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The BARRISTER

A. C. MACDONNELL, D.C.L., Editor.

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The Barrister.

VOL. II. TORONTO, APRIL, 1896. No. 4

EDITORIAL.

The Salisbury Administration is likely to have some good judicial berths to give away; five occupants of the Bench during the course of the present year will be entitled to retire on pensions. The first is Mr. Justice Mathew, who was raised to the Bench in 1881. Next to him Mr. Justice Cave and Mr. Justice Kay, whose appointments date a few weeks later. Mr. Justice Chitty will be entitled to retire in September and Mr. Justice North in November.

Senior to these five are the Master of the Rolls, Lord Justice Lindley, Lord Justice Lopes, Baron Pollock and Mr. Justice Hawkins, to all of whom it has been long optional to retire. Lord Esher, who is 83 years of age, has sat on the bench for 28 years, having been appointed a Judge of the Common Pleas in 1868.

A Study of Cases.

The appreciation of the study of cases as a part of a young lawyer's preparation for practice has grown greatly during the last few years, and legal educators are now agreed that if the cases are well selected no part of a law school course is more beneficial.

Some legal educators of the greatest prominence believe that a student should study law by means of cases, almost to the entire exclusion of text books. We have not been able to bring ourselves to agree with this idea. We believe that the best idea is to pursue a happy medium and study properly selected cases, not in the place of text books, but as illustrating text books. Studied in this way, cases cannot fail to be of the highest benefit to a law student. For he thereby, not only learns the law, but he also learns how to examine and study cases, to extract their important points, and to see just how a Court deals with states of facts, and applies the law thereto in preparing a judgment or opinion. This will prove of great value to him, both during his preliminary study and when he is admitted to the Bar and undertakes to prepare his own cases for argument.

Bar Associations.

It is stated that the Lord Chief Justice of England has accepted an invitation from the American Bar Association to attend its annual meeting, to be held at Saratoga Springs, New York, on August 19, 20, and 21 of the present year. The association, which has been in existence for eighteen years, is composed of members of the Bar associations of nearly all the states and territories of North America, its objects being to "advance the science of jurisprudence, promote the administration of justice and uniformity of legislation throughout the Union, uphold the honour of the profession of the law, and encourage cordial intercourse among the members of the American Bar." Lord Russell of Killowen will be accompanied by Sir Frank Lockwood, Q.C., M.P., and Mr. Montague Crackanthorpe, Q.C.

It will be remembered by readers of The Barrister that Sir Frederick Pollock attended a dinner given last year by the law faculty of Harvard. These two instances show how close and cordial the relationship is between the English and American Bar. It is a great pity that we have not a Canadian Bar Association. If we had such an association meeting annually, it would bring the lawyers from all the different Provinces together, and would be productive of no end of good. It would, first and foremost, cause the lawyers of the different Provinces to agitate for uniform legislation, and would, secondly, cause the lawyers to become better acquainted with the laws of each Province. We have called the attention of the profession time and again to this question, which, in our opinion, is fraught with more good than any other question now mooted. The great drawback to the average practitioner is that he mingles too little with his brethren, and is not stimulated like a man is who is continually rubbing up against bright minds. The old adage holds good that "iron sharpeneth iron." It is impossible for five or six hundred lawyers to meet together in convention for two or three days a year without it being a great benefit to them all, and to the country in general. If all who believe in this as we do would only write to us saying they would be glad to act on a professional committee to work it up, we would soon be able to start up the movement in real earnest.

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We regret that the effort made by the various towns to elect new Benchers in the late Bencher elections was not more successful. The position is largely an honorary one and should be passed around. At present it seems to be considered too good a thing to let go, and we have no doubt power will be asked of the Legislature to make it a life appointment with power of demise.

Editorial Notes.

Since our last issue, two of our High Court Judges have been on the sick list; and many others have been complaining of poor health. The Chancellor has been ill, suffering from nervous prostration. And Hon. Mr. Justice Ferguson was also confined to his house. When a Judge is ill or is unable from other reasons to keep his appointments, the whole legal machine is run down; the scheme or schedule of weekly Courts, Trial and Divisional Courts, completely takes up the time of every Judge. And the Judges are being worked hard in order to keep pace with their duties. Such a state of affairs is deplorable. We hear on all sides agitations in support of "eight hours" as a full day's work, yet many of our Judges sit eight hours, and put in four or five hours' work outside the court room. The Dominion Government has introduced the eight hour a day movement into the Printing Bureau at Ottawa. Should not some limit be placed on the work that our Judges are expected to do? Every Judge of our High Court has about 40 per cent. too much work to attend to, and to ask these Judges to keep up the work they have been doing is simply an attack on their lives. There have been Divisional Courts sitting almost steadily since the beginning of this year, and owing to the new rules of practice the work of the Judges is greatly increased. We hope the Minister of Justice will look into the matter as soon as possible and recommend the appointment of one or two extra Judges, and attach them to the High Court. This difficulty occurred in the Province of Quebec, where the Assize lists were greatly congested and the Judges were overburdened with work, until the Minister of Justice carried through a bill to remedy the defect by the appointment of an extra High Court Judge.

The session of the Federal Parliament at Ottawa was unimportant so far as legislation was concerned. We will comment on this in our next issue, and note the few legislative acts of the session.

Although fresh from the Benchers' elections, the lawyers of the Province are about to take a hand in the Dominion elections. We notice some prominent members of the Bar of this Province already in the field as candidates. The legal profession produces candidates galore, and yet our patron traducers say we do not stimulate production.

The Rules Commission is sitting regularly at Osgoode Hall, and considerable progress is being made in the good work of consolidation. We trust that before our next issue appears the Commission will have about com-

pleted their labors. Suggestions from the Bar will be thankfully received by Mr. Thos. Langton, Q.C., Osgoode Hall. We understand that a new edition of Holmested and Langton is in the press and will be finished by the long vacation.

HON. WILFRID LAURIER, Q.C., P.C., M.P.

The subject of this sketch was born on the 20th November, 1841, at St. Lin, a quiet, modest parish in the Province of Quebec; his father was Carlus Laurier, a land surveyor, and a well educated gentleman of the old French school. Wilfrid entered Assomption College in 1854, and here gave evidence of his literary and oratorical abilities; he was the prize speaker of the college and the framer of its addresses, and a good scholar, studious and serious, and, as a general thing, obedient to the rules of the school. But he incurred punishment several times for going without leave to hear the lawyers plead in the village court house, and in going to public meetings to hear the popular speakers of the day. His vocation was at this early age asserting itself in spite of all rules and regulations. As a boy his politeness and delicacy were marked characteristics, and are still so at the present day.

In 1860 he entered the office of Rudolphe Laflamme in Montreal, one of the greatest lawyers in the Province of Quebec. His student life was not stormy and dissipated like that of many law students of the period; he studied very hard and also bent his energies to mastering the English language and burrowing in English literature. This did not conduce to his health, which, as a boy, had been delicate.

He was admitted to the bar in 1864 and started to practice in the city of Montreal with a fellow student, Lanctot, under the firm name of Lanctot & Laurier. The first case in which he appeared as counsel, that is reported, is the case of Lacomb v. Lanctot, which was taken to the Supreme Court of the Province; it was a matter in bankruptcy. Mr. Laurier appeared for the petitioner, and George E. Cartier, the celebrated leader of the Conservative party, appeared for the claimants; judgment was given against Mr. Laurier's clients, but no costs were allowed. The next case in which he appeared that is reported was Lefort v. Marie dit Ste. Marie. It will be interesting to our readers to know that he had for his opponent a gentleman who was to be afterwards his lifelong opponent in the political arena, Mr. Chapleau; Mr. Laurier succeeded. One cannot help but wonder if Mr. Chapleau, as he returns to the arena once more to face his old legal and political foe, recalls Lefort v. Marie. Mr. Laurier practised for two years in Montreal, and appears to have been working up a good practice, when his health, that was always delicate, forced him to retire for a time to try a change. On the advice of friends he removed to Arthabaska, which is one of the most charming spots

in all the Province of Quebec, and for a short time here took editorial charge of "Le Defricheur." In the course of a year he retired from journalism and returned to the practice of law in Arthabaska. As our readers are all aware, the Province of Quebec is divided into judicial districts. Mr. Laurier at once took a leading position at the Bar, and showed himself to be as versatile in law as he afterwards showed in the political arena. He was equally at home before the jury or the Supreme Court, equally at home in criminal or commercial or corporation law; in that respect he seems to have been very much like Mr. D'Alton McCarthy of this Province, as the following cases will show: Ivers v. Lemieux, Beaudette v. Mahoney, Crepeau v. Glover, Corporation de St. Christophe d'Arthabaska v. Esdras Beaudette, Regina v. Ling, Bothwell v. Corporation of West Wickham, Brown v. Perkins, Lavergne v. Lainesse, Carrier v. Cote, Moore v. Kean et al.; these are all cases that were carried to the Supreme Court, and represent every branch of law. Mr. Laurier appears to have been very successful, and would, undoubtedly, have made a great reputation as a lawyer had he devoted himself exclusively to it. Mr. Laurier was very successful with juries; his tall, straight and noble bearing, with the pale face of the student, with a countenance mild, serious and rendered sympathetic by an air of melancholy, with a manner simple, sweet and self-commanding, he at once won the interest and sympathy of the jury before he uttered a single word; as his mind is not involved his addresses were always clear, concise and to the point. At a glance he embraces all sides of the question, seizes its leading principles and draws therefrom a series of reasoning which is connected together like the links of a chain. He impressed every juryman that he firmly believed in the justice of his client's cause, and made it clear to them that he had a wrong that should be righted, and he seldom failed to make them see his way. Mr. Laurier enjoys the advantage of being a born orator; he has the further advantage of having cultivated his great natural gift and developed a love of truth and honesty of purpose, without which no man can be a great orator. Listen to him, and it is at once seen that his language is the echo of conviction and of a noble heart. And the impression which he creates upon his audience constitutes the best part of his force and his merit

In 1871 he was nominated for the Local Legislature and was returned to represent the united counties of Drummond and Arthabaska, defeating by a majority of one thousand votes the Ministerial candidate, Mr. Hemming. Entering the House while such men as Cartier, Cauchon, Langevin, Holton, Fournier, Irvine, Joly, Lynch, Blanchet, Fortin, Robitaille, Cassidy and Bachande still figured on the provincial scene, the young member for Drummond and Arthabaska modestly took his seat on the rear Opposition benches, but his first parliamentary speech at once brought him into full prominence, and he was heralded throughout the Province as the rising hope of his party. A perusal of this speech will show that in regard to its breadth and scope it was more in keeping with the tone of the House of Commons, which the young member was destined to

reach before long. He was then thirty years of age.

Three years afterwards he entered the Federal arena as a supporter of Alexander Mackenzie, and within three years more, at the early age of thirty-six, he became a Cabinet Minister and one of the recognized leaders of his Province. Up to that time no career in Canada had been more rapid, more brilliant. But, strange to say, upon his return to his native county for endorsation on his elevation to the ministerial rank he was defeated, where he had once carried it by one thousand majority. This appears to have been the first rumbling of the downfall of the Mackenzie Government. East Quebec was opened for him at once, and there he was easily elected and became Minister of Inland Revenue. On the downfall of the Mackenzie Government in 1878, he returned to Arthabaska and resumed the practice of law, where he enjoyed a lucrative practice.

On the Hon. Edward Blake assuming the leadership of the Liberal party in 1880, Mr. Laurier became his first lieutenant from Quebec. The speech which gave him national reputation was that delivered on the 16th March, 1886, in the House of Commons on the execution of Louis Riel, when he delivered his great Phillipic against the Government. In this occurs the famous sentence that, if he had been stationed upon the banks of the Saskatchewan River he would have shouldered his musket in defence of the rights of the half-breeds. Next morning the ministerial press from ocean to ocean named him the "Silver-tongued Laurier," and his name was in every man's mouth.

During the campaign of 1887 he was, next to Blake, the most conspicuous figure in the Liberal party in Canada, and showed his bravery and courage in coming to Toronto, where the press said he dared not come, and deliver the speech he delivered in the House of Commons; but come he did, faced the three thousand people and won a triumph. After the defeat in 1887 he was elected to the Liberal leadership, and has since continued in that position.

Mr. Laurier as an orator calls into play logic, reason, scorn, contempt, wit, laughter, pathos, and often apologizes and the apology is an insult; he oftentimes eulogizes his opponents, and they wake to find themselves absurd. His speeches are studded with brilliant sayings, repartee and startling apostrophes; in a single sentence he ofttimes demolishes an argument that an opponent has taken an hour to evolve. As for instance, who can forget the Board of Trade banquet held in the city of Toronto in 1893, when after an hour's speech delivered by Hon. George E. Foster, in which he proved by column after column of figures and by mathematics that we were all rich, on the Hon. Wilfrid Laurier rising to speak, with quiet good humored sarcasm, he said, "When I am Premier it will not be necessary for you to read statistics to know whether you are rich or not; you will simply have to put your hands in your pockets and feel it." What could be finer? It simply exhausted the question, there was nothing more to say. It reminds one of the celebrated prize essay upon the Lord's first miracle, which exhausted the question in seven words: "The

Lord looked and the water blushed." Such eloquence commands admiration, and proofs presented in such guise cannot help but captivate all who hear.

RICHARD ARMSTRONG.

THE LAW OF THE WHEEL.

Solomon has said that "there is nothing new under the sun," but the bicycle is a new thing to the consideration of the Courts. Its use for purposes of locomotion and travel is so recent that as yet there has been little adjudication as to the rights and liabilities of travellers employing it on the highway. The trend of judicial opinion, however, seems to place it in the category of vehicles and carriages with the rights and liabilities attendant thereto.

In the early stages of its popularity the wheel met strong opposition from both pedestrians and the agencies of transportation on the road, the former objecting to its use on the sidewalk and the latter objecting to its use on the road, claiming that it was an object of terror, the use of which was perilous in that it frightened horses. In time, however, the wheel rolled itself into popular favor and use to such a degree as to compel its recognition by the Courts and the establishment of its legal status with other vehicles. When the Courts came to determine the principles applicable to the particular case, it was shown that the wheel was only an apparent exception to Solomon's aphorism, for the principles to which the Courts were compelled to look, were those laid down by Blackstone, Coke and the old common law jurists, who never saw, and so far as we know, never dreamed of the two-wheeled vehicle or the bloomer girl. We therefore look to the mother country for the first case involving the law of the wheel. The English Courts early decided that the wheel was not an obstruction to or an unreasonable use of the streets or roads, "but rather a new and improved method of using the same, and germane to their principal object as a passageway."

The first person to bring the bicycle into litigation was one Taylor, an Englishman, who had come into collision with one Goodwin, who, in the parlance of to-day, was "scorching" along the highway. Goodwin was accused of violating a statute making the furious driving of a carriage upon the highway an offence, the terms of the statute being, "If any person riding any horse or beast, or driving any sort of carriage, shall ride or drive the same furiously so as to endanger the life or limb of any person," etc., proceeding to designate the penalty. When brought into Court, Goodwin did not deny the allegation of immoderate speed, but set up that the bicycle was not a carriage within the meaning of the statute, and that the word "driven" could not be applied to the bicycle, and that the statute did not apply, since bicycles, having been invented since the enactment of the statute, could not have been contemplated by its framers. He claimed that the mere fact that

the bicycle had wheels did not make it a carriage any more than it did a wheelbarrow or roller-skates. The Courts, however, held that the words "any sort of carriage" were broad enough to include the bicycle, and that the person propelling a bicycle drives it as much as one drives a horse or as an engineer drives an engine for he controls its course and regulates its speed.

The anomalous character of the bicycle and its use, however, necessitates some slight variations in applying the law of carriages and vehicles to it, and it seems that the wheelman in riding the road partakes somewhat of the nature of a horseman and to some extent reaps the benefits and disadvantages of the immemorial usages and customs applicable to him. For instance, it seems that there is no law requiring a horseman to turn to the right. The rule seems to be that a man on horseback should be governed rather by his notions of prudence, and should be required to consider somewhat the convenience of vehicles which he meets, depending upon their character. A horseman should yield the travelled track to a vehicle, particularly if it is heavily laden, where he can do so without peril. The facts that bicycles and horses can pass along a track much narrower than that required for carriages, and that they also occupy much less space in length, are of weight in determining the duty of the wheelman or rider. So, too, is the fact that his control is more absolute than that of the driver of horses attached to carriages. A bicyclist, however, cannot be forced to ride his machine on dangerous ground, and the cardinal rule, subject to the above considerations, is: "Keep to the right."

In general terms the law of the bicycle may be summed up in the following paragraphs:

All persons have a right to use a public highway in the ordinary manner in safety, and municipal corporations or cities are liable to bicyclists for injuries incurred by reason of defective roads, provided they are not guilty of contributory negligence. But a municipal corporation is not an insurer, and all that is required of it is that it shall use reasonable diligence to keep the highway in reasonably good condition for safe travel by the ordinary means of vehicles in general. But the corporation is under no special obligation to wheelmen, and an obstruction or defect which will cause an injury to a wheel or its rider, will not sustain an action unless it is also sufficient to operate as a defect with relation to vehicles in general. Thus, a stone might be disastrous to a bicycle and still have no effect upon a carriage, and in such case the wheelman would probably have no action.

The driver or owner of a vehicle who wilfully or negligently causes a collision or damages a bicycle while left standing by the street curb or roadside, would be liable for the injury; but it is the duty of a wheelman to avert collision if possible, and he cannot recover damages unless he himself was free from contributory negligence in permitting the collision or the injury complained of.

A person injured while committing an illegal act cannot recover therefor; so in States having Sunday laws, a wheelman riding on Sunday for business or pleasure cannot recover damages if injured.

When bicycles are going in the same direction the hindermost may pass the others on either side. But one riding on the left-hand side of the road probably assumes all risks and is prima facie guilty of negligence.

Though in general a bicycle has no right upon the sidewalk, a pedestrian has a right to walk in the highway, and may cross the street where he pleases, but he is guilty of negligence which will prevent recovery of damages if he attempts to cross immediately in front of a moving vehicle, and for the purposes of such a case, the fact that the vehicle is on the left-hand side of the road is not alone evidence of negligence to charge the rider or driver.

If the bicyclist rides at an immoderate rate of speed on a highway or street, and while so doing injures a pedestrian, he may be liable either civilly or criminally, for his recklessness in riding at such a rate of speed will, in general, be held to supply the want of criminal intent. Thus, it has been held that where a bicyclist kills a human being while going at a dangerous speed he may be convicted of manslaughter. But what is "an immoderate rate of speed" is a question to be determined in view of all the circumstances of the case, as time and place, for what might be a perfectly safe rate of speed upon a country road might be murderous on a city street.

STRIKES.

Strikes, which were formerly considered illegal, have some time since been legalized; trade unions at one time pronounced to be illegal are now legal societies. Persons may now combine for the purpose of refusing to work for their masters; they may strike, unless in so doing they commit acts otherwise illegal, and a trade union that assists in or conducts a strike, may in so doing act legally, even when picketing with proper restrictions is resorted to. The limits within which a strike must be conducted so that those participating in it do not thereby break the law have recently been considered by the English Court of Appeal in the case of Lyons v. Wilkins, 12 T. L. R. p. 278.

Inasmuch as in most cases of strike many act in consort, the law pertaining to the subject is generally to be found classed under "conspiracy." Another reason for this is that the acts complained of are nearly always in contravention of some criminal statute, the indictments, because of the number of persons implicated, being for a conspiracy to commit the statutory offence. There may, of course, be a conspiracy, not criminal, to do an illegal act, which Courts will restrain. Some recent actions have been brought for injunctions to restrain strikes, but the orders, where granted, have been to prohibit the doing of such acts as the particular statute applicable constitutes an offence. In the case just mentioned, the Court, on appeal, reformed the injunction order so that it read in the terms of the statute. There is no doubt,

however, that it is enough to entitle a plaintiff to an injunction, that he can show that the acts complained of, though in contravention of no statute, are malicious, and done for the purpose of injuring him.

A short sketch of the history of the law respecting the class of conspiracies under discussion will make it easier to comprehend the present legal position of the striker. During the reigns from that of Edward III. to the end of that of Elizabeth, various statutes were directed against combinations by masons, by carpenters and by victuallers to raise prices, and by laborers to raise wages or alter hours. During the seventeenth century all the cases of conspiracy for offences relating to trade or labor relate to prices. During the eighteenth century several Acts were passed prohibiting combinations from controlling masters in particular trades. By 39 Geo. III. c. 81 (1799), all agreements by workmen of any kind, for altering hours or lessening the quantity of work, or for hindering masters from employing such persons as they should please, or for controlling or in any way affecting a master in the conduct or management of his business, were declared illegal, null and void. The same statute made it an offence for workmen to enter into such agreements, or subscribe or collect money, or attend meetings for the purpose of such agreements, or bribe, persuade or influence other workmen not to enter into hirings, or to quit their hirings, or refuse to work for any other workman. Next year this Act was repealed and replaced by another, the provisions of which were similar, except that to constitute the various offences the acts must be wilfully and maliciously done.

In 1824, 5 Geo. IV., c. 95, repealed all the then existing Acts relating to combinations of workmen, and provided that workmen should not by reason of combinations as to hours, wages or conditions of labor, or for inducing others to refuse to work, or to depart from work, or for regulating the mode of carrying on any manufacture, trade or business, or the management thereof, be liable to any criminal proceedings or punishment for conspiracy or otherwise, under the statute or common law. But it exacted a penalty of imprisonment for violence, threats, intimidation and malicious mischief. Next year this was repealed and replaced by 6 Geo. IV., c. 129 (1825), which continued in force till 1871.

In 1859 an amending Act was passed declaring that agreements by workmen or others as to wages or hours of work, whether of persons present at the meetings or of other workmen, and peaceable persuasions by workmen or others to abstain from work in order to secure such wages or hours, should not be deemed to be molestations or obstructions, but that this proviso should not authorize breach of contract by workmen or persuasion of workmen to break their contracts. This too was repealed by the Act of 1871.

So much for the statute law up to 1871. The suggestion that combinations to injure private persons may be criminal, although the proposed means of injury would not be criminal, though often made, is not borne out by the cases. It rests partly on the authority of Hawkin's Pleas of the Crown, I, 72-2, where

it is stated that "there can be no doubt but that all confederacies whatsoever wrongfully to prejudice a third person are highly criminal at common law." An examination of the authorities for this proposition does not bear it out. There has been up to now no rule of common law that combinations for controlling masters or workmen were criminal, except where the combination was for some purpose punishable under a statute expressly directed against such combinations, or was for conduct punishable independently of combination.

The numerous cases of this century uniformly recognize that a lock out or a strike, whether for higher wages or against an obnoxious workman, or against refusal to conform to regulations, is not per se an offence. In R. v. Druitt, 10 Cox, 592 (1867), Bramwell, B., said that strikes to raise, or lock outs to lower wages were lawful. In R. v. Sheridan (Leeds Mercury), Lush, J., is reported to have said that there was nothing criminal in a combination to enforce by strike, without intimidation, the compliance by a master with arbitrary rules of a trade union. A strike is admitted not to be itself criminal, nor in the absence of breach of contract is it a civil wrong.

The Imperial Trade Unions Act of 1871, 34 & 35 Vic. c. 31, which takes form in Canada under the same name by 35 Vic. c. 30, takes away restraint of trade as a possible ground of criminality. See s. 22. The Imperial Statute 34 & 35 Vic. c. 32, being the Criminal Law Amendment Act of 1871, again repealed all the older statutes, but without mention of the common law. Threats, violence, intimidation, molestation or obstruction by any person or combination for the purpose of forcing a master to alter his mode of business, or a workman to leave work, or forcing any person to belong to, or subscribe, or conform to rules of any club or associations, are thereby penalized.

In R. v. Bunn, 12 Cox, 316, it was held that a combination between workmen to hinder or prevent their master from carrying on his business by means of the workmen or servants breaking unexpired contracts of service, into which they had entered with the master, was an indictable conspiracy, notwithstanding 34 & 35 Vic. c. 32. This decision led to the repeal of this Act, and the enactment of 38 & 39 Vic. c. 81, the Conspiracy and Protection of Property Act, which by s. 3 declares that: "An agreement or combination of two or more persons, to do, or procure to be done, any act in contemplation or furtherance of a trade dispute between employers and workmen, shall not be indictable as a conspiracy, if such act, committed by one person, would not be punishable as a crime." In the same year the law in Canada was amended to conform to the Imperial Act, and is now to be found in the Criminal Code, as Article 518. The scope of the meaning of this section is laid down in R. v. Gibson, 16 O. R. 704, where it was held that members of a trade union, in conspiring to injure a non-unionist workman by depriving him of his employment, were conspiring to do something that was not for the purposes of their trade combination, within the meaning of the statute.

While strikes conducted by trade unions, by which workmen combine for the purpose of declining to work for their master are legal, it is not always easy

by legal means to make them effective. The difficulty in the way of making these acts effective is, that the master may arrange with others to take the place of the strikers. According to Lindley, L.J., this difficulty will continue to exist till Parliament confers powers on trade unions which have not yet been conferred. In Lyons v. Wilson, before referred to, the English Court of Appeal granted an injunction to restrain a trade union from inducing people not to enter the employment of the plaintiffs, on the ground that their manner of doing it was malicious.

The Imperial Statute 38 & 39 Vic. c. 86, is repeated in part in Articles 521, 523 and 524 of the Criminal Code, by which persons who, with a view to compel any other person to abstain from doing, or to do any act, which such other person has a legal right to do, or abstain from doing, wrongfully and without legal authority, watches or besets the house or other place where such other person resides, or works or carries on business or happens to be, is guilty of intimidation.

In this case, Lyons v. Wilson, the defendants had picketed the plaintiff's premises, not only to get information, but for the purpose of inducing work people to abstain from entering their employment. This was held to be evidence of malice, and malice must be shown even where injuries result from the acts complained of. Mogul v. McGregor, (1892) A. C. 25, decides that persons may by lawful means endeavor to prevent others from working for third parties. But Temperton v. Russell, (1893) 1 Q. B. 715, and Flood v. Jackson (1895), 2 Q. B. 21, make it clear that while merely to persuade a person who has contracted to break his contract gives no cause of action at all, if it is done maliciously, for the purpose of injuring the person to whom the advice is given, or of injuring some one else, the person against whom the malice is directed and carried out has a cause of action; not on the ground of persuasion to break the contract, but on the ground of malice directed against him. The result is the same whether the persuasion is to break the contract or not to make a contract. One person has a perfect right to advise another not to make a particular contract, and that other is at perfect liberty to follow that advice. But if the first person uses that persuasion with intent to injure the other, or to injure the person with whom he is going to make the contract, then the act is malicious, and the malice makes that unlawful which would otherwise be lawful.

The case of Temperton v. Russell is authority for the broad principle, that if a man induces one or two parties to a contract to break that contract, with intent to injure the other party, or to do himself a benefit, he thereby commits an actionable wrong. See Bowen v. Hall, L. R. 6 Q. B. D. 333. A combination for such a purpose is illegal, and so a conspiracy for this purpose (not a violation of any statute) would be restrained.

G. G. S. LINDSEY.

REPORTS OF CASES.

Recent Decisions Not Previously Reported.

Supreme Court of Canada.

Agricultural Insurance Co. v. Sargent.—Ottawa, 18th February, 1896.—Suretyship—Principal and surety—Continuing security—Appropriation of payments—Imputation of payment—Reference to take accounts.—J. H. S. was a local agent for an insurance company, and collected premiums on policies secured through his agency, remitting moneys thus received to the branch office at Toronto from time to time. On 1st January, 1890, he was behind in his remittances to the amount of $1,250, and afterwards became further in arrears until, on the 15th October, 1890, one W. S. joined him in a note for the $1,250 for immediate discount by the company, and executed a mortgage on his lands as collateral to the note and renewals that might be given, in which it was declared that payment of the note or renewals or any part thereof was to be considered as a payment upon the mortgage. The company charged J. H. S. with the balance then in arrears, which included the sum secured by the note and mortgage, and continued the account as before in their ledger, charging J. H. S. with premiums, etc., and the notes which they retired from time to time as they became due, and crediting moneys received from J. H. S. in the ordinary course of their business, the note and its various renewals being also credited in this general account as cash. W. S. died on 5th December, 1891, and afterwards the company accepted notes signed by J. H. S. alone for the full amount of his indebtedness, which had increased in the meantime, making debit and credit entries as previously in the same account. On 31st July, 1893, J. H. S. owed on this account a balance of $1,926, which included $1,098, accrued since 1st January, 1890, and after he had been credited with general payments there remained due at the time of trial $1,009. The note W. S. signed on 15th October, 1890, was payable four months after date, with interest at 7 per cent., and the mortgage was expressed to be payable in four equal annual instalments of $312.50 each, with interest at 6 per cent. on unpaid principal.

Held, that the giving of the accommodation notes without reference to the amount secured had not the effect of releasing the surety, as being an extension of time granted without his consent and to his prejudice; that the renewal of notes secured by the collateral mortgage was prima facie an admission that at the respective dates of renewal at least the amounts mentioned therein were still due upon the security of the mortgage; that in the absence of evidence of such intention it could not be assumed that the deferred payments in the mortgage were to be expedited so as to be eo instanti extinguished by entries of credit in the general account, which included the debt secured by the mortgage; and that there being some evidence that the moneys credited in the general account represented premiums of insurance which did not belong

to the debtor, but were merely collected by him and remitted for policies issued through his agency, the rule in Clayton's case as to the appropriation of the earlier items of credit towards the extinguishment of the earlier items of debit in the general account, would not apply.

Held, also, reversing the judgment dismissing the plaintiff's action in the courts below, that under the circumstances disclosed the proper course should have been to have ordered accounts to be taken upon a reference to the master. Appeal allowed with costs. Holman, for the appellants. Watson, Q.C., for the respondent.

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Rooker v. Hoofstetter.—18th February, 1896.— Mortgage — Agreement to charge lands— Statute of frauds—Registry.— The owner of an equity of redemption in mortgaged land, called the Christopher farm, signed a memorandum as follows: "I agree to charge the east half of lot No. 19, in the seventh concession of Loughborough, with the payment of two mortgages held by G. M. G. and Mrs. R. respectively, upon the Christopher farm . . . amounting to $750 . . . and I agree on demand to execute proper mortgages of said land to carry out this agreement or to pay off the said Christopher mortgages." Held, affirming the decision of the Court of Appeal (22 Ont. App. R. 175), that this instrument created a charge upon the east half of lot 19 in favor of the mortgagees named therein. This agreement was registered and the east half of lot 19 was afterwards mortgaged to another person. In a suit by one of the mortgagees of the Christopher farm for a declaration that she was entitled to a lien or charge on the other lot, it was contended that the solicitor who proved the execution of the document for registry as subscribing witness was not such, but that the agreement was in the form of a letter addressed to him. Held, affirming the judgment of the Court of Appeal, that as the agreement was actually registered the subsequent mortgagee could not take advantage of an irregularity in the proof, the registration not being an absolute nullity. Held, per Taschereau, J., that if there was no proof of attestation, the Registry Act required a certificate of execution from a County Court Judge, and it must be presumed that such certificate was given before registry. Appeal dismissed with costs. Smythe, Q.C., for the appellant. Langton, Q.C., for the respondent.

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Ontario Cases.

Muller v. Gerth.—The Divisional Court.—Armour, C.J., Falconbridge, J., Street, J.—3rd March, 1896.—Particulars slander.—The defendant must be furnished by the plaintiff as a right, the fullest and most comprehensive particulars, as to the place where, time of, and the person to whom the defamatory words alleged were uttered, and the names of persons who have ceased dealing with the plaintiff because of the slander. Uncertain particulars, such as "among others" and "some of the persons," are not sufficient. The plaintiff must give definite information as far as he can, and if further information comes to his knowledge, he must announce it. The defendant is entitled to particulars of slanderous state-

ments, alleged merely as matters showing malice express or in aggravation of damages. W. N. Ferguson, for the plaintiff. F. A. Anglin, for the defendant.

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Taylor v. Neil.—Boyd, C.—16th March, 1896.—Discovery—Examination of party, etc.—R. S. O. c. 61, s. 7.—It is not in the power of the plaintiff to enforce the attendance or examination of the defendant, either (1) as a witness, or (2) for discovery, where the proceedings are instituted in consequence of adultery. (Mulholland v. Misener, supported). But where the action is of a compound character, and raises a distinct claim for damages on account of the alienation of the affections and loss of the society of plaintiff's wife, then the defendant must submit to examination on that branch of the case. Construction of s. 7 of R. S. O. c. 61, and the difference between it and s. 3 of the Imperial Act, 32 and 33 V. c. 68, pointed out. F. McPhillips, for the plaintiff. T. G. Meredith, for the defendant.

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Mulholland v. Misener.—MacMahon, J.—September 24, 1895.—Discovery—Examination of party—R. S. O. c. 61, s. 7.—The defendant cannot be compelled to submit to examination for discovery in an action for criminal conversation with the plaintiff's wife. Construction of s. 7 of R. S. O. c. 61, and difference between it and s. 3 of the Imperial Act, 32 and 33 Vic. s. 68, distinguished. McBayne, for the plaintiff. D'Arcy Tate, for the defendant.

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In re Rose.—Dower—Sum in gross—Devolution of Estates Act—Creditor.—21st March, 1896.—Land of an intestate was sold under the Devolution of Estates Act. It was, with the approval of the official guardian and by the consent of the widow, freed from dower. The consent was upon the footing that the widow was to get a sum in gross in lieu of dower out of the proceeds of the sale. The estate was almost insolvent, and but little was left to support the widow and children. The creditors, after the sale, opposed the payment of a sum in gross. Held, that whatever might be the usual course in the case of a large estate, where the family were well provided for, the better practice in a case like this was to prefer the claim of the widow to a gross sum to that of creditors to have only annual payments on a funded capital, the residue of which should be distributed on the widow's death. J. H. Moss, for the widow. J. Hoskin, Q.C., for the infants. T. W. Howard, for the creditors.

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Stephenson v. Vokes.—Street, J.—April 16th.—This was a judgment in action tried with a jury at Toronto. Action brought by Stephenson, Mulvey and the Toronto Lock Company, against Vokes and Oxenham, asking to have it declared that the directors could not lawfully alter the by-law under which the stock was increased, so as to give themselves power to allot the new shares, and that their allotment of five shares to defendant Vokes was illegal; that the defendant Vokes should have rejected the five votes cast by him in respect of such shares; and should have allowed the five votes cast by Stephenson as proxy for Bedson, and should have declared that the by-law for terminating the term of office of the directors, and

the resolution removing the existing directors and electing plaintiffs Stephenson and Mulvey and defendant Oxenham in their stead, had been passed; for a declaration that these persons were duly elected directors; for an injunction restraining defendant Vokes from interfering as a director or as president; and for an order directing defendant Oxenham to deliver to plaintiffs the books of the company. The learned judge held, that the shareholders had no power to pass a by-law amending the existing by-law regulating the term of office of the directors; the directors exercised the power given by the Act of incorporation by passing a by-law which provided that the term of office should be one year, and this by-law was confirmed at the annual meeting in October, 1895, at which defendants and plaintiff Stephenson were elected; the shareholders having confirmed the by-law were bound by it, and could not themselves pass another one to alter it. The action of plaintiffs Stephenson and Mulvey, therefore, in forcibly ousting defendants from the control of the company was entirely unjustifiable. Judgment declaring that defendants Vokes and Oxenham and plaintiff Stephenson are the directors of the company for a year from 19th October, 1895, and until their successors are elected. Interim injunction dissolved, and defendants to have a reference as to damages, if they wish, but at their own risk as to costs. Judgment for plaintiffs, declaring invalid the allotment of the five shares by the directors to defendant Vokes, and ordering him to release them to the company. Judgment for defendant Vokes against the company for the recovery of the $500 paid for the shares with interest from the time it was paid. Judgment for plaintiffs, declaring that the proxy given by Bedson to Stephenson entitled the latter to vote in respect of them. Plaintiffs Stephenson and Mulvey to pay the full costs of the interim injunction motion, and one-half of the other costs of defendants. T. Mulvey and L. V. MacBrady for the plaintiffs. S. H. Blake, Q.C., and F. Denton for the defendants.

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In Thibadeau v. Garland the Divisional Court held on Feb. 20th that after a trader had become insolvent and had absconded, but before he had made an assignment for benefit of creditors, a person indebted to the insolvent and aware of his insolvency, purchased from a creditor of the insolvent a debt due to the creditor by the insolvent, which he claimed to be entitled to set off against his debt to the insolvent. Held, under R. S. O. c. 224, sec. 23, in connection with the general law of set off, he might properly do so. McCarthy, Q.C., for the plaintiff. Ritchie, Q.C., and Masten, for the defendant.

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Henry v. Dickey.—The Divisional Court (Boyd, C., Street, J., Meredith, J.), held, where the defendant, a prisoner on the charge of larceny, sent for the agent of the owner and offered to give security by a mortgage on his property for the value of the goods stolen, the agent told him he would have to take his trial just the same, whether he gave a mortgage or not, and he could not release him from his position even if he secured him, but let him know that on making a settlement he would endeavor to get a mitigation of the sen-

tence, which he afterwards did. Held, affirming a local Master, Street, J., dissenting, that there was no promise and no agreement that there should be any interference with the course of justice, and no promise to stifle or suspend the prosecution, and no step taken which interfered with the due prosecution of the offender, and that the mortgage curity. Per Street, J.—The mortgage was obtained by promising, if it was given, endeavors would be made to have the punishment made as light as possible, and such a bargain is founded on an illegal consideration, and a security given in consequence of it cannot be enforced. Hamilton Cassels, for the appeal. Grierson, contra.

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Regina ex rel. Sutherland v. Levett. — Feb. 17. — March 16.— Municipal election — D. R. O. — Refusal of vote to a qualified voter—S. 118, Municipal Act.— This was an application to unseat the respondent from the office of town councillor, and to declare the relator entitled to the seat, on the ground that the clerk of the town, who acted as returning officer at the election, refused to permit two legally qualified voters to take the proper oaths of qualification or to vote although they stated they wished to vote for the relator and intended to do so. Without these votes there was an equal number of votes for the relator and the respondent, and the returning officer gave his casting vote in favor of the respondent. The counsel for the respondent admitted he must be unseated, but set up the contention that the relator should not be awarded the seat, and no costs should be given against the respondent. An order was made by the Master in Chambers unseating the respondent and declaring the relator entitled to the seat. Costs to be paid by the respondent. The following cases were referred to: Reg. ex rel. Dundas v. Niles, 1 U. C. Chamb. R. 198; Reg. ex rel. Dillon v. McNeil, 5 U. C. C. P. 137. The respondent appealed from so much of the Master's judgment as awarded the seat to the relator. The Divisional Court, Meredith, C.J., Rose, J., and Street, J., allowed the appeal, and ordered a new election to be held. Aylesworth, Q.C., for the relator. W. E. Middleton, for the respondent.

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Regina ex rel. Harding v. Bennett.—Street, J.—Feb. 20— This case was a quo warranto proceeding to unseat R. W. Bennett, who had been declared elected alderman for the City of London. In 1892 the City Council passed a by-law exempting the property of the respondent's partnership from taxation, except as to school rates. Held, the exemption not being founded upon any contract, but being an exemption without a contract, as provided by 56 Vic. c. 35, s. 4, there was no disqualification. Regina ex rel. Lee v. Gilmour, 8 P. R. 514, distinguished. Held, also, as to property qualification, that the respondent was entitled to qualify upon his rating upon the assessment roll of 1895 as the joint owner of a freehold estate in the partnership property aforesaid, the three partners being rated for this property as freeholders to the amount of $10,000: 55 Vic. c. 42, ss. 73 and 86. Notwithstanding the exemption by-law above mentioned, the partnership property remained liable

to pay school rates, which, by 54 Vic. c. 55, s. 110, had to be levied by the municipality upon the taxable property within it; nor did the amendment in 56 Vic. c. 35, s. 4, debar the respondent from so qualifying; for the words "exempt from taxation" in that section must be held to mean exempt from payment of all taxes, whereas the property of the respondent was not exempt from school taxes. Hellmuth, for the relator. Moss, Q.C., for the respondent.

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Falconbridge, J.—April 10th, 1895.—Linton v. C. P. R.—This was an action tried without a jury at Ottawa. The plaintiff, a commercial traveller residing at Ottawa, alleged that on the 24th February, 1895, he was received by defendants at Schreiber as a passenger from Schreiber to Sudbury on defendants' sleeping car "Nagaski," forming part of defendants' train, and purchased from defendants' agent on such car a ticket entitling plaintiff to travelling and sleeping accommodation therein; and while plaintiff was lawfully travelling in such car, the defendants by their servants wrongfully and violently ejected plaintiff therefrom and placed him in the first-class car attached to the train, from which he suffered injury; and he claimed $2,000 damages. The defendants set up that the plaintiff was not in fact at the time the holder of a first-class railway ticket, but only of a second-class ticket, and as such was not entitled to travel on a sleeping car. It was held by Falconbridge, J., that the plaintiff knew that by the rules of the road it was necessary to pay first-class fare in order to get a berth or seat in a parlour car. The porter gave plaintiff a berth ticket on the supposition that plaintiff was a first-class passenger, i.e., held a first-class ticket. The company is not bound to provide parlours or sleepers, and their rules regulating the admission of passengers thereto seem to be entirely reasonable. The plaintiff, who must be taken to have known that he could in that event get a refund of the money he had paid for his second-class ticket, not only did not offer to pay, but refused to pay full first-class fare, although he had the money to do so. The rule on which the conductor acted in refusing to accept the difference between first and second-class, where the ticket reads beyond his division, is obviously reasonable. I am unable to see that defendants have been guilty of any wrongful act. The American cases turn mainly on the fact of the railway company and the parlour car company being separate entities, and are not of assistance. The plaintiff was treated with great courtesy and delicacy. The conductor acted in good faith in passing upon the question whether plaintiff was entitled to travel in a parlour car, and if I had held him to have been wrong in his determination I should not have awarded punitive, but only actual, damages, which would not have been great. Plaintiff had to sit up in a first-class car, and there is no evidence that his illness was aggravated thereby. The action was dismissed with costs. Wyld (Ottawa) for plaintiff. W. Nesbitt and W. L. Scott (Ottawa) for defendants.

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Divisional Court.—Jan. 2, 1896.—Milligan v. Sutherland.—Chattel Mortgage.—Description, etc.—Where persons carrying on

business as manufacturers of hoops and staves at their factory at B., and also as general storekeepers at L., in the same county, made a chattel mortgage conveying their goods and chattels to defendant, as set forth in two schedules annexed thereto, schedule A, covering the machinery and other goods and chattels in the factory, and which, after describing them, extended to all other goods and chattels thereafter purchased or manufactured or brought on the premises, whether for the business of stave-manufacturing or not, or into or upon any other premises thereinafter to be occupied by the mortgagors, or either of them, it being understood that all logs, staves and bolts manufactured and timber brought on the mortgagors' premises or not, after the execution of the mortgage, should be covered thereby; the other schedule, covering the goods and chattels in the general store, and extending to goods and chattels thereafter brought into the said store premises, etc.

Held, that the provision in schedule B to after-acquired goods, referred only to goods brought into the store in which the business was then being carried on, and not to goods brought into a store at B., to which that business had been subsequently removed; neither would the provision as to after-acquired goods in schedule A apply to the after-acquired goods brought into the store at B., for the reference thereto was only to goods of the character referred to in that schedule. Crothers, for the plaintiff. Aylesworth, Q.C., for the defendant.

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Smith v. Township of Ancaster. —January 26.—A macadamized road, portions of which were in in townships of A. and B., and under the control and management of the Minister of Public Works, was, under the powers contained in sec. 52 of 31 Vict. c. 12 (D), declared to be no longer under his control; and by section 53 it was declared that the road should be under the control of, and managed and kept in repair by the municipal or other authorities of the locality. Subsequently the township of B. passed a by-law authorizing the township of A. for the purpose of keeping the said road in repair, to take possession thereof, and, so long as they kept it in repair as a toll road, to retain possession; and the township of A. also passed a by-law assuming the said portion of the road. Held, that both these by-laws were invalid; and consequently the township of A. had no authority to levy tolls on the part of the road so assumed. Corporation of Ancaster v. Durrand, 32 C. P. 563, distinguished. G. Lynch-Staunton, for the plaintiff. Cassels, Q.C., and Waddell, for the defendants.

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Ontario Western Lumber Co. v. Citizens' Telephone & Electric Co. —Contracts not under the corporate seal made with trading corporations relating to purposes for which they are incorporated, or, partly performed and of such a nature as would induce the court to decree specific performance thereof if made between ordinary individuals, will be enforced against them. Where, therefore an electric light company, while they were making changes in their factory, entered into a contract by correspondence, merely for the use, at a specified amount, of one of the wheels in the plaintiff's mill, which was used and a part payment made, the contract was held to be binding on it, and the

plaintiffs entitled to recover the balance due, notwithstanding the absence of the corporate seal. Ewart, Q.C., and McLennan, for the plaintiffs. Langton, for the defendants.

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Sills v. Warner.—January 3.—A testator by his will, made six months prior to his death, gave to his wife a life estate in a house and a lot of land, and, by a subsequent clause, directed that after her death the property should go to the trustees for the time being of a named Presbyterian church for a manse, if required, or to be kept in good repair and rented for the benefit of the congregation thereof; and in case the said Presbyterian church should cease to exist, etc., and a Congregational church be organized in lieu thereof, then to the trustees of such Congregational church, for rental and benefit thereof, or for a parsonage. The widow died shortly before the commencement of this action, which was for the construction of the will, and the land had not yet been used for a manse, etc. Held, that the devise was valid. By another clause, certain other land was given to the trustees of a named common school section, on which a teachers' residence might be erected, or it might be rented for the benefit of the school funds, subject, however, to a condition of preserving and keeping in order an adjoining plot, etc. Held, a devise for charitable purposes within the 9 Geo. II., c. 36, and, not being excepted by any legislation from the operation thereof, was therefore void. Clute, Q.C., for the plaintiff. Warner, for defendant Warner.

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Tennant v. Macewan.—Before Robertson, J.—6th April, 1896.—Assignment for benefit of creditors—Ontario debtor and Quebec assignee—53 Vic. c. 21, Ont.—Judgment in action tried without a jury at Toronto. Defendant, residing in Ontario, made an assignment under the statute for benefit of creditors to plaintiff, who resided in Brockville, Ontario. The assignment, though made to plaintiff, was accepted and executed for him in Montreal by one Hains, who resided there. Hains was a partner of plaintiff in the Brockville business. Hains managed all matters in connection with the assignment. A dispute arose between plaintiff and defendant as to plaintiff's charges for managing the estate, which defendant considered excessive. This action was brought to recover $627.10, as the balance due to plaintiff for money paid out, work done and for commission, etc. The defendant counterclaimed for moneys received by plaintiff, and for account and a re-assignment of the estate. At the close of the plaintiff's case the learned Judge dismissed the action with costs, on the ground that the assignment had in fact been really made to Hains, a resident of the Province of Quebec, although it was nominally taken in the name of plaintiff, and was therefore in direct violation of 53 Vic. c. 21 (O.). The learned Judge then heard the counterclaim of defendant and reserved judgment upon it. He now gives judgment for defendant for $295.16 upon the counterclaim, without costs. George Kerr and Rowell for the plaintiff. H. D. Gamble and H. L. Dunn for the defendant.

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Ardagh v. York County.—Before Boyd, C., Ferguson, J., and Robertson, J.—Reviving action

in name of executrix—Long delay from time of death of party.—C. C. Robinson, for defendants, appealed from Meredith, C.J., in chambers, dismissing application by defendants to discharge order of 19th February, 1896, reviving action in the name of the executrix of the will of Arthur Leonard, one of the original plaintiffs, who died pendente lite. The appellants contended that the Court will not revive an action, after long delay in its prosecution, where the rights of the parties have been affected by the delay. J. Pearson, for the plaintiffs, contra. The Court held that the old practice was superseded, and that the case was a proper one for a revivor.

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Regina v. Grant.—Hagarty, C.J.O.; Barton, Osler, MacLennan, JJ.A.—Jury notice—Action against sureties of Collector of Customs—Motion to strike out.—Judgment on appeal from order of Divisional Court (Armour, C.J., Falconbridge, J., and Street, J., reported at page 75 of this volume of The Barrister), reversing order of Robertson J., striking out (without prejudice to a motion to trial Judge if desired) jury notice served by defendants in action upon two bonds given by defendant for the due performance of the duties of the defendant Grant as Collector of Customs at Barrie. Held, that the Crown has a right to proceed by the ordinary machinery of an action as between individuals and to avail itself of any right of a plaintiff in such a cause, and there was jurisdiction to make the order appealed from. Per Burton, J.A.:—Rule 364 expressly provides that the procedure in Crown actions is to be the same as in actions between subject and subject, and the mode of trial is a matter of procedure. Per Osler, J.A.:—If before the trial of an action the Court or a Judge has ordered that the motion may be tried without a jury, there is no power under the Judicature Act, 1895, in the presiding Judge at the trial to try the issue with a jury. Appeal allowed. Order of Robertson, J., striking out jury notice, restored. F. E. Hodgins for the Crown. A. E. H. Creswicke (Barrie), for defendants.

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Poole v. Poole.—Boyd, C., Ferguson, J., Robertson, J.—April 7th—Examination de bene esse—Foreign commission to take defendant's evidence to be used at trial.—D. Armour, for plaintiff, appealed from order of Master in Chambers allowing defendant to issue a foreign commission for her examination de bene esse at the city of New York, and allowing such examination to be read at the trial upon proof by affidavit of her solicitor of her inability to attend such trial. Action to establish an interest in certain lands of Theophilus T. Poole, deceased, who was the brother of plaintiff and husband of defendant. The plaintiff charges the defendant with a fraudulent scheme to convert her life estate in her husband's lands into an estate in fee; and contended that in view of these charges it was necessary that defendant should be examined in open Court. F. A. Anglin, for defendant, contra. Appeal dismissed with costs to the defendant in any event.

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Re Canning.—Motion to commit for disobeying subpœna—Proceedings to remove an assignee—16th April, 1896.—H. E. Irwin moved to commit one Jane Jackson, who was subpœnaed to

attend as a witness upon a pending motion under R. S. O. c. 124, to remove an assignee, for default of attendance pursuant to subpœna. J. H. Denton, for Jane Jackson, contra. Held. that the motion to remove the assignee was not a proceeding in court, and there was no power to commit. Motion refused. No costs.

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Aldrich v. Canada Permanent Co. — Mortagee's exercise of power of sale—Duty he owes mortgagor to use wisdom and discretion in selling—Sales en bloc and in parcel.—Judgment on appeal by plaintiff from judgment of MacMahon, J., at trial, dismissing an action for damages for the alleged improvident exercise of the power of sale in a mortgage. The Court held that it was clear from evidence that mortgaged property, had it been sold in two separate parcels, instead of en bloc, as it was sold, would have brought a price in excess of that which it did bring of at least $1,300; that a sale under such a power must be effected with proper discretion, for the mortgagee, as a trustee for persons interested in the equity of redemption, is bound to adopt such means as would be adopted by a prudent owner to get the best price that can reasonably be had; and defendants did not act in accordance with this requirement. Appeal allowed with costs and judgment to be entered for plaintiff for $1,300 and costs. Charles Macdonald, for the plaintiff. W. Cassels, Q.C., and G. A. Mackenzie, for defendants.

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Re Henry v. Paisley. — Before Meredith, J.—The 18th April.—Division Courts — Prohibition — Jurisdiction over added defendant—Sub-sec. 3, sec. 108, of Division Courts Act.—Judgment on motion by defendants for order prohibiting the Judge and clerk of the Tenth Division Court in the County of York, from further proceeding upon a judgment against defendant James K. Paisley, upon the ground that there was no jurisdiction over the defendant. Held, that there was a want of jurisdiction in the Division Court over the added defendant, because he was not served with a copy of the writ of summons, "the original summons being first properly amended": sec. 108, sub-sec. 3, of the Division Courts Act; and because no particulars of the plaintiff's claim were ever served upon the defendant: sec. 109. Order to go for prohibttion, but only upon the terms that plaintiff shall not be precluded from suing again upon abandoning the present action. No order as to costs. Shilton for the defendants. E. D. Armour, Q.C., for plaintiff.

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Regina ex rel. Crews v. Brenton. — Quo warranto — Taking recognizance before notary—Sec. 188, Municipal Act, 1892—Rules 1038 and 53?—April 20th.—Shepley, Q.C., for relator, appealed from order of senior local Judge at Cobourg in a proceeding in the nature of a quo warranto to unseat the defendant as a municipal councillor. The relator obtained from the junior local Judge upon a recognizance taken before a notary public. Upon the return of the motion to unseat the defendant, and also of a substantive motion by defendant to disallow recognizance, the senior Judge disallowed the recognizance as not made before the proper officer, pursuant to sec. 188 of the Municipal Act, 1892. This was the order appealed against.

W. F. Kerr (Cobourg), for defendant, contra. Held, that the junior Judge had jurisdiction to grant the fiat under Rule 1038, as a local Judge of the High Court, and this being so, a motion might properly be made under Rule 536 to the senior Judge as having co-ordinate jurisdiction. Appeal dismissed with costs.

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Regina v. Bayley.—Before Armour, C.J., and Street, J.—20th April.—The Lord's Day Act—Quashing conviction—Band concert of sacred music—Act of Charles II. and R. S. O. c. 203—"Other persons whatsoever."—Osler, Q.C., and W. B. Raymond, for defendant, moved upon a case reserved to quash conviction of defendant under Lord's Day Act for exercising his ordinary calling by conducting a band concert of sacred music at the Toronto Island on a Sunday last summer. Moss, Q.C., and A. E. O'Meara, for the Crown, contra. The Court felt bound by the long line of decisions from the passing of the Act of Charles II. to the present time, to hold that the defendant was not within the meaning of the words "other persons whatsoever" in sec. 1 of R. S. O. c. 203. Conviction quashed.

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Re Young v. Ward.—Falconbridge, J., and Street, J.—22nd April.—Division Courts Act—Execution direct to sheriff under 57 Vic. c. 23, sec. 8—Creditors' Relief Act—Proposed distribution by sheriff thereunder.—Judgment on appeal from order of Boyd, C., prohibiting the clerk of the First Division Court in the County of York from entering up satisfaction in this action pursuant to order of Judge of the First Division Court upon receipt of certain moneys from the sheriff of the County of Ontario. The plaintiff had caused an execution against lands to be placed in the hands of sheriff of Ontario under 57 Vic. c. 23, sec. 8, amending Division Courts Act, and a friend of defendant caused the amount thereunder to be remitted to the sheriff in payment of the execution. The sheriff, instead of applying the money as provided by sub-sec. 3 of sec. 8, propounded a scheme under the Creditors' Relief Act for its distribution among several execution creditors, whose executions were also in his hands, as money levied within that Act. Counsel contended that the Creditors' Relief Act did not apply to Division Courts. Held, that the moneys levied by a sheriff under a Division Court execution are subject to the provisions of the Creditors' Relief Act, and the Judge presiding in the Division Court out of which execution issues, has no right to pronounce upon the claims of other execution creditors to a share in the money levied under it, because disputes of that kind are placed by secs. 2 and 32 of Creditors' Relief Act under the jurisdiction of the Judge of County Court in which claims are filed. Upon a motion of this kind the question whether the money paid to sheriff was levied within the meaning of the Act should not be considered, as it is a question of fact. The question here to be decided is whether the County Judge had any jurisdiction to deal with the scheme of distribution of the sheriff of another county, and in the opinion of the Court he has not. Appeal dismissed with costs. J. E. Jones, for defendant, appellant. Charles Macdonald, for sheriff of Ontario and an execution creditor, Marion Ward. B. E. Swayzie, for plaintiff.

English Cases.

Rogers v. Le Cook.—31 L. J. 131—Probate—Costs.—An executor, who propounds a will which shows signs of lunacy on the face of it, will be condemned personally to pay the costs, even if the other side had declined to give the executor information which might probably have prevented litigation. (Barnes, J.)

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In Tomlinson v. Broadsmith (T. 216; S. J. 318; L. T. 465), the Court of Appeal (Esher, M.R., Lopes and Rigby, L.JJ.), held that if the managing partner of a firm instructs a solicitor to defend an action against the firm, the solicitor has authority to act for the other partners.

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Lubowski v. Goldstein.—100 L. T. 487; 40 S. J. 334—Restraint of Trade.—A dairyman's servant contracted that he would not at any time after leaving the employment serve or solicit any of the customers who had been or should at any time be served by the employer, his successors and assigns in the said business. Held that the employer was only entitled to an injunction against serving persons who had actually been his customers during the time of service. (Court of Appeal, affirming Williams and Wright, JJ., and following Baines v. Geary, 56 L. T. 567.)

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Byles v. Cox.—100 L. T. 392—Omnia rite esse acta.—Both the attesting witnesses to a will were dead; there was no formal attesting clause; the signatures of testator and one witness were proved by comparison with genuine signatures; but no evidence was forthcoming as to the signature of the second witness. Held, as there was no evidence against the will, probate should be decreed on the above maxim. (Jeune, J.)

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Ainsworth v. Wilding.—W. N. 30; 100 L. T. 487; 31 S. J. 354.—Jurisdiction—Setting aside judgment.—If a judgment by consent, compromising an action, has been passed and entered, it can be set aside in a new action (but not on a motion in the old action) on the ground that the consent was given under mistake. (Romer, J.)

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Strickland v. Hayes.—31 L. J. 116—By-law.—A by-law, made by a county council for the good rule and government of the county, that no person shall use obscene language in any street or public place or land adjacent thereto, is unreasonable and void—for the prohibition is not restricted to cases where annoyance is caused, and "land adjacent thereto" is too wide. (Lindley and Kay, L.JJ.)

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Kennedy v. De Trafford.—100 L. T. 487; 31 L. J. 184—Mortgagee selling to one mortgagor.—If a mortgagee sells under his power of sale, there is nothing to prevent one of several co-mortgagors buying the property for himself, at a price representing the principal, interest, and costs due to the mortgagee, provided the power of sale is exercised bona fide. (Lindley, Kay and Smith, L.JJ.). (See 1 Prideaux, 16th edition, 475; Indermaur's Equity, 3rd edition, 161.)

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Thwaites v. Coulthwaite.—100 L. T. 390; 31 L. J. 128; 40 S. J. 274—Partnership as bookmakers.—The business of a ready money bookmaker is not an illegal business per se, and a partnership therein is valid, and an action for

an account of profits made will lie, unless it can be shown the partners contemplated an infringement of the law in carrying on the business. (Chitty, J.) Note in Indermaur's Common Law, 7th edition, 154, 292; Indermaur's Equity, 3rd edition, 136.

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Salmon v. Brownfield.—T. 329. —If a contract as to the employment of a commercial traveller is indefinite as to time, is he entitled after dismissal to commission on business introduced by him?—Mr. Justice Mathew held that he could see no reason to import into the contract a clause that it was only to last a reasonable time, or until it was ended by a reasonable notice, and therefore held that the plaintiff was entitled to such commission.

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Tomlinson v. Broadsmith.—L. T. 422.—Is a solicitor liable for negligence if, acting on the instruction of the managing partner of a firm in taking or defending proceedings, he does not give notice to each partner of every step in the legislation? Held not: provided the solicitors kept the managing partner fully informed of what was being done. So held by the Court of Appeal, and a jury's verdict given against the solicitors in an action brought against them for negligence by the partners was set aside.

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Munkilbrick v. Perryman and Hands.—L. T. 429; T. 239—A limitation to the law of Broderip v. Salomon (1895), 2 Ch. 323; 7 L. T. 261, 735.—P. and H. formed a company to produce a burlesque. The capital of the company was £3,000. All of the shares belonged to P. and H., except £5 worth, which were allotted to five persons who, with P. and H., signed the memorandum of association, each of the five taking one share. The company was duly registered. P. and H. engaged X. to give his services to the company, X. knowing full well that P. and H. were not acting individually, but as a registered company. The venture proved a failure. A good deal of money was owing to X. for services, and he sued P. and H. for the amount, and in so doing relied on the case of Broderip v. Salomon, namely, that in reality there was no company, that the venture was really for the benefit of P. and H., that the company was but the agent of P. and H., as there were no assets. As Broderip v. Salomon was a "one man" company, so this was a "two man" company, and a fraud on the company laws. The Divisional Court, reversing the County Court Judge's decision, held that X.'s action must fail, remarking that the effect of registration was to create a corporation, and that no action lay on a contract with such corporation, unless the corporation was made a party to it. Whether, if the corporation had been joined, the appellants could not have been made responsible for the debts of the company the Court declined to say; but at any rate it could not be treated as non-existent.

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Chillingworth v. Chambers.—W. N. 24; S. J. 294; T. 217; L. T. 419; L. J. 165.—If a trustee, who is also one of the cestuis que trust, derives as between himself and his co-trustee, an exclusive benefit by the breach of trust, must he indemnify his co-trustee from the loss arising from the breach to the extent of his interest in the trust

fund, or only to the extent of the benefit he has received? Held, that the facts in this case were complicated, but the above was, in reality, the question for the Court to determine, and it was held that the indemnity must be to the extent of his interest in the trust fund. As trustee, said Lord Justice Kay, he was not estopped by his concurrence in the breach of trust, from claiming contribution from his co-trustee for any loss sustained by him; but as a concurring cestui que trust he was prevented from requiring his co-trustee to make good any loss sustained by him in that character.

Stephens v. Green.—Our authorities on the law of trusts have received an important addition in the recent decision of the Court of Appeal, in Stephens v. Green; Green v. Knight, 64 Law J. Rep. Chanc. 546; L. R. (1895) 2 Chanc. 148. The case is an authority that where there are two settlements —an original settlement or will followed by a sub-settlement or will settling or disposing of an interest created by the original settlement—the assignee of a beneficiary or legatee under the sub-settlement or second will should, in order to make himself secure, give notice of the assignment to the trustees or executors of the sub-settlement or will, and not to the trustees or executors of the original settlement or will, notwithstanding that the latter still have the trust fund under their control. The case is one which is often likely to arise. A reversioner under an original settlement dies in the lifetime of the tenant-for-life, having disposed by will of his residuary estate, which includes the reversionary interest, in favour of his children. One of the children assigns her share under the will first to A., and then to B., who was not aware of the prior assignment to A. B. gives the earlier notice to the trustees of the original settlement, the trusts of which are still continuing. A. gives the earlier notice to the executors of the will, whose hand will ultimately receive the reversionary interest when it falls in. Which is the effectual notice to secure priority in respect of the assignor's share of the reversionary interest? Such was the question reduced to its essential features, and the answer given by Mr. Justice Stirling and the Court of Appeal was, as we have indicated, in favour of A., who gave the first notice to the executor of the reversionary's will. In both Courts the decision was put on principle rather than authority; and, to speak the truth, it would be a hard matter to reconcile the previous authorities. In Holt v. Dewell, 15 Law J. Rep. Chanc. 14; 4 Har. 446, Vice-Chancellor Wigram held that till the executor of the second will had assented to the bequest he was the proper person to receive the notice. In re Booth, 29 L. T. (O. S.) 239; 1 W. R. 444, on the other hand, Vice-Chancellor Wood decided that the notice should be given to the trustees of the original settlement, and not to the trustees of the sub-settlement, and Lord Romilly, M.R., in Bridge v. Beadon, 26 Law J. Rep. Chanc. 351; L. R. 3 Eq. 664, expressed a decided opinion to the same effect. It does not appear from the reports that Holt v. Dewell was cited to Vice-Chancellor Wood in In re Booth, or that either of the cases were cited to Lord Romilly in Bridge v. Beadon. We are justified, therefore, in saying that the previous state of authority

was not entirely satisfactory, and even a little misleading, as may be seen from the statement of the law in the last edition of "Lewin on Trusts," 9th ed. p. 800. The Court of Appeal has now dealt with the cases by affirming Holt v. Dewell, by overruling In re Booth and by distinguishing Bridge v. Beadon; and all mortgagees who advance money on this kind of security have reason to be thankful for the direct and comparatively simple rule now laid down for their guidance, which, shortly stated, is that only one notice is necessary, and that must be given to the immediate trustee of the assignor, or to the executor of the will under which the assignor immediately claims. It would be added that the rule is not varied or altered by the circumstance that the trust funds are in Court in an administration suit relating to the original settlement or will alone, as to obtain a stop order in that suit is according to well-settled authority, only equivalent to giving notice to the first set of trustees. This, indeed, was the actual state of the case in Stephens v. Green.—Law Journal."

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In F. Reddaway and F. Reddaway & Co. (Ltd.), appellants, v. G. Banham and G. Banham & Co. (Ltd), respondents.—A person is not entitled to call his goods by a name, even though that name be an accurate and true description, when the name has been associated with the goods of another, and the effect of such user of the name would be to mislead purchasers into the belief that they were purchasing that other person's goods. Injunction granted in the terms of Johnston v. Orr Ewing, 51 Law J. Rep. Chanc. 797; L. R. 7 App. Cas. 219. Their Lordships (Lord Halsbury, L.C., Lord Herschell, Lord Macnaghten, and Lord Shand), reversed the decision of the Court of Appeal (64 Law J. Rep. Q. B. 321; L. R. (1895), 1 Q. B. 286), the respondents to pay the costs of the appellant both in this House and below.

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James Pledge (appellant) v. L. B. White and others (respondents).—When distinct mortgages of separate properties are given to different mortgagees, but become subsequently vested in one mortgagee only, that mortgagee is entitled to consolidate all the mortgages, and neither the mortgagor nor a second mortgagee is entitled to redeem part only of the mortgaged property. Their Lordships (Lord Halsbury, L.C., Lord Watson, and Lord Davey), after consideration, and without hearing counsel for the respondents, affirmed the decision of the Court of Appeal (sub. nom. Pledge v. Carr, 64 Law J. Rep. Chanc. 51; L. R. (1895) 1 Chanc. Div. 51), and dismissed the appeal, with costs.

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In re Webb.—Webb v. Kleinwort. — Chancery Division. — Kekewich, J. — March 27. — A testator, after giving an annuity of £800 to his wife, and bequeathing various other legacies, gave and devised all his real and personal estate to trustees upon trusts, after the death of his wife, to pay various legacies to his children, with an ultimate gift of the residue to two of his sons equally. The will contained a proviso that if any child should attempt to sell, charge, or anticipate any legacy or share of residue, such legacy or bequest "which shall then remain unpaid" was to be expressly revoked and

made void. The trustees appropriated securities to satisfy the widow's annuity. The plaintiff, who was one of the residuary legatees, issued an originating summons to have it determined whether, in the event of his anticipating his share or any part of it, there would be a forfeiture of the bequest. It was urged that the gift was absolute, and the forfeiture clause bad. In re Porter, 61 Law J. Rep. Chanc. 688; L. R. (1892), 3 Chanc. 481, referred to. Kekewich, J., held that so far as concerned the money set apart for the annuity, which was clearly "unpaid" within the meaning of the proviso, the legatee could not anticipate without forfeiting his interest.

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McKeown v. The Boudard Peveril Gear Company. — Chancery Division.—Romer, J.—March 25.—The plaintiff claimed rescission of a contract to take shares in a company on the alleged ground that material facts known to the directors at the time the prospectus was issued were suppressed, thereby rendering the prospectus misleading, and that the plaintiff had applied for his shares on the faith of the prospectus, not knowing the material facts suppressed, and being thereby misled by the prospectus. The plaintiff relied upon The New Brunswick and Canada Railway Company v. Muggeridge, 30 Law J. Rep. Chanc. 242, 249; 1 Dr. & Sm. 363-381 (cited and approved by Lord Chelmsford, L.C., in The Directors, etc., of the Central Railway Company of Venezuela v. Kisch, 36 Law J. Rep. Chanc. 849-852; L. R. 2 E. & I. App. 99-113), where Kindersley, V.C., laid it down that those who issue a prospectus inviting the public to take shares on the faith of it are bound "to omit no one fact within their knowledge, the existence of which might in any degree affect the nature, or extent, or quality of the privileges and advantages which the prospectus holds out as inducements to take shares." Romer, J., said that, to make the mere non-disclosure of facts in a prospectus a ground for avoiding a contract to take shares, there must be such a non-disclosure as made the prospectus misleading. His lordship could not find in this case that the omission to state certain facts had rendered the prospectus misleading, nor that the plaintiff had, in fact, been misled as he alleged. The action was dismissed.

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United States Supreme Court Cases.

The Supreme Court of Pennsylvania.—McMillan v. Federal Street, etc., Passenger Railway Co.—A passenger on a street railway, when requested by the conductor to go from the platform to the inside of the car, where there were vacant seats, refused to do so, though he knew that a rule of the company forbade passengers to stand on the platform when there was room in the car. As a reason for refusing he said he was not going far enough to justify him in going inside, but how far he was going he refused to say. The car was then stopped, and he was told that he must go inside or get off, and refusing to do either, he was put off by the conductor, who used sufficient force to loosen his hold of the railing, and to remove him from the platform, and to prevent him from reboarding the car. Held, that he had no right of action against the company, the rule being a reasonable one. The passenger having

resisted the conductor in the proper performance of his duty, he was not entitled to recover punitive damages because the conductor used force in removing him from the car.

Electric Street Railways.—Liability for negligence—Contributory negligence—Bicycle.—The Supreme Court of California holds in Everett v. Los Angeles Consol. Electric Ry. Co., 43 Pac. Rep. 207, that it is contributory negligence per se to ride on a bicycle between the tracks of an electric street railway without watching for the approach of cars from behind.

Carriers of Passengers.—Failure to supply Train—Exemplary damages.—In Hansley v. Jamesville & W. R. R. Co., 23 S. E. Rep. 443, decided by the Supreme Court of North Carolina, it was held that exemplary damages will not be awarded against a railway company because, when by reason of a breaking down of a defective engine, it failed to carry a passenger to whom it had sold an excursion ticket back to his starting point, though the company's equipments were inadequate, as the passenger's action is ex contractu and not in tort, no personal injury or indignity being inflicted on him. Clark, J., dissented in a vigorous opinion.

Liability for injuries through electrical appliances.—In Girardi v. Electric Imp. Co., 28 L. R. A. 596, decided by the Supreme Court of California, it was held that placing electric light wires over the metallic roof of a hotel where persons may come in contact with them, without running them high enough to prevent such contact, is sufficient proof of negligence in case of injury to a person by an electric shock from such wires; and that want of ordinary care of an employee of an hotel, in going out on the roof in a dark night with his employer to secure signs which were threatened during a heavy rain, and coming in contact with the electric wires, which he knew were above the roof but which he may not have known to be dangerous, was a question for the jury. A substantially similar case on the facts in New York is Ennis v. Gray, 87 Hun, 355. The plaintiff was a roofer by trade, and, while at work on the roof of a building was injured by coming in contact with electric wires put up and maintained by a corporation not the owner of such building, and it was held that such company was liable in damages. A case was recently reported in the newspapers in which an appellate Court of a neighboring state affirmed a judgment for personal injuries sustained through coming in contact with electric wires, where the defence was that the wires were strung high enough for a person of ordinary height to pass under them, but that the plaintiff came in contact with them because he was an unusually tall man. It was held that the defendant had not exercised proper care for the protection of the public, and that plaintiff's failure to observe extraordinary caution because of his unusual stature did not constitute contributory negligence.

LAWYERS.

Below we give some of the lighter extracts from an address delivered before the law students of Maryland University, by Mr. Justice David J. Brewer, who is as keen as a humorist as he is great as a Judge.

"It is a blessed thing to be a lawyer, providing always that you are of the right kind, and I take it no one is permitted to graduate at this law school unless he is of the right kind. It is the rule of our profession to work hard, live well and die poor. And to such a life I most cordially invite you.

"Never sign your own name as plaintiff or defendant, but only as counsel.

"One class of persons would as soon expect to find a baby that never cried, a woman that never talked, a Shylock loaning money without interest, a Mormon advocating celibacy, a gentleman without a cent opposed to the income tax, or a candidate for the presidency hurrying to express himself on the silver question, as an honest lawyer.

"I admit that lawyers do not support themselves by planting potatoes or plowing corn, though there is many an attorney who would bless himself and bless the Bar and bless all of us if he struck his name off the Court-rolls and entered it on the books of an agricultural society.

"We are not as a profession, physically speaking, like Pharoah's lean kine. Those pictures which Dickens, that prince of slanderers, and others like him, draw and call attorneys, are nothing but atrocious libels.

"From time immemorial, size physical, as well as mental, has been considered one of the qualifications of a Judge. Justice and corpulence seem to dwell together. There appears to be a mysterious and inexplicable connection between legal lore and large abdomens. I do not know why this is, unless it be that in order that justice may not easily be moved by the foibles and passions of men she requires as firm and as broad a foundation as possible.

"George Washington's hatchet is not popularly regarded as one of the heirlooms of the legal family. I can say that for over thirty years I have been a Judge, and of the many thousands of lawyers who have appeared before me I have never found but a single one upon whose word I could not depend.

"While other professions and vocations are constantly putting on striped clothes, how seldom does any lawyer respond to a warden's roll-call!

"The business man needs us to draw his contracts, the laborer to collect his wages, the doctor to save him from the consequence of his mistakes, the preacher to compel the payment of his salary, the wife to obtain a divorce and the widow to settle her husband's estate. The people need us in the Legislature and in Congress to hold the offices and draw the salaries. Every convention and public meeting needs us to fill the chair and occupy comfortable seats on the platform. Every man accused of crime needs us to establish his innocence through the verdict of twelve of his peers. In short, it may be said of us, in the

language of the itinerant vendor of soap, 'everybody needs us,' and, like that very useful article, nothing tends to keep society so clean as the presence of a lawyer.

"Blot from American history the lawyer and all that he has done and you will rob it of more than half its glory. Remove from our society to-day the lawyer, with the work that he does, and you will leave that society as dry and shifting as the sands that sweep over Sahara."

WHAT THE LOCAL HOUSE DID THIS YEAR.

A Resume of the Legislation Effected at the last Session of the Ontario Legislature.

Numerous were the statutes passed by the Ontario Legislature during the late session. Many of them are merely amending in their character, and several are not of much public utility, relating to matters not of general interest.

The poor, persecuted "Ditches and Water Courses Act" has been lightly dealt with this year, there being a change in a word only of the Act of 1894. The Drainage Act suffers in the shape of two unimportant amendments. An act providing for the inspection of bake shops is useful and practical. Bake shops must be properly lighted, heated and ventilated, and have good drainage. Conveniences for the employees are provided for, and means of fire escape supplied. No person shall be allowed to sleep in the shop or in any room connected therewith. Sixty hours per week is the limit for work, except by direction of the inspector. Persons affected with consumption, constitutional or skin diseases are not knowingly to be employed as bakers or servants. Penalties are provided for violations of the Act.

Owing to a judgment of His Honor Judge Morgan on the question of distress for rent, an amendment has been passed placing the maker beyond doubt, and declaring the law to be the same as between landlord and tenant as it always was prior to the Act of 1895.

Where the wife of a person selling or mortgaging lands has been living apart from her husband for five years, provision is made for an application to a Judge of the High Court to allow the husband to convey or mortgage as in cases where the wife is a lunatic. Where the wife is confined in a public lunatic asylum, and the husband acquires land during such period, he may sell or mortgage such land freed from dower. That troublesome, vexatious, and expensive legal machinery, known as the Mechanics' Lien Act has been amended and consolidated. It still retains many of its objectionable features, the principal one being its intricate character, resulting in loss to all parties concerned where the property has not sufficient margin to cover claims and the heavy costs always incurred in these proceedings.

A very important change has been made in the law relating to chattel mortgages. By a rule of the Courts of Equity and by the authority of decided cases, where an advance was made on the verbal agreement that a chattel

mortgage would be given to secure the re-payment, and the same was not given until some weeks or months after, the mortgage, if given in good faith, was held valid. Now the mortgage must be given within the five days and registered, and no verbal agreement shall hold good against creditors or subsequent purchasers or mortgagees. In cases of assignments, the creditor holding security must value the same, and failing to do this, the assignee or other interested person may apply to the County Judge, who may order the creditor to value the security or be barred from putting in any claim against the estate. Machinery is provided for settling disputed valuations before the Judge in a summary manner. Amongst the amendments to the Registry Act is one much needed. No person shall hereafter file a plea dividing land into lots, without the proper consent of all mortgagees and other persons interested in the property. From the 1st of July to the 31st of August, inclusive, all registrars outside of Toronto and York are entitled to Saturday afternoon holiday. A similar provision has been in force for a few years with regard to the Toronto and York offices, and continues.

Amongst other legal matters, city constables in charge of stations have power to accept bail from persons under arrest for violation of any provincial statute or by-law passed thereunder. Coroners' jurors are now to receive fifty cents for every four hours' sitting, and over four hours, one dollar for each day's attendance. Another prudent measure is the Act aimed at debt collectors. If these enterprising gentlemen use any notice which resembles a Division Court form, which is calculated to deceive the public into the belief that it is issued by the Division Court officials, they are liable to a fine of $20 for every day they so sin against the law.

An executor or administrator, where the estate does not exceed $1,000, may be removed by the Surrogate Court Judge on good cause, without the expense of an application to the High Court. An executor of an executor is hereafter deprived of all power over the estate of the original deceased person.

Only one County Judge can hereafter be appointed for any county or union of counties having a population not exceeding 80,000. This will deprive the Dominion Government of the patronage of appointing faithful gentlemen of the Bar to easy and lucrative positions. The jurisdiction of the County Courts has been somewhat extended, but evidently the change was made with a good deal of nervous feeling on the part of the Attorney-General. The advance is a very short one. There is no good reason why many actions that now must be tried in the High Court should not be dealt with by the County Courts, with the right of an appeal to the higher tribunal—suits for debts, covenant and contract up to $600, instead of $400, where the amount is ascertained or liquidated by act of the parties may be brought in the County Court. Trespass to land, where the value of the land is not over $200; partnership accounts where the capital is not over $1,000; legacies not exceeding $200, where the estate is not over $1,000; and mortgages up to $200 may now be dealt with by the County Courts.

One of the most serious changes in the law is that relating to actions for damages against municipal corporations by reason of

non-repair of streets, roads or sidewalks. All these cases must now be tried by a Judge without a jury. The eloquence of counsel over the pain and suffering of their unfortunate clients will no longer avail them. The amount of damage and the perplexing questions of negligence and liability will hereafter be determined by the stern and merciless hand of justice, without the aid of sympathy, and the chance of persuading juries into melting and liberal moods is gone for the time being. The jury system has always been popular with the masses, and this move will not be favoured by the people, whatever arguments may be found to support it.

The Succession Duties Act is enlarged in its operation, in order that the Province may not lose the fees by reason of settlements and conveyances made in contemplation of death, or to take effect after death. This will prevent this system of taxation from being evaded, as it doubtless has been in the past, and owing to the wide scope of the Act, it will be found somewhat difficult to get rid of the liability to contribute towards the maintenance of the provincial surplus.

An important amendment has been made to the Assessment Act, whereby the goods on the premises not belonging to the person assessed shall not be distrained for taxes, except in cases where the tenant or other person in possession has acquired such goods under an execution against the person assessed or by purchase, assignment, mortgage or exchange from or with the person assessed and primarily liable to pay the taxes. If the goods, however, belong to the wife, husband, daughter, son, daughter-in-law or son-in-law of the person so liable, or to any other relative, and such relative lives on the premises as a member of the family, the goods on the premises shall be liable to distress. In cities having a population of 30,000 or more, the Court of Revision shall be composed of three members, one to be appointed by the City Council, one by the Mayor, and the third shall be the official arbitrator for the city, appointed under the Municipal Arbitrations Act, and where there is no such arbitrator, the sheriff shall act as the third member. Where the population is 100,000 or over, each member shall receive $500 per annum, and in cities under that, $300 per annum. These provisions come into force in 1897. Another Act provides for the appointment of provincial municipal auditors, three in number, by the Lieutenant-Governor.

In the Municipal Amendment Act of 1896, a radical change has been made by the creation of a Board of Control, which applies practically only to the city of Toronto. The board consists of the Mayor and three aldermen, the latter to be elected by the Council. The tenure of office is yearly. Salaries to the limit of $700 each may be fixed by by-law. The duties are to prepare the estimates, deal with and award contracts, inspect all municipal works, nominate to the Council all heads of the various civic departments and recommend the salaries, and no official or clerk shall be appointed without the consent of the board, except on a two-thirds majority of the Council. Power to dismiss employees, and to regulate the work of the various departments, are some of the other duties of the board. The Toronto Council is empowered to

grant, with the assent of the ratepayers, a sum not exceeding $25,000 in aid of the Canadian Historical Exhibition of 1897. The Canadian Wheelmen's Association is given authority to place guide and mile posts on the public highways. Power is given to the Council to indemnify police officers in proper cases against the costs of suits or prosecutions brought against them, evidently the outcome of the well known Archibald-Kelly cases.

OSGOODE HALL—NOTES, Etc.

The Law School.

The Law School will close on the 30th inst., and the annual examinations will begin on May 7th and will last until May 19th. The examination in the first year will last four days; the second year's examination lasts nine days, and the final year eleven days. We give the time table in another column. The results will be announced on Wednesday, June 3rd.

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A cricket team will likely be formed in connection with the school.

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Application forms for the May examination must be filed with the Secretary of the Law Society by May 1st. Those writing in the first year, residing outside the city, must send $1 with their applications. Final year men must deposit $160 fees before writing on their examination.

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Monday, April 20th, was the last day for filing the necessary papers for admission next term to the Law Society. Tuesday, May 12th, will be the first day of Easter term. All articles of clerkship should be executed before that day.

Things are quiet in and around the Law School; which marks the approach of the annual examinations. The school will reopen again for the Fall term on Monday, September 21st.

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FIRST YEAR.

Thursday, May 7th, Pass—Forenoon, Contracts; Honours—Afternoon, Contracts.

Friday, May 8th, Pass—Forenoon, Real Property; Honours—Afternoon, Real Property.

Saturday, May 9th, Pass—Forenoon, Common Law; Honours—Afternoon, Common Law.

Monday, May 11th, Pass—Forenoon, Equity; Honours—Afternoon, Equity.

SECOND YEAR.

Thursday, May 7th, Pass—Forenoon, Criminal Law; Honours—Afternoon, Criminal Law.

Friday, May 8th, Pass—Forenoon, Real Property; Honours—Afternoon, Real Property.

Saturday, May 9th, Pass—Forenoon, Contracts; Honours—Afternoon, Contracts.

Monday, May 11th, Pass—Forenoon, Torts; Honours—Afternoon Torts.

Tuesday, May 12th, Pass—Forenoon, Equity; Honours—Afternoon, Equity.

Wednesday, May 13th, Pass—Forenoon, Constitutional History and Law; Honours—Afternoon, Constitutional History and Law.

Thursday, May 14th, Pass—Forenoon, Personal Property; Honours — Afternoon, Personal Property.

Friday, May 15th, Pass—Forenoon, Evidence; Honours—Afternoon, Evidence.

Saturday, May 16th, Pass—Forenoon, Practice; Honours—Afternoon, Practice.

THIRD YEAR.

Thursday, May 7th, Pass—Forenoon, Contracts; Honours—Afternoon, Contracts.

Friday, May 8th, Pass—Forenoon, Evidence; Honours—Afternoon, Evidence.

Saturday, May 9th, Pass—Forenoon, Criminal Law; Honours—Afternoon, Criminal Law.

Monday, May 11th, Pass—Forenoon, Equity; Honours—Afternoon, Equity.

Tuesday, May 12th, Pass—Forenoon, Real Property; Honours—Afternoon, Real Property.

Wednesday, May 13th, Pass—Forenoon, Constitutional History and Law; Honours—Afternoon, Constitutional History and Law.

Thursday, May 14th, Pass—Forenoon, Construction of Statutes; Honours—Afternoon, Construction of Statutes.

Friday, May 15th, Pass—Forenoon, Commercial Law; Honours—Afternoon, Commercial Law.

Saturday, May 16th, Pass—Forenoon, Private International Law; Honours—Afternoon, Private International Law.

Monday, May 18th, Pass—Forenoon, Torts; Honours—Afternoon, Torts.

Tuesday, May 19th, Pass—Forenoon, Practice; Honours—Afternoon, Practice.

The results will be published on June 3rd.

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Lyrics of the Law.

"THE LAW STUDENT'S LAMENT."

—

"'Tis lecture hour, Horatio, that melancholy hour,
When students yawn.—Hamlet.

Forever gone!—the halcyon days
of old,
When students were not lectured
half to death
As now—alas!
Paid for their honest toil they
gathered in the gold,
And praised the powers that were
with every breath,
And all did pass.

How do I envy thee, O happy
race!
Blithe, free, unlectured to and
stocked
With well-filled purse;
Thou dids't not know the ever
damned place
Where poverty is inhumanely
mocked
With heartless curse.

O'er, o'er, is dear freedom's sunny
reign,
The habitation once of joy and
peace;
The student's soul,
Longing for happier days, amidst
its pain
Impatient doth await the day of
its release
From this vile hole.

—W. E. B.

Guelph, April 1, 1896.

BOOK REVIEWS.

A Treatise on the Railway Law of Canada, by Harry Abbott, Q.C., of the Montreal Bar.

We have been much interested in this work, the first on the railway law of the Dominion, as stated in the preface. It will be found a useful handbook on the subject, and the author has displayed much industry in collecting the leading Canadian and English cases without encumbering the reader in numberless American decisions.

After a brief introduction, dealing with the Dominion and Provincial jurisdiction over railways, our Railway Act is taken up and the various sections treated under leading sub-divisions, such as Eminent Domain, Receivers, Construction and Operation of Railways, Carriers, Negligence, etc. In the appendix the text of the present Railway Act is given with references to corresponding sections in the various provincial Acts, the Criminal Code and some special statutes affecting railways.

A comparison of the decisions in the Ontario Courts with those from the other Provinces, showing the progress made since Confederation in arriving at a uniform system of jurisprudence in the Dominion on matters affecting railways. In this connection we notice a valuable discussion of the principle of English law as to the liability of railway companies for damages caused by sparks emitted by their engines, namely, that they are not liable for damages so caused, if they have taken every proper precaution and adopted every means which science can suggest to prevent injury from fire, and are not guilty of negligence. In the Quebec Courts the French doctrine has been rather preferred, namely, that a railway company are responsible under any circumstances for such damage, whether negligent or not; the last case, however, decided in Quebec has followed the English decisions. At pp. 378-9 the requirement as to fencing at highway crossings, sec. 259, is not quite correctly stated; the track is properly fenced according to the manner prescribed by the Act, sec. 197, when the fences at such crossings are turned into the cattle guards, gates are not required, in addition, unless ordered by the Railway Committee of the Privy Council: sec. 187.

This and a few other oversights we have noticed will no doubt be corrected in a second edition. Speaking of England and Ontario "Court of Appeals" should be "Court of Appeal."

The general appearance and typographical execution of the work is excellent.

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Treatise on Banks and Banking, by J. J. Maclaren, Q.C., D.C.L., LL.D., Toronto.

The profession owe a great debt of gratitude to Mr. Carswell, of the Carswell Co. (Ltd.), Law Publishers, for his "up to date publications." The latest work from the Carswell Press is a most excellent treatise on "Banks and Banking, the Bank Act, Canada," etc., by J. J. Maclaren, Q.C., D.C.L., LL.D., with notes, authorities, and decisions; and the law relating to Warehouse Receipts and Bills of Lading.

The book also contains chapters on the Savings Bank Act, the Winding-up Act, and extracts from the Criminal Code, 1892. Mr. Maclaren is a member of both the Ontario and Quebec Bars; he has been solicitor to the Molsons Bank at Toronto for some years, and is the author of that admirable book "Bills, Notes and Cheques." Mr. Byron E. Walker, General Manager of the Canadian Bank of Commerce, has written a practical and useful introduction to Mr. Maclaren's "Banks and Banking;" which will prove very interesting, as it is from the pen of one who is an acknowledged authority on the subject.

Mr. Maclaren points out that many of the rules and principles laid down in the general works on banking, by writers in Great Britain and the United States, are inapplicable here, and are apt to prove misleading, and that the same is also true of the decisions of the Courts in these countries.

The selection of cases as authorities and illustrations includes all those in our Canadian reports which settle a principle, and which have not been overridden by subsequent legislation, or overruled by later decisions. The banking system of the Dominion is treated at length. The leading cases in the higher Courts in England and the United States which seem to be in harmony with our law have also been included in the text. There are 350 Canadian cases cited, and 300 references to Canadian Statutes.

The sections of the Criminal Code relating to banking operations are reviewed. The book is practical, and ought to sell rapidly among the lawyers and bankers of the Dominion.

GENERAL NOTES.

In all probability the Jameson case will be heard "at bar," that is to say, before several Judges, probably three, with a jury. Trial at Bar is a very ancient form of procedure; prior to the Statute of Westminster 2 (13 Edward I. c. 30), civil causes were tried either at the Bar, before all the Judges of the Court in term time, or when of no great moment before the Justices in "Eyre." That statute marks the disappearance of the Justices in Eyre, and practically established the modern procedure in connection with the Justices of Assize. It declared that "inquisitions to be taken of trespasses pleaded before the Justices of either Bench shall be determined before the Justices of Assize, unless the trespass be so heinous that it requires great examination. . . . But inquisitions of many and weighty matters, which require great examination, shall be taken before the Justices of the Benches." On this Act it has been decided that if the Crown is immediately concerned the Attorney-General has a right to demand a trial at Bar.

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Covenants on Behalf of Lunatics

Considerable doubt appears to exist as to how far the committee of a lunatic can enter into covenants on the lunatic's behalf. In the second edition of Davidson's "Precedents" (published in 1857), there is a precedent of an assign-

ment of a leasehold by a committee, which contains covenants by the committee in the name and on the behalf of the lunatic, and so as to bind the estate and effects of the lunatic only, and not the estate and effects of the committee, for production of title-deeds, for payment of rent up to a certain day, and for the indemnity of the purchaser against such rent; and the same precedent appears in th later editions of that work. But in a case which came before the Lords Justices in 1886 (In re Fox, L. R. 33 Chanc. Div. 37), in which it was proposed to mortgage a lunatic's estate for payment of certain debts, the Court declined to allow a covenant on behalf of the lunatic for payment of the mortgage money and interest to be inserted in the mortgage deed; and, although it was clearly for the benefit of the lunatic's estate that the mortgage should be effected, the mortgagee had to be content with the rights of a mortgagee against the estate. Section 124 of the Lunacy Act, 1890, gives the committee power to execute on behalf of the lunatic such assurances as the Judge may direct; and it has recently been held that this section gives the Court jurisdiction to authorize a committee, who is selling a lunatic's property under an order in lunacy, to enter into the statutory implied covenants for title. It is believed that it has always been the practice for a committee who grants leases of a lunatic's land to covenant on behalf of the lunatic for quiet enjoyment.—Law Journal.

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Before a Queen's Counsel can appear to defend a prisoner it is necessary for him to obtain a special license from Her Majesty for the purpose, so says our old friend Stephen's Commentaries. This is, in most cases, a merely formal matter; but a few instances have occurred in which the Crown has refused the license, and has claimed the services of the particular counsel. Until recently the Queen herself signed these licenses, but now we are told that the Home Secretary's signature appears on the document. All the Queen's counsel who have appeared in the Jameson case for the defence have, it is understood, applied for and obtained the necessary licenses.

William H. Freeman was arrested in New York charged by the Superior Court with contempt. Mr. Freeman went to New York to attend a trial in which is brother was interested. While motion was being argued for a new trial William Freeman walked into the Court room and took a position immediately in front of the Judge. He gave the Masonic sign of distress to the Judge, and when the latter exclaimed, "What do you mean, sir?" repeated it. Thereupon the Judge ordered his immediate arrest. It is thought to be the first event of its kind where a Mason has been arrested for making a sign of distress to a brother. Freeman protests that he did not attempt to influence the Judge.

Getting Justice.—"All I demand for my client," shouted the attorney, in the voice of a man who paid for it, "is justice!" "I am very sorry I can't accommodate you," replied the Judge, "but the law won't allow me to give him more than fourteen years."—Cincinnati Enquirer.

*

Stole and Sold a Red-hot Stove.—Judge Meyers in the Coun-

ty Court at Bloomington, Ill., sentenced Thomas Huey to thirty days in the county jail. Huey stole a red-hot stove from a neighbor's house and sold it, buying whiskey with the proceeds.

SPRING ASSIZES YET TO BE HELD, 1896.

TOWN.	Date (Jury).	Judge.	Date (Non-jury.	Judge.
Bracebridge	7th July	Ferguson, J.	7th July	Ferguson, J.
Brampton	4th May	Meredith, J.	4th May	Meredith, J.
Owen Sound	10th Feb	Meredith, J.	1st June	MacMahon, J.
Parry Sound	14th July	Ferguson, J.	14th July	Ferguson, J.
Port Arthur	16th June	Armour, C.J.	16th June	Armour, C.J.
Rat Portage	23rd June	Armour, C.J.	23rd June	Armour, C.J.
Sault Ste. Marie	9th June	Armour, C.J.	9th June	Armour, C.J.
St. Catharines	2nd March	The Chancellor	4th May	Ferguson, J.
Toronto	10th week		27th April	Robertson, J.
do.	11th do.		4th May	Armour, C.J.
Welland	27th April	The Chancellor	27th April	The Chancellor.
Whitby	16th March	Falconbridge, J.	27th April	Street, J.
Woodstock	17th Feb.	Falconbridge, J.	27th April	Meredith, J.

CRIMINAL.

1st week....Ferguson, J.....27th April
2nd " ....The Chancellor... 4th May
3rd " ....Robertson, J .....11th "
4th week....Meredith C. J....18th May
5th " ....MacMahon, J....25th "

RESCISSION OF A CONTRACT FOR SALE WHERE THE VENDOR HAS NO TITLE.

It is laid down in most of the text-books that a condition of sale of the ordinary character enabling a vendor to rescind the contract on the purchaser's making a requisition or objection which the vendor cannot comply with does not extend to a case in which the vendor has failed to show any title whatever to the property which is the subject of the sale. The authority cited for the proposition is the case of Bowman v. Hyland, decided by Vice-Chancellor Hall in 1878; but it seems doubtful whether that case has not been considered to go further than it really went. It is to be observed that the condition of sale on which the case turned only related to requisitions which the vendors should be "unwilling" (not "unwilling or unable") to comply with; and the Judge held, moreover, that the vendors would have waived the right (if any) to rescind through their delay in exercising it. Though Bowman v. Hyland has not been expressly overruled, it has apparently never been followed; and doubt seems to be thrown on it by Woolcott v. Peggie, a case in the Privy Council (see 59 Law J. Rep. P. C. 44), in which the vendor's want of title arose from

a mistake which had found its way into the Land Registry in Victoria. The purchaser's counsel appear to have relied on Bowman v. Hyland, but the vendor was held entitled to rescind the contract. It is obvious that the case of a vendor having no title may arise in many ways; thus executors might offer property for sale over which they bona fide believed themselves to have a power of sale; if their belief turned out to be unfounded, they could certainly avail themselves of the condition.—Law Journal.

PREVIOUS OCCUPATIONS OF FAMOUS LAWYERS.

The fact that Mr. Finlay, Q.C., the newly-appointed Solicitor-General, was, before he became practising surgeon, will recall the circumstances that some of the most eminent ornaments of the Bench and Bar have been originally designed for other avocations which in some instances they have actually followed.

Thus Peter King, who was appointed to the Lord Chancellorship by George I., was a son of a grocer in the City of Exeter and spent some years behind his father's counter. "Who," writes Noble, King's biographer, "who had stept into the shop of Mr. Jerome King and had there seen his son up to the elbows in grocery, would have perceived in him a future Chancellor of Great Britain?" So, too, another Lord Chancellor, Lord Erskine, was, before his call to the Bar, a midshipman in the Royal Navy for four years, and subsequently for seven years a subaltern in an infantry regiment; while a third Lord Chancellor, Lord Brougham, migrated from the Scotch to the English Bar, to which he was called at the mature age of nine-and-twenty; and a fourth holder of the Great Seals, Lord Truro, better known as Sir Thomas Wilde, was for thirteen years a practising solicitor, not being called to the Bar till he had entered his thirty-fifth year.

At least one Chief Justice of England — Sir Charles Abbott, afterwards created Lord Tenterden—was on the point, before his call to the Bar, of taking Holy Orders in the Anglican communion; as were, before their call to the Irish Bar, the late Right Hon. William Brooke, a Master in Chancery, and one of the greatest equity lawyers of the past generation—and the Hon. Francis A. FitzGerald, whose brother was a Bishop of Killaloe, who was for twenty-three years one of the Barons of the Irish Court of Exchequer, and who retired from the Irish Bench in 1882, amid universal regret, almost immediately after he had been offered and had declined the great office of Lord Chief Justice of Ireland. So, too, the late Mr. Justice O'Hagan, the judicial member of the Irish Land Commission, and the Right Hon. The MacDermott, Q.C., who was Attorney-General for Ireland in the late Administration, were both educated for the Roman Catholic priesthood.

At the Irish Bar there were in comparatively recent years two instances of men who attained great eminence, having followed for many years other callings. The Hon. Charles Burton, who

was a Justice of the Court of Queen's Bench in Ireland from 1820 till his death in 1847, came to Dublin from England and worked for ten years before his call to the Bar as clerk in an attorney's office. The late Mr. Gerald Fitzgibbon, an Irish Master in Chancery, was, till his approach to middle age, the chief clerk in a distillery. Mr. Justice Burton, before whom Mr. Fitzgibbon was examined as a witness in a complicated matter of account, was so much struck by his ability that he recommended him from the Bench to get called to the Bar, instancing his own case.

The most notable illustration, perhaps, of success attending the abandonment of the Bar for another calling is that of the late Right Rev. Canon Thirlwall, the eminent historian of Greece, who was for many years Bishop of St. David's. Dr. Thirlwall was called to the Bar, and for several years before his ordination followed assiduously, and with considerable success, the practice of the Profession.—Law Times.

THE UNBUSINESS LIKE LAW.

The Globe, London, Eng., says: "Every year men of business show less and less inclination to submit their disputes to the law courts. In almost every commercial contract now made a clause is inserted binding the contracting parties to submit their differences to arbitration in place of going to law, if either fails to fulfil the terms agreed upon. It will hardly be denied that this tendency is highly unsatisfactory from every point of view. Arbitration cannot and does not take the place of a judicial decision, and it is certainly an evil that, when all the machinery for justice has been supplied by the state, men should still be obliged to constitute private courts of their own. The law's delays will not explain the fact in these days of special commercial courts. It unquestionably lies in the rooted distrust entertained by the man of business for methods which he sees to be unbusinesslike, and in his perception that such methods obtain in the present administration of the law. To begin with, he is never sure of getting his money's worth. He instructs his solicitor to brief eminent counsel, pays their by no means exiguous fees, and has no certainty that they may not turn his case over to some junior to whom he would assuredly not have offered the half of what he has paid. But, above all other causes for the distrust which the man of business unquestionably entertains for the law is the want of responsibility on the part of the legal gentlemen whom he employs. A case is, perhaps, thrown away by neglect or bad advice, and the litigant naturally seeks to make his advisers responsible. He finds that the solicitor has taken 'counsel's opinion,' under the ægis of which he regards the threats of his quondam client with amused contempt. He then proceeds to seek redress from his counsel, and discovers that, as his fee is only an *honorarium*, and not legally recoverable, counsel has no responsibility whatever for any advice that he may have given, no matter how careless or

how obviously ridiculous it may have been. So long as these three causes of the business man's distrust exist, so long will it be impossible to induce him to change his preference for arbitration about law." So, according to the Globe, the greatest cause of distrust is that a business man having lost his case cannot immediately walk off to some other solicitor, trump up a charge of neglect or bad advice, and make the wretched solicitor liable in damages. We have some personal experience of business men who have won and lost an action. When they win all is as right as can be. When they lose they are usually ready to blame any one except themselves. By the way, does the Globe know that arbitrations are not booming as they did? Further, does the Globe know that business men are foolish enough to employ unbusiness-like solicitors to act for them in arbitrations? The Bar appears to be chiefly to blame for decrease of litigation.

TOO MANY WORDS.

One great difficulty in learning what is the law on any given subject is that its expounders use too many words. Open one of the portly compilations which are often put forth as treatises, and read. A thorough master of the English language could put three or four pages into one; could express all the ideas of several paragraphs in as many sentences. And by this condensation contradictions would be brought together in contrast, inconsistencies exposed, cautiously concealed doubts brought to light, and the distinction between settled law and debatable questions forced upon the attention of the writer or the reader, or both.

Language is an instrument of thought. And the current legal language, as used in setting forth the law, is as clumsy and burdensome as are the ploughs and harrows of two centuries ago compared with the implements of to-day.

But this is not a mere question of expression. Better rhetoric will not alone suffice. It will aid, and only aid. What is needed is that clearness of conception which only requires a few words. When our ideas upon a subject are vague, undeveloped, nebulous, we require amplitude of space and phraseology to do justice to them. Clear conclusions can be shortly expressed.

The same principle applies to the process of reasoning by which those conclusions are reached. Unsatisfactory reasons force us to expansion and amplification to make them appear to fill the need. Satisfactory reasons can be shortly stated.

If a student, when required to abridge a case or a passage in the work he is studying, is allowed to take all the space he inclines to, he will probably make a long screed which will leave the critical instructor in doubt whether he has really mastered the thought. But compel him to reduce the chain of reasoning to its separate links, and state each in a single sentence, and all on a single page of small note-paper, and we see from the result, at once, whether he has made the subject his own.

Erroneous conceptions, confusion of thought, unrecognized inconsistencies, unperceived inadequacies, easily hide themselves in a superabundance of flowing sentences rambling on without restraint. Conciseness is the great detector of fallacies. To introduce severe terseness into unrestrained verbiage brings all its weakness into the light. To cancel every sentence and every member of a sentence that does not add something valuable to what was said before, and to cancel every word in the sentences left that does not make that value more clear, is a pruning that lets the light of truth into the tree of knowledge and gives vitality to the fruit.

To raise thought to its highest power, the formula of words must be reduced to its lowest terms. This more than any other intellectual characteristic is the secret of the masterful power of Shakespeare, and Bacon's essays, and the English Bible.

There is no class of compositions in all the arts of letters which stands in sorer need of this principle than judges' opinions and lawyers' briefs. A large par of legal writing appears to be done as a means of thinking through the fog out into the clear. The easy facility of expression which shorthand and the typewriter give us, and the habit of estimating expression by a commercial value of so much a folio, are responsible for much of that growing uncertainty of legal minds about the law, which is called "uncertainty of law." It is really uncertainty of the lawyer.

Voluminousness is the mother of indecision.—University Law Review New York.

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