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ANTI-COMBINES ACT.

The judgment of the Court of Appeal in the great case of the *Mogul Steamship Co.* v. *M'Gregor, Gow & Co.* cannot but be regarded as the most important decision since that of *Vagliano* v. *Bank of England*, though, like that case, the matter is to be carried to the House of Lords. In the result, so far as the Court of Appeal was concerned, the judgment of Lord Coleridge, L.C.J., in favour of the defendants, has been upheld by Bowen and Fry, L.JJ., Lord Esher, M.R., dissenting. In his judgment the M.R. laid down amongst a series of propositions that an agreement among two or more traders who are not, and do not intend to be, partners, but where each is to carry on his trade according to his own will, except as regards the agreed act, that agreed act being one to be done for the purpose of interfering—*i.e.*, with intent to interfere with the trade of another—is a thing done not in the due course of trade, and is, therefore, an act wrongful against that other trader, and is also wrongful against the right of the public to have free competition among traders, and is, therefore, a wrongful act against such trader, and, if it is carried out and injury ensues, is actionable. On the other hand, Bowen, L.J., saying that it must be taken that the defendants had no personal ill-will to the plaintiffs, nor any desire to harm them, except such as was involved in the wish and intention to discourage, by the measures they took, the plaintiffs from sending rival vessels to certain Chinese ports, laid down that competition, however severe and egotistical, if unattended by circumstances of dishonesty, intimidation, molestation, or such illegalities as fraud, misrepresentation, or the intentional procurement, without just cause, of a violation of individual rights, contractual or otherwise, gives rise to no cause of action at common law; and the Lord Justice pointed out that in fact the combination of capital for purposes of trade and competition was a very different thing from such a combination of several persons against one, with a view to harm him, as falls under the head of an indictable conspiracy.

We insert the foregoing article from *Pump Court* of 24th July last, thinking it may tend to throw some light on Mr. Wallace's Anti-Combines Act, and the interpretation thereof, as to what acts are forbidden by and punishable under it, as being unlawfully done. From the judgment of the Court of Appeal, upholding that of Lord Coleridge, and Mr. Justice Bowen's reasons for so doing, which

seem to us reasonable and right, it would appear that a trust or combine within the limits mentioned in the said reasons, would not be unlawful by the law of England, nor would its object be held to be unduly effected. Lord Esher, however, thinks otherwise; and if the case is to be carried to the House of Lords we may say "*adhuc sub judice lis est.*" We believe there has been no Canadian judgment under this Act.

PARTIES TO ACTION TO ENFORCE MECHANICS' LIEN.

It will be seen from the note of the case of *Cole* v. *Hall*, *ante* p. 284, that the Court of Appeal has affirmed the decision of Ferguson, J., upon which we offered some remarks, *ante* Vol. 24. p. 481. The decision of the Court of Appeal proceeds on the ground taken by Ferguson, J., that according to the ordinary procedure of the Court to enforce liens, it is right and proper to make subsequent incumbrancers parties in the Master's office and not original parties to the writ. This, of course, apart from any question as to any Statute of Limitations, is a truism; but would this "ordinary procedure" enable a plaintiff to resist a defence of the Statute of Limitations if raised by a party added in the Master's office? For instance, assume a mortgagee brings an action for the foreclosure of the mortgaged premises, and a subsequent mortgagee in possession is not added in the Master's office until after the time limited by the statute for the plaintiff to bring action against him has expired. Would it be any answer to the defence of the Statute by the party added, that the action was commenced against the mortgagor in due time? The case has never actually arisen in any reported case that we have seen, but, on principle, we should say that it would be no answer. We observe that the Court of Appeal distinguishes *Cole* v. *Hall* from the *Bank of Montreal* v. *Haffner*, 10 App. R. 592, Cass. Dig. 289. In that case, the plaintiff, after bringing a suit against the "owner" to enforce his lien, in which the mortgagee was not made a party either by bill, or in the Master's office, subsequently brought a new suit against the mortgagee after the 90 days had expired, in order to recover the increased selling value caused by the plaintiff's improvements; but the action was held to be too late. If it was too late to bring a new action, would it not also have been too late to have added the mortgagee as a party in the Master's office, in the original action? because, according to the cases of *Juson* v. *Gardiner*, 11 Gr. 23, *Sterling* v. *Campbell*, 1 Chy.Ch. R. 147, a party added in the Master's office is not a party until the date of the notice, or Master's order, adding him, and therefore, if an attempt had been made to add the mortgagee as a party in the Master's office in the original suit after the 90 days had expired, would it not have also been held to be too late to do so? We are inclined to think it would, and that this is a proper deduction from the case of *Bank of Montreal* v. *Haffner*. Any distinction between the case of a prior mortgagee sought to be made a party to a lien action in respect of the plaintiff's right to the increased selling value, and a subsequent mortgagee, or execution creditor, on the ground, that the one is prior, and the other subsequent, to the

claim of the plaintiff, appears to us to be somewhat illusory. It is true the mortgage of the prior mortgagee is prior in point of time to the plaintiff's lien, but it is subsequent in point of interest to the extent by which the selling value of the mortgaged premises have been increased by the plaintiff's improvements, and to that extent, the prior mortgagee is by force of the Statute postponed to the plaintiff, and therefore as to him, becomes a subsequent incumbrancer, and it is in that character he is really made a party. The result of the two decisions of *Cole* v. *Hall*, and *Bank of Montreal* v. *Haffner* appears to lead to the conclusion, that although an independent action cannot be brought against a mortgagee in respect of the increased selling value after the lapse of the 90 days, yet he may in common with all subsequent incumbrancers be made a party in the Master's office to any action commenced within the 90 days against the owner, even though the 90 days may have expired before he is actually added as a defendant.

RAILWAY COMMISSIONS.

THE second annual report of the Interstate Commerce Commission in the United States has come to hand, and as it relates to matters connected with railroads, the governing principles of which are the same in Canada as in the States, we propose to give a short review of the results of this Commission.

All those who have followed with any interest the inception and subsequent stages of the proposals for an Interstate Railway Commission, until the present law came into force, appointing a Commission, will recollect the strenuous opposition given it by the railways and others. It was predicted that it would destroy the commerce of the country and ruin the railways. When the recommendation of the joint committee of the two Houses was presented, and the Act framed thereon was brought up for discussion, it was admitted that the Act contained a couple of material defects. As, however, the Act could not be amended without losing a session, many of those who were opposed to some of the provisions of the Act, but were in favour of the principle, voted for it and it became law. It was then predicted by some, most of them railway men, that it would be an entire failure, and for a time they laid themselves out to make it a failure by endeavouring to make as many difficulties as possible, and by giving no more assistance in carrying it out than they could help. This action, however, was not found to be a great success. The Commission was composed of first-class men who acted in all cases judiciously and fairly to all parties concerned, and the railways gradually found that instead of the Commission being a detriment to them it was really a help. It is true the Act prevented the many discriminations that had existed, and to some extent curtailed the powers of the railways to do as they pleased; but on the other hand it really helped the railways: (1) It prevented the cutting of rates at particular points to the detriment of others nearer the market; and (2) It gave the railways the right to refuse to give discriminations which they claimed were so often forced on them by customers against their will. One result amongst others was to make the freight

rates steadier and fairer than they were before, besides providing a tribunal of easy access which could inquire into and decide the question in dispute speedily and inexpensively, and in most cases in the locality where the cause of complaint arose. These in themselves were found to be of great benefit, particularly the being able to get a case heard and determined, no matter what the result might be, as there was a continual state of pent up irritation between the business public and the railways which never could get an outlet except by the expensive and tedious process of a law-suit, which for many reasons was hardly ever resorted to. Now, however, complainants come freely before the Commission, and from the large number of cases before them and the generally very satisfactory result of them, we think our neighbours have cause to congratulate themselves on having established such a useful tribunal. There is no doubt it is the only true way of settling such disputes. The experience gained by the Commissioners, whose whole time is given to this all-important subject, will undoubtedly be the best medium through which the legislature can be from time to time advised of the changes in the law required for the proper government of the railways.

Amongst other decisions of the Interstate Commerce Commission they lay down the principle, "That carriers in making rates cannot arrange them from an exclusive regard to their own interests, but that they must respect the interests of those who may have occasion to employ their services, and subordinate their own interests to the rules of relative equality and justice." These are good principles and such as we think have generally been forgotten by railways in dealing with the public, the railways maintaining that they have the same right of action in dealing with the public as one business man has in dealing with another, entirely forgetting that it is from the general public they get these privileges, and for that reason alone the public have a right to be dealt with without favouritism or discrimination.

In the United States the railway question is admitted to be the most important one in the country, not only from its size and ramifications, but from its intimate connection with the business of all classes of the community. Besides this, the ever varying phases of business continually provide a crop of new questions of a mercantile nature to be considered, adjusted, and determined on. This cannot be done in even a fairly proper way without the assistance of some body which, from a continual acquaintance with the subject, is able to give impartial decisions.

That which has proved beneficial in the United States would, we doubt not, prove beneficial in this country. The volume of railway business is of course vastly less here than across the border. But it is even now very large and is constantly increasing. The time must soon come when some similar commission will be constituted to do similar work in this country.

THE MEETING OF THE COUNTY JUDGES.

The County Court judges of Ontario have held their sixteenth annual meeting at Osgoode Hall, but no official report of the proceedings is published, and therefore the profession and public are not in possession of any information concerning the business transacted or the conclusions arrived at by the learned judges who assembled there for the interchange of opinions and the discussion of topics of interest to the judiciary and, we suppose, in most instances, to the public as well. There are obvious reasons why no official report of these proceedings is issued, yet we think that many of the topics discussed and conclusions reached are of so much professional interest that they should be published in outline at least, and we have been at some pains to ascertain such particulars as may usefully be laid before our readers.

It may readily be supposed that, as many of the county judges are revising officers, much attention was given to the Franchise Act. It seems to have been concluded that there is no necessity for taking the oath of office, except where appointments have been made since 1886. It was, in the opinion of the meeting, discretionary with the revising officer, where the voters exceed 300 in an existing polling sub-division, to sub-divide that polling division before the final revision of the list. But sub-division or re-arrangement is obligatory if there should prove to be more than 300 registered voters. The order making changes in the sub-division need not be posted elsewhere than in the divisions affected. The divisions may be numbered consecutively for the whole riding, or for each municipality, the former course being generally preferred, but there are obvious advantages in giving a local designation to each sub-division, and the practice is free from objection.

It was properly held that when declarations are made on information and belief, as they so often are, the nature of the information and the grounds of the belief should be set out with clearness and fulness, and that such declarations should be accepted only when this is done, and where the grounds on which the information and belief rest are, in the opinion of the revising officer, satisfactory. Some attention was also given to departures from the form of declaration prescribed by the Act Respecting Extra-Judicial Oaths, and it was considered that where the declaration does not state that it is made under that Act, it should be rejected as deficient.

It was urged that parties should not include in one declaration names from several divisions, so that all papers relating to each division could be kept separate.

By sec. 75 of the Assessment Act the clerk of each municipality is required to transmit to the county clerk a certified copy of the assessment roll of his municipality, as soon as it is finally revised and corrected. This furnishes the revising officer with a convenient means of access to the assessment rolls. Considerable diversity of opinion, we are informed, exists among the judges as to whether names already on the list for income should be allowed to remain or

should be put on the list for removal. It was pointed out on the one side that no information could be obtained as to income voters from the assessment rolls, and that these names were already on by judicial authority, and should not be removed unless cause were shown. On the other side it was contended that the only legal way for an income voter to be put on was by means of a declaration. Each view had numerous supporters. The question as to whether wage-earners whose names appear on the assessment rolls, should, or should not, be put on the first supplementary lists as income voters, was also left undetermined.

Various matters relating to the remuneration of the revising officers, and their re-imbursement for necessary expenditures were discussed and recommendations were made to the Government relating thereto. Great as is the expense involved in the working of the Dominion Franchise Act, the remuneration of the officers on whom the burden of the work falls is, in many instances, quite inadequate, and it seems unjust that they should have to pay out of their own pockets the expense of hiring court rooms for the final revision of the lists.

Some discussion took place as to the effect of the repeal of section 7 of the Act, thereby impliedly repealing the words "except as hereinafter provided" in sub-secs. 7 & 8 of sec. 3. Some doubt seems to exist as to whether it has not done away with the privilege of counting in the time of occasional and other absences as part of the time of residence of farmers' and owners' sons, as provided for in s.s. *a* & *b* of the repealed section. This seems to be the general impression.

Various points arising out of the criminal law were also discussed. The Dominion Act, 52 Vict., c. 44, s. 2, relating to the conditional release of first offenders in certain cases was considered, and the view that the words "punishable with not more than two years' imprisonment" were not to be restricted to cases in which the maximum penalty would be two years' imprisonment, but were to be taken as applying to any case in which the penalty may, in the judge's discretion, be not more than two years' imprisonment, was approved.

The Dominion Statute 52 Vict., c. 47, s. 4, speaks of the County Court Judge's Criminal Court of the County. Sec. 2 of chapter 49 of the Revised Statutes of Ontario calls the same tribunal the Judge's Criminal Court. Which is the proper name? The judges seem to be in favor of using the name fixed by the Dominion Statute. These courts have not power in Ontario to try perjury or forgery, though in Nova Scotia and Prince Edward Island they have. This seems anomalous.

Under the Dominion Act, 52 Vict., c. 47, s. 12, the County Attorney may, with the consent of the judge, prefer against the prisoner a charge or charges, for any offence or offences for which he may be tried under the provisions of this Act, other than the charge or charges for which he has to go to gaol for trial, although such charges are not mentioned in R.S.C., c. 174, s. 140. Suppose a prisoner tried and committed for robbery, and the County Attorney with the consent of the judge, prefers a new charge of indecent assault, the prisoner elects to be tried by a jury and is remanded. The question arises, whether the indictment must be preferred by the direction of the

Attorney-General, or whether the Grand Jury can present a bill of indictment unless the case comes under s.s. 2 of s. 140. The conclusion reached, so far as our information goes, appears to have been that the bill of indictment could be presented by the Grand Jury without the direction of the Attorney-General.

Such meetings as the one in question can not fail to be productive of much good. It is unfortunate that the work done by the judges in these gatherings in the interest of the public service, has to be done at the cost of the judges themselves. This ought not to be.

COMMENTS ON CURRENT ENGLISH DECISIONS.

The Law Reports for July comprise 23 Q.B.D., pp. 1-135; 14 P.D., pp. 73-85; and 41 Chy.D., pp. 213-438.

ARBITRATION—APPLICATION FOR LEAVE TO REVOKE SUBMISSION—ARBITRATOR MAKING MISTAKE IN LAW AS TO MATTER WITHIN HIS JURISDICTION—3 & 4, W. 4, c. 42, s. 39—(R.S.O., c. 53, s. 38).

In *James* v. *James*, 23 Q.B.D. 12, the Court of Appeal affirmed the decision of a Divisional Court (22 Q.B.D. 669). An application was made in the Court below for leave to make a submission to arbitration under the provisions of 3 & 4, W. 4, c. 42, s. 39, (R.S.O., c. 53, s. 38), on the ground that the arbitrator in the course of the proceedings was making a mistake of law in a matter within his jurisdiction. The Divisional Court refused the motion, and the Court of Appeal (Lindley and Lopes, L.JJ.) affirmed the decision. The ground upon which the Court of Appeal proceeded may be gathered from the following passage from the judgment of Lindley, L.J.: "The parties agreed to refer all matters in difference to arbitration, and it was made a term of the submission that the arbitrator might decide the question of liability first. The parties came before the arbitrator and asked him to decide the question of liability first. He was not asked then to state a special case, but to decide the question of liability. He did decide it; and then the party against whom he decided comes and asks to be allowed to revoke the submission. The question is whether it is right that he should be allowed to take that course, after inducing the arbitrator to do what, in the ordinary course, he would not have done, viz.: to decide the case piecemeal. It seems to me that to take that course is really not quite consistent with good faith."

The decision of the House of Lords in *East and West India Dock Co.* v. *Kirk*, 12 App. Case, 738, was considered by their Lordships to lay down no general rule opposed to what had previously been the ordinary practice.

TRAMWAY COMPANY—STATUTORY POWERS—RUNNING POWERS OVER ANOTHER LINE—TRAMWAY IN A DEFECTIVE CONDITION—TRESPASS.

In *Sadler* v. *The South Staffordshire Tramways Co.*, 23 Q.B.D. 17, the Court of Appeal (Lord Esher, M.R., and Lindley and Lopes, L.JJ.) affirmed a decision of Charles, J., at the trial of the action. The action was brought by the plain-

tiff to recover damages for injuries sustained by him by reason of a tram-car of the defendants' running off the line, owing to the defective condition of the tramway. The defendant Company was authorized by Act of Parliament to run tram-cars by steam, and had running powers over the line of another tramway company along a highway. By reason of certain points upon the latter line being defective, a tram-car of the defendants drawn by a steam engine went off the line and injured the plaintiff, who was on the highway. The defendants sought to escape liability on the ground that they were merely exercising their statutory powers in running over the line of the other Company and were not responsible for accidents resulting from defects in that line. But the Court of Appeal was unanimous in holding that the statutory powers of the defendants could not be taken to authorize them to run their tram-cars along a tramway in a defective condition; and that the tramway being defective, the defendants were guilty of an unlawful act in running their cars over it, and were therefore liable to the plaintiff.

STATUTE AUTHORIZING A PERSON TO BE HEARD BY HIMSELF—RIGHT TO APPEAR BY SOLICITOR.

The Queen v. *Jones*, 23 Q.B.D. 29, was an application for a mandamus to a commissioner assigned to try an election petition, to compel him to give audience to the solicitor for a person, not a party to the petition, who had been notified as having been guilty of corrupt practices. A statute provided that before any such person should be reported by the Election Court to have been guilty of corrupt practices, he must be notified, and in case he appears upon such notification, the Court shall give him an opportunity of being heard "by himself," and of calling evidence in his defence to show why he should not be reported. Lord Coleridge, C. J., and Pollock, B., and Hawkins, J., were unanimously of opinion that the words "by himself," precluded the right to be heard by counsel, or solicitor. The commissioner refused to hear the solicitor, because in his opinion, counsel alone could be heard. But, as we have seen, the Court refused the mandamus on the ground that neither counsel nor solicitor had any right to be heard.

LANDLORD AND TENANT—COVENANT RUNNING WITH THE LAND—LEASE OF PUBLIC HOUSE—COVENANT TO CONDUCT BUSINESS SO AS NOT TO FORFEIT LICENSE.

Fleetwood v. *Hull*, 23 Q.B.D. 35, was an action by the assignee of a reversion of a lease to enforce a right of re-entry for breach of covenant. By the covenant in question the tenant covenanted so to conduct business on the demised premises (which was a public house) as to afford no ground or pretext whatever, whereby the license might be suspended, discontinued, or forfeited or be in any danger of being suspended, discontinued, or forfeited. The lease contained a right of re-entry for breach of covenant. A person who occupied the premises by leave of the lessee was convicted of selling drink within prohibited hours. By a license Act, if three convictions for breach of the Act were indorsed on the license it would forfeit the license. The conviction in question had not been indorsed on

the license. On the two questions argued before Charles, J., he held that the covenant was one which ran with the land, and therefore the plaintiff, as assignee of the reversion, was entitled to sue for a breach; but the main question, whether there had been any breach of the covenant, he determined in favor of the defendant; as owing to the non-indorsement of the conviction on the license, the latter was not in any way endangered.

MALICIOUS PROSECUTION—ISSUE OF WARRANT—JUDICIAL ACT.

Lea v. *Charrington*, 23 Q.B.D. 45, was an action for malicious prosecution under the following circumstances. By an Act of Parliament on the information made before any Justice of the Peace, on oath, by any parent, relative, or guardian of any woman or girl, or any other person who, in the opinion of the justice, is *bona fide* acting in the interest of any woman or girl, that there is reasonable cause to suspect that such woman or girl is unlawfully detained for immoral purposes the justice was empowered to issue a warrant to search for such woman or girl, and also to arrest the person suspected of detaining her. The defendant, relying on a statement made to him by a third party, laid information against the plaintiff and procured a warrant for the plaintiff's arrest, which was the act complained of; but it was held by Pollock, B., and Manisty, J., that the issue of the warrant was a judicial act, and therefore an answer to the action. The case was held to be covered by the decision in *Hope* v. *Evered*, 17 Q.B.D. 338.

MUNICIPAL OFFICER—AGREEMENT BY MUNICIPALITY TO PAY ITS OFFICER FOR SUPERINTENDING A CONTRACT A COMMISSION ON AMOUNT OF CONTRACT IN ADDITION TO SALARY—INTEREST IN CONTRACT—CERTIORARI.

The Queen v. *The Mayor of Ramsgate*, 23 Q.B.D. 65, illustrates the extreme jealousy with which the Courts regard any attempts to evade the statutory provisions forbidding officers of municipal bodies from being in any way interested in contracts made with their employers. In this case the municipality empowered one of its officers, apart from his ordinary duties, to superintend the execution of certain works on their behalf, upon the terms that he should be paid by a commission on the contract price of such works. The officer duly superintended the works, and resolutions were passed by the municipality to pay him his stipulated commission. On a previous application the Court of Appeal had held that the effect of the bargain with the officer was to make him interested in the contract, and as such, liable to a penalty. The present application was to bring up the resolutions to quash them, and it was admitted by the defendants that the payment of the commission *qua* commission was invalid, but it was contended that a fixed sum equal to the amount of the commission might have lawfully been paid as an allowance, under an Act authorizing the municipality to pay to their employees "such reasonable salaries, wages, or allowances," as they might think proper, and that the validity of the payment was therefore a matter of form rather than of substance, and that therefore the Court should not interfere; but Field and Cave, JJ., were agreed that the payment was illegal and not warranted by the section authorizing "allowances," which term, in their judgment, did not include an allowance of money. The certiorari was therefore granted.

BANKRUPTCY—DEBT BARRED BY STATUTE OF LIMITATIONS—PART PAYMENT BY BANKRUPT FOR PURPOSE OF REVIVING DEBT.

In re Lane, 23 Q.B.D. 74, though a bankruptcy case, seems deserving of attention, as it deals with a point of law which does not appear to have been previously covered by authority. A debtor unable to pay his debts as they became due, within three months of his being adjudged a bankrupt, paid with his own money part of a debt barred by the Statute of Limitations, with the object of reviving the debt and enabling the creditor to prove in the bankruptcy for the balance. The debt up to the date of payment had always been treated by the debtor and creditor as a subsisting debt, and one which it was intended should be ultimately paid. The trustee in bankruptcy claimed that, notwithstanding the part payment, the debt in question was barred by the Statute of Limitations. But Field and Cave, JJ., were clearly of opinion that the debt had been validly revived by the part payment as against the trustee; and Field, J., was of opinion that even if the payment could have been recovered back as a fraudulent preference, that would not prevent the payment from having the effect of reviving the debt.

COUNTY COUNCIL—DISQUALIFICATION OF WOMEN AS CANDIDATES.

In *Hope* v. *Sandhurst*, 23 Q.B.D. 79, no less than eight judges were called upon to determine whether, under the English Local Government Act of 1888, women were eligible as candidates for election as members of the new County Councils established by that Act. First of all, Huddleston, B., and Stephen, J., decided they were not, and from their decision an appeal was had to an exceptionally strong Court of Appeal, consisting of Lord Coleridge, C.J., Lord Esher, M.R., and Cotton, Lindley, Fry, and Lopes, L.JJ., who all agreed in affirming the Court of first instance. The ground of the decision appears to be that the Act did not expressly render women eligible as candidates, and the Act could not be construed as impliedly qualifying them as candidates merely because it gave them a right to vote at the elections held thereunder.

GAME—POSSESSION OF FOREIGN GAME AFTER CLOSE OF SEASON.

Guyer v. *The Queen*, 23 Q.B.D. 100, seems to deserve a passing notice. By a somewhat curious coincidence it appeared that the appellant, Guyer, had been convicted by a Mr. Partridge, a magistrate, of having two partridges in his possession during the close season. Mr. Guyer thereupon applied to quash the conviction because the birds in question had not been killed in England, but were imported from Russia. Lord Coleridge, C.J., and Hawkins, J., agreed that the Act did not apply to birds killed abroad, and therefore quashed the conviction, but Manisty, J., dissented.

PRACTICE—ORDER FOR JUDGMENT IN DEFAULT OF DELIVERING ANSWERS TO INTERROGATORIES—SERVICE OF ORDER—SETTING ASIDE JUDGMENT—MERITS.

Farden v. *Ritcher*, 23 Q.B.D. 124, deals with a point of practice. An order had been made giving the plaintiff leave to sign judgment in default of the defendant delivering his answers to interrogatories within a limited time. De-

fault having been made, the plaintiff signed judgment under the order. Upon an application to set aside the judgment for irregularity, the defendant showed that on the day the judgment was signed a copy of the order had been left at his house, and that within three days thereafter (being, as he supposed, within the time limited by the order) he had delivered the answers to the interrogatories; there was no affidavit of merits. Huddleston, B., and Manisty, J., however, held, following a decision of Field, J., in *Hopton* v. *Robertson*, W. N. (1884), 77, that the order under which the judgment was signed did not require to be served at all, and that therefore the judgment was regular, and being regularly signed, it could not be set aside, except upon an affidavit of merits. The motion was therefore dismissed.

COLLISION—STERN LIGHT—CARRYING LIGHT CONTRARY TO REGULATIONS.

It may, perhaps, be of use to bestow a brief note on *The Imbro*, 14 P.D. 73, which was an admiralty action for collision. By "the regulations for preventing collisions at sea," Art. 2, "the lights mentioned in the following articles (which include Art. 11) shall be carried in all weathers, from sunset to sunrise": By Art. 11, "a ship which is being overtaken by another, shall shew from her stern to such last-mentioned ship a white light or flare-up light." It was held by Butt, J., that it is a breach of the above regulations for a vessel, when no other vessel overtaking it is in sight, to carry a white light permanently fixed upon its stern.

PROBATE—ADMINISTRATOR PENDENTE LITE—PAYMENT OF PREMIUM TO GUARANTEE SOCIETY OUT OF ESTATE.

In re Harver, 14 P.D. 81, was a probate action in which different wills of a deceased testator were propounded. An administrator *ad litem* had been appointed and required to give security to an amount over $50,000. One of the parties who had propounded a will, applied to the Court for authority to the administrator *pendente lite* to pay out of the estate £50 premium to a guarantee society who had become his security. The Court made the order on the applicant giving security to recoup the estate in the event of his failing to establish the will propounded by him, and being condemned to pay costs.

PROBATE—CODICIL TORN UP UNDER MISAPPREHENSION—PROVOCATION.

In re Thornton, 14 P.D. 82, a testatrix under the misapprehension that a codicil to her will was not properly executed, directed it to be torn in four pieces and enclosed to her solicitor, in order that he might prepare another copy for her to execute. This was done, but before another copy could be prepared the testatrix died. This was an application to admit the codicil to probate, which was granted.

COMPANY—WINDING UP—CLAIM FOR COSTS OF OBTAINING SPECIAL ACTS OF INCORPORATION.

In re Skegness and St. Leonard's Tramways Co., 41 Chy.D. 215, a contest arose as to the right of a parliamentary agent to proceed against a company ordered to be wound up, for his costs of obtaining two special acts of Parliament for the

benefit of the Company. The agent was employed by one Spark, who had taken an active part in the promotion of the Company, but who never became a member or shareholder of it. The first Act obtained was an Act of Incorporation, and provided that the costs of the company, of applying for, and obtaining, and passing the Act, should be paid by the Company. After this Act had been passed, the agent, either of his own accord, or upon the instructions of Spark, procured the second Act to be passed, authorizing the abandonment of part of the undertaking and extending the time for completion of the tramway, and which also contained a provision that the costs connected with it should be paid by the Company. The seal of the Company was affixed to the petition for this Act, but without authority; in fact the Company never had any board of directors or body of shareholders capable of entering into a binding contract, or of exercising any of the statutory powers, and it was ordered to be wound up shortly after its formation. Under these circumstances the Court of Appeal (Cotton, Lindley, and Bowen, L.JJ.) affirmed the decision of Chitty, J., that the Parliamentary agent was not entitled to prove against the Company for his costs, but must look to the person by whom he was actually employed.

ARBITRATION CLAUSE—MOTION TO STAY PROCEEDINGS—C. L. P. ACT, 1854 (17 AND 18 VICT., C. 125), S. 11 (R. S. O., C. 50, S. 38.)

In *Davis* v. *Starr*, 41 Chy.D. 242, the defendant agreed to employ the plaintiff as his agent for carrying on his business in a specified district for fifteen years; and the agreement contained a clause for referring to arbitration any disputes as to the construction of the agreement, or any payment, act, or thing relating to or arising out of the agreement. Before the time expired the defendant dismissed the plaintiff for alleged misconduct, and gave notice to refer the matters in dispute between them to arbitration, but among the matters in dispute he did not specify his dismissal of the plaintiff. Both parties appointed arbitrators, but before anything more was done the plaintiff brought the present action for wrongful dismissal; whereupon the defendant applied to stay the proceedings on the ground of the agreement to refer all matters to arbitration, but the Court of Appeal (Cotton, Lindley, and Lopes, L.JJ.) agreed with Kekewich, J., in holding that as the defendant had taken upon himself to dismiss the plaintiff without awaiting the decision of the matters in difference by arbitration, the Court, in the exercise of its discretion, ought not to stay proceedings in the action, and that it was too late after the commencement of the action for the defendant to withdraw his dismissal.

BUILDING AGREEMENT—AGREEMENT FOR LEASE—EVIDENCE—APPROPRIATION OF PAYMENTS—ONUS—LEAVE TO AMEND.

Lowther v. *Heaver*, 41 Chy.D. 248, may be taken as an illustration of the equity maxim, "Equity looks upon that, as done, which ought to be done." One of the points determined in the case being shortly this, that where a building agreement is entered into, whereby it is agreed that upon the performance of

certain specified conditions, one party will make, and the other accept, a lease of the premises on certain terms also specified; then, upon the performance of the stipulated conditions, the rights of the parties are thenceforth governed by the terms of the lease, though it may not in fact have been executed. There was also another question of some interest, upon which the Court was also called upon to pronounce regarding a question of evidence. The action was brought to compel the execution of leases pursuant to a building agreement; the defendant resisted the action upon the ground that the rent was in arrear. In order to establish this defence, he produced an account against the original party to the agreement, and who was a builder, but who had since died, having assigned his interest to the plaintiff; and in this account he charged the builder with rent, and credited him with payments on account, leaving a balance due from him of £395; but he also produced another account, whereby it appeared he had made advances to the builder to the extent of £15,000, and had received payments which the defendant had applied on this indebtedness to the extent of £7,000. But the Court of Appeal held that before the defendant could make good his right to appropriate the payments as he had done, he must show that the builder had not himself made any appropriation; and in the absence of any evidence on this point, the Court of Appeal (Cotton, Lindley, and Lopes, L.JJ.) agreed with Kekewich, J., that as it was obviously for the interest of the builder to pay up the rent, as its non-payment involved a forfeiture of the property, that the presumption would be that he had so applied his payments, and therefore there was no evidence of rent being in arrear. This at first sight appears to be an exception to the ordinary rule which exempts a party from proving a negative, but inasmuch as the right of a payee to appropriate payments depends on the fact of the payer having made no appropriation, it really establishes that that fact, though a negative, is a necessary part of the case of a payee who claims the right to appropriate payments, because it is the basis on which alone his alleged right can rest. There is still one other point decided by this case to which we may refer, and that is one of practice. The leases in question were to be executed on the houses being "roofed in." The plaintiff in his statement of claim alleged that they were duly roofed in, and the defendant in his defence did not traverse this statement, which, under the English Rules, amounted to an admission of its truth; but by the evidence at the trial, it appeared that the roofing of some annexes had not been completely finished. The defendant then applied for leave to amend his defence by setting up that the houses were not roofed in, but Kekewich, J., refused leave to amend, and was sustained by the Court of Appeal.

THE MORALITY OF ADVOCACY.

The disregard of lawyers for truth and justice has been for many generations a standing topic for satire. The common view of the subject is expressed by Southey, with his usual neatness, in the address to Bishop Basil, which he puts into the mouth of the devil :—

> "The law thy calling ought to have been,
> With thy wit so ready and tongue so free,
> To prove by reason, in reason's despite,
> That right is wrong, and wrong is right,
> And white is black, and black is white,—
> What a loss I have had in thee!"

Dr. Arnold seems to have looked upon the profession of an advocate as of necessity immoral. In the "History of Rome" he speaks of "the study of law which is as wholesome to the human mind as the practice of it is often injurious." And in one of his published letters to Sir J. Coleridge, he speaks of his "abhorrence of the profession of advocacy," and asks whether there is no way by which a man can hope to reach the position of a judge without exposing himself to the injurious influences of the bar. It is, perhaps, however, amongst the lighter class of writers that lawyers of all sorts are most hardly dealt with. There is a piquancy in the contrast which is alleged to exist between the solemnity of the function which they claim to discharge—the administration of justice—and the disregard which their conduct is said to display for everything but the interest of their clients, which is irresistibly tempting to those who are bound to make a point of some sort or other, whatever may be the subject on which they write.

On the other hand, those who are guided in forming their opinions by their judgments rather than their sympathies will be slow to condemn any established and recognized profession as immoral; for they will feel that to do so is to condemn the general constitution of society, as it forms a connected whole, the different members of which are closely connected with one another. Advocacy has been a recognized profession in all societies, except the most barbarous and despotic, and it would be absurd to deny that it has rendered splendid services to every nation in which it has existed.

The leading principle by which the whole subject is governed is, that the profession of advocacy is an essential part of the general administration of the law. The principle itself is familiar, perhaps even trite, but its practical application is generally unperceived; for though both the words and the thoughts for which they stand are common-place enough, few persons set themselves seriously to consider what law is, and what is implied in its administration. A clear view on each of these points is, however, essential to any one who wishes to understand the moral questions connected with advocacy.

First, then, what is law? It is usually supposed that if a contrast can be drawn out between law and justice, the law is, as it were, refuted and exposed; but such contrasts may be true, and may yet prove little or nothing. Law is a

collection of rules, or, more properly, of commands, prescribing the application of certain principles to particular classes of circumstances, with inflexible rigidity and precision. Justice may be described, with some approach to correctness, as the sentiment on which law is founded, but, like the curve and the asymptote, they never coincide, however nearly they may approach. Probably no law was ever yet devised which entirely satisfied the sentiment of justice in every case to which it was applied. No laws are more general, and few appear more obvious, than those which punish crimes and enforce contracts. Yet definitions of contracts and of crimes are essential to such laws; and such is the infirmity both of human language and of human thought, that the best definitions ever constructed will always include many cases which never occurred to those who framed them, and which, if they could be settled on their own grounds and without establishing precedents, would unquestionably be determined in a manner totally different from that in which the law determines them; yet this does not condemn the law. Many actions involving the guilt of high treason are almost universally looked upon as virtuous, some even as heroic; yet no sane man would wish to see the law of treason relaxed.

It is, perhaps, not too much to say that there is a natural and inevitable opposition between a definition and the sentiment on which it rests. The sentiment which condemns dishonesty is as clear and strong as any sentiment can be. But how far is it satisfied by the definition of theft? The sentiment condemns the intention even more decisively than the act; but when a definition of theft is required, terms must be chosen which do not describe, and therefore leave unpunished, many acts which are morally indistinguishable from those which are punished. Laws must be general in their terms; and a certain harshness, sternness, and disregard of individual cases of hardship are inseparable from the very existence of law.

The first thing, therefore, to be borne in mind in examining the moral character of the profession of advocacy is that the advocate is administering law, and not attempting to satisfy the sentiment of justice, and is thus engaged in a task which is radically different from that which devolves upon persons placed in positions in private life apparently analogous to his own. The master of a house, in managing the affairs of his family; a person called in to advise upon the conduct which honour and conscience require under difficult circumstances; a man of business consulted as to the course which a tradesman in difficulties ought to pursue with regard to the interests of his creditors,—are all called upon in a sense to administer justice, but they are not called upon to administer law, for no one of them has to deal, as is the case with judges and advocates, with precise rules and inflexible definitions.

Such being the general nature of law, what is the character of its administration? It may probably be asserted with as much confidence as such broad propositions ever deserve, that the degree of liberty which a nation enjoys may be tested by the degree in which the task of setting the law in motion is left to private persons. In our own country this practice prevails, with few exceptions, in all cases civil and criminal. Judges and lawyers are inactive, unless they are

set in motion by private litigants who demand the application of the law to particular cases for the sake of obtaining some personal object. A man wishes to have the benefit of a contract, to receive compensation for a wrong, to get a criminal punished, and he applies to the judge appointed for that purpose to put the law in force. It is obviously necessary that the judge should hear what he has to say, and hence comes the necessity for professional advocates.

In considering the general character of the profession of an advocate, the first question which is suggested is whether the obligations which it imposes are, in their very nature, of such a character that a conscientious man ought to undertake them? Does the profession of an advocate place any one who acknowledges the obligation to be true and just in all his dealings in the same position in which the profession of a hangman would place a man who believed capital punishment to be sinful, or the military profession would place a Quaker? The common sense and common experience of mankind answer that it does not; but why not? Why is it not wrong and unjust for a man to hold himself in readiness to say what is to be said in favour of any one who wishes to put the law in force against his neighbour? That every one who does so habitually must frequently take part in shocking the sentiment of justice, and in inflicting hardships, often of the most grievous kind, on individuals, follows from the observation already made on the nature of the law. If a lawyer succeeds in his profession, there can be little doubt that he will, in the course of his career, brand honest men with infamy, deprive lawful proprietors of their possessions, and possibly deprive innocent men, not only of character and property, but of liberty and even of life! Why is it right to incur, without compulsion and of free choice, responsibilities (to call them by no heavier name) so tremendous?

To answer such questions by appealing to the common sense and common practice of the world is, for practical purposes, as wise as for other than practical purposes it is unsatisfactory. In order to give not merely a reason for disregarding such difficulties in practice, but an answer which removes them, it is necessary to go deep into the foundations of morality. The true answer is that for purposes of action, and especially for deciding on the morality of professions, we must assume that life is a good thing, or at least that, not being proved to be a bad thing, it is to be treated as good. From this it follows that all callings which are proved by satisfactory evidence to be essential to the transaction of the affairs of life must also be treated as good, and that such defects as are shown by experience to be inseparable from their working prove, not that they are bad, but that life itself is less beneficial than it would have been without them.

Thus the steps by which the profession of advocacy is justified are as follows: We must act on the principle that life is a good thing; therefore, that the administration of the law, which is essential to the transaction of the affairs of life, is good; therefore, that the advocacy which is essential to the administration of the law, is good; therefore, that the shocks given by the practice of advocacy to the sentiment of justice, and the hardships inflicted by it on individuals, which are inseparable from advocacy, are drawbacks from its advantages, and not objections to its existence.

If this general theory of the morality of advocacy is accepted, many of the common objections to it fall to the ground at once. It puts an end to all questions about pleading on the wrong side; for to the advocate whose duty it is to administer law, the wrong side means the illegal side; and which side is legally right is a question which can be decided only by a competent court; and the mode of arriving at a decision which courts of justice have deliberately adopted in this country is that of hearing all that can be said on both sides of the cases brought before them. No doubt it may be, and often is, morally wrong to exercise a legal right. It may be unmerciful, vindictive, grossly selfish, and abominably cruel to do so, but this is the concern of the litigant, not of the advocate. A legal right is a power put by society at large into the hands of a private person to be used at his discretion. The officers of the law, in their various degrees, enable him to use it; but there is no moral difference at all between the advocate who conducts to a successful termination a prosecution instituted from the vilest motives, and the judge who passes sentence on the verdict. No one blames the latter, nor ought any to blame the former.

Many persons would admit that this is, in theory, a sufficient justification of the profession of advocacy, but they would add: "Whatever may be the theory, the practice is, in point of fact, unjustifiable. Lawyers do not, as a rule, confine themselves to performing the duty which the law assigns them. They do twist evidence; they do, as far as they can, pervert and obscure the truth, and their standing and success in their profession is determined by the ability with which they contrive to do so."

This impression is as unjust as it is common. Its injustice is displayed most strikingly in the fact that it entirely overlooks the existence of a whole system of professional morality based upon the principles just stated, and rigidly enforced not only by the authority of the judges, but by both the good and bad qualities of the bar, by professional honour and *esprit de corps* on the one hand, and by personal rivalry and even jealousy on the other. It would be out of place here to enter upon a full description of this system, but it may be stated generally that its object is to maintain rigidly the representative character of the advocate. It forbids every expression and every form, either of statement or of interrogation, which would involve a surrender of that character and make the advocate a partisan, instead of a professional agent. To attack private character without explicit instructions that the imputations made are true; to misstate the effect of evidence; to put to a jury a false view of the law; to attempt to mislead the court by garbling or misquoting cases; to insult or attempt to confuse and bewilder a witness by a brutal manner or insolent questions,—are practices which are looked upon by the legal profession in the light in which tradesmen look upon sanding sugar and wetting tobacco; and they would, as a rule, be resorted to only by a low, disreputable class of lawyers. The general character of litigation is in itself a proof that it cannot be advantageously conducted by dishonest men. It is one of the foolish errors into which people are led by the wish to appear knowing, to assert that litigation is generally dishonest. In fact, it is an uncommon thing for people to go to law unless, whether right or wrong,

they have a substantial reason for doing so. Of the many foolish things that are said about the bar, few are more foolish than the common assertion that moral vices, such as impudence, coarseness, and lying, are useful to a lawyer. In fact, honesty is the best policy in that in precisely the same sense as in other professions. Each of the three vices named, is on the whole, injurious to a man's legal prospects. Impudence is often confounded with the possession of strong nerves,—the advantage of which no one disputes; but it is in reality quite a different thing. It is no more than insensibility to shame, arising from the absence of that internal warning which holds a man back from doing what is wrong, or makes him feel ashamed of himself if he does; but how is this an advantage to any one? It can only be one on the supposition that to do the shameful thing which modesty withholds a man from doing is an advantage. Impudence is very like imperfect bodily senses,—it consists not in an excess of courage, but in want of sensibility, and is a most serious defect both in speaking and in the examination of witnesses. It is impossible to do either of these things well unless the speaker can establish sympathy between himself and those whom he is addressing, and to do this considerable sensibility is indispensable. An impudent man does not feel whether the judge and jury are listening to him or not, nor has he any notion of the impression he is making. He cannot feel for the witness whom he examines, and therefore never examines him well, for he does not see how his questions affect him. The same may be said to a great extent of coarseness, which has moreover, the additional disadvantage of disgusting those who listen to it.

The notion that disregard for truth is an advantage to a lawyer is, of all the spiteful commonplaces which people take a foolish pleasure in repeating upon the subject, the most absurd. A man suspected of that vice is never trusted, either by the judges or by the bar; and no one who does not know by practical experience how much the despatch of business depends on the existence of such confidence can estimate the loss which the want of it inflicts. Suppose a judge detects a lawyer in misstating the effect of an affidavit, and on all subsequent occasions insists on reading his affidavits straight through,—is that likely to make him a pleasant person to deal with? Suppose that after giving a promise to the counsel on the other side to produce a particular witness, or to make a particular admission, he refuses to do so,—is he likely to be trusted with confidence in return?

The simple truth is that advocacy is neither more nor less moral than other professions. It is a practical expedient devised as the best mode of doing a very difficult thing, namely, administering the law. It shares with all other human pursuits the reproach of doing harm, though on the whole it does good. It possesses a high and strict standard of professional morality, which is, however, evaded by a noisy and conspicuous section of its members; and it gives its prizes to those who have the intellectual and physical strength to win them; but in attaining them the possession of the principal moral virtues are a considerable, though not an indispensable assistance.—*Cornhill Magazine*.

Reviews and Notices of Books.

Magistrates' Manual or Handy Book, Compiled from the Revised Criminal Law, Revised Statutes of Canada, and Revised Statutes of Ontario, 1887, with the several Amendments made thereto. By T. JONES, Deputy Clerk of the Peace, County of York. Toronto: Carswell & Co., 1889.

This book arranges the criminal statutes under heads in alphabetical order, and also refers to the proper sections of the statutes so that each enactment may be found in its proper connection.

The Law of Damages, a Treatise on the Reparation of Injuries, as administered in Scotland. By John Guthrie Smith, Sheriff of Aberdeen, Kincardine, and Banff. Second edition. Edinburgh: T. & T. Clark, Law Publishers, 1889.

A superficial glance at a work such as this is sufficient to forcibly remind the reader how distinct the jurisprudence of Scotland is from that of England. Plaintiffs and defendants are replaced by pursuers and defenders, and the legal phraseology varies in the same degree throughout. The sheriff is a judicial as well as an executive officer, but his judicial functions are ordinarily left in the hands of the Procurator-fiscal. The sheriff, however, in delicate or important cases may cause the precognitions to be laid before himself.

The first edition of this work appeared twenty-five years ago, under the title of "The Law of Reparation." Since that time the subject, owing to a variety of causes, has grown greatly in importance. Of recent years injuries to persons and property have formed a large part of the business of the Supreme Court as well as of the Sheriff's Court, particularly the latter. Before the time of the present Lord President cases relating to damages were imperfectly reported, and the most rapid development of the principles of the law of damages in Scotland has been within the last quarter of a century. The second edition of the book under review is consequently in reality a new work. The scope of the subject is so great that it is difficult to treat it within moderate compass, but the author seems to have succeeded admirably in his attempt to do so.

Papers Read Before the Medico-Legal Society of New York, from its Organization. First series, third illustrated edition. New York: The Medico-Legal Journal Association.

The Medico-Legal Society of New York was first organized in 1867. Its aim is to advance medical jurisprudence. It is international in character, on its roll of active and corresponding members being representatives of medico-legal science from all countries, as well as prominent physicians and lawyers from every State in the Union. Its success has been due, in a considerable degree, to

the energy and attainments of the present President of the Society, Mr. Clark Bell, whose portrait appears as the frontispiece of this volume. The Society, shortly after its organization, began the collection of a library, comprising all the current literature in medical jurisprudence in the English, French, and German languages. All the papers read before the Society were published in the public press, and were also issued in more permanent form in bound volumes. In 1883 the Society founded the *Medico-Legal Journal* upon the recommendation of Mr. Bell, who took editorial charge thereof, and since that time all the important papers read before the Society have appeared in the columns of the *Journal*. The publication of important papers read before the founding of the *Medico-Legal Journal* was a necessity, and of these, three series have been issued, the fourth is about half completed, and it will be followed by a fifth one. The first of these series has been for some years out of print, but the demand for it was so great that a third edition is now issued. This edition is embellished with portraits and is made more entertaining by short sketches. The papers contained in this series deal chiefly with intemperance and insanity in relation to crime.

Maritime Court, Ontario. General Rules (1889) *and Statutes, with Forms, Tables of Fees, etc.* By Alfred Howell, Barrister-at-Law, and Alexander Downey, Official Reporter of the Maritime Court at Toronto. Toronto: Rowsell & Hutchison.

The new Rules, Forms, and Tariff of Fees for the Maritime Court came into operation on 1st May, 1889. The Rules, etc., formerly in force have been superseded by the new ones. Since the rules of 1878-9 were issued, the Judicature Act and the procedure based on it have almost revolutionized all proceedings in civil actions in the High Court and County Courts. But it was not until the new rules came into force in May last that proceedings in the Maritime Court were brought into harmony with the new order of things. The changes brought about in maritime litigation by the new rules have been most favourably received by the profession. These Rules, in addition to bringing the Maritime Court into line with the Supreme Court of Judicature for Ontario, as far as was practicable, also embody such new features as were suggested by the Vice-Admiralty Courts Rules, 1883, and by the experience of the learned judge of the Maritime Court, whose name is a sufficient guarantee for the care, skill, and learning shown in their preparation. The work before us contains the various Acts, Canadian and provincial, relating to the Maritime Court, and to seamen and navigation, the Rules and Forms. A number of additional forms compiled by the editors, the tariff of fees, and a list of all the officers of the Court are also given. A list of reported decisions under the Maritime Jurisdiction Act, and some cases decided by the Supreme Court of Canada upon questions of maritime law is a useful feature of the book; but the decided cases are yet few in number. A full index completes the useful little book.

Commentaries on American Law. By Jas. Kent. New edition, by Wm. M. Lacey of the Philadelphia Bar. Volume I. Philadelphia: The Blackstone Publishing Company.

The first volume of Kent's Commentaries on American Law is now issued as the thirty-second volume of the Blackstone Series, so well and favourably known to our readers. The author's aim was, as everybody knows, to instruct students in the fundamental principles of American jurisprudence, and his work has long held the distinction of being the best general treatise on its subject. Since the last edition issued under the author's supervision, important changes have been made, many of the questions discussed by him relating to international law have since been considered, and have received authoritative decision, while decisions relating to internal affairs have increased a thousandfold, and a great mass of legislation has also served to leave the original work far behind the time. Mr. Lacey seeks to bring the work down to the present. In no case has the original text been altered or any portion of it been omitted, but where it has been necessary to insert new matter to make the text more intelligible or accurate, that has been done within brackets. Throughout, notes of reference to recent decisions and critical and explanatory notes have been added wherever they were deemed needful. Numerous cross references have been supplied, historical notes and explanations have been inserted, and the annotator has furnished, sometimes in substance, sometimes in full Acts of Congress, now in force. The editor seems to have done his work well. The treatise is of especial value to legal practitioners and students in the United States, but it is, nevertheless, of considerable interest and value to Canadians as well.

Correspondence.

LANDLORD AND TENANT.

To the Editor of THE CANADA LAW JOURNAL:

SIR,—A question has been raised under section 5 of Mr. O'Connor's Act, 50 Vict., Cap. 23 (Cap. 143, R.S.O., 1887, Section 31) as to whether a tenant is entitled to 15 days' notice before a landlord can distrain.

On the part of the landlord, it is contended that it does not apply to cases of distress at all, that it is a mere amendment of the previous Act, 49 Vict., Cap. 29, Sec. 1 (Cap. 143, R.S.O., 1887, Sec. 9), and that it was only intended to apply to cases of ejectment for non-payment of rent.

On the part of the tenant, it is asserted that Mr. O'Connor's Bill, on which the Act was founded, was introduced for the purpose of abolishing the law of distress altogether—that it was considered too revolutionary to abolish it at one fell swoop—that distress should only be abolished by degrees—that clause 5 of the first Act was a compromise, not to take away distress altogether, as Mr. O'Connor had originally proposed, but to delay it for a time; that is for 15 days, and so as to make it correspond with the antecedent Act, 49 Vict., above cited—that it was considered rather inconsistent that a landlord could not enter to eject

with the process of the court for 15 days under 49 Vict., and yet that a landlord could enter to distrain *without process*, at once—that the compromise, so to speak, was come to, for the double purpose of giving the tenant something, though not as much as Mr. O'Connor had originally intended, and at the same time of placing the rights to enter, to eject, and to distrain, as to time, on the same footing—that the two Acts had different objects, one to benefit the landlord, and the other, the more recent one, the tenant—that the language of the O'Connor Act is in keeping with the old Statute of Richard II., passed to compel peaceable and easy, instead of violent entries, which had previously disgraced landlords proceeding by distress (see 5th Ed. Addison on Torts, p. 350)—that the original objects of the two Ontario Acts have been preserved separate and distinct in the revision of the Statutes (R.S.O., pp. 1313-1322), and that there is not a word in either to shew that one was intended to amend the other.

What do you think of the point? In view of the fact that the O'Connor Bill was introduced to abolish distress for rent altogether, one might well believe that the object of the 5th section of the Act was to delay distress for 15 days after demand for rent. There would be just as much reason for this delay, as to delay a landlord 15 days before bringing ejectment; and it would be a very natural preliminary to the expected abolition of distress altogether.

Of course it might be said that it would have been easy enough to insert the words, "or distrain" after "enter," in section 5, if it had been the intention to delay the distress for 15 days after demand for rent.

On the other hand, the Statute of Richard II. does not use the word distrain, and yet "enter" in that Statute means distress, and compels landlords distraining to enter peacefully and easily.

Toronto, 6th August, 1889. A SUBSCRIBER.

PRIVATE DELIVERY OF LETTERS.

To the Editor of THE CANADA LAW JOURNAL:

SIR,—Can the Postmaster-General prevent the delivery of letters for reward except through the Post Office?

The recent increase of the rate on city drop letters to two cents naturally induced private enterprise to undertake the delivery of such letters at the old rate of one cent each, and the Postmaster-General appears to have availed himself of the exclusive privileges conferred upon him by s. 34 of the Post Office Act, c. 35, R.S.C., by compelling the parties to desist from their undertaking.

The question arises, however, is that section of the Post Office Act not *ultra vires* of the Dominion Parliament? Such an enactment can be referred to no other head of jurisdiction under s. 91 of the B.N.A. Act, than s.-s. 5, "Postal Service." But surely the delivery of a letter, or parcel, or message, or anything else sent by one person to another by a private hand does not come under the head of "Postal Service," since the post office has nothing to do with it from beginning to end. The very definition of a "post letter" given in the Act itself shows what postal service means, for a "post letter" is defined to mean "any letter transmitted or deposited in any post office to be transmitted by the *post*

or delivered through the *post*, or deposited in any letter box put up anywhere under the authority of the Postmaster-General to be transmitted or delivered through the post." A letter does not become a *post* letter until such deposit or delivery in a post office, and can it be said that Parliament is legislating respecting the postal service when it attempts to prohibit citizens from carrying letters or other things for reward, entirely independently of the post or any of its officers? On the contrary, such prohibition is an interference with a civil right, and, as such, an encroachment upon the domain of local legislatures which are given exclusive jurisdiction over the subjects of "Property and civil rights in the Provinces." If Parliament can usurp the business of carrying letters and exclude private parties from carrying it on, under color of its power to legislate respecting the "postal service," it can also appropriate to the post office exclusively the business of carrying parcels, newspapers, periodicals, etc., and of conveying telegraph, telephone, or other messages for reward; but my contention is that no such power is conferred upon our Parliament by the B.N.A. Act. Mark: that Act does not confer jurisdiction, exclusive or otherwise, upon the Dominion Parliament to legislate upon the general subject of "the delivery and transmission of letters, circulars, newspapers, or other mailable matter." If it did, no question would arise, but it is only the "postal service" that is mentioned. Suppose the B.N.A. Act had mentioned "railways and railway traffic" as one of the subjects assigned exclusively to Parliament, would Parliament be empowered under that to usurp all traffic that could go by railway, and prevent one from carrying freight in wagons by the ordinary roads for hire, or conveying passengers by stage for reward? Surely not; and this seems to be a parallel case to that under discussion.

It must not be forgotten that the Dominion Parliament is not like the Imperial Parliament, whose jurisdiction is not limited by statute. To put the point differently: If the delivery of a letter from A. to B. by a private party for reward is a matter relating to civil rights in the Province, and has nothing to do with the "postal service," then it comes exclusively within the jurisdiction of the Local Legislatures, and they can incorporate companies to carry on such business in the Province under s.s. 11 of s. 92 of the B.N.A. Act, or pass laws to regulate or govern such traffic, or to raise a revenue by licensing it, under s.s. 9.

If such business does not come under the head of civil rights, then it might fairly be said to come under s.s. 16 as a matter of a merely local or private nature in the Province, and would be equally beyond the jurisdiction of the Dominion. It may be said that such usurpation is a necessary incident of the postal service in order that the postal revenue may be kept up; but the power of Parliament to raise a revenue is provided for elsewhere, viz., in s.s. 3, which reads as follows: "The raising of money by any mode or system of *taxation*." No one would say that to punish a person for carrying a letter is taxation, so that s.s. 3 gives no ground for the jurisdiction claimed. On the whole, then, I think it is pretty clear that the section of the Post Office Act in question is *ultra vires*, and that private individuals or companies are free to engage in the business referred to.

Yours truly,

Winnipeg, August 16, 1889. GEORGE PATTERSON.

DIARY FOR SEPTEMBER.

1. Sun.....*Eleventh Sunday after Trinity.*
2. Mon.....Long vacation ends. Trinity term commences.
3. Tues. ...Court of Appeal Sittings begin. Sir Edward Coke died, 1634, æt 82.
5. Thu. ....Chancery Division High Court of Justice sits.
8. Sun.....*Twelfth Sunday after Trinity.*
9. Mon.....General Sessions and County Court Sittings for Trial in York.
12. Thu. ....Frontenac, Governor of Canada, 1692.
13. Fri. .....Quebec taken and death of Wolfe, 1759.
14. Sat. .....Trinity term ends. Last day for call notices for Michaelmas Term. Sir J. S. Copley (Lord Lyndhurst), Master of the Rolls, 1826.
15. Sun.....*Thirteenth Sunday after Trinity.*
17. Tues. ...First Parliament of Upper Canada met at Niagara, 1792.
18. Wed. ...Quebec surrendered to the British, 1759.
22. Sun.....*Fourteenth Sunday after Trinity.*
28. Sat. .....W. H. Blake, First Chan. U. C., 1849.
29. Sun.....*Fifteenth Sunday after Trinity.*

Early Notes of Canadian Cases.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

HIGH COURT OF JUSTICE FOR ONTARIO.

Queen's Bench Division.

Div'l Ct.] [June 22.

LUPTON *v.* RANKIN.

Way — Access to road — Rights of way over adjoining lots — Rights of mortgagees — Way of necessity — Extinguishment by unity of possession — Revival on termination of possession.

C. conveyed to R. fifty acres of land and also a strip twenty feet wide to the south of it to give access from the fifty acres to the town line. R. mortgaged to C. the fifty acres but not the twenty feet strip, and then conveyed the strip to N. Afterwards R. conveyed the fifty acres to his son subject to the mortgage to C., and on the same day gave him the occupation under an agreement for sale of the adjoining fifty acres to the west. The son mortgaged to the plaintiff the fifty acres conveyed to him. During the possession of R. and his son they got access from the east fifty acres to the side line through the west fifty acres. The agreement for sale of the west fifty acres to the son having been cancelled, and R. having refused to allow a tenant of his son of the east fifty acres access to the side line through the west fifty acres, the plaintiff brought this action against R., C., and N., for a declaration as to the existence of a right of way through the strip conveyed to N or of a way of necessity through the west fifty acres, and for other relief.

Held, that if a right of way did pass to C. under the mortgage to him, it was a right of way only to C., his heirs and assigns; and the existence of a right in the plaintiff to redeem C. did not give her the rights of C. until after redemption.

Held, however, that the plaintiff was entitled to a declaration of the existence of a way of necessity through the west fifty acres, which was given by way of implied grant when R. conveyed to his son.

The exercise of the implied grant was suspended during the time that the son had possession of the west fifty acres, but upon the termination of that possession the implied grant and the right of way under it were revived.

Idington, Q.C., for the plaintiff.

Lash, Q.C., for the defendant Thomas Rankin.

Osler, Q.C., for the defendant Nafziger.

Full Court.] [June 22.

REGINA *v.* BARNETT.

Criminal law — Larceny Act, R.S.C., c. 164, s. 65 — Fraudulent conversion of negotiable securities by trustee — Letter showing trust — Identity of instruments produced with those mentioned in letter — Conversion of proceeds of securities — "Property," definition of — Sanction of Attorney-General — Proof of.

The defendant was indicted and convicted under the Larceny Act, R.S.C., c. 164, s. 65, for that he, being a trustee of two negotiable securities for the payment of $5,250 each, the property of the C. Bank, for the use and benefit of the C. Bank, unlawfully and with intent to defraud, did convert and appropriate the said two negotiable securities to the use and benefit of him, the defendant, etc.

At the trial the following letter, written and signed by the defendant, dated 6th November, 1885, was produced: "I have this day been entrusted by A. (the cashier of the C. Bank) with two notes of $5,250 each, for the specific purpose of paying two notes for $5,000 that are due in Montreal on 8th November, 1885, and my failing this shall consider myself committing criminal offence and amenable to the criminal law."

The securities produced at the trial as those converted by the defendant were two drafts, not promissory notes, for $5,250 each, dated 7th Nov., 1885; and two drafts for $5,000 each were also produced answering the description of the notes for that amount mentioned in the letter, except that they were not actually notes and were due at Toronto on the 9th Nov., instead of at Montreal on the 8th. It was shown, however, that they were held by a person in Montreal.

It also appeared in evidence that the defendant procured one B. to discount the two drafts for $5,250 each, B. retaining $1,000 for an old debt and paying part of the balance of the proceeds to the defendant in diamonds.

The defendant did not take up the two $5,000 drafts, and retained the proceeds of the two $5,250 drafts. The drafts were identified by witnesses as to dates, amounts, etc., and entries in the defendant's memorandum book, also produced, showed the nature of the transactions with the cashier and B.

The trial judge stated a case for the opinion of the court.

Held, upon the evidence that the drafts were the property of the bank and not of the cashier in his private capacity, and upon the law and evidence, that the defendant was a trustee of the documents within the meaning of the statute; and that notwithstanding the discrepancies as to the nature of the instruments, the due date, and place of payment, there was sufficient evidence to go to the jury of the identity of the drafts produced at the trial with the notes mentioned in the letter above set out.

It was contended that the defendant should have been indicted for converting the *proceeds* of the securities, inasmuch as it was in the contemplation of the cashier that the defendant should convert the securities themselves:

Held, that the nature of the transaction with B. showed an appropriation by the defendant of the securities themselves to his own use, and per FALCONBRIDGE, J., even if it had been otherwise, the definition of property in s.s. (*e*) of s. 2 of R.S.C., c. 164, showed the sufficiency of the indictment.

It was objected that no proof was given at the trial that the sanction of the Attorney-General, required by R.S.C., c. 164, s. 65, s.s. 2, had been given:

Held, that this objection was not open to the court upon a case reserved, not being a question that could arise at the trial.

Knowlden v. *The Queen*, 5 B. & S. 532, followed.

Irving, Q.C., and *Osler*, Q.C., for the Crown.

G. T. Blackstock and *J. J. Maclaren* for the defendant.

Div'l Ct.] [June 22.

REGINA *v.* COUNTY OF WELLINGTON.

Constitutional law — Insolvency legislation — Powers of Dominion Parliament—33 Vict., c. 40 (d) — Intra vires—B.N.A. Act, s. 91, ss. 21 — Assessment and taxes — Exemption from taxation—R.S.O., c. 193, s. 7, ss. 1.

Held, that the statute 33 Vict., c. 40, which recites the insolvency of the Bank of Upper Canada, vests the property of the insolvent estate in the Crown as trustee for the creditors, and provides for its realization in order that the debts may be paid, is within the powers of the Dominion Parliament, under ss. 21 of s. 91 of the B.N.A. Act; and that the interest of the Crown, acquired under such Act, as mortgagee of certain lands, could not be sold for arrears of taxes, being exempt from taxation under R.S.O., c. 193, s. 7, ss. 1.

Lash, Q.C., and *H. L. Dunn* for plaintiff.

Bain, Q.C., for certain defendants.

Div'l court.] [June 22.

SMITH *v.* JAMIESON.

Husband and wife—Breach of promise of marriage—Infancy of defendant—Ratification at majority—R.S.O., c. 123, s. 6—Evidence—Corroboration—R.S.O., c. 61, s. 6—Contract not to be performed within a year—Statute of frauds.

In an action for breach of promise of marriage the defendant admitted a promise, but said that he was an infant when he made it, and that there was no ratification in writing after majority, as required by R.S.O., c. 123, s. 6. The plaintiff insisted that there was no engagement between her and the defendant until he became of age on the 20th August, 1887. The jury found that the promise to marry was first made on that day, there being evidence to sustain that finding, and also evidence upon which the jury might have found a previous promise.

The court refused to interfere with the finding.

There was evidence to corroborate the statement of the plaintiff that an engagement to marry existed, such evidence being not incon-

sistent with the precise engagement sworn to by the plaintiff as having been entered into on the 20th August, 1887:

Held, that this evidence satisfied the requirements of R.S.O., c. 61, s. 6, and it was not necessary that it should go so far as to be inconsistent with the promise which the defendant admitted he made before majority.

The plaintiff swore that "it was to be a year's engagement, and we were to be married in the following August:"

Held, that this was not an agreement not to be performed within a year, and was therefore not void under the Statute of Frauds, although not in writing.

McVeity for plaintiff.

Shepley for defendant.

Chancery Division.

OSLER, J. A.] [July 9.

DARBY *v.* THE CORPORATION OF THE CITY OF TORONTO, *et al.*

Municipal corporation—Representation previous to submission of money by-law—Costs—52 Vict., c. 73, s. 14 (O).

A municipal corporation previous to the submission of a money by-law to the vote of the electors issued a pamphlet to them which contained under the heading "Some of the reasons why the buildings should be erected" this clause: "In order that the buildings may be erected in accordance with ** legislation has been obtained authorizing the appointment of three commissioners to whom will be entrusted the supervision of the work **", and after the by-law was approved of and passed they decided not to appoint commissioners.

In an action by a ratepayer to enjoin the corporation from proceeding with the work, it was

Held, that that representation formed no part of the by-law and was not a representation of an existing fact but a mere statement of intention, and formed no part of the bargain in the sense of a binding bargain between the corporation and the ratepayers, and there was nothing to bind the corporation to adhere to it, and they were at liberty to revoke or disclaim that intention and take another course, and that the action should be dismissed; but as the conduct of the corporation was so discreditable their costs were refused.

Held, also, that there was no person or class of persons for whose benefit the power under 52 Vict., c. 73, s. 14 (O) was conferred, or upon whom a right was conferred to have the power exercised, and that such power was not obligatory but permissive only.

A by-law is not a contract between the ratepayers and the corporation.

Remarks upon the practice of taking a *plebiscite* upon a subject wholly within the discretion of a corporation.

W. M. Hall for the plaintiff.

C. R. W. Biggar for the defendants.

Practice.

Q. B. Div'l Ct.] [June 22.

In re MOORE *v.* WALLACE.

Prohibition—Division Court—Attachment of debts—R.S.O., c. 51, s. 189—Absconding debtor—R.S.O., c. 66, s. 16—Payment to sheriff of moneys attached—Payment to Division Court clerk.

Where money comes into the hands of a Division Court clerk under a garnishee summons, and he is made aware of a writ of attachment under the Absconding Debtors' Act, he must pay the money to the sheriff and not to the primary creditor, under the provisions of s. 16 of the Absconding Debtors' Act, R.S.O., c. 66.

And where after the service upon the garnishees of a Division Court garnishee summons, a County Court writ of attachment was placed in the hands of the sheriff, and the garnishees paid the amount owing by them to the primary debtor to the sheriff, but the judge in the Division Court ordered the sheriff to pay the money to the Division Court clerk, and the clerk to pay it out to the primary creditors in the Division Court:

Held, that the judge was right in ruling that the money should have been paid by the garnishees to the Division Court clerk under sec. 189 of the Division Courts Act, R.S.O., c. 51, and therefore his order upon the sheriff to pay it to the clerk could not be interfered with; but the order to pay out to the primary creditors was contrary to s. 16 of the Absconding Debtors' Act; and prohibition to restrain the clerk from so paying out the money was awarded.

Aylesworth for the sheriff and attaching creditors.

John Farley for the Division Court creditors.

Court of Appeal.] [June 29.

BERTRAM *v.* MASSEY MANUFACTURING CO.

Costs—Jury Trial—Findings in favor of both parties—Substantial recovery by plaintiff—Depriving defendants of costs of issue found in their favor—"Event"—"Good cause"—Orders of trial Judge and Divisional Court.

The plaintiffs claimed more than $13,000 upon a special contract for iron sold to the defendants and damages for refusal to accept a portion of the goods sold. The defendants denied their liability to pay for any part of the iron, setting up that it was not what they had contracted for, and counter-claimed for damages for breach of contract. The case was tried by a jury, who in answer to questions left to them found that the iron delivered was not up to contract, but that the defendants had accepted and used a portion of it, and judgment was entered for the plaintiffs by the trial judge for over $5,000 for the portion of the iron used by the defendants at the contract price, less 15 per cent. for inferiority, as found by the jury, and also for the defendants for $200 damages upon their counter-claim, as found by the jury. The trial judge gave the plaintiffs the costs of the action and the defendants the costs of the counter-claim, and the Divisional Court (15 O.R. 516) affirmed the judgment and this disposition of the costs.

The defendants appealed upon the question of costs only, contending that they had succeeded upon the issue as to the quality of the iron and were entitled to the costs of that issue.

The defendants had not asked at the trial to have judgment entered for them upon such issue, nor was it so entered.

Held, by the majority of the court, that there was upon the evidence good cause within the meaning of Rule 1170 for depriving the defendants of the costs of the issue found by the jury in their favor, and the order of the trial judge and the Divisional Court should not be interfered with.

Per HAGARTY, C.J.O.: If the trial judge did not intend by his order to deprive the defendants of such costs, then the costs were properly left to follow the event, which was in favor of the plaintiff to the extent of over $5,000.

Per BURTON, J.A.: The defendants not having applied for judgment thereon, were not entitled to costs of the issue found by the jury in their favor.

Per OSLER and MACLENNAN, JJ.A.: Although there was no formal order specifically depriving the defendants of costs, the trial judge and the court below intended to deprive them of costs, for good cause.

Huxley v. *West London Extension R.W. Co.*, 14 App. Cas. 26, specially referred to.

Osler, Q.C., and *Watson*, for the appellants.

Robinson, Q.C., and *Lash*, Q.C., for the respondents.

Law Students' Department.

The following papers were set at the Law Society Examination before Easter Term, 1889:

CALL.

REAL PROPERTY AND WILLS.

1. A. died before the law of primogeniture was repealed, leaving a son and two daughters, and leaving a will whereby he devised Blackacre "to my son." After the death the three children executed a deed, reciting an intention to partition their late father's estate, "devised and described to them," and they thereby partitioned and allotted [the lands] amongst them in the following portions, etc. Then followed a covenant by each with the others for themselves, their heirs, etc., for further assurance, according to the Short Forms Act. One of the daughters offers her share for sale. Can she make title? Why? How would you classify such a deed?

2. A. conveys to B. a piece of land upon the secret verbal agreement that B. is to pay all creditors of A. who apply to him for payment, but not to call for creditors or pay any who do not apply, and afterwards to re-convey to A. After payment of some creditors, A. demands a reconveyance, which B. refuses. Several years afterwards a creditor, whose debt accrued after the conveyance, brings an action to have his debt paid out of the land. Can he succeed? Why?

3. At an auction sale of land A. bids the highest price and the land is knocked down to him, and he signs an agreement to buy. The vendor immediately refuses to carry out the sale, alleging that he desires to withdraw the lands as the price bid was not high enough. What remedy, if any, has the purchaser? Explain fully.

4. A house is sold for the purpose of being removed and broken up for the material. No writing is signed, but one-tenth of the purchase money is paid. The vendor refuses to complete the bargain. Has the purchaser any, and what, relief? Explain fully.

5. An advertisement for sale by the court describes lands as having 110 feet frontage. It is so valued for the purpose of a reserved bid, and so treated by bidders. The purchaser at the sale signs a contract without reading it. During the investigation of title the purchaser discovers from the deed that there are only 100 feet. The vendor answers that ten feet additional are held under a possessory title. A surveyor on measurement reports that there are only 100 feet. On looking at the contract the vendor and purchaser both discover for the first time that the frontage is there stated to be 100 feet. Has the purchaser any, and what, remedy?

6. A wife, having a decree for alimony, took by conveyance from her husband a valuable piece of land in lieu of alimony in 1869. In 1876 the wife conveyed without her husband. The wife died in 1883, leaving children by the husband. Can the title be forced on a purchaser? Why?

7. A mortgagee offers the land for sale under the power in the mortgage, and the sale proves abortive. The mortgagee a week afterwards sells at an advance of $1,000 to a clerk of his solicitor, who a year afterwards sells at an advance of $1,500 to a bona fide purchaser for value without notice. The mortgagor receives from the mortgagee a small surplus, and then sues the mortgagee and the solicitor's clerk for damages. Can he recover? If so, what is the measure of damages? Explain fully.

8. Upon a sale under a statutory short form power of sale in a mortgage, can the purchaser demand any, and what proof of default? Explain fully.

9. A devise to trustees, the property devised to be subject to a power in A. B. to appoint it as he pleases, by will or deed. Can A. B. appoint to himself? If not, what interest has he got in it? Can he lawfully take consideration for appointing to a stranger? Explain fully.

10. Can a power of sale exist in the person owning the fee simple of land? Why?

HARRIS' CRIMINAL LAW.

BROOM'S COMMON LAW, BOOKS 3 AND 4.

BLACKSTONE, VOL. 1.

1. What is the difference between an arrest by a *private person, on view*, and an arrest by a private person *on suspicion*, as regards the breaking open doors, and as regards the legal consequences of such person killing, or being killed, in making the arrest?

2. On a trial for obtaining goods by *false pretences*, is evidence admissible to prove that the prisoner has *previously*, and *subsequently*, to the transaction in question obtained other property from some other person by the same pretence? If so, for what purpose?

3. Give an example showing how a person may be guilty of *larceny*, although the goods were voluntarily delivered to him by the owner.

4. In what cases is the Court bound to grant a *reprieve* to a prisoner?

5. What is the general rule as to the competency of the *wife* of one of two prisoners *jointly indicted and tried*, as a witness for or against the other prisoner?

6. Explain the meaning of *constructive breaking* in burglary, and give an example.

7. Under what circumstances will a person be guilty of *larceny* of goods which he has *found*?

8. Explain the difference between actions of *slander* and *malicious prosecution*, in regard to the necessity for proof of *malice*.

9. Discuss briefly the question of the necessity for proof of *privity* in an action *ex delicto*.

10. In what different ways may a corporation aggregate be dissolved?

CONTRACTS—EVIDENCE—STATUTES.

1. In an action on an agreement at the trial the plaintiff's counsel proposes to prove by a witness that defendant's solicitor admitted in

conversation that there was a written agreement, defendant having denied that such was the fact. How far is the evidence admissible? Why?

2. In dealing with a lost document, as far as concerns its value and weight as evidence, distinguish the functions of the Judge from those of the Jury.

3. How far may apparent deficiencies in a document be supplied by oral evidence?

4. How far will a verdict against a testator or intestate bind his representatives?

5. In an action for goods sold and delivered, plaintiff proves delivery of the goods to and receipt by the defendant, defendant having been in the habit of selling goods on commission for the plaintiff. Defendant calls no evidence, but claims that the plaintiff should fail, not having proved an order. How far should he succeed? Why?

6. How may *Infancy* be proved?

7. What is the rule as to the apportionment of entire contracts? Illustrate by an example.

8. Explain the limitations which are required by Statute in the case of chattel mortgages to secure advances and to secure against endorsements respectively.

9. A. insures his life for the benefit of his wife and children. After paying premiums for ten years he wishes to surrender the policy and take its surrender value, but the company declines, on the ground that the policy is not his property, having been made out for the benefit of his wife and children. Is the company right? Why?

10. "An agreement may be void by its connection with an unlawful purpose, though subsequent to the execution of it." Discuss this statement.

EQUITY.

1. A., who is carrying on business for himself, procures B. to become surety for the honesty of his clerk C. After this he enters into partnership with D. C. subsequently embezzles some of the partnership moneys. Action is brought against the surety for indemnity; he disputes the liability. Who should succeed, and why?

2. What, if any, statutory provision is there affecting the rights of the mortgagee to distrain for arrears of interest?

3. A. leases a farm to B. for a term of five years. There is a proviso in the lease that B. shall have the privilege of purchasing on giving certain notice, and paying on a certain day. B. gives the required notice, but does not pay the money on the exact day named. He, however, tenders it the next day. A. declines to take the money or carry through the purchase on the ground of delay in payment. Can B. compel specific performance? Reasons.

4. A. owns farm Blackacre; he rents farm Whiteacre, which adjoins Blackacre, from B; he, without any intention of acting fraudulently, removes the boundary fence. When the lease expires it is impossible to find the original fence-line between the properties. Is there any remedy in equity? Explain fully.

5. State fully the necessary proceedings where you are applying for the sale of the land of infants.

6. A. enters into an agreement in writing for the sale of certain property from B., mentioned therein as follows: "A house and lot in the city of Hamilton, more particularly described in a mortgage to the Canada Permanent for $5,000." A., on B.'s refusal to carry out the contract, brings action for specific performance. B. sets up in defence the statute of frauds. Who should succeed? Explain.

7. State the law as to the right of a tenant to call upon his landlord to interplead when adverse claims are made against him for rent.

8. A., a trader in insolvent circumstances, goes to B., who is a creditor, and asks him for a loan of $1,000 to enable him to carry on his business. B. agrees to do so on being secured for that amount and his previous indebtedness. A. afterwards makes an assignment deed; the assignee endeavors to have the security set aside as a fraudulent preference. Can he succeed? Explain.

9. A. is a receiver in possession as such of certain real estate; B. considers himself entitled to it. In what way can B. test his claim?

10. Define the term subrogation, and exemplify.

Miscellaneous.

ERRATA.—Owing to the absence from Toronto of the writer of the article on "Maintenance," ante p. 385, we were unable to submit a

proof of it to him for revision before its publication, and unfortunately some few errata in the proof escaped correction, viz.: P. 386, 3rd line from the top, for "institute" read "constitute"; p. 386, 4th line from the top, for "amount" read "commencement"; p. 386, 24th line from the top, after "Edward I." insert "were"; p. 386, 11th line from bottom, for "settler" read "seller"; p. 388, 20th line from top, for "make a former will" read "revoke a former will"; p. 388, 23rd line from top, for "in champerty" read "for champerty"; p. 389, 7th line from bottom, for "*Edwards*" read "*Edmunds*"; p. 390, 7th line from top, for "any" read "are"; p. 390, 11th line from top, for "infringement" read "assignment"; p. 390, 13th line from the top, for "law of merchant" read "law merchant."

Law Society of Upper Canada.

CURRICULUM.

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

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

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

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

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

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

Trinity Term, second 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 Michaelmas Term.

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

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

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

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

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

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

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

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

15. Service under Articles is effectual only after admission on the books of the Society as Student or Articled Clerk.

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

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

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

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

20. Candidates for call to the Bar must give notice signed by a Bencher, during the preceding Term. Candidates for Certificates of Fitness are not required to give such notice.

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

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

23. A Teacher's Intermediate Certificate is not taken in lieu of Primary Examination.

24. All notices may be extended once, if request is received prior to day of Examination.

25. Printed questions put to Candidates at previous Examinations are not issued.

FEES.

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

BOOKS AND SUBJECTS FOR EXAMINATIONS.

PRIMARY EXAMINATION CURRICULUM for 1889.

Students-at-Law.

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

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

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

MATHEMATICS.

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

ENGLISH.

A paper on English Grammar.
Composition.
Critical reading of a selected Poem:
1889—Scott, Lay of the Last Minstrel.

HISTORY AND GEOGRAPH

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.
1889—Lamartine, Christophe Colomb.

or NATURAL PHILOSOPHY.

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

Articled Clerks.

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

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

RULE *re* SERVICE OF ARTICLED CLERKS.

From and after the 7th day of September, 188[illegible], no person then or thereafter bound by articles of clerkship to any solicitor, shall, during the term of clerkship mentioned in such articles, hold any office, or engage in any employment whatsoever, other than the employment of clerk to such solicitor, and his partner or partners (if any) and his Toronto agent, with the consent of such solicitors, in the business, practice, or employment of a solicitor.

First Intermediate.

Williams on Real Property, Leith's edition; 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. 123 Revised Statutes of Ontario, 1887, and amending Acts.

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

Second Intermediate.

Leith's Blackstone, 2nd edition; Greenwood on Conveyancing, chaps. on Agreements, Sales, Purchases, Leases, Mortgages, and Wills; Snell's Equity; Broom's Common Law; Williams on Personal Property; O'Sullivan's Manual of Government in Canada, 2nd edition; the Ontario Judicature Act; R.S.O., 1887, cap. 44, the Consolidated Rules of Practice, 1888, the Revised Statutes of Ontario, 1887, chaps. 100, 110, 143.

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

For Certificate of Fitness.

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

For Call.

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

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

Michaelmas Term, 1888.