# The Canada Law Journal.

VOL. XXVIII. JUNE 16, 1892. No. 11.

WE regret to record the death of Mr. James Hutcheson Esten, barrister-at-law, on the 13th inst., in the 59th year of his age. For 20 years Mr. Esten was secretary, sub-treasurer, and librarian of the Law Society. Before his appointment he practised his profession in the city of Toronto. He was called to the Bar in Easter Term 1865. Mr. Esten was a faithful and industrious officer of the Society.

THE *American Law Review*, in speaking of the international interests of the United States and Canada, apologizes for discussing economical questions. They cite with commendation an argument before the Senate on interstate commerce, in which the speaker pointed out the extent to which their transcontinental railroads are suffering from the competition of the subsidized railroads of Canada, and proposes some retaliation for their protection. Reference is made to the enormous leverage afforded by the power of practically shutting up the Atlantic ports of entry for Canada for six months in each year, in which case we should be obliged to make ports of entry of St. John or Halifax, and use the Intercolonial Railway around Maine. So far, retaliation on the part of our friends to the south of us has done us good. Possibly action in the line indicated might also be found beneficial to us, and show that there is no need after all to annex the State of Maine, which, we presume, the Americans do not now require, as so many of them have left it. After all, it really belongs to Great Britain, and, but for Yankee sharpness when the treaty was made, would now be part of the Dominion.

THE commissioners appointed to inquire into the charges of drunkenness made against Mr. Justice Cook, Senior Puisne Judge of Trinidad and Tobago, made short work of the inquiry. The charges were that the learned judge was in the habit of using intoxicating liquor in excess while in the actual discharge of his official duties. The commissioners, Sir William Markby and Sir Frederick Pollock, were appointed on the 13th of April and on the 5th of May the Official Gazette published their report, which was to the effect that, owing to his intemperate habits, the continuance of Mr. Justice Cook in his present office would be wholly incompatible with the due administration of justice. It is gratifying to know that a commission of this sort is almost unknown in the British dominions. Whilst it is sad that such a state of things could exist, the report shows that the inquiry had also its comical side. One incident was a judicial joke of a rather grim character, in which a Dr. Anderson was the victim.

Judgments had been recovered against him to the amount of £42 2s. Summonses were taken out to examine him as to his ability to satisfy these judgments, and on the 23rd of January he was ordered by Mr. Justice Cook, on an adjournment of his examination, to give his own security in £500 and also to find bail in £500 for his appearance on the adjourned hearing of his examination. In default of giving that security he was committed to prison, where he remained until the 30th of January, when some of his brother medicos came to the rescue. The general impression of the witnesses was that the judge was drunk when he made his astounding order. One witness, however, ascribed the judge's demeanor to his "jovial disposition." The commissioners, in reference to this incident, quaintly remarked, "We do not pause to consider how far joviality may be becoming or tolerable in a judge hearing and determining an application in which the liberty of the subject is involved." This joviality seemed to extend beyond the judge; for in another case it was proved that the bailiff of the court, who sat immediately below the judge, was helplessly drunk, a fact which the judge, owing to a similar condition of things, was unable to recognize; or possibly he thought the bailiff's condition was quite in keeping with the traditions of the court, or perhaps a kindly act of self-sacrifice on the part of a faithful servant who desired in all things to show a practical sympathy with his master.

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A CORRESPONDENT calls our attention to the discussion which has recently taken place in the House of Commons and elsewhere in reference to the 51st section of the British North America Act. This section reads as follows: "On the completion of the census of the year 1871, and of each subsequent decennial census, the representation of the four provinces shall be readjusted by such authority in such manner and from such time as the Parliament of Canada provides," subject, however, to certain rules, one of which is that such readjustment shall not take effect until the termination of the then existing Parliament. Our correspondent urges that the intention must have been to enable Parliament to provide specially for a case which might probably arise if the completion of the census should take place at a time when, by the termination of the five years' life of the House of Commons or its dissolution, there should be no Parliament which could make the readjustment, and when, consequently, as no House of Commons could be elected until the readjustment should be made, there would be a deadlock, which could only be removed by the intervention of the Imperial Parliament, and that there was no intention to prevent the Dominion Parliament from itself making the readjustment if it should think proper to do so. The consideration of this very important provision has been so brought into the arena of party politics that we do not care at present to take it up. The best legal minds in the Dominion take different views of the meaning of the section, one of the speakers, by the way, drawing a distinction between readjustment and redistribution. We notice, moreover, that these views have, generally speaking, been expressed with that diffidence which is consistent with the importance and difficulty of the questions involved. As to the opinion expressed by our

learned correspondent, we cannot say that we see the matter, at present at least, in the light he does. The impression first formed upon the mind by reading the words "by such authority," etc., is rather that the constituted authority shall be some person, court, or commission, appointed by Parliament for the purpose indicated, other than the Parliament itself.

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It is said that you can only tell what a man is really made of when a crisis or desperate emergency arises in his life. If this be true, a certain legal firm in a town in Eastern Ontario, at one time known as the El Dorado of lawyers, must be in very desperate straits. To say, however, merely that this firm is equal to the occasion but feebly tells the height to which their professional ambition soars. We have before us what they call their annual circular, which is being distributed among the farmers of the surrounding country. Did they not describe themselves in this circular as barristers, solicitors, and notaries, we should not have contemplated the possibility of their being members of an honourable profession. The circular begins by saying that *they* are the people for the public to do business with, and we, as part of the public, propose to have a little business with them, in the hope that it may result in the withdrawal of their circular and an apology to the Law Society before the latter takes notice of it. In the commencement of this circular they say, "Our prayers and best wishes are for mankind in general, but more particularly for the well-being of our honoured patrons." Their patrons are of course much indebted to them, but we fear mankind in general will never know who their best friends are. The next sentence says this firm "trusts in the future (not apparently in Providence, as might be supposed) and hopes for foreign wars." About the meanest man on earth is the man who lives on the misfortunes of others. The first branch of their business introduced to the public is the "loan department." We should judge from the circular that all the money in the country, both public and private, has been entrusted to their management, especially that of a certain "grand, reliable old company, whose liberal, straightforward dealing with its patrons has won golden opinions." (We reluctantly withhold the name of this venerable institution.) The matter of costs is of course entirely beneath their lofty consideration; the welfare of the public is what they alone consider, and herein they stand out as a noble example to the rest of us. The "real estate department" is not forgotten, buyers and sellers being, we are told, highly pleased with their manner of dealing. We presume they charge no fees to either one or the other. In the "fire insurance department" they give entire satisfaction to their customers, and leave nothing undone to merit approval. They are evidently adepts also as canvassers for life insurances, and give some touching advice in reference to this matter, closing with the unctuous remark (one of the firm must be a descendant of Uriah Heep), "Life insurance not only adds to the happiness of this life, but better fits us for enjoyment of the life to come." It is rather a flop, after the last sentence, to be introduced to the next department, which is the Chicago World's Fair. Possibly the desire is to draw a marked contrast between "the

life to come" and the Sodom and Gomorrah of this present sinful world; but if this be their desire, why their anxiety to sell tickets for the aforesaid fair—tickets which they are "now disposing of, the number being limited, at an astonishingly rapid rate"? In this connection we are compelled to believe that their great legal attainments are as nothing compared to their intimate and prophetic knowledge of board and lodging in Chicago in 1893. A firm like this must of course have a "general department," and under this they pay special attention to ocean trips, whereby a purchaser of one of their tickets can "visit the land of his forefathers, where he can see, and, seeing, ever remember all the historic places of interest in the foremost nations of the earth. Can send you there and back for $40." A more unique specimen of unprofessional advertising, cant, and impudence has not come before us.

## Notes and Selections.

DISCOVERY BY INFANT.—An infant plaintiff cannot be ordered to make discovery of documents. *Curtis* v. *Mundy*, 40 W.R. 317.

REMOVAL OF BUILDING FROM MORTGAGED LAND.—Where a mortgagor had moved a house from the mortgaged premises to another piece of land owned by him but not covered by the mortgage, it was held that the mortgagee's lien on the building was not affected. *Turner* v. *Melbane*, N. Carolina Sup. Ct., April, 1892. The court there decreed a sale of the house in its new *situs*, with leave to the purchaser to remove the building. In this case the rights of third parties were not involved.

MAGAZINES AND MARGINS.—An exchange remarks that it is a great mistake for publishers to issue periodicals in book form uncut, though some subscribers prefer them that way in order to recut them in binding with plenty of margin. It is, however, properly remarked that it is a great nuisance for a man to have to cut open a large number of periodicals before he can glance at their contents. The right way, the writer says, is to issue law periodicals, which are subsequently to be bound in book form, cut, but with wide margin, so that they can be recut in permanent binding, that being the plan adopted by his review. We entirely agree with these remarks. It is often difficult to persuade printers that a wide margin is desirable; and binders are sometimes reckless in trimming the edges, which makes matters still worse.

EVIDENCE IN JAPANESE COURTS OF JUSTICE.—A Japanese journal, describing the manner in which witnesses are sworn and evidence taken in native courts of justice, says that with the Japanese anything to which a man affixes

his seal is considered more sacred than what he may say. Hence, each witness is required to make a declaration to the effect that with a mind free from bias in favour of or against either of the litigating parties, and with perfect fairness, he will give evidence, and, after this has been read out by the recorder of the court and handed to the witness in the form of a document, the latter is expected to affix his seal to it. The same plan is adopted with the statement of facts which, in the course of the examination he undergoes, a witness makes in court. The purport of his evidence is written out by the recorder, and before leaving the court he is required to make what corrections are necessary to render the written statement a trustworthy record of his evidence, and to guarantee its correctness by affixing his seal. Though this process occupies a good deal of time, it precludes the possibility of the evidence given being incorrectly reported, which, in trials where the decision of the court depends largely on oral evidence, is a matter of much moment.—*Law Journal.*

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LITERARY THEFT.—In relation to literary theft the editor of the *Nineteenth Century* has published, in a recent number of his magazine, an emphatic condemnation of the "monstrous extent to which an organized system of plunder is carried on in certain quarters." "Under pretence," writes he, "of criticism and the transparent guise of sample extracts, the whole value of articles and essays—which may and frequently have cost a review hundreds of pounds—is offered to the public for a penny or even a halfpenny," and he adds that "a determination has been arrived at to make an example of such pilferers." The cases are numerous in which the defence of literary piracy on the ground of "comment, criticism, or illustration" has been unsuccessfully raised. Perhaps the best example is *Campbell* v. *Scott*, 11 Simon 31. In that case (as cited in "Scrutton on Copyright," 2nd ed., p. 123) the defendant had published a volume of 790 pages, thirty-four of which pages were taken up with a critical essay on English poetry, while the remaining 738 pages were filled with complete pieces and extracts as illustrative specimens. Six poems and extracts, amounting to only 733 lines in all, were taken from copyright works of the plaintiff, who obtained an injunction against the continued publication, on the ground that no sufficient critical labour or original work on the defendant's part was shown to justify his selection. Not a few of these thieves think that an acknowledgment of the source from which they steal will excuse them. This view is quite unsound, as was shown by *Scott* v. *Stanford*, 36 Law J. Rep. Chanc. 729. There the plaintiff had published certain statistical returns of London imports of coal, and the defendant, "with a full acknowledgment of his indebtedness" to the plaintiff, published these returns as part of a work on the mineral statistics of the United Kingdom, the extracted matter forming a third of the defendant's work. "The court," said Vice-Chancellor Page Wood, "can only look at the result, and not at the intention," and he granted an injunction without hesitation. Similarly, the verbatim extracts from law reports in *Sweet* v. *Benning*, 16 C.B. 459, which Chief Justice Jervis described as a "mere mechanical stringing

together of marginal or side-notes, which the labour of the author had fashioned ready to the compiler's hands," were declared by the Court of Common Pleas to be piratical, and it is impossible to glance at the cases without seeing that, if examples are really about to be made, the pilferers will have a very hard time of it.—*Law Journal.*

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LIFE INSURANCE BY CREDITOR.—The opinion in the case of *Ulrich* v. *Reinoehl*, decided in the Supreme Court of Pennsylvania in October, 1891, contains a most interesting discussion of the lawful extent of a creditor's insurable interest in the life of his debtor. The debtors had insured the life of their creditor, a healthy man, forty-two years of age, in the sum of $3,000, to secure a debt of about $100. Under the Carlisle tables his probable duration of life was twenty-six years, and the assessments and annual payments during such prospective period would have amounted to over $4,300. It was held that such insurance was not a gaming transaction, and that said creditors were legally entitled to retain the full amount of the policy, though the debtor died a few years after its issue. The suit was brought by the personal representatives of the debtor to recover from the creditors the amount of the policy, less the amount actually due on the debt. The whole opinion will amply repay perusal. It is printed in 22 Atlantic Reporter, p. 862. We subjoin an extract therefrom which concludes with a general rule laid down by the court to govern in such cases: "The policy in question, however, was taken out in a mutual company, where assessments are made from time to time, and there appears to have been no difficulty upon the trial below in ascertaining with sufficient accuracy the amount of assessments which the defendants would have been called upon to pay had the assured lived out his expectancy. The precise amount of such assessments cannot, of course, be estimated with the same accuracy as in the case of a company in which the annual premium is a fixed sum. But the assessments, even in a mutual company, can be approximated by the experience of other similar companies with sufficient accuracy to base an insurance upon it; and, where a policy has been taken out in good faith by a creditor, the law does not exact impossibilities. A slight mistake one way or the other, owing to the condition of the company's business, by which assessments are increased or diminished, would not necessarily vitiate a policy. The cost of life insurance by whatever system adopted, it is believed, does not vary so greatly as to prevent a reasonable approximation thereof. It may be that few men would take out a life policy to secure a debt of $100, where there is an expectancy of life for 26 years, and pay an annual assessment or premium in excess of the whole amount of the debt. But we do not pass upon the wisdom of contracts. We only consider their legality, and care must be taken in the enforcement of an admittedly sound rule of public policy not to impinge upon the right of the citizen to contract. In this instance the contract was lawful, and the defendants appear to have entered into it, not so much for their own benefit, as for the accommodation of the assured. We are not to measure its legality by its results, but by its surroundings at the time it was made. We are of opinion that a creditor may lawfully take out a policy on

the life of his debtor in an amount to cover the debt, with interest, and the cost of such insurance, with interest thereon, during the period of the expectancy of life of the assured, according to the Carlisle tables. We find no error in the ruling of the court below."—*New York Law Journal.*

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STREETS AND STREET RAILWAYS.—We notice in one of our American exchanges the case of *Rafferty* v. *Central Traction Company*, decided by the Supreme Court of Pennsylvania, as to the user of public streets for street railways. The decision of the court was that the use of a street by a cable railway company is not an additional servitude entitling abutters to compensation, though vehicles cannot stand between the curbing and the tracks without interfering with the cars, and though the pipes under the surface of the street by being lowered to make room for the cable conduit may be slightly more difficult of access. Upon this point the court says:

"It has been many times held, and by many different courts, that the use of a public street for purposes of street railroads is not the imposition of an additional servitude, and does not entitle the abutting landowners along the street to compensation for such use. In the case of *Lockhart* v. *Railway Co.*, 139 Pa. St. 419, 21 Atl. Rep. 26, we affirm the lower court in the following ruling: 'It cannot be doubted at this day that the legislature of Pennsylvania has the power to authorize the incorporation of companies with power to build and operate railways with horses over the streets of cities, with the authority and consent of the authorities of the said cities, as provided by section 9, art. 17, of the constitution; and it is too late to say that such use and occupation of the streets impose such an additional burden of servitude thereon as renders it necessary to provide for compensation therefor to the owners of abutting property. . . . So far as the street use proper is concerned, there is no substantial difference between the tracks of such a street railway and one operated by electricity. . . . And it may be now taken as settled that the owners' rights as to abutting property are subject to the paramount right of the public, and the rights of the public are not limited to a mere right of way, but extend to all beneficial legitimate uses, such as the public may from time to time require. . . . Recognizing the right of the legislature and city authorities to authorize the building of railways upon the streets of a city without compensation to property owners, because it is a means of public transportation and accommodation, the necessary and proper apparatus for moving them must be allowed to follow as an incident, unless there is something illegal in its construction or use.' In *Halsey* v. *Railroad Co.*, 20 Atl. Rep. 859 (Court of Chancery, N.J., 1890), it was held that land taken for a street is taken for all time, and compensation is made once for all, and by taking the public acquire the right to use it for travel, not only by such means as were in use when the land was acquired, but by such other means as new wants and the improvements of the age may render necessary; and that the question whether a new method of using the street for public travel results in the imposition of an additional burden on the land or not must be determined by the use which

the new method makes of the street, and not by the motive power which it employs in such use. It was held that the erection of poles in the centre of the street, and on the sidewalk in front of the plaintiff's property, with connecting wires, for the purpose of applying electricity as a motive power to propel street cars, was not imposing an additional servitude upon the street, and that the owner had no cause of action. In *Williams* v. *Railroad Co.*, 41 Fed. Rep. 556, the court says: 'The operation of a street railroad by mechanical power, when authorized by law, on a public street, is not an additional servitude or burden on land already dedicated or condemned to the use of a public street and is therefore not a taking of private property, but is a modern and improved use of the street as a public highway, and affords to the abutting property holder, though he may own the fee of the street, no legal ground of complaint.' In the case of *Briggs* v. *Railway Co.*, 79 Me. 363, 10 Atl. Rep. 47, the court said: 'We do not think the construction and operation of a street railroad in a street is a new and different use of the lands from its use as a highway. The modes of using a highway, strictly as a highway, are almost innumerable, and they vary and widen with the progress of the community. . . . The laying down of rails in the street, and running street cars over them for the accommodation of persons desiring to travel on the street, is only a later mode of using the land as a way, using it for the very purpose for which it was originally taken. It may be a change in the mode, but it is not a change in the use. . . . We do not think the motor is the criterion. . . . This defendant company is using the land as a street. Its railroad is a street railroad. Its cars are used by those who wish to pass from place to place on the street. A change in the mode is not a change in the use.'

"All this is strictly applicable to the facts of the present case. High street was a public street of the city before the defendant's tracks were laid, and it is so still. Whether the motive power of the cars be horses, electricity, or a submerged cable makes no difference in the use, and no one of these modes of use confers any right of action upon the abutting owner. In *Taggart* v. *Railway Co.* (R.I.), 19 Atl. Rep. 326, it was held that a street railway operated by electricity imposed no new servitude upon the property owner, although poles and wires were erected in the street in connection with the railway. Laying a street-car track so close to the sidewalk that vehicles cannot stand gives no ground for action. *Kellinger* v. *Railway Co.*, 50 N.Y. 206."

# Proceedings of Law Societies.

## *LAW SOCIETY OF UPPER CANADA.*

### MICHAELMAS TERM, 1891.

*Monday, November 16th.*

Convocation met.

Present—10 to 11 a.m.: The Treasurer, and Messrs. Irving, Meredith, Magee, Moss, Hoskin. After 11, in addition: Messrs. Barwick, Robinson, Teetzel, Aylesworth, and Watson.

The minutes of the last meeting of Convocation were read, approved, and signed by the Treasurer.

Mr. Moss, from the Legal Education Committee, reported that they had considered the Examiners' Report on the examination of certain candidates for Call to the Bar under the Law School curriculum, and also the Secretary's Report on the papers of such candidates.

The committee find that the following candidates have passed the examination, that their attendance on lectures has been duly allowed, and that their papers are regular, namely:

Messrs. N. Simpson, C. F. Maxwell, G. R. Sweeney, R. G. H. Perryn, F. R. Blewett, Wm. Stewart, W. A. Baird, L. V. McBrady, A. C. M. Bedford-Jones, J. F. Tannahill; and report that they are entitled to be called to the Bar.

The committee also brought up the Report of a select committee adopted on the 14th of September last, to the effect that Messrs. Simpson and Maxwell were entitled to be called with honours, and that Mr. Simpson was entitled to receive a gold medal.

The Report was ordered for immediate consideration and was adopted, and it was ordered

That the above candidates be called to the Bar, that Messrs. Simpson and Maxwell be called with honours, and that Mr. Simpson do receive a gold medal.

Mr. Moss, from the same committee, reported on the following special cases, namely, Messrs. C. H. Glassford and R. T. Harding, recommending that their attendance at the Law School be allowed, and reporting that they have passed the examination, that their papers are regular, and recommending that they be called to the Bar.

The Report was ordered for immediate consideration and was adopted, and it was ordered that Messrs. C. H. Glassford and R. T. Harding be called to the Bar.

Mr. Moss, from the same committee, reported that they have had under consideration the Examiners' Report on certain candidates for Certificates of Fitness under the Law School curriculum, also the Secretary's Report on the papers, and that the following candidates have passed the examination, their attendance has been duly allowed, and their papers are regular, namely:

Messrs. C. F. Maxwell, G. R. Sweeney, R. G. H. Perryn, W. A. Baird, L. V. McBrady, W. H. Hodges, A. C. M. Bedford-Jones.

The Report was ordered for immediate consideration and was adopted.

Ordered, that the above-named gentlemen do receive their Certificate of Fitness.

Mr. Moss, from the same committee, reported on the following special cases, namely:

(1) Mr. J. F. Tannahill, recommending that the Certificate of Service from the late Mr. G. D. Dickson, deceased, be dispensed with.

(2) Mr. McBride, recommending that a Certificate of Service from the late Mr. A. D. Kean, deceased, be dispensed with; and reported that the attendance

Ordered, that the Report be considered to-morrow.

Mr. Irving presented the Report of the Finance Committee on the salaries at present paid by the Society as follows:

The Finance Committee deem it desirable to lay before Convocation a statement of the annual expenditure on salaries and wages of those now in the employment of the Society, and beg leave to report as follows:

REPORTERS AND REPORTING STAFF.

| | | |
|---|---|---|
| Editor | $2,000 | |
| Two reporters, Court of Appeal, $1000 each | 2,000 | |
| One reporter, Queen's Bench Division | 1,200 | |
| One reporter, Common Pleas Division | 1,200 | |
| Two reporters, Chancery Division | 2,400 | |
| One reporter, Practice Court | 900 | |
| | | $9,700 |
| Secretary, per annum | | 2,000 |
| Librarian (vacant) | | |
| Assistant Librarian | | 800 |

THE LAW SCHOOL.

| | | |
|---|---|---|
| The Principal | $4,000 | |
| Four Lecturers, $1,500 each | 6,000 | |
| Three Examiners, $500 each | 1,500 | |
| | | 11,500 |
| The Solicitor | | 300 |
| The Auditor | | 100 |
| The Telegraph Operator | | 432 |
| The Caretaker | | 525 |
| Labourer | | 360 |
| Messenger Boy | | 120 |
| Estimate for Gardener, $224 | | 224 |
| Estimate for Law School Attendant, $360 | | 360 |
| Estimate for evening Attendant in Library | | 156 |
| | | $26,577 |
| Add salary of new Librarian | | |

The committee respectfully state that in their opinion the subject of the salaries, tenure of office, and duties of the officers and employees of the Society should be considered by Convocation, with the view of determining whether it is necessary to maintain the staff at its present strength, or place it upon a more economical footing, and whether a readjustment of duties cannot advantageously be made, and whether it is not desirable to introduce a system of rotation in the appointments to certain offices, and the committee suggest that a call of the Bench be ordered for such consideration.

Submitted on behalf of the committee.

Nov. 16th, 1891. (Signed) ÆMILIUS IRVING.

Ordered for consideration to-morrow.

Mr. Hoskin, from the Discipline Committee, presented their Report on the reference of Mr. Armstrong's application for a copy of the Report of the Discipline Committee as follows:

The Discipline Committee, to whom application of one Armstrong, who made a complaint against one F——, a member of the Law Society, for a copy of a Report of the committee upon the investigation of the complaint in question, beg leave to report that according to the authorities the said Armstrong is not entitled to a copy of the Report in question.

All of which is respectfully submitted.

(Signed) JOHN HOSKIN,
*Chairman.*

Ordered, that the Report be considered to-morrow.

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| One reporter, Queen's Bench Division | 1,200 | |
| One reporter, Common Pleas Division | 1,200 | |
| Two reporters, Chancery Division | 2,400 | |
| One reporter, Practice Court | 900 | |
| | | $9,700 |
| Secretary, per annum | | 2,000 |
| Librarian (vacant) | | |
| Assistant Librarian | | 800 |

THE LAW SCHOOL.

| | | |
|---|---|---|
| The Principal | $4,000 | |
| Four Lecturers, $1,500 each | 6,000 | |
| Three Examiners, $500 each | 1,500 | |
| | | 11,500 |
| The Solicitor | | 300 |
| The Auditor | | 100 |
| The Telegraph Operator | | 432 |
| The Caretaker | | 525 |
| Labourer | | 360 |
| Messenger Boy | | 120 |
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| Estimate for Law School Attendant, $360 | | 360 |
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Submitted on behalf of the committee.

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The Discipline Committee, to whom application of one Armstrong, who made a complaint against one F——, a member of the Law Society, for a copy of a Report of the committee upon the investigation of the complaint in question, beg leave to report that according to the authorities the said Armstrong is not entitled to a copy of the Report in question.

All of which is respectfully submitted.

(Signed) JOHN HOSKIN,
*Chairman.*

Ordered for immediate consideration, and adopted.

Mr. Hoskin, from the same committee, presented their Report on the reference as to the complaint of Rebecca Thompson, as follows:

The Discipline Committee, to whom the complaint of Rebecca Thompson against one W——, a member of the Law Society of Upper Canada, was submitted for consideration, beg leave to report:

(1) That in the opinion of your committee Convocation has power under the statute in that behalf to inquire into the complaint referred to, and that if the complaint should be substantiated Convocation has the power to deal with the said W—— in the manner provided by the statute.

(2) Your committee suggests that the matter should be referred to the committee to enquire and report whether a *prima facie* case has been shown.

All of which is respectfully submitted.

(Signed) JOHN HOSKIN,
*Chairman.*

Ordered to be considered forthwith.—*Adopted.*

Ordered, that the petition be referred to the Discipline Committee to consider and report whether a *prima facie* case is made thereby.

Mr. Hoskin, from the same committee, presented their Report on the complaint made by James Robinson and others against J. K. Brydon, as follows:

The Discipline Committee, to whom the complaint of James Robinson and others against John K. Brydon has been sent by Convocation, beg leave to report that so far as your committee have been able to learn the said Brydon has not been practising in any of the courts, and therefore does not come within the provisions of the statute.

As appears by the local newspapers in the hands of your committee, the said Brydon advertises himself as a solicitor, conveyancer, notary public, and commissioner for taking affidavits.

Your committee are of opinion that Convocation should instruct the Secretary to communicate to the said Brydon, informing him that the complaint has been made that he advertises himself as a solicitor and represents himself to the public as being a fully qualified solicitor. The Secretary should further say that unless an explanation satisfactory to Convocation be forthcoming proceedings will be instituted to revoke his commission for taking affidavits.

All of which your committee beg respectfully to submit.

(Signed) JOHN HOSKIN,
*Chairman.*

The Report was ordered for immediate consideration and adopted.

Mr. Maxwell was called to the Bar with honours.

Messrs. Sweeney, Perryn, Glassford, Stewart, Baird, McBrady, Bedford Jones, Tannahill, Harding, Gillett, Burritt, Mills, and Cameron were called to the Bar.

Mr. Watson's notice was ordered to stand till to-morrow.

Mr. Moss moved the second reading of the Rule as to the attendance of certain students and clerks at the Law School.

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

Those students and clerks who have already been allowed their examination of the second year in the Law School, or their Second Intermediate Examination, and under existing rules are required to attend the lectures of the third year of the Law School course during the school term of 1892-3, may elect to attend during the term of 1891-2 the lectures on such of the subjects of the said third year as they may name, provided the number of such lectures shall, in the opinion of the Principal, reasonably approximate one-half of the whole number of lectures pertaining to

the said third year, and complete their attendance on lectures by attending in the remaining subjects during the term of 1892-3.

Every student or clerk desiring so to elect must, before commencing to attend, deliver to the Principal his written election specifying the subjects of the lectures he so elects to attend during the term of 1891-2 and obtain the approval of the Principal thereto, and must at the same time deliver to the Principal a certificate of the sub-Treasurer showing that he has paid the school fee, and no such student or clerk having paid the said fee and having had his attendance duly allowed in respect of the lectures which he shall so have elected to attend and of the lectures on each of the subjects named in his election according to existing rules shall be required to attend any lectures on the same subjects during the term of 1892-3, or to pay any school fee for the said last-mentioned term. No students or clerks so attending shall be examined in the third year until the completion of their attendance as herein provided.

Mr. Moss' notice for leave to introduce a Rule was ordered to stand till to-morrow.

Mr. Irving moved that it be an instruction to the Reporting Committee to report to Convocation their action as to the arrangement for editing the Digest under the Report presented to Convocation on 31st December, 1889, and also to report to Convocation the present condition of the work, the prospects of its publication, and the reasons for delay.—*Carried.*

Convocation adjourned.

*Tuesday, November 17th.*

Convocation met.

Present—Between 10 and 11 a.m.: The Treasurer and Messrs. Irving, Hoskin, Moss, Magee, Idington, Bruce, and Barwick. In addition, after 11: Messrs. Martin, Strathy, Aylesworth, Britton, and Christie.

The minutes of last meeting were read and approved.

The Report of the Examiners on the First Intermediate Examination was considered.

The Secretary reported that all the candidates who had passed were in due course.

Ordered, that the examinations of the following gentlemen reported as having passed be allowed, namely:

John A. Murphy, G. R. Geary, C. W. Craig, J. T. Stanton, W. S. Deacon, S. J. Cooley, G. F. Peterson, J. G. Shaw, H. T. Sims, W. P. Telford, Norman S. Gurd, Charles J. Foy, J. Fowler, F. A. McDiarmid, R. A. MacKissock, J. R. Stone, G. N. Hayard, H. F. Hunter, W. M. McClermont, S. F. Medd, J. W. Graham, W. T. Henderson.

The Report of the Examiners on the Second Intermediate Examination was considered.

The Secretary reported that all the candidates who had passed were in due course.

Ordered, that the examinations of the following gentlemen reported as having passed be allowed, namely:

Wm. H. Perry, R. J. Sims, A. G. Shaunessy, W. J. McFarlane, Alex. Cowan, A. E. Fripp, Gordon E. Henderson, Jas. E. Day, G. M. Vance, J. M. Pike, H. E. Lyon, Duncan E. Stuart, H. T. Gault, H. D. Smith, C. E. Gibbon, H. McK. McConnell, C. J. Powell.

The Report of the Library Committee ordered for consideration to-day was taken up, and, on motion that the Report be adopted,

Mr. Aylesworth moved for leave to introduce a Rule founded on the Report as to the salary of the Librarian.—*Carried.*

The Rule was read a first time.

The Rule as to stages was unanimously suspended.

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

So much of the Rule passed on the 19th September last as repealed Rule 49 and substituted instead thereof certain provisions as to the salaries of the Librarian and Assistant Librarian is hereby repealed and the following substituted instead thereof:

(49) The salary of the Librarian shall be at the rate of fifteen hundred dollars per annum; the salary of the Assistant Librarian shall be at the rate of eight hundred dollars per annum; and,

On motion, Mr. Eakins was appointed Librarian, the appointment to take effect on the 15th of December next, and to continue during pleasure.

Mr. Moss, from the Legal Education Committee, reported with reference to the examinations for Call under the Law Society curriculum that they had considered the Examiners' Reports pursuant to the order of Convocation, and the Secretary's Reports as to the standing of candidates, that in the cases of the following gentlemen they have passed the examinations, their papers are regular, and they are entitled to be called to the Bar, namely:

Messrs. Billings, W. F. Smith, Buell, Langworthy, Mealy, Harrison, Pegley, Cook, Knowles, and Scane.

Ordered for immediate consideration, adopted, and ordered accordingly.

Mr. Moss, from the same committee, reported with reference to the examination for Certificate of Fitness under the Law Society curriculum that they have considered the Examiners' Reports pursuant to the order of Convocation, and the Secretary's Reports as to the standing of candidates, and that in the cases of the following gentlemen they have passed their examinations and their papers are regular, and they are entitled to their Certificates of Fitness, namely:

Messrs. Cawthra, Pirie, Armour, Langworthy, Buell, Harrison, Reveller, McCurry, Pegley, and Lucy.

Mr. Moss, from the same committee, reported on the following cases:

(1) Mr. Wallis Mills. That the delay in filing an assignment of articles be waived, and that his service be allowed.

(2) Mr. James Lennon. That he had completed his service as previously ordered, and that his service should be allowed.

(3) Mr R. T. Harding. That he had completed his service as previously ordered, and that his service should be allowed.

That in the cases of these three gentlemen they having passed their examinations, their papers are now regular, and they are entitled to their Certificates of Fitness.

Ordered for immediate consideration, adopted, and ordered accordingly.

Mr. Moss, from the same committee, reported on the case of Mr. F. Billings, recommending that production of a Certificate of Service from the late W. H.

Billings be dispensed with and that his examination be allowed, and that his case be considered on the 29th of December with a view to the granting his Certificate of Fitness.

The Report was adopted, and it was ordered accordingly.

Mr. Moss, from the Legal Education Committee, reported in the case of Mr. Freeman Harding that he had passed the examination for Call, that his papers are regular, and that he is entitled to be called.

Ordered for immediate consideration, adopted, and ordered accordingly.

The following gentlemen were called to the Bar, namely:

Messrs. Billings, Smith, Buell, Langworthy, Mealy, Harrison, Pegley, Cooke, Knowles, Harding, Blewett.

The Report of the Finance Committee was considered pursuant to order.

Ordered, that it be referred to the Standing Committees for Finance, Legal Education, Reporting, and Library severally, to consider and report to Convocation a theoretical organization as to members and salaries of the staff of the department in respect of which it is the Standing Committee and the best practicable plan for improving the present organization, and that it be referred to a committee composed of the Treasurer and the chairmen of each of the said Standing Committees to consider and report to Convocation a plan for the appointment to and tenure of the offices in the Society, such Reports to be presented not later than the 29th December.—*Adopted.*

Mr. Watson's notice of motion and Mr. Moss' notice of motion were ordered to stand until Saturday.

The letter of Dr. Rosebrugh as to the Prisoners' Aid Association was read.

Ordered, that Messrs. S. H. Blake, B. M. Britton, and N. W. Hoyles be appointed to represent the Law Society at the Prison Reform Conference.

The petition of J. C. Grace was read and received.

Ordered to be referred to the Legal Education Committee to enquire and report to Convocation as to the action to be taken on the petition.

The petition of C. Seager was read and received.

Ordered to be referred to the Legal Education Committee to enquire and report to Convocation as to the action to be taken on the petition.

Mr. Strathy presented the Report of the Committee on Unlicensed Conveyancers, which was read and received.

Ordered to be considered on Friday, the 27th November.

Mr. Britton gave notice of motion for Saturday, 5th December. to the effect that the Supreme Court reports be furnished to the profession by the Law Society.

Convocation adjourned.

*Saturday, November 21st,* 1891.

Convocation met.

Present: The Treasurer and Messrs. Moss, Hoskin, Shepley, MacKelcan, Martin, McCarthy, Bell, Irving, Robinson, Kerr, Riddell.

The minutes of last meeting were read and deferred to a later stage for approval.

Mr. Moss, from the Legal Education Committee, reported:

(1) In the case of Mr. Blewett (deferred), that the required proof has now been given, that he has completed his service, that his papers are regular, and he is entitled to his Certificate of Fitness.

Ordered for immediate consideration, adopted, and ordered accordingly.

(2) In the case of Mr. H. D. Cooke (deferred), that the required proof has now been given, that he has completed his service, that his papers are regular, and he is entitled to his Certificate of Fitness.

Ordered for immediate consideration, adopted, and ordered that he receive his Certificate of Fitness.

Mr. Moss, from the same committee, reported in the cases of Messrs. G. D. Grant and F. D. Boggs, who have passed the examination, that they have now completed their service, their papers are regular, and they are entitled to their Certificates of Fitness.

Ordered for immediate consideration, adopted, and ordered accordingly.

Mr. Moss, from the same committee, reported in the case of Mr. W. Frank Smith, ordered by Convocation to be reserved, that he had passed his examination, completed his service, that his papers are now regular, and that he is entitled to his Certificate of Fitness.

Ordered for immediate consideration, adopted, and ordered accordingly.

Mr. Moss, from the same committee, reported in the cases of Messrs. Seager and Grace, referred to them, to the effect that they are entitled to certificates of qualification under the statute 54 Vict., c. 25, and recommended that they receive the same.

Ordered for immediate consideration, adopted, and ordered accordingly.

Mr. Moss' notice of motion was deferred till Friday, 27th inst.

Mr. Slater's letter, asking for a return of his petition, was read.

Ordered, that a certified copy of the petition and accompanying letter be transmitted to Mr. Slater, that the Society decline to stamp any of the papers or to return the original petition.

The complaint of Miss Esther Hudgin was read.

Ordered, that the matter is not one for the interference of the Bench, and that Miss Hudgin be so advised.

Mr. Hoskin, from the Discipline Committee, in the matter of Rebecca Thompson's complaint against Mr. W., reported that, in the opinion of the committee, a *prima facie* case for enquiry had been made.

Ordered for immediate consideration, and adopted.

Ordered, that the complaint be referred to the Discipline Committee for enquiry, pursuant to the Rules.

The petition of the Osgoode Legal and Literary Society was read.

Ordered that for one "At Home" to be held in January, 1892, the Osgoode Legal and Literary Society be allowed the use of all the rooms, including the library, at the Societys' disposal in Osgoode Hall, under arrangements to be submitted and conditional upon the insurances not being affected thereby, and to be subject to the approval of a special committee to be named by Convocation.

Ordered, that Messrs. Hoskin, MacKelcan, Lash, Barwick, and Shepley be the Special Committee under the preceding resolution.

The correspondence with Mr. Burnham on the subject of accepting the bonds of guaranty companies for the barrister's bonds to the Society was read.

Mr. Martin gave notice of intention to introduce a Rule on the subject at the next meeting of Convocation.

Ordered, that Mr. Watson's notice stand till next meeting of Convocation.

Mr. A. A. Adams was called to the Bar.

Convocation adjourned.

*Friday, November 27th*, 1891.

Convocation met.

Present: Messrs. Martin, Shepley, Bruce, Watson, Hoskin, Strathy, Hardy, Ritchie, and Irving.

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

The minutes of the last meeting of Convocation, held on Saturday, 21st November, were read and confirmed.

The Report of the Secretary on the recent meeting of the Osgoode Legal and Literary Society, held on Friday, 20th inst., and the letter of the President and officers of the Society having been read,

Ordered, that it be referred to the Finance Committee to settle terms and conditions upon which the use of the building or any portion of the same may be permitted to the Osgoode Legal and Literary Society, not only for its regular meetings, but also for its public debates, and that it be the duty of the Secretary to communicate such terms and conditions to the said Society, and to enforce the observance of the same upon all occasions.

Mr. Martin, from the County Libraries Aid Committee, presented the Report of that committee in reference to the application of the County of Hastings Law Association for an initiatory grant, which was received and read, as follows:

The County Libraries Aid Committee beg leave to report that

The County of Hastings Law Library Association has transmitted proof of its incorporation, with a copy of the declaration and by-laws, showing compliance with the requirements of the Law Society; a suitable room for the Library has been secured in the hall adjoining the court house, and the sum of $500 has been actually paid in cash by the members of the Association. Your committee recommend that the usual initiatory grant be made to the Association, which will amount to $1000, being double the amount of the cash paid in, but not exceeding the maximum sum of $20 for each practitioner in the county.

All of which is respectfully submitted.

(Signed) EDWARD MARTIN,
*Chairman.*

The Report was ordered for immediate consideration and was adopted, and it was

Ordered, that a cheque for $1000 be issued payable to the Hastings Law Association for the initiatory grant to that Association.

The Secretary reported that Mr. N. Simpson, who was ordered to be called with honours, and to receive a gold medal, was in attendance.

Mr. Simpson was called with honours, and a gold medal was presented to him.

Ordered, that one hundred copies of Mr. Read's "Lives of the Judges" be purchased on the same terms as to price as mentioned in the minute of Convocation of 31st May, 1889, in relation to this work.

Ordered, that Mr. Moss' notice of motion stand for next meeting.

Mr. Watson moved, pursuant to notice, that a special committee be appointed to consider the best means to adopt to obtain the promotion of the administration of justice in the following, amongst other respects:

The complete amalgamation of the three divisions of the High Court of Justice.

The abolition of the double circuits, and provision for one sittings of the High Court of Justice in each county town and city at certain fixed periods at least twice a year, and oftener when required; in Toronto such sittings to be held monthly.

Provision for monthly or more frequent sittings of the Court of Appeal for Ontario, and dispensing with the printing of appeal books for that court.

The abolition of Terms, and provisions for monthly sittings of the Divisional Court of the three divisions, composed of three judges, none of whom shall be the judge appealed from.

The abolition of separate sittings for the divisions, and provision for a daily sitting in court of one judge for all divisions.

Provision for a daily sitting in chambers of one judge for cases in all the divisions.

With instructions to the committee to wait upon the Attorney-General and the Government in respect to the necessary legislation therefor.

And with further instructions to the committee to represent the great inadequacy which exists in the compensation at present made to the judges of the High Court of Justice and of the Court of Appeal for this Province, and in the absence of reasonable provision from the Dominion Government to endeavour to obtain from the Government of Ontario such supplemental yearly grant to each of the judges as will make their compensation fitting to the position and adequate to the services rendered in the administration of justice in the Province.

And that Messrs. Osler, Martin, Moss, McDougall, Hoskin, Lash, Watson, Barwick, Ritchie, Strathy, Aylesworth, Shepley, and Riddell be appointed such committee, and five should form a quorum.—*Carried.*

Ordered, that Mr. Hardy be paid $100 as a contribution to the Legal Chart for 1892, and further ordered that the remainder of Mr. Hardy's letter be referred to the Reporting Committee with an earnest request that they report thereon Saturday, 5th December next, as also on the matters on same subject referred to them on 13th February, 1891.

Mr. Strathy presented the Report of the Committee on Unlicensed Conveyancers, and moved its adoption.

Ordered, that it be taken into consideration at the half-yearly meeting to be held on Tuesday, 29th December, 1891, and that the Report be printed for circulation among the Benchers and the County Law Associations, that one copy be

sent to each Bencher, and one copy to each County Judge and Junior Judge and County Attorney, and six copies to each County Law Association, and that they be requested to send suggestions to H. H. Strathy, Esq., chairman of the committee, at Barrie.

Ordered, that the Finance Committee be authorized to confer with Mr. Andrew or any person they may deem it desirable to consult in lieu of the gentleman named in the order of Convocation of September 19th, 1891, in respect of the form of accounts.

Convocation adjourned.

*Saturday, December 5th,* 1891.

Convocation met.

Present: Messrs. Hoskin, Shepley, Martin, Moss, Britton, Barwick, MacKelcan, and Irving.

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

The minutes of the last meeting of Convocation were read and confirmed.

Mr. Moss, from the Legal Education Committee, reported as to the applications of certain students to be admitted as students-at-law:

(1) In the case of R. H. C. Pringle, graduate, recommending that he be admitted as of Trinity Term, 1891.

(2) In the case of L. J. Reycraft, matriculant, recommending that he be admitted as of Trinity Term in the matriculant class.

(3) In the case of G. A. Robillard, recommending that he be admitted as a student-at-law as of Trinity Term in the matriculant class.

(4) In the case of John M. Laing, matriculant, recommending that he be admitted in the matriculant class as a student-at-law as of Trinity Term, 1891.

The Report was read and received.

Ordered for immediate consideration, adopted, and ordered accordingly.

Ordered, that these cases, being granted under exceptional circumstances, are not to be regarded as precedents.

Mr. Barwick presented the Report of the Finance Committee in reference to the fines for not taking out certificates in time, as follows:

The Finance Committee beg leave to report that the Secretary has drawn their attention to that which is seemingly a conflict in language, but not, perhaps, in practical effect, between Rule 217 of the Society and the Revised Statutes of Ontario, c. 147, s. 19, s-s. 2.

The Rule of the Society prescribing the fines for not taking out annual certificates in due course provides that if such certificate be not taken out before the first day of Hilary Term, in addition to the usual fee for certificate, the further sum of $2 for each division of the High Court of Justice; if not taken out before the first day of Easter Term, the further sum of $3 for each such division of the High Court of Justice, in addition to the usual fee for certificate; and if not taken out before the first day of Trinity Term, the sum of $4 for each such division of the High Court of Justice, in addition to the usual fee for certificate; being in accordance with the Revised Statutes of Ontario, 1877, c. 140, s. 19, and was passed when that Act was in force, and is not in accordance with the Revised Statutes of Ontario, c. 147, s. 19, s-s. 2, which provides that if such certificate is not taken out before the first day of Hilary Term, the further sum of $6; if not before the first day of Easter Term, the further sum of $9; and if not before the first day of Trinity Term, the further sum of $12.

(Signed) ÆMILIUS IRVING,
On behalf of the Committee.

December 4th, 1891.

The Report was received, read, and adopted.

Mr. Barwick moves for leave to introduce a rule in accordance with the Report.—*Granted.*

Mr. Barwick, seconded by Mr. Shepley, moved that Rule 217 be amended by striking out all the words after the word "as follows," and by inserting in lieu thereof the following words:

"If such certificate is not taken out before the first day of Hilary Term, the further sum of $6; if not before the first day of Easter Term, the further sum of $9; and if not before the first day of Trinity Term, the further sum of $12."

The Rule was read a first and second time.

The Rule as to stages was suspended.

The Rule was read a third time, and passed.

The petition of R. A. Bradley to be called to the Bar under the Rules in special cases was read, and was referred to a special committee composed of Messrs. Hoskin, MacKelcan, and Shepley for investigation and report on his papers, and for the examination of Mr. Bradley.

The petition of Mr. Charles Miller, barrister and solicitor, complaining of a solicitor, accompanied by declaration and other documents, was read.

Ordered, that in the opinion of Convocation a *prima facie* case has been shown, and that the matters referred to in the petition be referred to the Discipline Committee for investigation.

Mr. Hoskin, from the Special Committee appointed to examine Mr. Bradley and to report on his papers, reported as follows:

The Special Committee appointed to examine Mr. Richard A. Bradley touching his fitness to be called to the Bar beg leave to report to Convocation that they have examined Mr. Bradley, who has passed a satisfactory examination, and we report his fitness to be called to the Bar, and that he has complied with the Rules of the Society in cases of call to the Bar of solicitors in special cases.

Ordered that the Report be received.

Ordered that it be considered forthwith.

The Report was adopted.

Ordered, that Mr. R. A. Bradley be called to the Bar.

Mr. Barwick brought up the Report of the Finance Committee, which was received and read, as follows:

The Finance Committee beg leave to report with reference to the resolution of Convocation of the 27th ult., referring to this committee the settlement of the terms and conditions upon which this building or a portion of the same may be permitted to the Osgoode Legal and Literary Society, not only for its regular meetings, but also for its public debates, that they have had the advantage of a personal interview with the President of the Osgoode Society, and obtained from him a statement of the occasions when the uses of the building are required for the ordinary meetings of the Osgoode Society and for the public debates, and upon consideration of the application this committee have decided as follows:

(1) For the ordinary meetings of the Society held every Saturday night, except during the months of June, July, August, and September, and except during Christmas vacation, the examination hall and lavatory only to be opened at 7.45 p.m., and closed not later than 11.30 p.m.

(2) For public debates, which are understood to be entertainments of a musical and literary

character, of which, it is stated by the President of the Society, as many as three or four public debates have been held in previous years.

(3) The committee have decided that not more than three shall be held during each year, and between the months of October and April inclusive, of each of which one week's previous notice in writing is to be given to the Secretary.

(4) That the Society on such occasions have the use of the examination hall and the two consultation rooms, the students' room, the room of which the typewriters have use at present, and the lavatory on the ground floor.

(5) That these rooms be opened from 7 p.m. until midnight on such occasions.

(6) That no refreshments of any kind be introduced or consumed on the premises, nor any dancing permitted at such musical and literary entertainments.

(7) The committee respectfully remind Convocation that the foregoing terms and conditions have no relation to the "At Home" of the Osgoode Society to be held in January next, pursuant to the permission of Convocation granted by resolution of 21st November of last year, under arrangements to be submitted and subject to the approval of a special committee appointed by Convocation on that day.

The Report was ordered for immediate consideration.

It was moved in amendment that all the words (in the sixth clause of the Report) after "premises" be struck off.—*Carried.*

The Report as amended was adopted.

Mr. R. A. Bradley was called to the Bar.

The Secretary reported that Mr. D. B. Read had delivered one hundred copies of his "Lives of the Judges" to the Law Society, and had been paid for them, pursuant to the order of Convocation of 27th November, 1891.

Mr. Osler, from the Reporting Committee, asked leave to defer reporting on the subjects referred to the committee until meeting in December.

The petition of A. J. G. Carscadden was read.

Ordered, that the prayer of the petition cannot be granted.

Convocation adjourned.

J. K KERR,
*Chairman Committee on Journals.*

## DIARY FOR JUNE.

1. Wed.....First Parliament in Toronto, 1797.
2. Thurs..Chancery Division H.C.J. sits.
4. Sat.....Easter term ends. Lord Eldon born, 1751.
5. Sun.....*Whit Sunday.* Battle of Stony Creek, 1813.
6. Mon.....Sir John A. Macdonald died, 1891.
8. Wed.....First Parliament at Ottawa, 1866.
11. Sat.....St. Barnabas. Lord Stanley, Gov.-Gen., 1888.
12. Sun.....*Trinity Sunday.*
13. Mon .....County Court sittings for motions in York.
14 Tues.....County Court sittings for trial except in York.
15. Wed.....Magna Charta signed, 1215.
16. Thurs...Battle of Quatre Bras, 1815.
18. Sat.....Battle of Waterloo, 1815.
19. Sun.....*1st Sunday after Trinity.*
20. Mon.....Accession of Queen Victoria.
21. Tues....Longest day.
24. Fri.....Midsummer Day. St. John Baptist.
25. Sat.....Sir M. C. Cameron died, 1887.
26. Sun. ...*2nd Sunday after Trinity.*
28. Tues....Coronation of Queen Victoria, 1838.
29. Wed.....St. Peter.
30. Thurs...Jesuits expelled from France, 1880.

# Early Notes of Canadian Cases.

## *SUPREME COURT OF CANADA.*

Exch. Ct.] [May 2.

MORIN *v.* THE QUEEN.

*Government railway—43 Vict., c. 8, construction of—Damage to farm from overflow of water—Negligence—Boundary ditches, maintenance of.*

*Held*, affirming the judgment of the Exchequer Court, that under 43 Vict., c. 8, confirming the agreement of sale by the Grand Trunk Railway Company to the Crown of the purchase of the Riviere du Loup branch of their railway, the Crown cannot be held liable for damages caused from the accumulation of surface water to land crossed by the railway since 1879 unless it is caused by acts or omissions of the Crown's servants; and as the damages in the present case appear by the evidence relied on to have been caused through the non-maintenance of the boundary ditches of claimant's farm, which the Crown is under no obligation to repair or keep open, the appellant's claim for damages must be dismissed.

Appeal dismissed with costs.

*Belcourt* for appellant.

*Hogg*, Q.C., for respondent.

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HUMPHREY *v.* THE QUEEN.

*Contract—Carriage of mails—Authority of P.M.G.*

The contract for carriage of mails between St. John, N.B., and Digby, N.S., having expired, the P.O. Department advertised for tenders for temporary service, and H. put in a tender. None of the tenders was accepted, and H., being in Ottawa, had an interview with the P.M.G., who verbally agreed to H. performing the service for a time on the terms and conditions of the former contract. H. then, pursuant to directions from the P.M.G., wrote the latter a letter by which he agreed to carry said mails for a period of nine months for the amount paid under the former contract, and subject as usual to cancellation at an earlier period. The amount paid for the service by the former contract was $10,000 a year, and the usual cancellation was on giving six months' notice of the intention to terminate the contract. H. procured the necessary steamers and performed the service for some two months, when he was notified that his agreement with the Department was at an end, and the carrying of said mails was transferred to a Government steamer. H. then brought an action against the Government by petition of right, claiming damages for breach of contract.

*Held*, affirming the decision of the Exchequer Court (2 Ex. C.R. 386), that the P.M.G. had no authority to bind the Crown by a contract for a sum exceeding $1000 without the authority of an order in council, and the petition must therefore be dismissed.

Appeal dismissed with costs.

*Pugsley*, Q.C., Solicitor-General of New Brunswick, for the appellant.

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

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Ont.] [May 2.

GIBBONS *v.* MCDONALD.

*Debtor and creditor—Mortgage—Preference by—Pressure—R.S.O. (1887), c. 124, s. 2.*

M. was indebted to McD. on certain promissory notes, and, wishing to go to Manitoba to live, he proposed to give McD. a mortgage on his farm for the amount of the notes, and a further advance of money, which was done. McD. had previously demanded payment of the notes. At the time of giving the mortgage M. knew that he was unable to pay his debts in full, but McD. believed him to be solvent. M. afterwards executed an assignment for the general benefit of his creditors, and the assignee brought an action to set aside the mortgage to

McD. as being given with intent to defeat, delay, or prejudice the other creditors of M.

*Held*, affirming the decision of the Court of Appeal (18 Ont. App. R. 159) and that of the Divisional Court (19 O.R. 290), that the mortgage having been given as the result of pressure and for a *bona fide* debt, and McD. not having been aware that M. was insolvent, the mortgage was not void. *Molsons Bank* v. *Halter* (18 Can. S.C.R. 88) and *Stephens* v. *McArthur* (19 Can. S.C.R. 446) followed.

Appeal dismissed with costs.

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

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

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UTTERSON LUMBER CO. *v.* RENNIE.

*Mortgage—Rectification—Property not included—Evidence.*

A mortgage was given to R. of certain lots of land described by numbers, in front of which was a water lot with a sawmill and machinery thereon. The mortgagors afterwards assigned their property for the benefit of creditors, and it was sold at auction by a number of persons who afterwards became incorporated as the appellant company. After the sale and before the deed was executed in pursuance thereof, the respondent, as he alleges, first became aware that the mortgage did not cover the sawmill and machinery, as had been intended, and he commenced this action and registered a *lis pendens*. On the trial evidence was given of notice to some of the persons forming the company that respondent so claimed, and the trial judge found that the appellants were not *bonâ fide* purchasers for value without notice, and gave judgment reforming the mortgage as asked. This decision was affirmed by the Court of Appeal.

*Held*, GWYNNE and PATTERSON, JJ., dissenting, that there was ample evidence to sustain the finding that the mill and machinery were intended to be included in the mortgage and were omitted by mutual mistake, and the appeal should therefore be dismissed.

*Laidlaw*, Q.C., for appellants.

*Blackstock* and *Dickson* for respondent.

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DUGGAN *v.* LONDON & CANADIAN LOAN CO.

*Stock—Shares assigned in trust—Duty of transferee to make inquiry.*

D. transferred to brokers as security for a loan and for margins in stock speculations 180 shares of valuable stock, the transfer expressing on its face that the stock was assigned "in trust." The brokers afterwards pledged this and other stock with a bank in security for an advance, and from time to time transferred the loan to other banks and monetary institutions, the various transfers of D.'s stock retaining the original form, namely, that of being "in trust." The brokers finally arranged a loan for a large amount with the L. & C.L. Co., to whom the stock was transferred by the then holders, the Federal bank, by an assignment which was signed "B., Manager in Trust," B. being the manager of the Federal Bank. D. tendered to the London & Canadian Loan Co. the amount of his indebtedness to the brokers and demanded his stock, which the company refused to retransfer except upon payment of their advance to the brokers. D. then brought an action to compel the company to reassign his stock to him.

*Held*, reversing the opinion of the Court of Appeal (18 Ont. App. R. 305), and restoring that of the trial judge (19 O.R. 272), TASCHEREAU and PATTERSON, JJ., dissenting, that the company was put upon inquiry by the form of the transfer to it as to the nature of the trust, and, not having made that inquiry, could only hold the stock subject to the payment by D. of his indebtedness to the brokers. *Sweeny* v. *Bank of Montreal* (12 Can. S.C.R. 661; 12 App. Cas. 617) followed.

*Held, per* TASCHEREAU and PATTERSON, JJ., that the form of the transfer to the company signed "B., Manager in Trust," only indicated that B. held the stock in trust for his bank and that an inquiry as to the nature of the trust was not obligatory on the company, even if the same would have been possible in view of the shares not being numbered or otherwise identified so that they could be traced.

Appeal allowed with costs.

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

*E. Blake*, Q.C., and *Howland* for the respondents.

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KINGSTON & BATH ROAD CO. *v.* CAMPBELL.

*Negligence—Liability of road company—Collector of tolls—Lessee.*

C. brought an action against the Kingston & Bath Road Co. for injuries sustained from falling over a chain used to fasten a toll-gate on the company's road. On the trial the following facts were proved: The toll-house extended to the edge of the highway, and in front of it was a short board walk. The gate was attached to a post on the opposite side of the road and was fastened at night by a chain, which was generally carried across the board walk and held by a large stone against the house. The board walk was generally used by foot passengers, and C., walking on it at night, tripped over the chain and fell, sustaining the injuries for which the action was brought.

The toll-collector was made a defendant to the action, but did not enter a defence. It was shown that he had made an agreement with the company to pay a fixed sum for the privilege of collecting the tolls for a year, and was not to account for the receipts. The company claimed that he was lessee of the tolls, and that they were not responsible for his acts. It was proved, however, that in using the chain to fasten the gate as he did he was only following the practice that had existed for some years previously and doing as he had been directed by the company. The statute under which the company was incorporated contained no express authority for leasing the tolls, but uses the term "renter" in one section, and in another speaks of a "lease or contract" for collecting the tolls.

The company claimed also that C. had no right to use the board walk in walking along the highway, and her being there was contributory negligence on her part, which relieved them from liability for the accident.

*Held*, affirming the decision of the Court of Appeal, GWYNNE, J., dissenting, that C. had a right to use the board walk as part of the public highway, and was, moreover, invited by the company to use it, and there was therefore no contributory negligence; that whether the toll-collector was servant of the company or lessee of the tolls the company was liable for his acts; and even if they would not be liable in case he was regarded as lessee, the previous improper use of the chain would make them so.

*Britton*, Q.C., for the appellants.

*Lyon* for the respondent.

Quebec.] [May 2.

HATHAWAY *v.* CHAPLIN.

*Letter of guarantee by bank—Claim for loss—Proof of claim—Account sales.*

H. *et al.*, upon receipt of an order by telegram from the Exchange Bank to load cattle on a steamer for M.S., with guarantee against loss, shipped, three days after the suspension of the bank, some cattle, and consigned them to their own agent at Liverpool. Subsequently they filed a claim with the liquidators of the bank for an alleged loss of $7965 on the shipments, and, the claim being contested, the only witness they adduced at the trial was one of their employees, who knew nothing personally about what the cattle realized, but put in account sales received by mail as evidence of loss.

*Held*, affirming the judgment of the court below, that even assuming that there was a valid guarantee given by the bank, upon which the court did not express any opinion, the evidence as to the alleged loss was insufficient to entitle H. *et al.* to recover.

*Per* TASCHEREAU, J.: That the guarantee was subject to a delivery of the cattle to M.S., and that H. *et al.*, having shipped the cattle in their own name, could not recover on the guarantee.

Appeal dismissed with costs.

*Laflamme*, Q.C., and *Brown* for appellants.

*Macmaster*, Q.C., and *Greenshields* for respondent.

[May 3.

CONTROVERTED ELECTION OF L'ASSOMPTION.

*Election appeal — Discontinuance, effect of—Practice—Certificate of registrar—New writ.*

By a judgment of the Superior Court in the controverted election for the electoral district of L'Assomption, the respondent was unseated by reason of corrupt acts committed by agents; and the respondent having appealed to the Supreme Court, the case was inscribed for hearing for the May sessions of 1892. When the appeal was called, no one appearing for the appellant, counsel for respondent stated that he had been served by appellant's solicitor with a notice of discontinuance.

*Held*, that the appeal be struck off the list of appeals.

The motion of discontinuance having been filed in the Registrar's office, the Registrar certified to the Speaker of the House of Commons that by reason of such discontinuance the decision of the trial judges and their report were and are left unaffected by the proceedings taken in the Supreme Court. The Speaker subsequently issued a new writ for the electoral district of L'Assomption.

Appeal discontinued.

*Code* for appellant.

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CONTROVERTED ELECTIONS OF BAGOT AND ROUVILLE.

*Election petition—Judgment voiding election—Trial—Commencement of—Six months—Sec. 32, R.S.C.—Consent to reversal of judgment—R.S.C., c. 135, s. 52.*

In these two cases the trials were commenced on the 22nd day of December, 1891, more than six months after the filing of the petition, and subject to the objection taken by the respondents that the court had no jurisdiction, more than six months having elapsed since the filing of the petition, and no order made enlarging the time for the commencement of the trial, the respondents consented that their election be voided by reason of corrupt acts committed by their agents without their knowledge.

On appeal to the Supreme Court upon the question of jurisdiction, the petitioner's counsel signed and filed a consent to the reversal of the judgment appealed from without costs, admitting that the objection was well taken.

*Held*, that upon the filing of an affidavit as to the facts stated in the respondent's consent, the appeals should be allowed and the election petitions dismissed without costs. R.S.C., c. 135, s. 52.

Appeal allowed without costs.

*Bagot case:*

*Ferguson*, Q.C., for appellant.

*Belcourt* for respondent.

*Rouville case:*

*Belcourt* for appellant.

*Code* for respondent.

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N.B.] [May 2.

ST. JOHN *v.* CHRISTIE.

*Municipal corporation—Control over streets—Duty to repair—Transferred powers—Negligence—Notice of action—Defence of want of—34 Vict., c. 11 (N.B.); 25 Vict., c. 16 (N.B.).*

The Act incorporating the town of Portland (34 Vict., c. 11 (N.B.)) gives the town council the exclusive management of and control over the streets, and power to pass by-laws for making, repairing, etc., the same. By s. 84 the provisions of 25 Vict., c. 16, and amending Acts relating to highways, apply to said town, and the powers, authorities, rights, privileges, and immunities vested in commissioners and surveyors of roads in said town are declared to be vested in the council. By another Act no action could be brought against a commissioner of roads unless within three months after the act committed, and on one month's previous notice in writing. The town of Portland afterwards became the city of Portland, subject to the said provisions, and eventually a part of the city of St. John.

An action was brought against the city of Portland by C. for injuries sustained by stepping on a rotten plank on a sidewalk in said city and breaking his leg. No notice of action was given by C. The jury on the trial found that the broken plank was within the line of the street, and that the council, by conduct, had invited the public to use said sidewalk. After Portland became part of St. John, the latter city became defendant in the case for subsequent proceedings.

*Held*, STRONG, J., dissenting, that the city was liable to C. for the injuries so sustained.

*Held*, *per* RITCHIE, C.J., that if notice of action was necessary the want of it could not be relied on as a defence without being pleaded, which was not done.

*Per* TASCHEREAU, GWYNNE, and PATTERSON, JJ.: That notice was not necessary; the liability of the city did not depend on s. 84 of 34 Vict., c. 11, but on the sections making it the duty of the council to keep the streets in repair; that the only powers and authorities vested in commissioners and surveyors of roads were those relating to the performance of statute labour, and the section was unnecessary.

*Per* STRONG, J.: That one of the privileges or immunities declared to be vested in the council

was that of not being subject to an action without prior notice, and, no notice having been given in this case, C. could not recover.

*Jack*, Q.C., for appellants.

*Pugsley* for respondent.

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N.S.] [May 2.

PEERS *v.* ELLIOTT.

*Practice—Trial—Charge to jury—Misdirection—New trial—Negligence.*

P., a farmer, having a quantity of hay on his farm, agreed with E. to have it pressed by his (E.'s) steam engine, and in the course of the work the barn of P. was set on fire by sparks, as he alleged, from the engine, and was burned with its contents. P. brought an action to recover damages for his said loss, alleging negligence against E. both in the construction and management of the engine. On the trial the main issue was whether or not the spark arrester, which it was shown E. possessed in connection with the engine, was in its place when the fire occurred, and the judge directed the jury that if there was no spark arrester that in itself would be such evidence of negligence as would entitle plaintiff to recover. A verdict was given for plaintiff, which the full court set aside for misdirection by the trial judge in so charging the jury.

*Held*, that the judge had misdirected the jury in telling them that the want of a spark arrester was negligence in point of law, and it could not be said that the jury were not influenced by it in giving their verdict. A new trial was therefore properly granted.

Appeal dismissed with costs.

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

*W. B. Ritchie* for the respondent.

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Man.] [May 2.

MCMICKEN *v.* ONTARIO BANK.

*Deed—Rectification—Absolute in form, but intended to be a mortgage—Evidence of intention—Character of.*

A.M. conveyed to G.M. certain lands under lease to Ontario Bank, and on September 1st, 1877, G.M. conveyed said lands to plaintiff, wife of A.M., but the deed was not registered until October 1st. On September 17th G.M. executed a mortgage of the lands to the bank, which filed a bill against G.M. to foreclose said mortgage; but a year later, when about to issue the final decree of foreclosure, they for the first time became aware of the transfer to the plaintiff, and they abandoned the foreclosure proceedings and filed a new bill against the plaintiff. As the lease of the premises to the bank would expire before they could obtain possession of the land in the last-mentioned suit negotiations were had with plaintiff, as a result of which she and her husband executed an absolute deed of the land to the bank, which is the deed sought to be impeached in this suit.

Plaintiff brought a suit to have it declared that that the said deed was only intended to operate as a mortgage, and asked to be allowed to redeem and to have an account of the profits. The evidence on the hearing showed that A.M., plaintiff's husband, was indebted to the bank in the sum of $12,700, and G.M. also owed the bank as surety for A.M. The consideration of the deed was the extinguishment of these debts. Plaintiff claimed, however, that there was a parol agreement that the deed should only have the effect of a mortgage, and that the bank took the lands in trust to sell and pay off these claims and pay her the surplus. The bank claimed that the transaction was a final transfer of the lands to extinguish the two debts, and nothing more.

The trial judge, Mr. JUSTICE DUBUC, held that the plaintiff had not given evidence sufficient to justify him in granting her the relief she claimed, and dismissed the bill. Plaintiff obtained a rehearing before the Chief Justice and DUBUC, J. (BAIN and KILLAM, JJ., having been engaged in the case while at the Bar), who affirmed the previous decision. On appeal to the Supreme Court of Canada,

*Held*, that to induce the court to grant the relief asked for in this case the evidence of intention that the deed was to operate as a mortgage only must be of the clearest, most conclusive, and unquestionable character, and plaintiff having failed to produce such evidence her bill was rightly dismissed.

Appeal dismissed with costs.

*Haegel*, Q.C., and *Kennedy*, Q.C., for appellants.

*McCarthy*, Q.C., and *Richards* for respondents.

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B.C.] [May 2.

NEW WESTMINSTER *v.* BRIGHOUSE.

*Municipal corporation—Repair of streets—Excavation—Injury to adjoining land—By-law—Expropriation—Land injuriously affected—51 Vict., c. 42, s. 190 (B.C.).*

A by-law authorized the corporation of the city of New Westminster, B.C., to raise money for the purpose of making repairs on certain streets, but there was no by-law expressly authorizing such repairs, which were, however, proceeded with. One of the streets named in said by-law was excavated to lower the grade, in the execution of which work the soil of an adjoining lot fell into an excavation and the supports of the buildings thereon became weakened. The owner of such adjoining lot brought an action against the corporation for the damages occasioned to his land by such excavation.

By the Act of Incorporation of the city, 51 Vict., c. 42 (B.C.), s. 190, the council may, by by-law, order the opening or extending of streets, etc., and to purchase, acquire, take, and enter into any lands required therefor, either by private contract or by complying with certain formalities prescribed by said s. 190. The said formalities are set out in s-s. 3 and 4 of that section providing for the appointment of commissioners to value the land to be taken. By s-s. 14 the report of the commissioners is to be submitted to the Supreme Court or a judge thereof, or a County Court judge, for confirmation, and by s-s. 15 the council of the city is to deposit with the registrar or clerk of the court the value fixed by such report, such deposit constituting a legal title in the city to the land.

Subsection 17 of said s. 190 extends s-ss. 3 and 4 to all cases in which it shall become necessary to ascertain the amount of compensation to be paid to any owner of land for damage sustained by reason of any alteration made by order of the council in the line of level of any street, etc., and the amount of such compensation is to be paid at once without further formality.

*Held*, affirming the decision of the Supreme Court of British Columbia, RITCHIE, C.J., and TASCHEREAU, J., dissenting, that s-s. 17 of s. 190 applies only to lands injuriously affected by work on the streets and not to land taken or used for the purposes of such work, and that in order to acquire, take, or use land for such purpose the council must be authorized by by-law and comply with the formalities prescribed by s-ss. 3, 4, 14, and 15 of said section; that the soil of plaintiff's lot having fallen into the excavation made in the street, it must be regarded as lands taken and used for the purposes of such excavation equally as it would have been if the street had been elevated so as to cover a portion of the adjoining land; that the corporation had therefore taken and used plaintiff's land without complying with the conditions precedent therefor prescribed, and were liable to the plaintiff in an action for the damage he had sustained.

*Held*, further, that excavating the street to such a depth as to cause the soil of the adjoining lot to fall into the excavation was such negligence in the execution of the work as to make the corporation liable.

Appeal dismissed with costs.

*Robinson*, Q.C., for the appellants.

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

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## *EXCHEQUER COURT OF CANADA.*

Admiralty Court.] [May 2

CHURCHILL *v.* MCKAY.

IN RE SHIP "QUEBEC."

*Power of attorney—Construction—Authority of to settle or adjust claim—Right to receive payment.*

The ship "Quebec" was abandoned at sea by her crew and discovered by another vessel, the crew of which stopped up augur holes bored in her and brought her into port. A claim for salvage was made against the owners, and a power of attorney was given by the salvors to one P., authorizing him "to bring suit or otherwise settle and adjust any claim which we may have for salvage service," etc. P. arranged with the owners the amount of salvage for the ship due the salvors, and received payment for the same, as well as part of the salvage for the cargo, giving the owners a release of the lien of the salvors on the vessel. P. did not pay the money to the salvors, and the power of attorney was revoked before the

balance of the cargo salvage was paid, and this action was brought to recover the full amount.

*Held*, affirming the decision of the local judge in Admiralty for Nova Scotia, that the authority by the power of attorney to "settle and adjust" the claim did not authorize P. to receive the money, and his release did not prevent plaintiffs from maintaining the action.

TASCHEREAU, J., doubted the jurisdiction of the court to hear the appeal.

Appeal dismissed with costs.

*W. B. Ritchie* for the appellants.

*McCoy*, Q.C., and *Morrison* for the respondents.

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## *SUPREME COURT OF JUDICATURE FOR ONTARIO.*

### COURT OF APPEAL.

[May 10.

HAYES *v.* ELMSLEY.

*Vendor and purchaser—Specific performance—Interest - Rescission.*

This was an appeal by the plaintiff and a cross appeal by the defendant from the judgment of the Chancery Division, reported 21 O.R. 562, and came on to be heard before this court [HAGARTY, C.J.O., BURTON, OSLER, and MACLENNAN, JJ.A.] on the 23rd of March, 1892.

The appeal was dismissed with costs, the court agreeing with the reasons for judgment in the court below.

The cross appeal which was brought against that part of the judgment refusing to allow interest from the 19th February, 1890, to the 10th of March, 1891, during which time the judgment for rescission was in force, was also dismissed with costs, the court being equally divided as to it.

*J. A. Donovan* for the plaintiff.

*W. Cassels*, Q.C., and *D. T. Symons* for the defendant.

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WRIGHT *v.* COLLIER.

*Evidence — Experts — New trial — Practice — Con. Rule 207.*

An action for damages caused by collision between two vessels was tried by ROSE, J., without a jury, and after the evidence had been taken the learned judge, with the consent of both parties, consulted two master mariners, and adopted as his own their opinion, based on a consideration of conflicting testimony as to the responsibility for the collision.

*Held*, that this was a delegation of the judicial functions, and a new trial was ordered. The scope of Con. Rule 207 as to calling in the assistance of experts considered.

*C. J. Holman* for the appellants.

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

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HALL *v.* HALL ET AL.

*Donatio mortis causa – Delivery of keys of box and of rooms.*

This was an appeal by the plaintiff from the judgment of the Chancery Division, reported 20 O.R. 684, reversing the judgment of ROSE, J., at the trial in her favour, reported 20 O.R. 168.

The action was brought to establish an alleged *donatio mortis causa* of the contents of a cash box and of two rooms. The deceased, shortly before his death, handed to the plaintiff, with words of gift, his watch and pocketbook, and also the keys of his cash box, which was at the time in the custody of his solicitor and contained various title deeds and securities, and the keys of two rooms, not in the house where the deceased at the time was.

The appeal came on to be heard before this court [HAGARTY, C.J.O., BURTON, OSLER, and MACLENNAN, JJ.A.] on the 18th and 21st of March, 1892.

The court, with great regret, dismissed the appeal for substantially the reasons given in the judgments below, the costs of all parties to be paid out of the estate.

The following cases, in addition to those cited below, were referred to. *Mustapha* v. *Williams*, 8 Times L.R. 160; *Wildish* v. *Fowler*, 8 Times L.R. 457.

*S. H. Blake*, Q.C., for the appellant.

*Bicknell* and *Gauld* for the respondents.

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MINGEAUD *v.* PACKER ET AL.

*Insurance — Life insurance—Benefit society — Appointment — Revocation—Trust - R.S.O., c. 136—R.S.O., c. 172—51 Vict. c. 22 (O.).*

This was an appeal by the plaintiff from the judgment of the Queen's Bench Division, reported 21 O.R. 267.

The plaintiff was the second wife of a person whose life was insured in a benefit society, incorporated under R.S.O. (1877), c. 167, as

amended by 41 Vict., c. 8, s. 18 (O.), now R.S.O. (1887), c 172. On the 28th of January, 1888, he being then a widower, this person obtained a benefit certificate from the society by which the insurance was made payable to his children. After this he married the plaintiff, and on the 1st of June, 1889, a new certificate was at his request issued by which the insurance was made payable to the plaintiff, and he died shortly afterwards.

The appeal came on to be heard before this court [HAGARTY, C.J.O., BURTON, OSLER, and MACLENNAN, JJ.A.] on the 9th and 10th of March, 1892.

The court was equally divided, and the appeal was dismissed with costs.

*Per* HAGARTY, C.J.O., and BURTON, J.A., affirming the judgment of the Queen's Bench Division: The effect of 51 Vict., c. 22 (O.), was to make the first certificate subject to the provisions of R.S.O., c. 136, ss. 5 & 6, and it was thus a trust in favour of the children and was not revoked by the second certificate.

*Per* OSLER and MACLENNAN, JJ.A., adopting the view of STREET, J., in preference to that of the Division Court: The rules of the society giving a power of revocation formed a valid part of the contract of insurance under R.S.O., c. 172, s. 11, and this power of revocation was not taken away or restricted by R.S.O., c. 136, ss. 5 & 6.

*N. F. Patterson*, Q.C., for appellant.

*C. J. Holman* and *D. B. Simpson* for the respondents.

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VINEBERG *v.* GUARDIAN FIRE ASSURANCE CO.

*Arbitration—Interest of arbitrator—Valuation—Insurance—Fire insurance—R.S.O., c. 167, s. 114 (16).*

Proceedings under R.S.O., c. 167, s. 114 (16), for the ascertainment of the amount of a loss are proceedings in the nature of an arbitration and not of a valuation merely.

Arbitrators must be absolutely impartial, and an award made by arbitrators one of whom had acted to only a very small extent as agent for an agent of the defendants in obtaining risks was, affirming the judgment of ROSE, J., at the trial, and of FERGUSON, J., in the Divisional Court, held void.

*S. H. Blake*, Q.C., for the appellants.

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

HYATT *v.* MILLS.

*Deed—Description—Assessment and taxes—Tax sale—Right of entry—Purchase of—R.S.O., c. 193, s. 191.*

A parcel of land was described in the patent thereof and in the books of the county treasurer as "the north part of lot number thirteen . . . containing 60 acres of land, be the same more or less." The parcel contained, in fact, 82 acres. In 1868 there were sold for taxes 50 acres, described thus: "Commencing at the northeast angle of said north part at the limit between said north part of lot number thirteen and lot number fourteen, thence along said limit taking a proportion of the width corresponding in quantity with the proportion of the said north part of lot number thirteen in regard to its length and breadth sufficient to make fifty acres of land." Then in 1871 there was sold for taxes a parcel described thus: "The whole of said southerly part of north half of said lot number thirteen . . . containing ten acres, and being part not sold for taxes in 1868."

*Held*, reversing the judgment of the Queen's Bench Division, that the sale of 1871 could not be limited to 10 acres to be located by the court "in such manner as is best for the owner," but was, the taxes being properly chargeable against the whole of the unsold portion, a sale of the whole of that unsold portion, and could not in consequence of the provisions of R.S.O., c. 193, s. 191, be attacked by the plaintiff, a purchaser from the owner after the time of the tax sale, who then had a mere right of entry.

*M. Wilson*, Q.C., and *J. B. Rankin* for the appellant.

*Moss*, Q.C., and *A. B. Cameron* for the respondent.

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## HIGH COURT OF JUSTICE.

### *Chancery Division.*

BOYD, C.] [April 9.

CAMPBELL ET AL. *v.* DUNN ET AL.

*Life insurance—Benefit of children—Who to control proceeds—Executors or guardian—Will—R.S.O., c. 136.*

A testatrix, having insured her life and made the policies payable to her two daughters, by her will required her executors (the defendants) to place the amount thereof in some thoroughly

safe investment until their majority or marriage, when said amounts and their accumulated interest should be divided equally, and appointed her husband (the plaintiff) their guardian.

In an action brought by the guardian to have the proceeds of the policy handed over to him by the executors,

*Held*, that the insurance moneys being made payable to the daughters were by 53 Vict., c. 39, s. 4 (O.), severed from her estate at her death, and her testamentary directions could not affect the fund beyond what is permitted by that statute and R.S.O., c. 136.

*Held*, also, that during the minority of the daughters the trustees appointed by the will, as provided for by s. 11, R.S.O., c. 136, may, by s. 13, invest in manner authorized by the will; but while the insured can give directions as to the investment, there is no control over the discretion of the lawful custodian of the fund in case the income is needed for maintenance or education or the corpus for advancement.

*Held*, also, that the guardian was the custodian of the daughters, with the incident of determining to a large extent what should be expended in their bringing up, and that the executors had charge of the preservation and the utilization of the fund, and so the estate and the persons of the daughters were in different hands.

*Held*, also, that s. 12 of R.S.O., c. 136, does not justify an insurance company in paying the amount of a policy to a testamentary guardian, the guardian there named being one who has given security, and that the court should not transfer the moneys from the executors to the guardian, as the latter's right to handle any part of the fund was subject to the trusts specified in the will, the execution of which was vested in the executors.

*Moss*, Q.C., for plaintiffs.

*Thos. Wells* for defendants.

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BOYD, C.] [April 19.

KECH *v.* MOSES

*Life insurance—Effect of writing concerning policy—Gift—Declaration of trust—Will—Absence of witnesses.*

One M. insured his life and signed a document directed to the managers of the company in these words, "I give and bequeath to . . . the amount stated on the policy given on my life by the S. Life Insurance Company, to be paid to none other unless at my request, dated later." After showing or reading the policy, which he retained, he handed it to the plaintiff, remarking, "There, that is as good as a will." In an action against the administrator, who had collected the money from the company after his death, it was

*Held*, that on account of its incompleteness the transaction was not a gift; that as the trust intended was not irrevocable, it was not a declaration of trust; that it was of a testamentary character, meant to be acted on only after the death of the donor; and that it could not take effect on account of the want of witnesses, and the action was dismissed.

*Idington*, Q.C., for plaintiff.

*Moscrip* for defendant.

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BOYD, C.] [April 27.

MUTTLEBURY *v.* TAYLOR ET AL.

*Mortgage—More than one held by same party—Right of party liable to pay one to demand assignment without paying the others.*

B., the owner of property, mortgaged it to the plaintiff and then sold to H., subject to the mortgage, and took a second mortgage as part of his purchase money and assigned it to plaintiff. H. then sold to W. W., to obtain an extension of time on the first mortgage, entered into a covenant with the plaintiff to pay it, and afterwards sold the property to C.

In a foreclosure action in which plaintiff asked for an order for the payment of the first mortgage by W. under his covenant, W. asserting his willingness to pay the amount due on it if the plaintiff would assign the mortgage to him, it was

*Held*, that the plaintiff was not bound to assign to W. unless he paid off both.

*F. E. Hodgins* for the plaintiff.

*D. Urquhart* for defendant Windeler.

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ROBERTSON, J.] [May 28.

COLVIN *v.* COLVIN ET AL.

*Will—Devise without mentioning what—Intention — Unintentional omission — Words read into will.*

A testator being possessed of personalty and realty bequeathed money legacies to a much greater amount than the personalty he owned, and then bequeathed to his "executors . . . in trust to dispose thereof to best advantage in

trust, to be divided and paid over to my children in the sums mentioned, and as soon as may be agreeable to the terms and conditions of certain mortgages and leases now standing against the property," without mentioning any property.

*Held*, that the court being satisfied that it was not the testator's intention to die intestate, to make sense of the will, would read into it the words "my property," presumably unintentionally omitted.

*J. J. Stevens* for plaintiff.

*C. J. Holman* for defendants.

*Harcourt* for infants.

## *Practice.*

ROSE, J.] [May 28.

OBERNIER *v.* ROBERTSON.

*Libel—Notice before action—R.S.O., c. 57, s. 5, s-s. 2—Statement of claim confined to material in notice.*

In an action for an alleged libel contained in a report of a Division Court trial in the defendant's newspaper, a notice specifying the statements complained of in said report was served before action, as required by R.S.O., c. 57, s. 5, s-s. 2. The notice included only certain detached portions of the report. The report, which was lengthy, was set out in full in the statement of claim, and was alleged generally to be libellous. On appeal from the order of the Master in Chambers dismissing the defendant's motion to strike out those portions of the statement of claim not included in the notice served before action, it was

*Held*, reversing the order of the learned Master, that the statement of claim must be confined to the alleged libellous matter set forth in the notice before action.

*E. F. B. Johnston*, Q.C., for the appeal.

*E. Douglas Armour*, Q.C., *contra*.

Court of Appeal.] [May 10.

JONES *v.* MACDONALD.

*Appeal bond—Disallowance of—Refiling of without consent of sureties—Insufficiency of surety—Evidence of—Sworn admissions in another action—Leave to appeal—Merits—Discretion—Interlocutory appeal.*

A bond was filed by the defendant for the purposes of an appeal to the Court of Appeal. Leave to appeal was, however, necessary, and had not been obtained before filing the bond, which was, therefore, on the 4th April, 1891, disallowed. Leave to appeal was afterwards obtained, and the same bond was on the 18th September, 1891, refiled without the consent of the sureties, and was again disallowed.

*Held*, rightly so; for the sureties might object that the bond had been improperly used by the defendant; and the respondent was entitled to a security free from any objections of that nature.

The plaintiff objected to the bond on the ground of the insufficiency of one of the sureties, and in support of that objection read the sworn statements of such surety in another action.

*Held*, that such statements were admissible against the defendant, who was putting forward the surety as a person of substance.

Leave to appeal was refused on the merits, and also as a matter of discretion where the proposed appeal was upon an interlocutory proceeding in the course of another appeal.

*H. L. Drayton* for the plaintiff.

The defendant in person.

# Appointments to Office.

### DIVISION COURT CLERKS.

*District of Algoma.*

John McIntosh, of the Town of Sault Ste. Marie, in the District of Algoma, gentleman, to be Clerk of the Fourth Division Court of the said District of Algoma, in the room and stead of M. J. Patterson, resigned.

### DIVISION COURT BAILIFFS.

*County of Carleton.*

Charles Vaughan, of the Township of Nepean, in the County of Carleton, to be Bailiff of the Second Division Court of the said County of Carleton, in the room and stead of P. O'Connor, resigned.

*United Counties of Prescott and Russell.*

Napoleon Dupuis, of the Township of South Plantagenet, in the County of Prescott, one of the United Counties of Prescott and Russell, to be Bailiff of the Eighth Divisic Court of the said United Counties of Prescott and Russell, in the room and stead of Victor Leger.

*County of Victoria.*

Stephen Nevison, of the Village of Fenelon Falls, in the County of Victoria, to be Bailiff of

the second Division Court of the said County of Victoria, in the room and stead of George Manning, deceased.

COMMISSIONERS FOR TAKING AFFIDAVITS.

*District of Montreal.*

Albert William Atwater, of the City of Montreal, in the Province of Quebec, Esquire, Advocate, to be a Commissioner for taking affidavits in the District of Montreal, and not elsewhere, for use in the Courts of Ontario.

*City of Edinburgh, Scotland.*

Duncan Campbell Mackenzie, of the City of Edinburgh, in that part of the United Kingdom of Great Britain and Ireland called Scotland, Writer to the Signet, to be Commissioner for taking affidavits within and for the said City of Edinburgh, and not elsewhere, for use in the Courts of Ontario.

COMMISSIONERS FOR ADMINISTERING OATHS.

James Dunbar, of the City of Quebec, Esquire, one of Her Majesty's Counsel learned in the Law; Lewis W. DesBarres, Esquire, of the City of Halifax; Robert O. Stockton, Esquire, of the City of St. John: John A. Longworth, Esquire, of the City of Charlottetown; James Charles Prevost, Esquire, of the City of Victoria; and John Bruce, Esquire, of the City of Toronto, Registrars in Admiralty of the Exchequer Court: Louis Henri Collard, Esquire, of the City of Montreal, Clerk of the Court of Review; G. H. Walker, of the City of Winnipeg, Esquire; Dixie Watson, of the Town of Regina, Esquire: and H. A. L. Dundas, of the Town of Calgary, in the North-West Territories, Esquire: C. Gardner Johnson, of the City of Vancouver, Esquire: and W. E. Peters, of the Town of Sydney, in the Province of Nova Scotia, Esquire: to be respectively Commissioners for administering oaths in the Supreme Court and in the Exchequer Court of Canada.

## Flotsam and Jetsam.

A GOOD story is gotten off on the legal profession, which runs about as follows: In a certain community a lawyer died who was a most popular and worthy man; and among other virtues inscribed upon his tombstone was this: "A lawyer and an honest man." Some years afterwards a Farmers' Alliance convention was held in the town, and one of the delegates, being of a sentimental turn, visited the "silent city," and, in rambling among the tombs, was struck with the inscription: "A lawyer and an honest man." He was lost in thought, and when accosted by a fellow-hayseed, who, noticing his abstraction, asked if he had found the grave of a dear friend or relative, said: "No, but I am wondering why they came to bury these two fellows in the same grave."

The above story, which has been going the rounds, is a good one, and we intended to give credit for it in the usual way; and on this occasion to the *Central Law Journal*, when we remembered having seen it in a previous issue of the *Green Bag*. Which owns the copyright?—"Amongst ye be it, blind harpers."

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THE *Green Bag* is enlivened by a piece of poetry on the decision in *Hunter v. New York, etc., R.W. Co., 116 N.Y. 115*. "The court will take judicial notice that no man can sit four feet eight inches high." A brakesman was shown to have been sitting on the top of a freight car while it was entering a tunnel, the arch of which was said to have struck him. The evidence showed that the arch was four feet seven inches above the car. The fourth stanza of the poem tells us:

Of Hunter's height there was no proof;
The judge unto the jury said,
"You must determine if that roof
Could possibly hit Hunter's head."
The twelve, impartial, true, and good,
At Hunter looked, and said it could.

BROWN, J.

Now *this* court knows a thing or two;
This story is too big a boo.
To sit and butt the roof of hall,
Four foot seven above his seat,
A man must needs be nine feet tall:
Such men we never meet.

CHORUS OF JUDGES.

No mighty Hunter, well says Brown,
Has never reared so high his crown.
No man can sit four feet eight inches high;
So he falls short of a recovery.
Unless a man sits moderately short,
He'll seek in vain for standing in this court.