Barb. 616; Aymar *v.* Beers, 7 Cow. 105.

‖ See opinion of Sergeant, J., in Brenzer *v.* Wightman, 7 Watts. & S. 264. also Bank of Columbia *v.* Lawrence, 1 Pet. 578.

¶ 4 Mason, 345. Following opinion expressed in Muilman *v.* D'Equino, 2 H. Bl. 565; Fry *v.* Hill, 7 Taunt. 397; Straker *v.* Graham, 4 M. & W. 721.

** Chitty Bills, 369; Hadduck *v.* Murray, 8 Am. Dec. 43; Nash *v.* Harrington, 16 Id. 672; Gilmore *v.* Wilbur, 22 Id. 410; Shute *v.* Robbins, 3 C. & P. 80; Ins. Co. *v.* Allen, 11 Mich. 506; Moose *v.* Bellows, 28 Am. Dec. 372; Sussex Bank *v.* Baldwin, 17 N. J. L. 494; Howe *v.* Huntington, 15 Me. 353; Chambers *v.* Hill, 26 Tex. 472; Nichols *v.* Blackmore, 27 Id. 586; Fernandez *v.* Lewis, 1 McCord, 322.

† 4 B. & Ald. 387.

‡ Facey *v* Hendom, 3 B. & Cr. 21. 3

§ Pitt *v.* Shew, 4 B. & Ald. 208.

‖ Spoor *v.* Spooner, 12 Met. 285. For other Illustrations, see Wells' "Questions of Law and Fact," 151.

¶ Ellis *v.* Page, 1 Pick. 43.

** O'Reilly *v.* Moore, 15 How. 121; Seymour *v.* McCormick, 9 Id. 106.

†† Hughes *v.* Pipkin, Phil. Law (N. C.), 4.

‡‡ Stodden *v.* Harvey, Cro. Jac. 204.

maker of a note deposited goods with the holder to be sold to pay it; it was held that a sale several years afterwards was not within a reasonable time.* In *Doe* v. *Smith*, it was held a week or a fortnight was a reasonable time, in which to terminate a particular lease and take possession, but a year was not. † The court must decide whether the purchaser of a crate of ware has furnished the vendor with a list of the broken articles in a reasonable time. ‡ In legal provocation, what is time "to cool," from the heat of frenzied passion, between the provocation and the inflicting of the mortal blow in return, being a question of law, must be decided by the court, § and so is the question whether a prisoner was tried in a reasonable time after arrest. ‖ — *Central Law Journal.*

## *STREET CAR LAW.*

IN *Germantown Pass. Ry. Co.* v. *Brophy*, Pennsylvania Supreme Court, January 14, 1884, 14 W. N. Cas., 213, it was held that where a person sits in a street car with his arm resting on a window sill wholly within the car, and by a sudden collision his arm is thrown out and broken, his occupying such a position is not contributory negligence in law. The court said: "The company has two railway tracks, separated by so narrow a space on a curve, that when its cars were passing in different directions they came in collision, whereby the defendant in error, a passenger in one of the cars, was injured. The main contention is whether he was guilty of contributory negligence in producing the injury to his arm. . . . The learned judge charged that if he sat with his arm out of window when the collision occurred, he was guilty of negligence, and could not recover. Not satisfied with this, the counsel for the company requested the court to charge if the defendant in error placed his arm on the window sill and by a jolt of the car it was thrown out of the window and he was injured, he was guilty of contributory negligence, and could not recover. The court refused to so charge, but left it to the jury to find whether if he was so riding it was negligence on his part which contributed to the injury. The company has no just cause of complaint of this answer. It would have been clear error if the court had instructed the jury that occupying such a position was negligence in law. Resting his arm upon the window-sill wholly within the car, created no legal presumption of negligence. If it constituted negligence, it was a fact to be found by the jury, to whom it was submitted, and it was not to be so declared by the court. In the absence of a collision with an external object his arm was in no danger of injury. He was under no legal obligation to assume or anticipate that the company would run another car against the one in which he was sitting. The window-sill in a railway car is substantially the top of the back of the seat. In cannot be declared negligence in law for a passenger to so rest his arm, and the jury has found it is not negligence in fact."— *Albany Law Journal.*

* Porter *v*, Blood, 5 Pick. 104.

† 2 T. R. 436.

‡ Atwood *v*. Clark, 2 Greenl. 249. See Murrry *v*. Smith, 1 Hawks. 41; Kingsley *v*. Wallis, *supra*.

§ State *v*. Sizemon, 7 Jones Law (N. C.), 208.

‖ Cochran *v*. Toher, 14 Minn. 389.

# REPORTS.

## RECENT ENGLISH PRACTICE CASES.

### Armour v. Walker.

*Imp. O.* 37, *r.* 5 (1883)—*Ont. r.* 285.

*Commission to examine witnesses abroad—Witnesses not named in order.*

[C.A.—L.R. 25 Ch. D. 673.

Application on behalf of the plaintiffs to examine in New York on commission one or more of themselves, and the manager of their firm, and certain American lawyers as to the American law of limited partnership, and generally witnesses whose evidence was material for the trial of the action. Chitty, J., made the order appointing examiners in New York to take the evidence of witnesses residing at New York, and elsewhere in the United States, and particularly of the plaintiffs and of their manager, and of two American lawyers therein named.

*Held*, now, by the Court of Appeal, the order was in substance right, but should be qualified by directing that the commission was to be executed in New York, and that if the plaintiffs wished to examine any persons other than those named in the order, they must give ten days' notice of their names and addresses to the opposite side.

Cotton, L.J.—In my opinion an order for a commission to examine witnesses abroad ought not to be made unless some reason is shewn why they cannot be examined here, nor unless the Court is also satisfied that there are material witnesses abroad whom the party wishes to examine. It should not be a mere roving commission to give the party a chance of finding evidence abroad. I think that in the present case it is shewn that there are material witnesses, who cannot reasonably be expected to come here unless there is some special reason why their examination should take place in this country. . . . As to the American lawyers it is urged, and, as it seems to me, correctly, that none whose opinion is worth having would come over here; and I think that a sufficient reason for directing a commission to examine American lawyers in America.

Lindley, L.J.—I think that all that is required to justify the issuing the commission is that it should be shewn that there are witnesses resident in America whose evidence is material, unless a case is made out why they should be examined here.

Fry, L.J.—I am of the same opinion. *

* Cf. *Bingham* v. *Henry*, 19 C. L. J. 223.

### Gill v. Woodfin.

*Imp. O.* (1875) 29, *r.* 10—*O.* 40, *r.* 11—*Ont. r.* 211, 322.

*Judgment in default of defence—Defence delivered before judgment.*

[L.R. 25 Ch. D. 707.

A defendant made default in delivering a statement of defence, and the plaintiff gave notice of motion for judgment in default of defence. But before the motion was heard the defendant put in his statement of defence.

*Held*, that the statement of defence, though put in after time, could not be treated as a nullity, and that the plaintiff was not entitled to judgment in default of defence. But as the statement of defence disclosed no real defence to the action, the Court of Appeal ordered the notice of motion to be amended, and judgment to be given for the plaintiff on the admissions in the statement of defence.

# NOTES OF CANADIAN CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE LAW SOCIETY.

## QUEEN'S BENCH DIVISION.

Rose, J.]

### Regina v. Young.

*Conviction—Depriving of the use of property—32-33 Vict. cap. 21, sec. 110—Jurisdiction of Magistrate.*

The defendant sold to C., amongst other things, a horse-power and belt, part of his stock in the trade of a butcher, in which he also sold a half interest to C. The horse-power had been hired from one M., and at the time of the sale the term of hiring had not expired. At its expiry M. demanded it, and C. claimed that he had purchased it from defendant. The defendant then employed a man to take it out of the premises where it was kept, and deliver it to M., which he did. The defendant was summarily tried before a Police Magistrate, and convicted of an offence against 32-33 Vict. ch. 21, sec. 110, D.

*Held*, that the conviction was bad, there being no offence against that section, and no jurisdiction in the Police Magistrate to try

summarily; and that it was bad also in not shewing the time and place of the commission of the offence.

Remarks upon the improper use of the criminal law in aid of civil rights. The conviction was quashed with costs.

*Clements*, for the applicant.

*Holman*, contra.

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Rose, J.]

HUGHES ET AL. v. BOYLE ET AL.

*Appeal bond—Discontinuance—Liability of surety.*

The condition of an appeal bond in which the defendant was a surety, was that the appellant would effectually prosecute his appeal and pay such costs and damages as might be awarded in case the judgment appealed from was affirmed. The appellant discontinued the appeal pursuant to R. S. O. cap. 35, sec. 41, which enacts that "thereupon the respondent shall be at once entitled to the costs of and occasioned by the proceedings in appeal, and may either sign judgment for such costs or obtain an order for their payment in the court below, and may take all further proceedings in that court as if no appeal had been brought." The registrar, to whom the matter was referred, assessed the damages at the respondents costs of opposing the appeal.

*Held*, affirming his finding, that the judgment had been affirmed by the discontinuance, and that these costs had been awarded to the respondent by virtue of section 41.

*Quære*, as to the meaning of the expression "effectually prosecute."

*Donovan*, for appeal.

*Millar*, contra.

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## CHANCERY DIVISION.

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Boyd, C.] [May 7.

AMSDEN v. KYLE

*Will—Construction—Election.*

When a testator by his will bequeathed and devised to his nephew J. K., all his real and personal estate subject to the following bequest: "to my wife, E. K. a one-third interest in all my real and personal estate so long as she shall remain unmarried,"

*Held*, that the widow must elect between the bequest of the will in her benefit and her dower; for although the devise of one-third of the testator's land during widowhood would not *per se* interfere with the widow's right as doweress to claim another third for life, yet the fact that the testator gave his wife a one-third interest in all his real and personal estate as long as she should remain unmarried, imported the same manner of division in the case of the land as in the case of the personalty, viz.: a division of the entire property of each kind, which would be defeated if the dower were first substracted from the reality.

*Re Quimby*, *Quimby* v. *Quimby*, 20 C. L. J. 133 followed.

*R. W. Meredith*, for the plaintiffs.

*W. R. Meredith*, Q. C., for the infant defendant.

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Boyd, C.] [May 16.

RE BARWICK AND LOT 3 ON THE NORTH SIDE OF KING STREET, IN THE CITY OF TORONTO, ON THE PLAN OF THE GAOL AND COURT HOUSE BLOCK.

*Vendors' and Purchasers' Act, R. S. O. c. 109—Power to invest—Power to sell.*

A., on his marriage, having conveyed a certain farm, which was then under contract of sale, to the trustee of his marriage settlement, provided that the purchase money, if the sale was carried out, and the land itself if the sale was not carried out, was to be held subject to the trusts of the settlement, as follows:—"And it is hereby agreed by and between the parties hereto, that on the payments of principal being made from time to time by the said J. J. V. (purchaser), the said S. B. H. (trustee), or any other trustee or trustees to be appointed as hereinafter mentioned, shall invest the same in such estate or securities, whether real or personal, and of what nature or kind soever as to him or them shall seem best and most advantageous to the interest of the trust hereby created, and, on such investments being from time to time realized, the same to reinvest in like manner." The settlement also provided that if the said J. J. V. forfeited any right he had to the said real estate it should vest in the trustee for the purposes and uses of the said trusts hereinbefore mentioned as regards the purchase

money, *with full power to lease or sell* the same, etc.

The purchaser having failed to carry out his purchase, and having relinquished any claim he had to the farm, the trustee subsequently exchanged the farm for a city lot. On an agreement for a sale of the city lot the purchaser declined to accept it, and raised the objection that the trustee had no power under the settlement to sell and convey. On an application by the trustee under the Vendors' and Purchasers' Act R. S. O. c. 109, it was

*Held*, that there was a direction to invest in real estate, and following *Joint Stock Discount Co.* v. *Brown*, L. R. 3 Eq. 139, that "investing" means the "actual purchase," and the purchaser's objections were overruled with costs.

*Robinson*, Q.C., for vendor.

*McMichael*, Q.C., for purchaser.

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Boyd, C.] [May 16.

BEATTY v. O'CONNOR.

*Action for account—Small balance—Costs.*

In an action by a mortgagor, against the executors of a mortgagee who had sold the mortgaged premises under the power of sale in the mortgage, for an account of the proceeds of the sale a small balance of $10 was found in his favour. Plaintiff having made certain charges which he failed to substantiate, and not having proved that an account was demanded and withheld from him; and certain special matter pleaded by the defendants being found against them,

*Held*, on further directions, neither party entitled to costs.

*Lennox*, for plaintiff.

*Moss*, Q.C., and *G. W. Lount*, for defendants.

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## PRACTICE.

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Mr. Dalton, Q.C.] [May, 23.

PERRY v. PERRY.

*Action on covenant in mortgage—Setting aside service of writ—Ontario Mortgage Act, 1884.*

The plaintiff gave to the defendant a notice of sale under the power of sale in a certain mortgage and also began an action against the defendant upon the covenant of payment contained in the same mortgage.

The notice of sale was dated 2nd May, the writ was issued on the 3rd May, and both were served on the defendant on the 3rd May. No order was obtained permitting the action to be commenced. Upon motion to set aside the service of the writ as contrary to the provisions of the Ontario Mortgage Act, 1884, 47 Vict. c. 16, O.,

*Held*, that the object of the statute is to prevent all other proceedings while the notice of sale is running and it is not necessary under the statute, to fulfil the very words of it, that one of the acts should be prior to the other.

Service of writ set aside with costs.

*Mulock, Tilt, Miller and Crowther*, for the motion.

*Malloy*, contra.

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## LAW STUDENTS' DEPARTMENT.

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IT may be of interest to students, and the profession generally to know that the number of gentlemen who presented themselves for the recent final examinations were, for Call thirty-three, for Certificate of Fitness thirty-three, of which twenty-three passed for Call, and twenty-four for Certificate of Fitness. We concur in the hope expressed by Cameron, C.J., before whom these young gentlemen were sworn in "that their country will be able to provide them with lots of business without involving itself in a huge lawsuit."

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### EXAMINATION QUESTIONS.

FIRST INTERMEDIATE—PASS.

*Equity.*

1. A, by will, bequeaths a fund to the clergy of a certain denomination, in a certain diocese, in such proportions as the Bishop shall appoint; the Bishop fails to make any appointment. Will the clergy take any, and if so, what interest in the fund, and why?

2. What difference is there, so far as the beneficial interest of the devisee is concerned, between a devise of an estate in trust to pay debts of the testator and a devise of an estate charged with payment of the debts of the testator? Explain.

## Examination Questions.

3. A trustee conveyed his trust estate to A. who wasted the estate: the *cestui que trust* brought his action against the original trustee to compel him to make good the loss, and the latter defended upon the ground that he had, in good faith, and for the sole purpose of freeing himself from the burthen of his trust, conveyed the said estate to A, who was a person in good standing and had accepted the burthen of the trust, and that he, the original trustee, had, in fact, committed no waste. Who should succeed, and why?

4. A. and B. are both public lecturers; the former enters into a bond to the latter that he will not lecture in Toronto during the present year, and the penalty named in the bond for a breach of the condition is $1,000; A. afterwards desires to lecture and tenders to B. the amount of the penalty, but B. refuses to accept the money, and brings an action for an injunction to prevent A. lecturing. Should he get the injunction, and why?

5. What different rules have heretofore obtained at law and in equity with respect to the assignment of choses in action?

6. A. and B. enter into a contract whereby the former agrees to loan to the latter the sum of $1,000 for a specified period, and the latter agrees to accept the same and to pay interest thereon at a specified rate; A. subsequently refuses to advance the money and B. brings an action for specific performance of the contract. What defence, if any, is open to A. upon the facts stated?

7. State the general rules as to the right of appropriation of payments.

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### *Smith's Common Law.*

1. What obligation is there on the part of the owner of property to those who, at his invitation, come upon that property?

2. Can a farmer who draws in his hay on Sunday be punished for so doing under the Lord's Day Act? Give your reasons.

3. Explain the meaning of a *dormant partner* and a *nominal partner*.

4. Define *particular lien* and *general lien*, and explain the differences between them.

5. What is the law as to the personal liability of an agent upon a contract which he enters into for his principal? Explain fully.

6. In what cases must a bill of exchange be presented for acceptance?

7. Explain briefly the action of *Trover*, and state what effect the plaintiff's recovery in such an action had upon the title to the goods.

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### *Real Property.*

1. Define Fee-simple, Fee-tail, Estate for life, Estate *pur autre vie*, *Cestui que vie*, Reversion, Remainder.

2. Define Feoffment, Grant, Common recovery, Fine, Livery of seisin.

3. Explain fully the estate by joint tenancy, and distinguish it from a tenancy in common.

4. By what tenure are lands holden in Ontario? Why?

5. What is a bare trustee?

6. Can an infant make a valid conveyance of land? Explain.

7. What is the effect of a grant to A. B. simply —no words of inheritance being used? Explain.

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### *Anson on Contracts and Statutes.*

1. To what class of contracts does a judgment in an action belong? Mention its characteristics.

2. A. allows bills of exchange to remain in the hands of X., and X. promises to get the bills discounted and to pay the money to A.'s account. Is the promise of X. a binding promise, and why?

3. Give Anson's description of Fraud.

4. Give as fully as you can the effect of partial illegality on the validity of a contract.

5. State the two chief rules of construction which govern the interpretation of a contract.

6. What is meant by *merger* of a contract, and under what circumstances will it take place?

7. What is meant by *acceptance* of a bill of exchange? Is a verbal acceptance binding, and why?

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### First Intermediate.—Honours.

### *Smith's Common Law.*

1. What presumption of law is there in regard to the life or death of a person?

2. When one person, at the request of another, does an act not apparently illegal, but which is injurious to a third person, what promise may be inferred in law upon the part of the person requesting such act to be done?

3. If a man places a window in his house so as to overlook his neighbour's grounds, what remedy has the latter?

4. Explain the meaning and effect of *abandonment* in the law of insurance?

5. In the case of the death of a person from injuries sustained in a railway accident caused by the negligence of the company, can his administrator ever recover damages *for the benefit of the estate?* If so, under what circumstances.

6. A., in France, draws a bill of exchange on B., who lives in England. The bill is payable in Holland, and is accepted by B., in England. By the

law of which country is the obligation of A., and B., respectively governed?

7. Will the following be good secondary evidence of the contents of a written instrument, (*a*) the evidence of a witness who has read the original, although a copy is in existence, (*b*) a copy of a copy? Explain.

*Real Property.*

1. Explain the conveyances by bargain and covenant to stand seized. In whose favour may the latter be made?

2. Incorporeal hereditaments were said to lie in grant; corporeal hereditaments, to lie in livery. Explain. What change has been made.

3. A testator declared his intention to be that his son should not sell or dispose of his estate for a longer time than his life, and to that intent he devised the same to his son for life, and after his decease to the heirs of the body of the son, What estate does the son take?

4. If a mortgagor desires to pay off an overdue mortgage, what course must he adopt to compel the mortgagee to receive the money?

5. A devise of a mortgaged estate is made to A. Can A require the executors to pay off the mortgage so that he may enjoy the estate unincumbered? Why?

6. What is the meaning of the term *Emblements?*

7. A testator has duly executed his will which is valid to pass real estate. The will contains a devise of Whiteacre to A. and B. and their heirs. After the will has been made he changes his intention of permitting A. to share in this land, and with that object in view he runs his pen through the words "A. and," and "their," and over the word "their," writes "his." No one is present with him and nothing else is done. What is the effect of this alteration?

*Anson on Contracts.*

1. Indicate some of the consequences of the *peculiar* favour with which the idea of consideration as a necessary element of contract has been treated in *Equity*. Answer as fully as you can.

2. State and exemplify the position of parties who have entered into a contract specified in the fourth section of the Statute of Frauds, but have not complied with its provisions.

3. "The very nature of a corporation imposes some necessary restrictions upon its contractual power, and the terms of its incorporation may impose others." Illustrate what is meant in this quotation by examples.

4. Point out any difference in the rules of Equity respecting the right to rescined contracts entered into under (*a*) Undue Influence; and the rules which apply to Fraud.

5. "A contract may be discharged by express agreement that it shall no longer find either party." Explain this quotation as fully as you can.

6. What are the consequent rights to one party to a contract when the other in the course of the performance of the contract deliberately refuses performance of his part?

7. What is the effect of alteration by addition, or erasure of a written contract? Answer fully.

*Equity.*

1. A testator by his will devised his real estate to A., a stranger, in trust, but did not specify any trust upon which it should be held. In whom did the beneficial interest in the estate vest, and why?

2. A. and B. were equal partners, and their warehouse, which was used for partnership purposes, was purchased with partnership funds. A. died intestate, when B. claimed that he and A. held the warehouse as joint tenants, and that he therefore was, as surviving joint tenant, entitled thereto. A.'s heir-at-law claimed a half interest therein as being entitled to all A.'s lands, and A.'s personal representative claimed to be entitled to the benefit of the said half interest as personal estate. On whom did the half interest devolve, and why?

3. A vendor of land before conveyance received a notice from a third person that he has procured an assignment of the purchaser's interest in the contract, and a request that the vendor convey directly to such third person. The vendor disregards the notice and request, and conveys to the original purchaser. What are the rights of the parties and why?

4. State as many as you can of the grounds upon which Equity most frequently refuses to grant specific performance of contracts?

5. "In general in assignments of equitable interests other than equitable estates, he who gives formal notice to the holder of the fund has priority over him who does not." Illustrate this passage by an example.

6. Define legal and equitable assets, and illustrate your answer by an example of each.

7. A. borrows a sum of money from B. and by way of security therefor conveys to him a piece of land by an instrument which upon its face is an absolute conveyance in fee. B. who has oral evidence only of the real nature of the transaction, brings an action to redeem, and A. sets up the Statute of Frauds as a defence. Who should succeed in the action, and why?

## CORRESPONDENCE.

### LAW SOCIETY—REWARDS TO STUDENTS.

*To the Editor of the* LAW JOURNAL:

SIR,—I learn from the *resumé* of the proceedings of the Benchers during Hilary Term, published in your issue of March 15th, that it is proposed, upon economical grounds, to drop the Supreme Court Reports, which cost some $1,800. I also observe in the estimate of current year's expenditures by the Society the following items:—

| | |
|---|---|
| Scholarships | $1,600 |
| Medals | 120 |
| Law School prizes | 50 |
| In all | $1,770 |

Now, I suppose the funds of the Society are the common property of its members, of whom the Benchers are trustees, and that they (the Benchers), as in duty bound, are desirous of so administering the funds of the Society as to confer the greatest good upon the greatest number.

If so, I venture to believe, and trust I will be excused for saying, that a very large majority of the members of the profession could much better sustain the loss which will result from the withholding of the sum of $1,770, now devoted to scholarships, medals, and prizes, than the loss of the Supreme Court Reports.

It is not necessary to aver, as everyone knows, that these awards, as a rule, go neither to the most *needy* or meritorious, but rather to those whose advantages in other respects give them a long start in the race for these distinctions, and render them, when gained, of small pecuniary moment.

While it is usually well known that practitioners struggling in the comparatively outer darkness of the outer counties can ill dispense with light from any quarter, but especially from the highest Court of the Dominion, may I also be permitted to ask, is there any good reason for the rule which withholds from solicitors *any* report published after they receive their certificates? The fees paid at admission are supposed to cover all reports published for the current year. Why not supply all back numbers of current volumes at cost, and continue them to all upon the rolls alike?

Respectfully yours,

A JUNIOR.

### THE WILL PROBLEM.

*To the Editor of the* LAW JOURNAL:—

SIR,—If guesses as to solution of the will problem published on page 176 are in order, I submit the inclosed as nearer the intentions of the testator than any yet given.

Let A., B. and C., represent the respective shares of mother, son and daughter, and let C=6 (nearest practical figure); then, as son gets one-third more than daughter (two-thirds as against one-half),

$$B = C + \frac{C}{3} = 8.$$

The mother gets half as much as the son, or as much as the daughter. To average this, and give the share as against two instead of one, we have

$$A = \frac{\frac{B}{2} + C}{2} = 5,$$

making mother's share $\frac{5}{19}$; son's, $\frac{8}{19}$; and daughter's, $\frac{6}{19}$.

Yours, etc.,

S.

### ALTERATIONS IN TARIFF.

The following amendments in the tariff were issued on March 29th, 1884. The first item is a little ambiguous, and it seems doubtful whether it is intended to supersede the appeal to the Judge in Chambers under Rule 449, or whether it is to be concurrent therewith, or what the precise intention is. Then the charge made by item 11, which amends item 115 previously existing, is curious, inasmuch as it apparently takes away from the taxing officer all discretion in allowance of counsel fees for the attendances referred to. We especially, however, call attention to item 16, which introduces a decided novelty in numbering. What the precise effect of calling an item "165½" may be, is hard to anticipate. The following are the new regulations:—

*Saturday, 29th March*, 1884.

It is ordered that the tariff of fees made by the Judges of the Supreme Court of Judicature of Ontario on the 10th day of September, 1881, be amended as follows:

1. There may be an appeal by appointment without other notice from the taxing officer in Toronto to the Master in Chambers, or to the Master in Ordinary, pending the taxation in all cases.

2. Item 12 in the said tariff is struck out.

3. Item 23 in the said tariff is struck out, and the following is substituted therefor:

"23. To amend any pleading when the amendment is proper, $2.00."

ALTERATIONS IN TARIFF.

4. Under the heading "Drawing Pleadings," &c., after item 46, and as applicable to items 36 to 46 inclusive, add "In special or contested actions or matters, to be increased to such sum as the taxing officer in Toronto may think fit."

5. Item 83 in the said tariff is struck out, and the following substituted therefor:

"83. Notice of Motion in Court or Chambers, engrossing and copy to serve per folio, 30 cents."

6. Under the heading "Perusals," item 91 in the said tariff is struck out, and the following substituted therefor:

"91. Of each of the pleadings as defined by the Act, $1.00."

7. Item 93 in the said tariff is struck out, and the following substituted therefor:

"93. And in special or contested actions or matters, or of interrogatories and cross interrogatories on commission such sum as the taxing officer in Toronto thinks fit."

8. Under the heading "Attendances," item 96 in the said tariff is struck out, and the following substituted therefor:

"96. Necessary attendances consequent on the service of a notice to produce or admit, or an inspection of documents when produced under order including making admission altogether, $1.00."

9. Item 100 in the said tariff is struck out.

10. Item 111 in the said tariff is struck out, and the following substituted therefor:

"111. Attendance on warrant or appointment of Master, Registrar, Examiner, or Referee, per hour, $1.00."

11. Item 115 in the said tariff is struck out, and the following substituted therefor;

"115. On important points and matters requiring the attendance of counsel the Master, or Examiner or Referee, Judgment Clerk, or Inspector of Titles may certify the amount of counsel fee proper to be allowed (to be noted at the time), for the guidance of the taxing officer in Toronto, who may allow the same in lieu of fees for attendance."

12. Under the heading "Court Fees (Term Fees)," item 120 in the said tariff is struck out, and the following substituted therefor:

"120. Fee after statement or where statement dispensed with after filing writ, on defence, joinder of issue, trial or argument before Courts, or any other step in the cause, and on judgments other than præcipe judgments in mortgage cases. No two fees to be allowed either party when such proceedings are taken or had between the first day of any sittings of the Courts fixed by Rule 480, and the first day of the following sittings so fixed, $1.00."

13. Item 122 in the said tariff is hereby struck out, and the following substituted therefor:

"122. On every order or judgment, $1.00."

14. Under the heading "Judgment, Rules or Orders," item 133 in the said tariff is struck out, and the following substituted therefor:

"133. Drawing minutes of judgment or order per folio when prepared by solicitor under directions of Registrar or Judgment Clerk, 20 cents."

15. Item 135 in the said tariff is struck out, and the following substituted therefor:

"135. Attending for appointment to settle or pass judgment or order of Court, copy and service, $1.30."

16. Under heading "Sales by Master or Auctioneer," after item 145 add:

"145½. Each necessary attendance on printer, 50 cents."

17. Under heading "Miscellaneous," after item 153 add:

"In special matters, to be increased in the discretion of the taxing officer in Toronto."

18. Under the heading "Counsel Fees," items 165 and 166 in the said tariff are struck out; and Order 539 is rescinded, and the following is substituted therefor:

"165. On argument in Chambers in cases proper for the attendance of Counsel, (to be increased in the discretion of the Master in Chambers or the Master in Ordinary), $2.00."

19. The necessary letters and attendances incurred in obtaining the decision of the taxing officer in Toronto, shall be allowed as part of the costs of the cause.

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# Law Society of Upper Canada.

## OSGOODE HALL.

### HILARY TERM, 47 Vict., 1884.

During this term the following gentlemen were called to the bar, namely:—

Messrs. James Bicknell, gold medalist and with honours; George Walker Marsh; Donald Cliff Ross, John Young Cruikshank, Edward James Hearn, Wilmott Churchill Livingston, Robert Walter Witherspoon, George Frederick Cairns, Francis Stewart Wallbridge, Moses McFadden, Frederick Augustus Munson, Daniel Urquhart, Edward Guss Porter, James Burdett, Alexander Monro Grier, Edmund Campion, John James Maclaren. The last three being under Rules in special Cases.

And the following gentlemen were admitted into the Society as Students-at-Law, namely:—

Matriculants — John Frederick Gregory, William Edward Kelly, William Wesley Dingman, John Hind Hegler.

Junior Class — Michael H. Ludwig, Franklin Smoke, John B. McColl, Robert Wilson Gladstone Dalton, James Joseph McPhillips, Frederick Rohleder, Patrick Kernan Halpin, John Wesley Coe.

### BOOKS AND SUBJECTS FOR EXAMINATIONS.

*Articled Clerks.*

1884 and 1885.
- Arithmetic.
- Euclid, Bb. I., II., and III.
- English Grammar and Composition.
- English History—Queen Anne to George III.
- Modern Geography—North America and Europe.
- Elements of Book-Keeping.

In 1884 and 1885, Articled Clerks will be examined in the portions of Ovid or Virgil, at their option, which are appointed for Students-at-Law in the same years.

*Students-at-Law:*

1884.
- Cicero, Cato Major.
- Virgil, Æneid, B. V., vv. 1-361.
- Ovid, Fasti, B. I., vv. 1-300.
- Xenophon, Anabasis, B. II.
- Homer, Iliad, B. IV.

1885.
- Xenophon, Anabasis. B. V.
- Homer, Iliad, B. IV.
- Cicero, Cato Major.
- Virgil, Æneid, B. I., vv. 1-304.
- Ovid, Fasti, B. I., vv. 1-300.

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

Translation from English into Latin Prose.

MATHEMATICS.

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

ENGLISH.

A Paper on English Grammar.
Composition.
Critical Analysis of a Selected Poem:—
1884—Elegy in a Country Churchyard. The Traveller.
1885—Lady of the Lake, with special reference to Canto V. The Task, B. V.

HISTORY AND GEOGRAPHY.

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

Optional subjects instead of Greek:

FRENCH.

A paper on Grammar,
Translation from English into French prose.
1884—Souvestre, Un Philosophe sous le toits.
1885—Emile de Bonnechose, Lazare Hoche.

*or* NATURAL PHILOSOPHY.

*Books*—Arnott's elements of Physics, and Somervilles Physical Geography.

FIRST INTERMEDIATE.

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

Three scholarships can be competed for in connection with this intermediate.

SECOND INTERMEDIATE.

Leith's Blackstone, 2nd edition; Greenwood on Conveyancing, chaps. on Agreements, Sales, Purchases, Leases, Mortgages and Wills; Snell's Equity; Broom's Common Law; Williams on Personal Property; O'Sullivan's Manual of Gov-

ernment in Canada; the Ontario Judicature Act, Revised Statutes of Ontario, chaps. 95, 107, 136.

Three scholarships can be competed for in connection with this intermediate.

FOR CERTIFICATE OF FITNESS.

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

FOR CALL.

Blackstone, vol. 1, containing the introduction and rights of Persons; Pollock on Contracts; Story's Equity Jusisprudence; Theobald on Wills; Harris' Principles of Criminal Law; Broom's Common Law, Books III. and IV.; Dart on Vendors and Purchasers; Best on Evidence; Byles on Bills, the Statute Law and Pleadings and Practice of the Courts.

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

1. A graduate in the Faculty of Arts, in any university in Her Majesty's dominions empowered to grant such degrees, shall be entitled to admission on the books of the society as a Student-at-Law, upon conforming with clause four of this curriculum, and presenting (in person) to Convocation his diploma or proper certificate of his having received his degree, without further examination by the Society.

2. A student of any university in the Province of Ontario, who shall present (in person) a certificate of having passed, within four years of his application, an examination in the subjects prescribed in this curriculum for the Student-at-Law Examination, shall be entitled to admission on the books of the Socity as a Student-at-Law, or passed as an Articled Clerk (as the case may be) on conforming with clause four of this curriculum, without any further examination by the Society.

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

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

5. The Law Society Terms are as follows:

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

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

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

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

6. The primary examinations for Students-at-Law and Articled Clerks will begin on the third Tuesday before Hilary, Easter, Trinity and Michaelmas Terms.

7. Graduates and matriculants of universities will present their diplomas and certificates on the third Thursday before each term at 11 a.m.

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

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

10. The Solicitors' examination will begin on the Tuesday next before each term at 9 a.m. Oral on the Thursday at 2:30 p.m.

11. The Barristers' examination will begin on the Wednesday next before each Term at 9 a.m. Oral on the Thursday at 2:30 p.m.

12. Articles and assignments must be filed with either the Registrar of the Queen's Bench or Common Pleas Divisions within three months from date of execution, otherwise term of service will date from date of filing.

13. Full term of five years, or, in the case of graduates of three years, under articles must be served before certificates of fitness can be granted.

14. Service under articles is effectual only after the Primary examination has been passed.

15. A Student-at-Law is required to pass the First Intermediate examination in his third year, and the Second Intermediate in his fourth year, unless a graduate, in which case the First shall be in his second year, and his Second in the first six months of his third year. One year must elapse between First and Second Intermediates. See further, R.S.O., ch. 140, sec. 6, sub-secs. 2 and 3.

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

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

18. Candidates for call or certificate of fitness are required to file with the secretary their papers and pay their fees on or before the third Saturday before Term. Any candidate failing to do so will be required to put in a special petition, and pay an additional fee of $2.

FEES.

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| Notice Fees | $1 00 |
| Students' Admission Fee | 50 00 |
| Articled Clerk's Fees | 40 00 |
| Solicitor's Examination Fee | 60 00 |
| Barrister's " " | 100 00 |
| Intermediate Fee | 1 00 |
| Fee in special cases additional to the above. | 200 00 |
| Fee for Petitions | 2 00 |
| Fee for Diplomas | 2 00 |
| Fee for Certificate of Admission | 1 00 |
| Fee for other Certificates | 1 00 |

*Copies of Rules can be obtained from Messrs. Rowsell & Hutcheson.*