# Canada Law Journal.

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## DIARY FOR APRIL.

3. Sun....5th Sunday in Lent.
4. Mon...County Court Terms begin, County Court sitt. without jury (ex. York) begin.
5. Tues...Canada discovered, 1499.
8. Fri.....Supreme Court Act assented to, 1875.
9. Sat.....County Court Terms end.
10. Sun.....6th Sunday in Lent.
17. Sun.....Easter Sunday.
22. Fri.....Beaconsfield Ministry resigned.
23. Sat....St. George's Day.
24. Sun....Low Sunday.
25. Mon....St. Mark
26. Tues....2nd Intermediate Exam.
27. Wed...2nd Intermediate Exam.
28. Thurs..1st Intermediate Exam.
29. Fri....1st Intermediate Exam.

*TORONTO, APRIL 15th, 1881.*

WE regret to record the death of His Honor Judge Macdonald, of Guelph. He had been on the Bench for twenty-four years, and was a member of the Board of County Judges. He was a man of sound common sense, a good lawyer and much respected by his many friends. We publish in another place, resolutions of the Bar of his County on the occasion of his death.

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A TREATISE on the Law of Dower, with statutes, forms, pleadings, &c., is in preparation by a barrister of Osgoode Hall. We have had nothing on this subject since Mr. Draper's little book, published many years ago. It may be impossible for us for many years to come to do away with the cumbrous provision of the Common Law for wives, known to rustics as their "thirds," but we have often seen a pleasant smile light up the face of the "worse half" owning lands in Manitoba when told that in those happy hunting grounds dower is unknown, and that the apocryphal silk dress known here as a sure solatium for the "better half" remains unasked.

A LAW Society has recently been organized in Montreal. We cannot speak with any authority as to the necessity or cause for this movement; but we cannot forbear coupling the remarks so frequently made as to the alleged decadence of the "Bench and Bar" in our sister Province (speaking generally, and aware of the many brilliant, learned men amongst them) with the fact that the system there adopted is one of *decentralisation*, as ours is the reverse. Our brethren in the Lower Province have many difficulties to contend with; but not the least is the evil alluded to. It is impossible to have the same high standard where the Bar is broken up into a number of small sets, as where there is one central spot such as we have in Osgoode Hall.

The following are the officers of the "Montreal Law Society:"—President, A. Lacoste, Q.C.; Vice-President, T. W. Ritchie, Q.C.; Treasurer, Simeon Pagnuelo, Q.C.; Secretary, F. L. Beique; Committee, R. Laflamme, Q.C., J. M. Loranger, Q.C., J. J. Curran, Q.C., C. P. Davidson. Q.C., C.A. Geoffrion, Q.C. We hear that a large section of the Bar is not in sympathy with the action taken.

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THERE has also been an agitation, principally amongst the English section of the Bar, in connection with the vacancies on the Bench. The desire seems to be to have the appointment of a judge to the Superior Court made with especial regard to his acquaintance with commercial law. At a large meeting of the English speaking members of the Bar, at Montreal, several resolutions embodying the views of the meeting were passed. A deputation subsequently proceeded to Ottawa and laid the matter before the Government. The following were the resolutions:—

"Moved by Mr. Tait, seconded by Mr. Dunlop,

"That inasmuch as Montreal is the centre of the commerce not only of the Province of Quebec, but also of the Dominion of Canada and that in the Superior Court of Montreal, the commercial cases therein tried are of great importance, it is extremely desirable in the interest of the administration of justice that the seventh judge to be appointed to the Superior Court should be an advocate having large experience in commercial cases."

Carried.

It was then moved by Mr. W. H. Kerr, Q.C., seconded by Mr. Burroughs:

"That in the opinion of this meeting, the system of political appointments to the Bench has inflicted great damage on the Province, and that this meeting protests against the continuance of the practice, especially with regard to the Court of Queen's Bench."

Moved in amendment by Mr. T. W. Ritchie, Q.C., seconded by Mr. G. B. Cramp

"That this meeting is of opinion that questions respecting political appointments ought to be considered at a regular meeting of the Bar and not by any section thereof."

Moved in amendment to the amendment by Mr. D. Macmaster, M.P.P., seconded by Mr. J. N. Greenshields:

"That in the opinion of this meeting a representation should be made to the Dominion Government that the judicial appointment about to be made should be without regard to any considerations but personal worth and professional skill, and that in making such appointment the claims of the English section of the Bar should be fully considered."

The amendment to the amendment was then put and carried by a large majority.

Mr. Kerr then withdrew his motion.

Mr. Macmaster moved, seconded by Mr. J. S. Hall,

"That the Chairman name a committee, of which he himself should be one, to lay the views of this meeting before the Dominion Government."

Carried.

MR. JUSTICE BRAMWELL has recently written a letter to the *Times* over the signature "B" on the subject of Law Costs. The remedy he proposes is that "solicitors should be paid a lump sum; for instance, so much if proceedings stopped at the writ, so much if they stopped at a further stage, so much if there was a trial; and this sum should vary according to the amount at stake and other circumstances."

A writer in *St. James Gazette* takes exception to this suggestion, and after rather cleverly pointing out some objections, takes up the subject of the bench and suggests that judges should be rewarded according to the value of the work they do and not by the year, and that a reduction should be made whenever they refer a cause or wrongly decide points of law. He thus continues:—

"Of course to a certain number of blunders each judge would be entitled without charge, just as men engaged on piecework are allowed to make a certain percentage of 'wasters.' The House of Lords, like the King, cannot err, and needs, therefore, no consideration. To a lord justice I would allow three mistakes per annum gratis; after that I would charge him £500 for each; this being, after all, a moderate computation of the damage he has done. To vice-chancellors and 'ordinary judges,' as they call themselves now, I would freely allow ten mistakes at *Nisi Prius*, because of the noise there, and the necessity of humouring the jury; in *banc* five blunders per annum. If this quantity were exceeded, then I would deduct £100 for each error; but if more than twenty blunders were made on the whole, I would impose a fine of £2,000 for this number, with exclusion from the Lord Mayor's dinner. To County Court judges I would be more liberal yet; and to justices of the peace I would concede immunity if they were right one time in five."

THE Supreme Court of the United States has recently decided a most important constitutional question as to the limits of the power of either House of Congress to commit a contumacious witness for refusing to answer inquiries into his private affairs. The learned and elaborate judgment of Mr. Justice Miller is reported *in extenso* in the *Albany Law Journal*, (*Kilbour* v. *Thompson*, 23 Alb. L. J. 227,) and as his reasonings are based to a great extent either on decided English cases, or on general principles affecting the constitution and powers of representative assemblies, they are well worth the attentive consideration of our readers. The action was one of trespass for false imprisonment, brought against the sergeant-at-arms of the House of Representatives, and certain members of that House who had been appointed a Committee to inquire into the affairs of a bankrupt firm of which the United States was a creditor. The plaintiff, who had been subpœnaed as a witness by the Committee, refused to answer certain inquiries, and to produce records relating to the matters required of him.

The sergeant at-arms pleaded a special plea of justification founded on the fact that he had acted under the orders of the House of Representatives; and the other defendant pleaded a similar plea, except that they alleged that they were members of the House, and had acted in that capacity. To these special pleas the plaintiff demurred, and his demurrer has now been allowed by the highest legal tribunal, so far as the plea of the unfortunate sergeant-at-arms is concerned, while the other defendants who caused all the trouble escape under the friendly mantle of 'privilege,' which can apparently become on occasion as useful to over-zealous Congressmen as to obstructive Home Rulers. This, however, was merely a side issue, and does not touch the really important point decided by this case, which is that the House of Representatives can only punish a witness for refusing to answer inquiries which it is within their jurisdiction to make, and that private matters do not come within this category.

## *JUDICIAL CHANGES IN ENGLAND.*

Sir Henry Jackson, Q.C., and Mr. Mathew were, on the 2nd and 3rd of March respectively, appointed to the vacant seats on the English Bench. On the 8th March Sir Henry Jackson died of heart disease, being not quite fifty years of age, and before he had taken his seat or been sworn in.

The appointment of Mr. Mathew is spoken of as another of the few instances of a member of the junior bar (*i.e.*, a stuff-gownsman), being elevated to the Bench. He had a large commercial business and did a large counsel business in Common Law Chambers.

Mr. William Lewis Cave, Q.C., has been appointed to fill the vacancy in the Queen's Bench Division caused by the death of Sir Henry Jackson. His appointment seems to give general satisfaction. A contemporary thus speaks of him:—"Mr. Cave is the editor of 'Addison on Torts,' of which the fifth edition was recently published, and of the titles from 'Indictment' to 'Promissory Notes' in 'Burn's Justice,' and has a high reputation as a lawyer; while the dignity of the bench, and the good feeling between the judges and the profession—no unimportant matters—are safe in his keeping. In point of age, Mr. Justice Cave is still young enough to have lost none of his freshness."

Vice-Chancellor Malins has retired from the Bench. The *Law Journal* thus speaks of his judicial career:—"The learned judge is justly most popular with the legal profession, and throughout his career on the bench has been guided by an earnest desire to do justice. He would have earned a higher reputation as a lawyer if he had lived in the times before the system which he had to ad-

minister became stereotyped. He had all the instincts of justice, tenacity of purpose, and disregard of opposition, which would constitute a founder of the system of equity. These very qualities stood in his way as a judge in these latter days, so that his reputation as a lawyer was hardly equal to his powers."

Rt. Hon. Sir Arthur Hobhouse, K.C.S.I., has been appointed an unpaid member of the Judicial Committee of the Privy Council. In 1872, he succeeded Sir James (now Mr. Justice) Stephen, at Calcutta, as the legal member of the council of the Governor-General of India.

## *LEGISLATION OF LAST SESSION.*

A much valued correspondent at Ottawa thus writes to us *apropos* of the legislation of last session. We gladly reproduce part of his letter:—"Our list of survivors of the Legislative battle is not very numerous, and severely critical people will say 'so much the better.' We got up to 107 Bills entered and read, at least once, so that 44 died the death of the Innocents, and 44 Rachels mourned for their children, and will not be comforted. One poor little dear, only legislative child of Mr Patterson, of Essex, died *in print* but unintroduced, 'and went down to the grave unborn.' The fate of these Innocents was hard. 'The applause of list'ning senates to command, their fate forbade.' But perhaps the public will add, as a consolation,

'Nor circumscribed alone
Their hidden virtues, but their sins confined,
Forbade to puzzle justice on her throne,
Or pour confusion o'er the legal mind.'

Their country will hardly go into deep mourning for them.

I hope you are all well pleased with Mr. Mowat's fusion of law and equity. I see two learned gentlemen intend to indite commentaries upon it; yet it seems pretty considerably full in itself, and nearly long enough. I am very glad to see it, and to think that the foreign sneer about Englishmen having two laws or two opposite rules of decision in the same case, will no longer be applicable. I send you a copy of Mr. Mills' bill for establishing the rule of decision in the North-western Territories. Is Mr. Mowat's an amplification of Mr. Mills', or Mr. Mills' a condensation and quintessence of Mr. Mowat's, or a germ out of which a clever lawyer, with plenty of brains and enormous labor, could evolve Mr. Mills' measure? I remember Mr. Draper's idea of the immense extent of the labor involved in this fusion, and his saying it was enough to deter him from undertaking it; though he thought the thing ought to be done, and this blot on English jurisprudence removed. All honor to those who have removed it. There will be in Ontario as there has been in England, trouble enough at first; old lawyers will not much like it, but all will come right, and the next generation will wonder how we bore the reproach so long."

There are some who think that we were doing well enough without this much-needed fusion, and that there was no urgent demand for the change. It certainly will entail much labor on Bench and Bar, and probably make litigation rather more expensive than formerly.

## *ELECTION OF BENCHERS.*

This event has come and gone, and we are glad it is over. These occasional appeals to the general body of the profession may be desirable for some reasons; but the medicine is unpleasant and somewhat nauseous, and if there is a little unseemly spluttering, and some soiling of white robes on the part of the patient during the process, it is only what might have been expected. It is said by some that a dash of politics in the mixture is what gave it an offensive flavor on this occasion. We trust that this is not the case, and while we ask pardon for mixing metaphors, we express disbelief in the assertion that there can be in our ranks any pro-

fessional man so insane as to introduce an enemy into the citadel when we have all we can do to withstand the hostile army outside. If politics have been introduced, we may, when the mischief is done, witness an unseemly wrangle, suggestive of small boys each accusing the other of beginning the fight.

The following are the gentlemen who have been elected, with the number of votes given for each :—

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|---|---|
| W. R. Meredith, Q. C. | 541 |
| D. McCarthy, Q. C. | 518 |
| James Bethune, Q. C. | 510 |
| D. B. Read, Q. C. | 508 |
| Thomas Ferguson, Q. C. | 490 |
| Daniel McMichael, Q. C. | 465 |
| F. McKelcan, Q. C. | 456 |
| James Maclennan, Q. C. | 433 |
| John Hoskin, Q. C. | 423 |
| Charles Moss | 404 |
| Thos. M. Benson | 403 |
| Thos. Robertson, Q. C. | 360 |
| J. K. Kerr, Q. C. | 352 |
| Hector Cameron, Q. C. | 341 |
| Æ. Irving, Q. C. | 337 |
| B. M. Britton, Q. C. | 336 |
| John Bell, Q. C. | 321 |
| H. A. Hardy, Q. C. | 319 |
| J. J. Foy | 307 |
| H. W. M. Murray | 300 |
| Stephen Richards, Q. C. | 298 |
| T. B. Pardee, Q. C. | 284 |
| Edward Martin, Q. C. | 283 |
| James F. Smith | 277 |
| W. H. Scott, Q. C. | 268 |
| John Crickmore | 262 |
| J. H. Ferguson | 255 |
| David Glass, Q. C. | 248 |
| Andrew Lemon | 229 |
| Larratt W. Smith, D.C.L. | 227 |

There are five new names on the list: Messrs. H.W. Murray, J. F. Smith, J. J. Foy, J. H. Ferguson, and David Glass, Q.C. The first four were put forward as representatives of the Junior Bar, though it is worthy of remark that Mr. Murray has been at the Bar since 1859, and Mr. Smith since 1860, whilst Mr. Osler and Mr. C. Moss, who were appointed by the Benchers last year to fill vacancies, were only called in 1862 and 1869 respectively. We recognize, however, in the election of the gentlemen alluded to, a desire on the part of the profession to carry out the action commenced by the old Bench, and to put into practical shape the subject which has been so persistently urged in these columns, namely, some measure of protective justice to those who are enrolled in our ranks and are now at the mercy of an army of irresponsible invaders. We are at the same time compelled to notice that another result has been to turn out three country representatives, and put Toronto men in their places.

There were about 650 voting papers sent in, of which 53 were rejected as informal or of persons not entitled to vote. The names next on the list were J. E. Rose, 224; J. A. Henderson, Q. C., 213; J. A. Boyd, Q. C., 213; James Beatty, Q. C., 197; R. Lees, Q. C., 192; E. J. Parke, 189; James Gilt, 185. After them came upwards of one hundred more who received votes ranging from 170 down to one.

We miss the names of many who would have made excellent Benchers; but some of them will doubtless hereafter be added to fill the places of those who may not attend to their duties. We trust the rule in this behalf will be more rigidly enforced.

The duty of the Scrutineers, the Treasurer, Mr. D. B. Read, and Mr. Crickmore were very arduous, as will be evident when we state that some eighteen thousand votes had to be counted, and that six days of hard labor were occupied in the scrutiny.

# NOTES OF CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE LAW SOCIETY.

## SUPREME COURT.

NORTH ONTARIO ELECTION PETITION.
WHEELER V. GIBBS.

*Parliamentary Election—Costs—Set-off.*

The respondent having succeeded in having his election petition against the return of the appellant maintained with costs, but who, on appeal to the Supreme Court (which appeal was limited to the question of disqualification), was condemned to pay the costs of appeal, moved in the Supreme Court to set off the taxed costs of the respondent in the court below against the taxed costs of the appellant in the Supreme Court.

The Court ordered that the costs taxed and allowed to the appellant in this Court be set off against the costs which may be taxed and allowed to the respondent in the Court below by the proper officer thereof on the taxation of said costs, and be a satisfaction *pro tanto* of the said last-mentioned costs when so set off, and that all proceedings on the execution issued in this cause out of the Supreme Court be stayed.

*H. Cameron*, Q. C., for Respondent.

*McTavish*, for Appellant.

## COURT OF APPEAL.

C. C. Hastings.] [March 23.

IN RE LEWIS, INSOLVENT.

*Insolvent Act of 1875—Recovery of debts under sec. 68.*

Where certain creditors of the insolvent take proceedings under sec. 68 of the Insolvent Act, 1875, in the name of the assignee, to recover a debt due the insolvent, they are entitled to the amount recovered, and the estate cannot benefit by the recovery in any way unless indirectly, when the creditors' claims are extinguished thereby, and consequently their right to receive further dividends from the estate is gone.

Where in such a case the debt was paid to the assignee, who refused to pay it to the creditors who had taken the proceedings to recover it:

*Held*, that their proper remedy was by application to the Judge of the Insolvent Court.

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

*J. K. Kerr*, Q.C., for the respondent.

*Appeal dismissed.*

Q. B.] [March 26.

HARRISON V. PINKEY.

*Lease—Proviso on determination—Option to harvest crops, or be paid for—Construction.*

A lease from D. to the plaintiff of a farm contained the following proviso, "And the said lessee agrees to give up possession of said premises before expiration of lease, if sold by said lessor, upon receiving six months' notice, said notice to be given before 1st April, and should the said lessor give the said lessee notice to quit premises during any year of said lease, then the said lessee will have the privilege of harvesting and threshing the crops of the summer fallow, or the work done on said summer fallow will be paid for at a fair and reasonable valuation." D. agreed to sell the land to the defendant on 22nd August, 1877, and on the same day gave the plaintiff notice to quit possession on the 1st April, 1878. Plaintiff then put in a crop and quitted possession pursuant to the notice, and the land was conveyed to the defendant in the latter month. Neither D. nor the defendant offered to pay for either the work or the crop.

*Held*, affirming the decision of the Court below (44 U. C. R. 509), that the construction of the proviso was that the tenant was to have the privilege of harvesting any crops which might have been put in on the summer fallow, unless the landlord elected to pay for them at a valuation; that he had never parted with his property in the crop, and that he was therefore entitled to recover in trover against the purchaser of the farm.

*Per* PATTERSON, J. A. If the lessor elected to pay for the work he was bound to do so when he gave the notice, or at latest when he resumed possession.

*Tilt*, for appellant.

*C. Robinson*, Q.C., for respondent.

Q. B.] [March 26.

GAUTHIER v. THE WATERLOO MUTUAL INSURANCE COMPANY.

*Insurance—Further insurance—Mistake.*

The assured under a policy containing a condition "that the company is not liable . . . if any subsequent insurance is effected in any other company unless and until the company assent thereto by writing signed by a duly authorized agent," effected an insurance with the Mercantile Insurance Company, which was void at their option on account of a similar condition, the policy with the defendants not having expired as a matter of fact, though plaintiff was led to believe it had.

*Held*, affirming the judgment of the court below (44 U. C. R. 490) that the plaintiff could not recover, for in point of fact there was a further insurance which was voidable only and not void; and the defendant's liability was not dependant upon whether the Mercantile Insurance Company's policy was finally to be adjudged valid or not, the stipulation as to further insurance being designed to apply to all cases of policies subsequently existing in point of fact without reference to their validity or effect.

*Crickmore*, for appellant.

*Bowlby*, for respondent.

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Q. B. and C. P.] [March 26.

HOWARD v. BICKFORD.

*Principal and agent — Sale on commission—Right to commission.*

The rule that the agent is entitled to his commission only upon a due and faithful performance of all the duties of his agency in regard to his principal, is not applicable to this case where the commission had been earned, and the relation of principal and agent had ceased, the alleged omission of duty being that the agent did not report to his principal a difference of opinion expressed by a party to the contract as to its construction.

The plaintiff as agent of the defendant bought from the G. W. R. Co. a quantity of rails for which he was to receive one dollar per ton commission, payable one half when the defendant should sell them, and the balance when he should receive payment for them. The defendant having failed to sell them, appropriated them by laying down some upon, and distributing the remainder along a road in which he had a controlling interest.

*Held*, that the plaintiff was entitled to his commission.

The defendant believing, and being led by the plaintiff, who was acting *bona fide* in so representing, to believe that the advantage which he would gain on a re-sale was extravagantly large, offered in addition to a commission on a purchase of the rails, the sum of $1,000, which was paid by draft drawn by the plaintiff upon, and accepted and paid by the defendant. The defendant believed that the $1,000 was to be illegally used by the plaintiff in effecting the purchase, and the plaintiff, knowing this, left him under that impression. The expected advantage was not obtained.

*Held*, that the defendant was not entitled to recover back the $1,000.

*H. Cameron*, Q.C., for the appellant.

*E. Martin*, Q.C., for the respondent.

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C. P.] [March 26.

WALTON v. THE CORPORATION OF THE COUNTY OF YORK.

*Negligence—Ways—Ditches—Obligation to fence or grade.*

Action for negligence in not keeping in repair a county road. The plaintiff in driving along the road was carried into the ditch by his horse, which shied at some object. The travelled portion of the road, which was thirty feet wide, sloped gradually from the crown to the edge of the ditch, which was four feet wide —2½ at the bottom, 18 inches deep, measuring it from its edge. At the trial the plaintiff obtained a verdict for $400, and the Court below made absolute a rule for a non-suit, (30 C. P. 217), which also asked in the alternative for a new trial, holding that the having no guards or railings to the ditch was no evidence of neglect to keep the road in repair.

*Held*, that the question whether or not such a place required protecting guards, was a question of fact, and as there was some evidence of danger here, the case was not one that could properly have been withdrawn from the jury, and the appeal was therefore allowed.

The question of fact to be determined is, whether the road, having regard to all proper considerations, was in a state reasonably safe and fit for the ordinary travel of the locality.

The case coming on as it did, before this Court, the question of a new trial was left untouched. See *Hamilton* v. *Myles*, 24 C. P. 325.

*Donovan*, for plaintiff.

*J. K. Kerr*, Q. C., for defendants.

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Spragge C.] [March 26.

LIVINGSTONE v. WOOD.

*Appeal upon questions of fact—Balance of testimony.*

The Court below, having found upon the evidence (27 Gr. 515) that the plaintiff was entitled to redeem a bond for $4,000, assigned to the defendant to secure $2,000, the defendant giving a separate agreement to re-assign on payment of the loan and interest;

*Held*, that though the evidence as printed appeared to favor the defendant's view, yet not to such an extent as to show clearly that the learned judge who saw the witnesses was wrong, the decree should not be disturbed.

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

*W. Cassels*, for the respondent.

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Proudfoot, V. C.] [March 26.

BLAKE v. KIRKPATRICK.

*Contract of hiring—Rescission of contract.*

The plaintiff agreed with the defendant to serve him as manager of a tannery for six years, the agreement reciting that he was a practical tanner and was to manage the works, while the defendant was to furnish the capital. He also agreed to disclose to the defendant a secret way of tanning, which defendant was not to use after the agreement, except in connection with plaintiff, and the secret process was to be carried on in the works.

The defendant discharged the plaintiff in about seven months, alleging among other things that he was not a practical tanner, that he was not using the secret process, and that he had not disclosed that process to the defendant.

*Held*, reversing the judgment of PROUDFOOT, V. C. (27 Gr. 86), upon the evidence that the plaintiff was a practical tanner within the meaning of the agreement; that the manufacture of leather was being carried on according to the secret process, and that as no time was limited for disclosing the secret process the plaintiff was not in default, and therefore the defendant, who had never asked for the disclosure, had no right to dismiss the plaintiff for non-disclosure. A reference was therefore directed as to the damages sustained by the failure of the defendant to perform his part of the agreement, and for the dismissal.

*W. Cassels*, for the appellant.

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

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Proudfoot, V. C.] [March 26.

DUFF v. THE CANADIAN MUTUAL INSURANCE COMPANY.

*Mutual insurance companies—Separate branches—Guarantee capital fund—Liability of policy holders.*

The defendants, a mutual insurance company, had divided their business into several branches, pursuant to the Act, and had raised a guarantee capital fund. All losses were paid out of the guarantee fund. In two branches in which the policies were cancelled, it was proved that the amounts to be collected on the premium notes would not pay the losses in those branches.

*Held*, affirming the decision of PROUDFOOT, V. C. (27 Gr. 391), that the policy holders in the solvent branches were not liable in respect of any sums paid for losses appertaining to other branches, but merely for the balance of any which may be found due from them respectively for moneys paid out of the guarantee fund for their losses and expenses.

*Semble*, that whether the power of assessment was to be exercised in the discretion of the directors, or was obligatory upon them, it is not in the power of the Court of Chancery to do what the Directors might or should have done.

*Duff*, for plaintiff.

*E. Martin*, Q. C., *R. Martin*, Q. C., *Osler*, Q. C., *Gibson*, and *Laidlaw*, for defendants.

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Blake, V.C.] [April 11.

SIMONTON v. GRAHAM.

*Mortgage—Interest after maturity—Master's Office—Practice.*

In a foreclosure suit, the proviso in the mortgage was for payment of the principal "in three years from the date hereof, with interest at ten per cent., payable half-yearly."

On the reference, the Master allowed the plaintiff interest at ten per cent. up to the time the mortgage matured, and six per cent. afterwards.

*Held*, following *Dalby* v. *Humphery* and *Cook* v. *Fowler*, L. R. 7 H. L. 27, that where no rate of interest is fixed by the mortgage for payment after maturity, interest thereafter is awarded as damages for breach of contract; that *prima facie* the rate of interest stipulated for up to the time certain would be taken, but that would not be conclusive; that the onus then lay upon the person seeking to reduce the rate reserved to show that it was more than the ordinary value of money.

The case was referred back to the Master to take evidence as to such value. If the Master alters his former finding, costs to respondent; if he does not, costs to appellant.

*Armour* for appellant.

*Hoyles* for respondent.

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## COMMON PLEAS.

### VACATION COURT.

Osler, J.] [March 11.

THE MONTREAL CITY AND DISTRICT SAVINGS' BANK v. CORPORATION OF PERTH.

*Debenture—Conditions precedent—Presentation and surrender—Damages—Pleading.*

In an action on a debenture for £200 sterling, by which defendants agreed to pay bearer at the office of a named bank and on a day named, upon presentation and surrender of the debenture at the said office, alleging that the plaintiffs became the lawful holders and bearers thereof, before maturity, and that all conditions precedent were performed, &c., and averring as a breach the non-payment of the said principal sum.

*Held*, by OSLER, J., that the presentation and surrender of the debenture at the said office, on the said date, were conditions precedent to the plaintiff's recovery, but that interest, being merely an accessary to the principal sum, need not be claimed as damages in the declaration, and that therefore it was no departure for a replication herein to show for the first time, that damages or interest was all that was claimed; but that it was a departure for the replication to allege presentation on a day later than that named in the bond, the allegation of performance of conditions precedent in the declaration, including such presentation, &c., on the day named.

A plea after traversing the presentation of the debenture a, &c., alleged that it was afterwards paid, and was then duly surrendered and delivered up.

*Held*, a good plea, because by the exceptions taken to it the payment of principal debt was admitted, and no more than nominal damages, if any, could be recoverable; that payment or satisfaction of the debt would include the nominal damages for its detention, and that the surrender would show that the payment was in satisfaction and discharge of the debt, if not also of the damages, and that it was no answer that the surrender was by inadvertence or oversight when the surrender was intentional, but that it would be a good answer that the delivery up was on the agreement and understanding that the right to claim such damages was reserved, as the surrender would then be not for the purpose of cancellation, and with the intention of not yielding the right, if any, to damages.

*S. Richards*, Q. C., for the plaintiffs.

*R. Smith* (of Stratford), for the defendants.

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## CHANCERY.

Blake, V. C.] [March 23.

THOMPSON v. TORRANCE.

*Mental capacity—Testamentary capacity—Will obtained by interrogation—Mortmain Acts.*

The testator, a man of education, had become so weakened by illness as to be confined to his bed for weeks prior to his death, and a day or two before that occurred, executed a will by affixing his mark thereto, the instructions for which were obtained by the person preparing it by putting questions to the testator as to the disposition of his different properties; such will when drawn having been read over to the testator clause by clause, who expressed his assent to some of them, while as to others he made intelligent remarks and some changes in the provisions thereof, and then executed it. The Court (BLAKE, V. C.,) in a suit brought to impeach the will as having been obtained by fraudulent practices and undue influence of persons benefited thereunder, as well as by the persons concerned in the preparation of the will, refused the relief sought and dismissed the bill, with costs to be paid out of the residuary estate; although it was shown that though notice had been given to the testator, he was wholly unprepared to make the will when he came to the act—that there was no intention on his part to make a will—that he was a man who, when in possession of his mental faculties, was not likely to take suggestions from others—that not a single devise originated with the deceased—that the author of the will did not know what property the deceased had—that he admitted if he had had this knowledge he would have spoken to him seriously on the subject of his relations—that the will was inofficious—that the testator was 84—that it took two hours to prepare the will, although it covered but one foolscap sheet—that they sent and got the number of the lot from a neighbor, showing that they could not obtain it from the deceased. The residuary estate, consisted of mortgages, the bequest of which, under the Mortmain Act, was declared invalid, and to belong to the next of kin of the testator, the plaintiff in the suit.

Proudfoot, V. C.] [April 2.

WORKMAN v. ROBB.

*Fraudulent conveyance—Statute of limitations.*

A bill was filed in 1880, alleging that in June, 1864, the defendant L. conveyed to the defendant R. a lot of land, which conveyance was either voluntary or the consideration received therefor had been repaid, and that L. had ever since occupied the lands, without any acknowledgment of title in R. up to January, 1880, when L. attorned to R., placing his (L.'s) son in possession. On the hearing it was satisfactorily established that R. was a mortgagee of the property, and that in 1864 the equity of redemption had been released in consideration of further advances to L., who then left the country and did not return until 1867, when he went into possession and expended large sums of money in improvements made after consultation with R., and which were so made in lieu of rent. The Court, [PROUDFOOT, V. C.,] was of opinion that the suit entirely failed so far as it rested on the fraudulent character of the original transactions between L. and R., and that L. was not compelled to assert a title by length of possession so as to enable an execution sued out at the instance of the plaintiffs to attach upon the property.

*Keffer* v. *Keffer*, 27 C. P. 257, remarked upon and distinguished.

Blake, V. C.] [April 6.

DIRECT CABLE COMPANY v. DOMINION TELEGRAPH COMPANY.

When a submission to arbitration provides for making such submission a rule of any particular Court, no suit or proceeding can be had in any other Court to set aside the award although such submission has not been made a rule of the Court named in it.

Before an award has been made a rule of Court, a Court of equity has jurisdiction to restrain an arbitrator improperly appointed from entering upon the duties of such arbitration. Where a submission to arbitration has been made a rule of Court, no application can be made to any other Court for the purpose of setting aside the award.

Where the defendants in the suit resided in this country and the plaintiff's principal office was in England, and a contract was entered into there between the parties which was to be

executed in New York, a suit in respect thereof may be instituted in this Province.

In a suit in this Court to set aside the nomination by the defendants of an arbitrator on behalf of the plaintiffs, for irregularity in such nomination—

*Held*, that the arbitrators being necessary parties, and the defendants resident in this country, the arbitrators though resident out of the jurisdiction, were properly made defendants to the bill.

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Blake, V. C.] [April 11.

RE LAYCOCK.

MCGILLIVRAY V. JOHNSON.

*Administration Suit.*

After an abortive sale by auction, and an abortive sale by tender, the plaintiff who had the conduct of the third sale obtained leave from the Master to bid, and at the solicitation of all parties interested purchased the property at what was shown to be a good price. The guardian of the infants was not aware that the Master had given the plaintiff leave to bid, but did not oppose the motion on a motion to confirm the Master's report.

BLAKE, V. C.:—"One of the most stringent and jealously guarded rules of the court is that a party's *prima facie* interest will not be permitted to conflict with his duty. The vendor's duty is to get as high a price as possible—his interest, if he be allowed to bid, to pay a low one. The jurisdiction in such cases rests exclusively with the court, and the local Masters cannot invade the court's prerogative and expect to have that invasion confirmed by *nunc pro tunc* orders. The plaintiff's solicitor presumably knew the well-established practice of the court, the growth of many years, the subject of many reports, and should have asked the leave of the court before the rule. To encourage this practice would be to establish a most dangerous precedent. I refuse the application."

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## CHANCERY CHAMBERS.

Blake, V. C.] [Feb. 28.

GODERICH V. BRODIE.

*Service of bill of complaint—Assignee in insolvency—Absconding defendant.*

Where the defendant in a suit had absconded to the United States before the filing of the bill, and two months after the filing of the bill an assignee in insolvency was appointed by the creditors of the defendant, and the assignee was served with the bill, but not within the time limited by the general orders, the Referee in Chambers made an order allowing the service as good, though made 14 months after the bill was filed.

*Held*, on appeal, affirming decision of the Referee that the defendant having absconded was a sufficient reason for not proceeding with greater diligence.

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## DIVISION COURTS.

1st. D. C., Middlesex.] [Feb. 12.

ENGLISH LOAN COMPANY V. HARRIS.

*Division Court Act of 1880—Jurisdiction.*

The defendant applied by written application for a loan from the plaintiffs. The application was signed at the village of Wiarton, within the limits of 8th Division Court, County of Bruce, where defendant resided. The loan was not effected. The plaintiff brought action in the 1st Division Court of Middlesex to recover costs paid to solicitor for drawing mortgage, investigating title, &c. The head office of the plaintiffs was in the city of London, within the limits of the 1st Division Court of Middlesex. The defendant obtained a summons under sec. 11 of the Division Court Act of 1880, calling on plaintiffs to shew cause why all papers and proceedings should not be transferred to the 8th Division Court of the County of Bruce, and become proceedings thereof as though this cause were at first properly entered therein, on the ground that this Court had no jurisdiction.

ELLIOT Co. J. In this case the writter application emanated from the defendant at Wiarton. Upon this application the proceedings were taken. It is, therefore, a portion of the contract and the case seems undistinguishable from *Hagle* v. *Dalrymple*, 8 Pr. R. 183, and so long as that case, also *King* v. *Farrell* 8 Pr. R. 119, and *Noxon* v. *Holmes*, 24 C. P. 541, remain as authorities in our Courts upon the questions involved in this matter, I must adhere to them. The summons must be made absolute.

*Summons absolute.*

# REPORTS.

## ONTARIO.

### COUNTY COURT OF THE COUNTY OF GREY.

### McCLURE v. FARLEY, *et al.*

*Division Court transcript—Setting aside execution—Execution not following judgment.*

A Division Court transcript set out the proceedings and judgment against two defendants, the issue of execution in the Division Court, return of execution, money made partly of the goods of one defendant and partly of goods of the other, and alleged that one defendant was surety for the other, and that plaintiff had assigned the judgment to the alleged surety. The executions in the County Court were against one defendant only, the alleged principal.

*Held*, that the transcript and executions were irregular, and should be set aside.

[Owen Sound, January.]

In this case, plaintiff sued the two defendants in the 6th Division Court, Grey, and recovered judgment against both. Execution was issued against both defendants in the Division Court, and the whole amount was made, partly of the goods of Farley, and partly of the goods of Cooke. Cooke, alleging that he was surety for Farley, issued a transcript to the County Court, the transcript stating that he was surety and that he had obtained an assignment of the judgment from plaintiff. The County Court executions were against Farley only.

A summons was obtained to set aside the transcript and executions on the grounds:—

1. That the transcript was not a transcript of the Division Court judgment.

2. That there was no return of "*nulla bona*" to the Division Court executions—that a transcript could not issue from the Division Court after the judgment therein had been satisfied.

3. That the transcript was not in the form required, as it showed that the judgment had been satisfied.

4. That the execution in the County Court did not follow the judgment, the judgment being against defendants jointly, and the executions being against one defendant only.

*Frost* showed cause, and contended that the execution was authorized by the transcript and the Act R. S. O., cap. 116, secs. 2 and 3. The executions may be amended.

*Lane* and *Rowe*, in support of the summons, contended that the remedy of the defendant Cooke was by action against Farley, and that the transcript was irregular in form, and cited *Farr* v. *Robins*, 12 C. P. 35; *Jacomb* v. *Henry*, 13 C. P. 377; *Hope* v. *Graves*, 14 C. P. 393; *In re McLean & Jones*, 2 C. L. J. N. S. 206; *Scripture* v. *Gordon*, 7 Prac. R. 164. The execution should follow the judgment: Arch. Prac. 554; *Clarke* v. *Clement*, 6 T. R. 525.

MACPHERSON Co. J., held that the transcript was not in the form authorized by the Division Court Act, sec. 165; and the executions were irregular in form, as they did not follow the judgment, and made an order setting aside the transcript and executions with costs.

*(Note by Editors.)*

[The whole proceedings were clearly bad. There was nothing upon which to base an execution against lands. The return to the execution in the Court below showed that the judgment was satisfied. The first words of the section (165), "In case an execution is returned *nulla bona* limit the using of the transcript to cases where there is such a return (either as to the whole or in part), Even if the execution had been returned, *as to Farley only*, part made, and *nulla bona*, as to the residue, it would have been improper to issue a transcript, unless it was shown that Cooke also had no goods.

### GHENT v. TREMAIN.

*Division Court transcript—Omission of proceedings—Setting aside transcript.*

A Division Court Transcript to the County Court should set out all the proceedings in the Division Court—under R. S. O. cap. 47, sec. 165.

*Quære* if it is necessary to set out garnishee proceedings taken after judgment.

[Owen Sound, January.]

A judgment had been obtained in a Division Court, and an execution issued and returned *nulla bona*; an *alias* execution was afterwards issued, and returned *nulla bona*. The plaintiff had also taken certain garnishee pro-

ceedings in the Division Court. At the judgment upon which a small sum had been realized, and sums of money had been paid plaintiff, for which it was contended defendant had not got credit.

The proceedings were removed by transcript to the County Court. This transcript set out the first execution, and the return, but omitted to mention the second execution, and also omitted reference to the garnishee proceedings.

A summons was taken out to set aside the transcript and executions issued from the County Court, on the ground that the transcript did not set out the proceedings in the case, in that the second execution, and the garnishee proceedings were not mentioned; and on the ground that the true amount due was not stated in the transcript.

*Lane* and *Rowe* showed cause. If the correct amount due is not stated, this is only ground for amending, not for setting the proceedings aside. [MACPHERSON, Co. J., thought that an amendment might be made in this particular if the other objections could be got over.] It is not necessary to set out all the proceedings in the Division Court. Sec. 165 of the Division Court Act, cap. 47, R. S. O., says the transcript is to set out (1) the proceedings in the cause; (2) the date of the execution; (3) the bailiff's return of *nulla bona*. The general words of the first sub-section are cut down by the second and third sub-sections, which only require one execution and the return to be set out. The transcript being regular on its face, and showing that plaintiff was entitled to it, should not be set aside, but the parties should be left to contest it in an action of ejectment if a sale was had. The garnishee proceedings are collateral, not proceedings in the cause.

*Creasor* and *Morrison*, in support of the summons, contended that all the proceedings in the Division Court must be set out in the transcript—the section 165 requires all the proceedings to be set out: *Farr* v. *Robins*, 12 C. P., 377: *Hope* v. *Graves*, 14 C. P., 393; *Jacomb* v. *Henry*, 14 C. P., 377. The omission of the garnishee proceedings is fatal also. They argued that if the transcript was irregular the Judge had power to set it aside, and that they were not obliged to wait for a sale and then bring an action or defend one.

MACPHERSON, Co., J., held the omission of the second execution fatal to the transcript, and made an order setting aside the transcript and the executions thereunder with costs. Without deciding the point he thought the garnishee proceedings need not be mentioned, as they constituted another cause.

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*(Note by Editors.)*

[We are not prepared to say that we altogether agree with the learned Judge in the view he has taken. One would suppose that a strict compliance with the section in question (sec. 165 of R. S. O., chap. 47) both as to the letter and the spirit was not required. We must examine into the reasons which dictated these requirements. Division Court process never included a writ against lands, such a writ only issuing out of a Court of Record; and it was reasonable that a party to a suit in a Division Court, instituted expressly in order to afford a cheap and easy recovery of small debts, should be required to exhaust all the means and ends for doing so, provided for in that Court. Again, the statute of Geo. III. c. 1, (that in force when the old D. C. Act was passed), partly re-enacted by the C. S. U. C., forbade the issuing of an execution against lands, till after the return of a writ against goods, so that it became necessary to have something for the Clerk of the County Court to go by, before he could issue a fi. fa. lands upon a transcript from a Division Court. That something was the statement in the transcript that a fi. fa. goods had issued in the Court below and had been returned *nulla bona* as to the whole or part.

If, however, in addition to the first execution, an *alias*, a *pluries*, an *alias pluries* etc., had subsequently in proper order been issued, and each successively returned *nulla bona* and each leaving the judgment and the parties to it relatively in the same position, it might be doubted whether there was any necessity for reciting all these writs in the transcript; the omission of them would not prejudice the defendant nor deceive any one, and the insertion of them would not benefit him.

The same holds good as to garnishee proceedings and judgment summons process. If anything had been made in either of these ways, so as to alter the amount of the judgment as originally recovered, it ought, no doubt, to so appear in the transcript, and these proceedings recited therein.]

# QUEBEC.

## NOTES OF CASES.

(From the *Legal News.*)

### UNION BANK v. ONTARIO BANK.

*Banking—Forged Draft.*

One Deton, on the 17th September, opened a deposit account with the Ontario Bank at Montreal. On the 19th September he obtained from the Union Bank at Quebec a draft for $25 upon the agency of the Union Bank at Montreal. On the 21st September he deposited this draft, fraudulently raised in amount to $5,000, in the Ontario Bank at Montreal. The latter Bank took the precaution of stipulating that the depositor was not to draw cheques against the amount until the draft had been accepted by the Union Bank. The draft went to the Union Bank branch at Montreal in ordinary course, and this branch, having had no advice from its Quebec office, supposed it was all right and paid the money. Deton subsequently obtained from the Ontario Bank $3,500 on a cheque against his deposit, and fled the country before the fraud was discovered, which was not until six days after the draft was issued at Quebec.

The question was which Bank should suffer the loss of the $3,508 fraudulently obtained by Deton. The Union Bank claimed to be repaid the whole excess over the original $25. The Ontario Bank repudiated all liability, but offered to return the $1,500 which remained at the credit of Deton in the Bank.

Mr. Justice JETTE held that the Ontario Bank had taken all the care to guard against fraud that could be expected of it, and that the Union Bank, in neglecting to advise its Montreal branch of the draft, was in fault.

*Held*, on appeal (Monk J. *dissenting*) that the judgment was right.

RAMSAY, J. said, This case has to be decided by the law of England as it stood on the 30th May, 1849, Art. 2340 C. C. The date is unimportant in the present case. It seems to be unquestionable that according to that law the acceptor of a bill, the signature of which is genuine, but altered as to the amount since it passed from the hands of the drawer, and who had paid the same, could recover back the amount he had overpaid owing to the forgery. The cases of *Smith* v. *Chester*, 1 Durn. & E. 654, and *Jones* v. *Ryde*, 5 Taunt. 487, support this contention In the latter of these cases, Chief Justice Gibbs points out the distinction between the case before him and the case of *Price* v. *Neale*, 3 Bur. 1354, and the case of *Baillie* v. *Gingell*, 3 Esp. 60. It is quite evident, on general principles, that this must be true. The acceptor or payee got no value for his money, and consequently he had a right to recover back what he had paid, precisely on the same principle that any one who had received a counterfeit shilling from another by mistake could recover back his money. But it is contended that the acceptance differs from payment in this, that the acceptance is a deliberate recognition and a warranty of the whole bill. If this proposition be true, then there is an end to the discussion, but the authorities cited by appellant contradict this pretension. Daniel distinctly says the acceptor guarantees the signature and not the body of the bill. The one he has means of knowing about, the other he has not. The same doctrine is laid down in the case of the *National Bank of Commerce* (in New York) v. *The National Mechanics' Banking Association* 55 N.Y. Rep. 211, cited by respondent. Indeed, it is difficult to understand how any other doctrine could prevail. Starting from this point, appellants contend that they were not bound to know that the draft had been altered, that their acceptance covered only the signature, which was genuine. They say, moreover, that they were led into error by the fact that the draft had been passed by the Ontario Bank, —that if the unknown Deton had presented the draft himself they would have made enquiry, which would have resulted in discovery. In a word, they say that the Ontario Bank had passed upon them a forgery, and that, therefore, the respondents were obliged to return them the money and exercise their recourse against Deton. This position is doubtless very strong, and if it had been supported by authority I should not have felt disposed to alter the rule. Nevertheless, I do not think the argument perfectly sound. As we have already seen, the acceptor is held by his acceptance so far as to recognize that the signature, which he is presumed to know, is genuine. It seems to me that when a Bank is dealing with its own paper it should be presumed to know not only the signature but the whole document. It was the appellants who set the whole thing in movement, and by the signature of their cashier gave currency to a draft which they themselves did not know was forged. They were so secure that they ordered their branch to pay "with or without advice." It seems to me that any other doctrine would lead to inconvenience, and that if this does not hold good for drafts, it would be difficult to say why the rule should obtain with regard to bank notes.

### DARLING v. MCINTYRE.

*Insolvent Act of 1875—Action under sec. 133—Repealing Act.*

An action under s. 133 of the Insolvent Act of 1875 may still be brought, in any case in which the estate of the insolvent became vested in an official assignee before the passing of the act repealing the Insolvent Act.

MASSE *et al.*, v. ROBILLARD.

*Clerical influence in elections.*

A priest or clergyman may take the side of a candidate in an election, and support it by all lawful means, even from the pulpit. But if a priest does any unlawful act, such as using intimidation by refusing the sacraments to a person who will not vote as he wishes, he will be deemed the agent of the candidate, and the fact that he has committed the unlawful act in the exercise of his priestly office, will not protect the candidate from the consequences of such unlawful act on the part of an agent.

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DARLING *et al.* v. BARSALOU *et al.*

*Trade mark—Resemblance.*

B. & Co. registered a trade mark for the laundry soap made by them, the mark consisting of the imprint of a horse's head, with the words "The Imperial Laundry Bar" stamped on the face of each piece, and the words "J. Barsalou & Co., Montreal," on the opposite side. D. & Co. subsequently manufactured a soap with the imprint of the head of a unicorn and the words "A. Bonin, 115 St. Dominique street, Very Best Laundry" on the face (without any words on the opposite side).

*Held*, that there was no resemblance or similarity between the marks which could deceive persons of ordinary intelligence, and D. & Co. could not be restrained from continuing the manufacture of thir soap.

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EX PARTE ZINC.

*Extradition.*

A warrant of commitment for extradition should in its terms conform to the requirements of sect. 1, 31 Vict. (Can.) c. 94, in directing the person accused to be committed until surrendered on the requisition of the proper authority or duly discharged according to law. The judge is required to decide whether he deems the evidence adduced before him sufficient to justify the apprehension and commitment for trial of the person accused if the crime had been committed in Canada. If he finds in the affirmative he should so state it in his commitment, and certify the fact to the proper executive authority. His functions do not extend to determining whether the accused should be extradited; that rests with the Governor General after the evidence has been reported to him. If the judge fails to state in the commitment that he deems the evidence sufficient, the commitment will be held defective and insufficient.

Where a person charged with a crime is committed in pursuance of a special authority, the commitment must be special and must exactly pursue that authority. If the commitment does not on its face show that the case of the accused falls within the terms of the extradition treaty and the statutes authorizing the proceedings in extradition, or fails to contain the proper statutory conclusions, no sufficient cause of detention will have been shown, and he will be liberated on *habeas corpus*.

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## LAW STUDENTS' DEPARTMENT.

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### EXAMINATION QUESTIONS.

SECOND INTERMEDIATE.

*Common Law.*

1. Define and illustrate "Estoppel by Matter of Record."

2. Distinguish between a *good* and a *valuable* consideration, and point out cases in which the distinction is material.

3. What is necessary to constitute a valid contract for the sale (*a*) of growing potatoes, and (*b*) of growing grass? Give reasons for your answer.

4. When is a deed requisite to the validity of a contract *at common law*, *i. e.*, apart from statutory enactment?

5. What is the liability, in general terms, of a banker paying a cheque, the amount of which has been altered?

6. What is distress damage feasant?

7. Define trover, detinue, and replevin respectively.

8. What summary method is provided by statute for setting aside fraudulent conveyances at the suit of a judgment creditor?

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CERTIFICATE OF FITNESS.

*Smith on Contracts—Pleading and Practice.*

1. What must appear in a contract required by the Statute of Frauds to be in writing? What exception has been created by a subsequent Statute?

2. What are the matters usually provided for in partnership articles?

3. May a bill of exchange be drawn or accepted payable on a condition? What is the effect of a condition in either case?

4. Under what circumstances will non-presentment of a bill for payment be excused?

## CORRESPONDENCE.

*To the Editor of The Law Journal:*

SIR,—Since the passing of The Indicature Act, I, who expect to appear for call, &c., next February, feel that I am one of those who "blindly grope." How will the change affect the Final Examinations? Will it be necessary to be up in Stephens' Chancery Pleading? Will we be examined in the old practice of the courts, or the new, or both? Will Taylor's Equity continue one of the subjects? In a word, upon what subjects will we be examined?

By answering these questions you will greatly oblige,

Yours, &c.,
G. S. L. S.

April 6th, 1881.

[Our correspondent will see the answer to his question by referring to the advertisement in No. 6 of this Journal. Notice will be given of any change.—ED. *L. J.*]

## *DEATH OF JUDGE MACDONALD.*

AT a meeting of members of the Bar of the County of Wellington the following resolutions were passed:

"That the members of the Bar of the County of Wellington have heard with sorrow of the decease of Archibald Macdonald, Esq., late Judge of the County Court of Wellington, who for the period of twenty-four years efficiently performed the onerous duties of that position; and we desire to record our feelings of deep regret at the great loss not only we but the public have sustained in his death:

That as a mark of our respect for the memory of the late Judge Macdonald, the members of the Bar do attend his funeral in a body, and wear the customary mourning for the period of thirty days:

That we tender to the bereaved family of the late Judge Macdonald our heartfelt condolence in this hour of their affliction and that a copy of the foregoing resolutions be transmitted by the secretary to the family of the late Judge."

## Law Society of Upper Canada.

OSGOODE HALL.

HILARY TERM, 44TH VICT.

During this Term the following gentlemen were called to the Bar.

The names are arranged in the order in which they entered the Society, and not in the order of merit.

George A. Skinner, John Philpot Curran, Reginald Boultbee, Harris Buchanan, Goodwin Gibson, William James Thorley Dickson, James Alexander Allan, Walter Alexander Wilkes, James Harley, William White, Daniel Erastus Sheppard, Wallace Nesbitt, James B. McKillop, Colin Campbell, Phillip Henry Drayton, Thomas C. L. Armstrong, John Doherty, Alexander Dawson, Thomas Dickie Cumberland, J. Gordon Jones.

The following gentlemen were admitted into the Society as Students-at-Law.

GRADUATE.

Henry Gordon Mackenzie.

MATRICULANTS OF UNIVERSITIES.

James M. Knowlson, Edwin Mowat Henry, Edward Wilson Boyd, Reginald Rudgerd Boulton, William Arthur Campbell, Arthur Luke Rundle, Frederick Laing Fraser.

JUNIOR CLASS.

James F. Williamson, John Thacker, Edmund Walker Head Van Allen, Robert George Code, William Robert Smyth, William Nassau Irwin, Edward Herbert Ambrose, George Edgar Martin, John Smith Meek, Archibald McKechnie, William Henry Tweedale, Thomas Francis Johnson, Sidney Chilton Mewburn, George Hutchison Esten, William Lawrence Leslie.

The following gentlemen passed their examination as Articled Clerks.

Albert Wesley Benjamin, John Hambly, James Joseph Berry.

## RULES

As to Books and Subjects for Examination, as varied in Hilary Term, 1880.

PRIMARY EXAMINATIONS FOR STUDENTS AND ARTICLED CLERKS.

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 upon giving six weeks' notice in accordance with the existing rules, and paying the prescribed fees, and