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Want of space compels us to hold over several interesting cases and contributions. For the same reason we cannot at present discuss some criticisms on the Judges of the High Court in the Province of Ontario, which have recently appeared in the lay press. We chronicle the retirement of Hon. Oliver Mowat from the office of Minister of Justice, and his acceptance of the position of Lieutenant-Governor of Ontario, and the appointment of Hon. David Mills as his successor. They have both won the distinction they now enjoy. We refer to Sir Oliver's career in another place.

We congratulate the new Minister of Justice upon his appointment. He has a more difficult task before him than any of his predecessors. They all had the advantage of long experience in judicial proceedings, and in the practice of the Courts. In such matters Mr. Mills may possibly sometimes find himself at a loss. If, however marked ability, a sound knowledge of constitutional law, willingness and capacity for hard work and aptitude for study can supply any deficiencies in that training which might be thought to be helpful for his present position, Mr. Mills will not be found wanting. From a professional point of view his career as chief law adviser of the Crown will be watched with interest, and if successful, as we venture to think it will be, due meed of praise will be freely given.

In these days of legal training the Bar of Quebec does not desire to be left behind in the race. We are informed that when the Bar Association hold their next meeting in Montreal one of the subjects for dis-

cussion will probably be whether or not it may be wise to form a new Law School in that city. The feeling amongst the members of the profession seems to be general, that, owing to recent changes in the Law Department of McG l University the time has arrived for the formation of a school whose Professors would be chosen from the ranks of the Association; the aim being the equipment of the student to become not merely a lawyer in theory, but to train him for the practice of his profession at the Bar of the Province of Quebec. The University, of course, continuing the theoretical training, and the granting of degrees.

It has been recently decided in *Hammond* v. *Keachie* by the Divisional Court (Q.B.D. judges) that where a married woman enters into a covenant and subsequently becomes discovert, her liability is not increased or altered thereby, but that the judgment against her on such covenant, even while discovert, can only be in the form settled in *Scott v. Morley*, 20 Q.B.D. 132, i. e., against her "separate estate," but inasmuch as by reason of the decease of her husband, the property which was "separate property" in his lifetime ceases to be "separate property" on his decease, it is difficult to see what property such a judgment can operate on, and the last condition of the creditor seems to be worse than the first. The case has gone to the Court of Appeal, and it is to be hoped that that Court may see its way to rescue the law from such an apparent absurdity.

The proper pronunciation of the names of some of the English Judges is often a matter of doubt to Canadian lawyers. Sometimes, however, the legal poet comes to their aid, and they learn by some rhyming couplet the true pronunciation. For instance, when the poet rhymes "Lopes" with "hopes" they assume that the name is monosyllabic, though being of Spanish origin it should properly have two syllables; but when the same poet rhymes "Esher" with

"teacher" and also with "measure," they are still in doubt whether the learned ex-master of the Rolls should be called "Eesher" or "Essher." While on this subject one may observe that the possibilities of "Kekewich" are numerous. "Keke-itch," "Kek-é-witch," and "Kekwitch" all seem to come within the possible range of the pronunciation of that name, and perhaps neither is correct, for our English brethren with their proverbial ability to give proper names unexpected turns, may have some other altogether different pronunciation for this. Some of our English contemporaries might condescend to give us a little poetry to help us in our difficulty.

The system of public education in force in Ontario is very justly extolled for its generally beneficial character, but the recent decision of the Court of Appeal in *Hall* v. *Stisted*, 24 App. R. 476, discloses a serious defect. The Public Schools Act, 1891, 54 Vict., c. 55, s. 40, requires school trustees to provide school accommodation and teachers for two-thirds of the children between the ages of five and sixteen, whose "parents or guardians" are residents of the section. It is held in the above case that this does not require them to provide accommodation for children who have no parents or guardians resident in the section, and that the persons with whom children from the Barnardo Homes are placed under a "boarding-out agreement" are not "guardians" of such children within the meaning of the Act, and that consequently as to such children there is no obligation to provide school accommodation, and thus one class of the community is virtually deprived of education. Such a condition of things demands the attention of the Legislature. Parents who are not familiar with the careful training given to the Barnardo boys before they leave England, and the careful way in which the best are selected for Canada, (emigration here being one of the inducements for good conduct held out to the boys,) might possibly prefer not to have their children associate with these boys, but experience has shown that, speaking generally the latter have not much to learn in the way of behaviour from the average Canadian boy in the same station of life.

SIR OLIVER MOWAT.

The retirement from active political life of a man who has played so useful and honourable a part in public affairs as Sir Oliver Mowat, and the acceptance of the high position thus left vacant by the Hon. David Mills, are events of such general importance, and of such special interest to the legal profession, as to require more than a passing notice at our hands.

No man in public life in this country has filled so many places of public trust, has had a career so varied and yet so uniformly successful, and so absolutely free from reproach of any kind, as the present Lieutenant-Governor of Ontario. At the Bar, on the Bench, on the floor of Parliament, in the responsible position of a minister of the Crown, or in the no less responsible position of the leader of a great political party, Sir Oliver has always been equal to his duty, and has fulfilled it with credit to himself and benefit to his country. Happy it is for the country that this may be truthfully said, and, now that the fierceness of party strife no longer rages around him, is cheerfully admitted by all. So much of our political activity consists in using the weapons of slander, and in bandying charges and counter-charges of corruption, often, happily, without foundation, but none the less demoralizing by their indulgence, that it is gratifying when we find a public man against whom even his most determined foe would know that such means would injure no one but him who ventured to use them.

Entering upon the legal profession and subsequently into public life almost at the same time and in the same place with Sir John Macdonald, the career of Sir Oliver, if less brilliant than that of Sir John, has been pursued with fewer vicissitudes, and more even success. In the old Parliament of Canada Sir Oliver took a distinguished part, as well as in the framing of the Act of Confederation, and of those from Upper Canada who took part in that great work he is the only survivor. For a quarter of a century he ruled the Province of Ontario, and as a law giver and legislator his work is to

be found in the statute book of the Province, and in the establishment of those numerous institutions which provide for the reformation of the criminal and the care of the afflicted amongst our population. Though leading the party of Reform Sir Oliver was essentially conservative both in theory and practice, and it was largely the confidence felt by moderate men of all parties that in his hands their interests were safe that enabled him to maintain to the end his political supremacy.

As a judge Sir Oliver was the same courteous, painstaking official that he was in political life, and no man who has ever sat upon the Bench enjoyed more of the confidence of the Bar and respect of the public.

In regard to the judicial career there is one thing to be regretted, if not condemned, and that is that having once accepted the position of a judge, for which he was eminently fitted, he should have set the pernicious example of leaving the Bench again to engage in politics. The practice now apparently established by the action of both political parties is one that cannot be too strongly condemned, and we should be glad to see such a strong expression of public disapproval that the example set in the cases of Sir Oliver Mowat and Sir John Thompson may not be followed in future, no matter what the necessities of party warfare may demand.

Upon several important constitutional questions the late Premier of Ontario found himself at issue with the Dominion authorities, and in the fact that in these contests he was generally successful is the best evidence of his knowledge of constitutional law, the soundness of his judgment and his watchfulness over the interests of Ontario.

Briefly, then, we may say without entering upon prohibited ground, that in Sir Oliver Mowat the country recognizes a sound lawyer, an honest politician, an upright judge and a capable administrator. That he will discharge the easier but not unimportant duties of his present position as faithfully as he has those of a more arduous nature is on all sides confidently expected.

LIBEL AND PRIVILEGE.

One of the ablest and most lucid charges made to a jury on the subject of libel and the question of qualified privilege was that recently delivered by His Lordship Mr. Justice Mac-Mahon at the last Toronto Assizes in an important libel action. His Lordship, during the course of an exhaustive address, thus dealt with the matter:

"This action is, as you are aware, gentlemen of the jury, brought by the plaintiff against these defendants, charging them with having defamed his character. Every man is entitled to have his reputation preserved inviolate and free from imputation. His character is his property, and as was said to you by counsel yesterday, it is in many cases the only property, the only possession that a man has, and he is entitled to have that free from assault by the libeller, just as much as he is entitled to have any other property free from the depredations of anyone who may choose to assail it. And a man's character is often of more moment to him, more valuable to him, than the possession of property. If a man loses his estate, with honesty, energy and attention he may, perhaps, recover his status in a very short time; if a man loses his character, it is sometimes very difficult to rehabilitate it. When something goes out and blasts his reputation, it may be very difficult for him to recover his position even after years of continued residence in the same locality. I am addressing these observations to you, gentlemen of the jury, for the purpose of pointing out the importance of the trial in which these parties are engaged, and the importance both to the plaintiff and to these defendants of your verdict.

Now, anything that is written which imputes to a man that he is dishonest or guilty of dishonest practices, or which asserts that he is accused or suspected of being guilty of any misconduct of that character, is libellous. I propose to read to you the petition signed by these defendants, and some of the passages in this petition I shall have to refer to hereafter, and deal with them separately.

It was within the right of the defendants, if the plaintiff

(a public official) were guilty of misconduct, or if they believed from information received that he was guilty to petition the proper authorities, either for his removal or to ask for an enquiry that an end might be put to the abuses asserted to exist in connection with that office; because, as it is said, all persons have an interest in every public office, and particularly with every office connected with the administration of justice, and they not only have a right to see that the office is purely and honestly administered, but they have a right to complain if the office be not efficiently administered.

Where a communication or a petition is presented, under the circumstances I have indicated, bona fide—a petition presented honestly and in good faith, it is said to be a privileged communication. Now, I will state to you just what a privileged communication is, as it is defined, and that is the best way in which to give it to you, and then I will illustrate it by something which will make it perfectly clear I hope to every one of you. It is said that a privileged communication is this: If the circumstances are such as to make it right that the defendant should plainly state what he honestly believes to be the plaintiff's character, the occasion is said to be privileged, and although the statement may prove to be false, yet such publication on such privileged occasion is excused in the interests of society at large. As I said, I propose to illustrate that by something that frequently arises, particularly in towns and cities. A man has a servant who leaves his employment, and seeks employment from another source. The party to whom he applies for a situation on hearing, for instance, that any one of you had been the applicant's master, writes to enquire of you as to the man's character. You reply to that letter, honestly stating what your opinion of the man is, both as to his character and capacity. In such a case it is a duty which you owe to society, if you know anything against the man, to communicate it to the person who asks your opinion, and if you make that communication bona fide and honestly, it is a privileged communication, although you may be mistaken in some of the statements you have made. If that were not

so, no one could communicate his opinion in regard to a man who had been in his employment, and society therefore would often go unprotected if that class and character of communication were not privileged. So the law says, in the interests of business, and in the interests of society, a communication thus made is privileged, even although it may eventually turn out that some of the statements made in it were false. But it is a totally different thing, if, taking advantage of the communication afforded by an enquiry that was being made, you, in answer to that letter, make a statement which was false, or which you did not believe to be true; because a man who makes a statement that he does not believe to be true is as guilty as the man who makes a statement, and who knows it to be a deliberate and unqualified falsehood. So that if a man thus takes advantage of the occasion for the purpose of injuring the person in respect of whom the enquiry is made, the privilege is gone, because in making that statement in that way, there is the strongest evidence of malice, and where malice exists, the privilege is altogether lost.

Something was said during the course of the addresses to you about the interest that those parties had in petitioning, and I may say to you that it is not necessary that any person signing the petition should have been personally aggrieved or injured, for it is said, that all persons have an interest in the administration of justice and in the efficient carrying on of the departments therewith. So that, any member of the community, although having no connection with the plaintiff, nothing to do with him, perhaps never having spoken to the man, but who being aware of some misconduct, some misfeasance, or malfeasance in his office as a bailiff, has a perfect right to petition or to send any communication to the proper authority calling for an investigation, so long as the petition is clothed in language which did not exceed the necessities or the circumstances of the case. For instance, a man might write a letter to the inspector, stating that he knows so and so, and perhaps it would have been better in this case if a communication of that nature signed by those who were

cognizar of the facts, had been sent to the inspector, clothed in language that would convey exactly what offences he had been guilty of, and in that way, the redress which it is said by the defendants the community desired they should have, would have been just as effectual, and the method just as efficacious as in the petition which has been presented. While I say that, I say there can be no objection to the whole community, if they deem it advisable, petitioning against any man in the public service, who has been guilty of any misconduct in the administration of his office.

Now, I have told you what a privileged communication is, and I have endeavored by illustration to show what it means, and I proceed to another part of this case, and a very important part, in connection, at least, with some of the defendants. Every privileged communication rebuts the inference that the defendant acted in bad faith. So once it is shown that the statement, though libellous, was published on a privileged occasion, it casts upon the plaintiff the onus of proving that the defendants acted maliciously. During the progress of the case, the plaintiff knowing that such onus was cast on him, gave evidence of some acts, which, it is alleged, showed that these defendants were actuated by actual malice. Now, malice may be intrinsic, as furnished by the language of the document which is said to be libellous or extrinsic, which, it is said, is afforded by the acts and conduct of the defendants. Now, what is said as to the intrinsic evidence of malice, or the malice apparent from what is alleged as the too violent language contained in the document itself I will point out presently. The extrinsic evidence pointed to in the conduct of the defendants, I will deal with now, as we progress. A man acts maliciously when he acts from a wrong, or as it is said a corrupt motive. If a man under the guise of remedying a public wrong, acts of his own motion wrongly, and from a corrupt desire, a desire not to forward the interests of the public, or protect the interests of the public, but with a desire solely and only of punishing the man against whom he entertains enmity, in that case, the law says that he is acting maliciously.

If a man signs a document without knowing or caring what is in it, and it turns out to be libellous, it may be considered evidence against him of malice. For, when he is so reckless in regard to statements made by him the jury may well impute malice. Every man who signs a document knowing what is in it, makes an individual statement, that is, he pledges his credit, he pledges his word, that the statement is true, just as much as the originators of the petition do, who pledge their word to the person or persons to whom the petition is sent, that every statement made therein is true. So that, if a man, as I said, signs a document, knowing what it contains, or who does not care what it contains—for instance, if a petition is presented to one of you, and you hear it is against John Brown, or John Jones, and you say "I will sign that," without knowing what is in it,—he is just as guilty as the man who read it and conned it, and considered it, and afterwards put his name to it. But in relation to some of those who signed, perhaps the state of facts does not exist from which you would find they were acting maliciously—from which you would find that they were not so reckless in what they were doing that they ought to be held to have been guilty of malice. As I said, if a man says "I will sign that petition, no matter what allegations are in it, no matter what statements it contains," he is just as guilty as the man who has read it through and conned it. But in some of the cases it may be that the persons signing did not know what was in the petition, and if they had known they would not have signed it; they may have signed it under a misapprehension; they may have signed it under a misstatement of fact made by some of the other defendants, and if they signed it under these circumstances, you may very properly reach the conclusion that they were not possessed of, and that they had no actual malice against the plaintiff. Take the case of a man who meets you on the road, and asks you to sign a petition, and you sign it - it turns out to be a promissory note; if it gets into the hands of a third party for valuable consideration you cannot plead that you signed it under a misapprehension (unless you are unable

to see, or your eyesight is defective, which it was held in one case, would be an excuse); but if a man is so negligent as to sign a document without knowing what it is, he may sometimes have to pay the penalty. In this case you may, perhaps, take this view of it: supposing A said to B "I have a petition in the office, and I would like you to sign it," and B was induced to sign it by A requesting him to do so, without reading it to him, and if A made a misleading representation to B in relation to what was in it, that it was merely a formal petition asking that the plaintiff's conduct in connection with some alleged dereliction of duty in his office ought to be investigated, and B signed believing that statement, then, perhaps, you may reach the conclusion that his signing it under such circumstances was no evidence of malice in his case.

In regard to the intrinsic evidence in relation to malice, it may be that there is at least in part of this petition that was published strong intrinsic evidence of malice. (His Lordship here referred to certain portions of the petition). In these statements the language may be so much too violent for the occasion and circumstances, that you will consider them in excess of the privilege; and, coupled with the extrinsic evidence of the personal endeavours to obtain signers to the petition and of the statements made by some of the defendants, you may conclude that they form pretty strong evidence of malice."

In connection with the charge of his Lordship, it will be found useful to read the late case of *Neill* v. *Fine Arts and General Insurance Co., Ltd.* (1895), 2 Q.B. 156, affirmed on appeal (1897), App. Cas. 68; see C.L.J., vol. 31, p. 475, and ante infra, p. 314. The questions of malice and how far there may be liability by reason of excess, are discussed, and all the prior cases are referred to either in the arguments or in the judgments.

ENGLISH CASES.

EDITORIAL REVIEW OF CURRENT ENGLISH DECISIONS.

WILL—CONSTRUCTION—GIFT TO NAMED CHARITY, OR SOME ONE OR MORE KINDRED INSTITUTIONS—SUBSTITUTIONAL OR ALTERNATIVE GIFT—SCHEME.

In re Delmar Trust (1897) 2 Ch. 163, a testator gave to trustees a fund, and directed the trustees to pay one-tenth of the income thereof to the Protestant Alliance Society, "or some one or more kindred institutions," having certain specified objects, and divide the remainder of the income between such of the charitable institutions in London or the neighborhood as they might see fit. It was contended that the gift of the tenth of the income was absolute in favor of the Protestant Alliance so long as it should exist, and that the gift to the kindred institutions was merely substitutional in case the Protestant Alliance for any reason could not take. On the other hand the residuary legatees claimed that the gift of the tenth of the income was void for uncertainty. Sterling, J., however, determined that the gift of the tenth of the income was valid, but that it was alternative, and not substitutional, and that the trustees had not an absolute discretion as to what proportions and in what manner that portion of the fund should be applied, but that a scheme must be settled.

LIMITATIONS, STATUTE OF—ACKNOWLEDGEMENT BY ONE OF SEVERAL EXECUTORS —LORD TENTERDEN'S ACT— (9 GEO. 4, C. 14) S. 1.— (R.S.O. C. 123, S. 2.)

In re Macdonald, Dick v. *Fraser* (1897) 2 Ch. 181, is an important decison of Stirling, J., as to the effect of an acknowledgment of a debt by one of several executors. Lord Tenterden's Act (9 Geo. 4, c. 14) s. 1—(R.S.O. c. 123, s. 2) provides that an executor is not to be bound by the acknowledgment of a co-executor, but Stirling, J., holds that notwithstanding this provision the estate of the testator in the hands of the co-executor is bound by such acknowledgment, and that the effect of the Act is merely to release the co-executors from any personal liability.

ADMINISTRATION ACTION—ADMINISTRATOR MAKING UNSUCCESSFUL CLAIM—COSTS—ASSIGNEES OF BENEFICIARIES, RIGHT OF ADMINISTRATOR TO SET-OFF COSTS AS AGAINST—PAYMENT INTO COURT, EFFECT OF, ON PERSONAL REPRESENTATIVE'S RIGHT OF SET-OFF.

In re Jones, Christmas v. *Jones*, (1897) 2 Ch. 190, two or three points of some importance were decided by Kekewich, J. The action was for the administration of Eleanor Jones estate. The defendant was administrator of the estate, and also executor of the estate of James Jones. The principal part of the estate of Eleanor Jones consisted in her half share of a deceased son's estate which realized £708, this property was situate in South Africa. The next of kin of James Jones had commenced a probate action for the revocation of the grant of probate of the will of James Jones and the action was dismissed, and the next of kin who brought the action were ordered to pay the costs of the defendant. The next of kin of James Jones who were also some of the next of kin of Eleanor Jones, before the judgment in the probate action, had assigned their interest in both estates. The present action for the administration of Eleanor Jones' estate was occasioned by the defendant making a claim to be allowed for sums paid by him for the maintenance of the deceased who was his mother, and also for one-half certain expenses of the defendant in going to South Africa to look after and protect the property of her deceased son. Both of these claims were found to have been made in the bona fide belief that the defendant was entitled to them. In consequence of their disallowance a balance was found due by the defendant which he promptly paid into court. On an application to distribute this fund, it was contended that the defendant should be ordered to pay the costs of this action, and also interest on the balance found to be in his hands and paid by him into court, and that he was not entitled to set off the costs ordered to be paid to him in the probate action as against the assignees of the beneficiaries who had been ordered to pay such costs. But Kekewich, J., determined that the claim of the defendant having been made under an honest mistake and not fraudulent or monstrous, he was entitled to his costs of the administration action out of the estate, and was not liable to pay

interest on the balance found to be in his hands by reason of the disallowance of the claim made by him. He also held that the defendant was entitled to set off the costs due to him by the beneficiaries against the shares of their assignees in the estate. The fact that the money was paid into Court was held to make no difference in the defendant's right of set off.

WILL—"NEPHEWS AND NIECES," GIFT TO—ILLEGITIMATE NEPHEW.

In re Parker, Parker v. *Osborne* (1897) 2 Ch. 208, a testator by his will gave a legacy to his wife's "nephew," Jas. W. Robinson, by a subsequent clause he gave his residuary estate in trust, as to one moiety, for his wife's "nephews and nieces" equally. Jas. W. Robinson was an illegitimate nephew of the testator's widow, she had also several legitimate nephews and nieces. On this state of facts Kekewich, J., was called on to decide whether Jas. W. Robinson was entitled to participate in the residue. This question he answered in the affirmative. See *In re Walker*, infra, p. 760.

LIGHT—PRESCRIPTION—USER OF LIGHT FOR EXTRAORDINARY PURPOSE—PHOTOGRAPHY—INJUNCTION.

Lazarus v. *Artistic Photographic Co.* (1897) 2 Ch. 214, was an action to restrain the interference with the plaintiff's ancient lights. The principal point in the case was this. Although the plaintiff had had the use of the light in question without interference for over 20 years, he had only actually used it for the purpose of his photographic business since 1887. The evidence showed that the defendant's erection had not actually diminished the light for ordinary purposes, but that by reason of the light from the defendant's erection being reflected on to the plaintiff's studio, the light for the purpose of photography was injured: and the question was raised whether an interference with the plaintiff's light for such special and extraordinary purpose could be restrained, under the circumstances, such user for that purpose not having existed for 20 years. Kekewich, J., held that the plaintiff was entitled to the relief claimed, and he granted a mandatory injunction restraining the defendant's interference.

MARRIED WOMAN—RESTRAINT ON ANTICIPATION—ADMISSION OF MARRIED WOMAN.

Bateman v. *Faber* (1897) 2 Ch. 223, turns upon the effect of an admission by deed of a married woman. She was entitled to the income of certain property during her life for her separate use without power of anticipation, but subject to a proviso that if she should at any time in her own right succeed to £8000 per annum her interest should cease, and the property be held in trust for her husband. Her husband got into difficulties, and in order to assist him to make an arrangement with a creditor she executed a deed whereby she admitted in good faith, but contrary to the fact, that the trust as to her life estate had determined under the proviso in that behalf. She had in fact succeeded to a large estate in her own right, but subsequently discovered that owing to incumbrances the annual income was not as much as £8,000. She now claimed to receive the income settled to her separate use, notwithstanding the deed, and Kekewich, J., held her so entitled, on the ground that a married woman restrained from anticipation, cannot bind her interest by admission, any more than she can by assignment or release.

GENERAL POWER—APPOINTMENT BY WILL—DEATH OF APPOINTEES IN LIFETIME OF DONOR OF POWER—LAPSE.

In re Boyd, *Kelly* v. *Boyd*, (1897) 2 Ch. 232, the effect of an appointment by will came in question, two of the appointees having died in the lifetime of the testatrix. The testatrix had a general power of appointment by will over £5,000, and, after reciting the power, she bequeathed the fund and also all the residue of her estate not otherwise disposed of, equally among her eight nephews and nieces, by name and appointed an executor; by a codicil she gave various legacies of her "own moneys"; and by another codicil she referred to the fact that she had by her will given "a certain fund therein named," and also her residue to her nephews and nieces. The testatrix was possessed of considerable estate in addition to the £5,000. Two of the appointees died in the lifetime of the testatrix, and the question Romer, J., was called on to decide was whether there was a valid appoint-

ment of the two-eighths, by reason of the appointment of an executor, so as to make the same part of the testatrix's estate. This depended on whether it could be gathered from the will that the testatrix intended to make the fund a part of her estate for all purposes. The fact that the testatrix had herself drawn a distinction between the £5,000 and her own property was held to be indicative of an intention not to make the £5,000 her own for all purposes, and the two-eighths therefore passed as upon default of appointment.

WILL—CONSTRUCTION—"ISSUE"—ILLEGITIMATE CHILDREN WHEN ENTITLED AS "ISSUE."

In re Walker, *Walker* v. *Lutyens*, (1897) 2 Ch. 238, is a case which arose out of the marriage of a man and his deceased wife's sister, which, by the law of England, is unlawful. In the will of the testatrix which was in question in the action, she gave her residuary estate, subject to a life estate, equally between "my nephews and nieces," naming them, (and among those named was Mary Addams, who had gone though a ceremony of marriage with her deceased sister's husband) with a proviso that if any of the nephews and nieces should die during the lifetime of the tenant for life leaving issue, such issue should take the share his, her or their parent would have taken if living. Mary Addams was elsewhere described in the will as "my niece," and her illegitimate daughter as "her daughter, Gertrude Addams," and also as the testatrix's "great niece." Mary Addams died leaving an illegitimate daughter, Gertrude, and also an illegitimate son not referred to in the will, and the question was whether or not these two children were entitled to take as "issue" of their deceased mother. The daughter, Gertrude, consenting that if found entitled her illegitimate brother should share with her, the title of the brother was not considered, but Romer, J., was of opinion that the daughter was under the circumstances entitled to take as "issue" of Mary Adams. See *In re Barker*, supra, p. 758.

BANKER AND CUSTOMER — PRIVATE ACCOUNT — OVERDRAFT—PAYMENT IN OF TRUST MONEY—NOTICE - LIABILITY OF BANK—TRUSTEE AND CESTUI QUE TRUST —TRUST FUND, FOLLOWING.

Coleman v. *Bucks Oxon Union Bank* (1897), 2 Ch. 243, was an action brought against a bank to compel them to make good certain trust moneys to which the plaintiff claimed to be entitled. The facts were that the plaintiff's trustee had a private bank account with the defendants, the fund in question was remitted to the defendants to be placed to the credit of the trustee's trust account. He had no trust account, and his private account at the time was overdrawn on securities deposited with the defendants. He was notified of the remittance, and gave no instructions about the money, and it was placed to the credit of his private account and his indebtedness to the defendants was thereby temporarily reduced. He was in good credit with the defendants, and they had no intention of benefiting themselves, and no suspicion that the trustee contemplated a breach of trust, and they continued to allow him further extended overdraft on further securities, and he from time to time drew on his account as usual, until his bankruptcy. Byrne, J., held that the Bank was not liable to make good to the plaintiff the trust fund that had been thus lost. The case is an important one, and we should not be surprised if a different view of it were taken by an appellate court. It certainly comes very close to some of the cases from which the learned Judge distinguishes it. The bank knew that the money in question was trust money, and the effect of placing it to the trustee's private account was to benefit themselves, whatever intention they may have had.

POWER—APPOINTMENT—FRAUD ON POWER—GIFT OVER ON APPOINTEE ENTERING A SISTERHOOD—REMOTENESS.

Wainwright v. *Miller* (1897), 2 Ch. 255, is another decision of Byrne, J., on the question of the validity of an appointment. By a settlement property was settled upon trust for Tryphosa Sutton for life, and after her death for such one or more of her children in such shares and subject to such conditions and in such manner as she should by deed appoint. There were three children, and Tryphosa executed a deed

appointing one-third to each of two of them, and as to the remaining one-third she appointed the income to be paid to her third child Harriett, if not then a Roman Catholic or a member of any sisterhood, or until she should become either, and subject as aforesaid she gave the capital and income to the other two children. The appointor died in 1893 and in 1895 Harriett became a member of an Anglican sisterhood whereby the gift over took effect. It was contended on her behalf that the imposition of the condition was a fraud on the power, and that in any case the appointment was void for remoteness because the event contemplated might not happen within the period occupied by a life in being at the time of the settlement and 21 years afterwards. But both of these contentions were overruled by Byrne, J.

COMPANY — WINDING-UP —LIQUIDATOR—EMPLOYMENT OF SOLICITOR—LITIGATION BY LIQUIDATOR—53 & 54 VICT., C. 63, S. 12—(R.S.C. C. 129, SS. 31, 32.)

In re London Metaliurgical Co. (1897), 2 Ch. 262, may be briefly referred to as showing that where in a winding-up proceedings a liquidator is authorized generally to take certain proceedings to recover calls, that does not necessarily entitle him to appoint a solicitor and give him a free hand in carrying on proceedings, but that he is still bound to get the specific orders of the Court for the appointment of a solicitor and as to the proceedings to be taken, and if he neglect to do so it may be at the peril of not being allowed costs incurred without such authority. See R.S.C. c. 129, ss. 31, 32.

GAMING—PLACE USED FOR BETTING — INCLOSURE ON RACE COURSE — BETTING ACT—(16 & 17 VICT. C. 119) SS. 1, 3—(CR. CODE, SS. 197, 198)—EJUSDEM GENERIS.

Powell v. *Kempton Park Race Course Co.* (1897), 2 Q.B. 242, was an action by a shareholder of the defendant company for an injunction to restrain the company from keeping an inclosure upon their race course for the purpose of persons resorting thereto, and betting therein on races held on the course. It will thus be seen that it incidentally brings up for consideration on the civil side, the question which was at issue in the criminal case of *Hawke* v. *Dunn* (1897), 1 Q.B. 579, noted

ante p. 518. A majority of the Court of Appeal (Lord Esher, M.R., and Lindley, Lopes, Smith and Chitty, L.JJ.) has reached a different conclusion to that arrived at in *Hawke* v. *Dunn*, which they refused to follow. This is probably the decision which the newspapers described as that of "the House of Lords" reversing *Hawke* v. *Dunn*. The case was evidently considered of some importance, for if *Hawke* v. *Dunn* were sound law, it meant that a blow had been struck at betting in England, which to the sporting community must have seemed appalling. The fault which the Court of Appeal finds with *Hawke* v. *Dunn* is that the decision proceeds on the assumption that the Act of 1853 was one for the suppression of betting generally, whereas according to the view of the Court of Appeal the Act was plainly directed to the suppression of betting at particular places, viz., betting offices, and places of a similar character, and an inclosure at a race course to which the public generally have access, not necessarily to bet, but which some of them use for that purpose, is not keeping a "place" for betting within the meaning of the Act. The Court, however, was not entirely unanimous, Rigby, L.J., dissenting from the rest of the Court, and holding that *Hawke* v. *Dunn* was rightly decided, having regard to the previous decisions.

The case is very elaborately discussed, and the majority of the Court hold that in construing the words "other place" in the Act in question the doctrine of "Ejusdem generis" is applicable, and that the meaning of the word "place" must be controlled by the specific words, "house, office, or room."

INJUNCTION—BREACH OF COVENANT, RESTRAINING—HUSBAND AND WIFE—SEPARATION DEED—COVENANT NOT TO MOLEST—DIVORCE PROCEEDINGS IN FOREIGN COURT.

In *Hunt* v. *Hunt* (1897), 2 Q.B. 304, the plaintiff was the wife of the defendant, and the action was brought to restrain the breach of a covenant not to molest contained in a separation deed which had been entered into between them. The breach complained of was, that the defendant had commenced proceedings for a divorce in a Court in Texas, where he had

gone for that purpose. Wright, J., held this to be a breach of the covenant, as the defendant did not show any reasonable ground for taking the proceedings, and he granted an injunction perpetually restraining the defendant from taking any proceedings in England in furtherance of the divorce proceedings in Texas, and awarded damages to the plaintiff.

PROBATE—WILL INCORPORATED DOCUMENT—CATALOGUE OF BOOKS

In re Balme (1897), P. 261, a testator bequeathed to a college his library of books as enumerated in the catalogue thereof, with certain specified exceptions, and the question arose whether the catalogue must be brought into the office for the purposes of granting probate. A copy of the catalogue would cost £15, and an engrossment £200. The legatee of the excepted volumes consenting, and the college undertaking to hold the catalogue for the registry, its deposit in the registry was dispensed with.

DIVORCE - NULLITY - FRAUD—PREGNANCY OF WIFE BY ANOTHER MAN AT TIME OF MARRIAGE—CONCEALMENT OF PREGNANCY FROM INTENDED HUSBAND.

In *Moss* v. *Moss* (1897), P. 263, an important point on the law of marriage was determined by the President (Sir F. H. Jeune). The action was brought for a declaration of nullity of marriage, the plaintiff relying on the fact that at the time of the marriage in question in 1896, the defendant was actually pregnant by another man, which fact was unknown to the plaintiff. About a week after the marriage the defendant admitted her condition and gave the plaintiff the name of her seducer. The plaintiff left her and within a month of the marriage a child was born. The President found as a fact that the plaintiff did not know of his wife's condition when the marriage took place. By direction of the Court the Queen's Proctor was notified and the point was carefully argued. On the part of the plaintiff several decisions of Courts in the United States were cited in support of his claim that the marriage was null and void, but no decision of any English Court could be found in support of the plaintiff's contention. The learned President was of the opinion that

the only case in which fraud avoids a de facto marriage is where it is such as prevents there being any actual consent to the marriage, and does not include such fraud as induces consent, but is limited to such fraud as procures the appearance without the reality of consent, as for example in the case of personation, or in the case of duress. The learned President therefore came to the conclusion that the American cases were not to be followed, and that the petition must be dismissed. He points out that unchastity before marriage according to English law is clearly not a ground for avoiding a marriage, and unless there is to be one law for a man and another for a woman, it is impossible to suppose it ever could be, and he is unable to see how the fact of the unchastity having resulted in pregnancy at the time of a marriage can have the effect of rendering the marriage void.

CORPORATION — ULTRA VIRES — NEWSPAPER — LIBEL — PRINCIPAL AND AGENT — ACTION AGAINST EDITOR — DEFENCE OF ACTION AGAINST EDITOR, BY PROPRIETOR — INDEMNITY.

In *Bray* v. *Royal British Nurses' Association*, (1897) 2 Ch. 272, North, J., granted an interlocutory injunction against the defendants and their officers restraining them from employing the funds of the association in defending an action of libel brought against the editor of a journal of which the defendant association was the proprietor, on the ground that it was ultra vires of the association so to employ its funds. From this order the defendants appealed, and the Court of Appeal (Lindley, Lopes and Chitty, L.JJ.) reversed the order, holding, that as the subject matter of the alleged libel had been published by the direction of a sub-committee of the defendant association, the association as publishers and proprietors would also be liable for the alleged libel, and had a direct interest in defending the action brought against the editor, and might legitimately employ its funds for that purpose, and there appearing to the Court of Appeal that there really was no substantial question to be tried in the action, the injunction was dissolved.

REPORTS AND NOTES OF CASES

Province of Ontario.

COURT OF APPEAL.

From FERGUSON, J.] [Nov. 9.

CRAWFORD v. CANADA LIFE ASSURANCE COMPANY.

Chose in action—Assignment—Notice—Life Insurance.

The life insurance company issued two policies upon a man's life, one policy being payable generally and the other to his wife. The assured made an assignment for the benefit of his creditors, and the assignee, who at the time knew only of the policy payable generally, wrote to the company referring to this policy by number, and telling them of the assignment. The assured's wife had died before the assignment was made, and the policy in which she was named as beneficiary had become part of the assured's estate and had passed to the assignee. A few weeks after notice of the assignment had been given to the company the assured told them of his wife's death, and obtained from them the surrender value of the policy. There was no imputation of bad faith, and the officers of the company swore that they had at the time no recollection of notice of the assignment for the benefit of creditors having been given.

Held, that the company were entitled to distinct and clear notice of any change of interest and were justified, in the absence of knowledge of the wife's death, in treating the notice of the assignment as applicable only to the policy payable generally and not to that payable to the wife.

Judgment of FERGUSON, J., reversed.

Bruce, Q.C., for the appellants.

S. H. Blake, Q.C., and *Smythe*, Q.C., for the respondent.

From MEREDITH, J.] Nov. 9

BUCHART v. DOYLE.

Landlord and tenant—Way—Mode of user.

The defendant leased to the plaintiff a small knoll or island, standing in a shallow lake, which in the dry season became a muddy marsh. The land surrounding the knoll or island belonged to the defendant and the lease provided that the plaintiff should have a right of way across it, nothing being said as to the mode of exercising the right. The plaintiff built a trestle bridge from the knoll or island to the main land and this bridge the defendant pulled down.

Held, that the plaintiff's mode of user was reasonable and that the defendant was not justified in interfering with the bridge.

Judgment of MEREDITH, J., reversed.

Watson, Q.C., and *Kilbourn*, for the appellant.

Aylesworth, Q.C., for the respondent.

From ROSE, J.] Nov. 9.]

HARRISON *v.* PRENTICE.

Seduction—Presumption of service—Loss of service—R.S.O. c. 58.

The plaintiff's unmarried daughter was seduced by the defendant while at service in his family. There was no pregnancy and only very slight physical disturbance.

Held, that while there is under the Act, R.S.O. c. 58, a presumption of service, there is no presumption of loss of service which must still be proved; and that (MACLENNAN, J.A., dissenting) proof of sickness or physical disturbance sufficient to have caused loss of service if the girl had been living with the parent, is not sufficient.

Held also, per MACLENNAN, J.A., that an action for seduction will lie even if pregnancy does not result.

Westacott v. *Powell*, 2 E. & A. 525, and *Cole* v. *Hubble*, 26 O.R. 379, considered.

Judgment of ROSE, J., 28 O.R. 140, affirmed, MACLENNAN, J.A., dissenting.

E. Guss Porter, for the appellant.

W. B. Northrup, for the respondent.

From Divisional Court.] [Nov. 9.

ANDERSON *v.* GRAND TRUNK RAILWAY COMPANY.

Railway—Trespass—Invitation—Negligence.

The defendants were in the habit of selling tickets to, and allowing passengers to get off at a crossing or junction, the only means of egress to the highway being along the track. A passenger while walking from the crossing to the highway was killed.

Held, that he could not, under the circumstances, be looked upon as a trespasser; that the defendants were bound to use reasonable care towards him, and that, as there was some evidence of want of care, a verdict in favor of his representatives could not be interfered with.

Judgment of a Divisional Court, 32 C.L.J. 330; 27 O.R. 441, affirmed.

Osler, Q.C., for appellants.

Aylesworth, Q.C., for the respondents.

From Drainage Referee.] [Nov. 9.

IN RE TOWNSHIP OF CARADOC AND TOWNSHIP OF EKFRID.

Drainage—Enlargement of drain—Work done beyond limits of initiating township—Error in mode of assessment—Drainage Act, 1894—57 Vict., c. 56, s. 75 (O.)

Under s. 75 of the Drainage Act, 1894, 57 Vict. c. 56, s. 75 (O.), any municipality whose duty it is to maintain any part of a drainage work, may without being set in motion by any complainant, initiate proceedings for its repair and improvement, and for extending its outlet, although nearly the whole of the cost is assessable against adjoining townships

Where, however, the engineer of the initiating township assessed lands in the adjoining townships for improved outlet, and the original outlet was in fact sufficient for these lands, his report was set aside, Burton, C.J.O., dissenting.

Per BURTON, C.J.O.—A question of this kind should be dealt with by the Court of Revision, and where the engineer acts in good faith his report cannot be set aside upon such a ground.

Judgment of the Drainage Referee reversed.

Osler, Q.C., and *T. G. Meredith*, for the appellants, the Township of Caradoc.

Folinsbee, for the appellants, the Township of Ekfrid.

M. Wilson, Q.C., and *Rankin*, for the respondents.

From ROBERTSON, J.] [Nov. 9.

GROSS *v.* BRODRECHT.

Evidence—Indecent assault—Evidence of reputation—Evidence of specific acts of impropriety.

In an action for damages for indecent assault evidence of the general reputation for unchastity of the plaintiff is admissible, but evidence of specific acts of impropriety is not.

Judgment of ROBERTSON, J. reversed.

Idington, Q.C., for the appellant.

J. F. Mabee, for the respondent.

From MEREDITH, C.J.] [Nov. 9.

BUILDING AND LOAN ASSOCIATION *v.* MCKENZIE.

Mortgage—Leasehold—Acquisition of reversion by mortgagor.

Where the assignee of a term, subject to a mortgage of the term and of the rights of renewal and of purchase given by the lease, exercises the right of purchase, the mortgage becomes a charge upon the fee, and the purchaser has no lien upon the fee in priority to the mortgage for the amount of the purchase money.

Judgment of MEREDITH, C.J., ante p. 244; 28 O.R. 316, affirmed.

Laidlaw, Q.C., and *D. W. Saunders*, for the appellant.

H. J. Scott, Q.C., and *A. Cassels*, for the respondents.

From ARMOUR, C.J.] [Nov. 9.

LINDSAY *v.* WALDBROOK.

Will—Legacy—Abatement.

A testator directed that a farm should be sold, and that his executors should "first out of the said proceeds set apart the sum of $2000, and invest the same in some safe security, for the benefit of and for the maintenance and education of "the testator's grandson, subject to certain provisions as to payment of the income and corpus," and he then further directed that "out of the proceeds of the sale of the land there shall be paid the following legacies" to three daughters and a son of the testator.

Held, that the general rule of equality among legatees applied, and that there not being sufficient to pay all the legacies in full, the grandson's legacy should abate proportionately.

Judgment of ARMOUR, C.J., reversed.

C. J. Holman, for the appellants.

A. J. Boyd, for the infant respondent.

C. W. Cotter, for the adult respondents.

From BOYD, C.] [Nov. 9.

BALER *v.* FOREST CITY LODGE

PARKHOUSE *v.* DOMINION LODGE.

Benevolent societies — Alteration of rules — Reduction in amount of sick benefit.

These were appeals by the plaintiffs from the judgment of BOYD, C., reported 28 O.R. 238, and were argued before BURTON, C.J.O., and OSLER, MACLENNAN and MOSS, JJ.A., on Sept. 23rd, 1897.

I. F. Hellmuth, and *W. C. Fitzgerald*, for the appellants.

Shepley, Q.C., and *R. K. Cowan*, for the respondents.

November 9th, 1897. The appeals were dismissed with costs, the Court agreeing with the reasons for judgment reported below.

From MEREDITH, C.J.] [Nov. 9.

MCMICKING *v.* GIBBONS.

Mortgage—Interest—Redemption—R.S.O. c. 121, s. 17

In an action of redemption by a second mortgagee against a first mortgagee the latter is entitled to only six years arrears of interest.

Delamy v. Canadian Pacific R. W. Co., 21 O.R. 11, overruled on this point.

Judgment of MEREDITH, C.J., reversed.

Garrow, Q.C., for the appellant.

Philip Holt, for the respondent.

From FALCONBRIDGE, J.] [Nov. 9.

BOULTON *v.* LANGMUIR.

Bills and notes—Demand note—Alteration—Limitation of actions—Absence beyond seas—Return.

The changing by the payee of the date of a demand note, payable with interest, to a later date, is a material alteration and makes it void, though the effect of the alteration may be to benefit the maker by reducing the amount of interest chargeable against him.

Judgment of Falconbridge, J., affirmed.

The expression "beyond the seas" in 4 & 5 Anne, c. 3 and c. 16, is not to be construed literally, but means, when applied to a defendant sued in this Province, "out of the Province of Ontario."

To make the statute run in the defendant's favor, his return from beyond the seas must be open and of sufficiently long duration to have enabled the creditor, if he had known of it, to bring an action, though the creditor's knowledge is not essential.

McCarthy, Q.C., and *John McGregor*, for the appellant.
Aylesworth, Q.C., and *E. B. Brown*, for the respondent.

From Divisional Court.] [Nov. 9.

LELLIS v. LAMBERT.

Husband and wife—Alienation of husband's affections—Adultery of husband—Damages—Married Woman's Property Act, R.S.O. c. 132.

Neither at Common Law, nor under the Married Woman's Property Act, R.S.O. c. 132, will an action lie by a married woman against another woman to recover damages for alienation of her husband's affections, and for living in adultery with him.

Quick v. *Church*, 23 O.R. 272, overruled.

Judgment of a Divisional Court reversed.

W. R. Smyth, for the appellant.
E. E. A. DuVernet, for the respondent.

From FERGUSON, J.] [Nov. 9.

HOLWELL v. TOWNSHIP OF WILMOT.

Insolvency—Assignments and preferences—Preference—Breach of trust—Revocation of transfer.

The transfer by the defaulting treasurer of a municipality to the bankers of the municipality of the accepted cheque of a third person for the amount due by him to the municipality cannot be impeached under the Assignments and Preferences Act, the duty to make good this wrong being sufficient to protect the transaction.

The cheque was sent by the treasurer in a letter to the bankers, and this letter was received by the bankers in the afternoon, but the amount was not credited in the bank books to the municipality till next morning, and before this was done an assignment for the benefit of creditors had been made by the treasurer.

Held, that the property passed as soon as the cheque reached the bankers, and that the assignment was not a revocation of the transfer.

Judgment of FERGUSON, J., affirmed.

W. Nesbitt, for the appellant.
Aylesworth, Q.C., for respondents.

HIGH COURT OF JUSTICE.

Mr. Winchester, Master. [Sept. 16.

MURRAY v. CLAPP.

Staying proceedings—Misjoinder of parties—Striking out defendant—Action for conspiracy—Class suit.

Action by plaintiff on behalf of themselves and other creditors to set aside transfers of goods from certain of the defendants to defendant Young, and for damages for conspiracy. Motion by defendant Young for order staying proceedings until applicant's name be struck out or for an order striking it out, on the ground that if plaintiff desires to proceed against him it should be in a separate action.

Held, that this action, so far as it claims to set aside the different hypothecations of goods to defendant Young (inter alia) as fraudulent and void against plaintiff, comes within *Faulds* v. *Faulds*, ante p. 464; 16 P.R. 480.

Held also, that there being no authority for a class suit being brought for damages for conspiracy, the allegation of conspiracy against all defendants does not bring this action outside *Faulds* v. *Faulds*, and prior cases. Order to go similar to that made on appeal in that case with costs.

Ritchie, Q.C., for defendant, Young.

J. Bicknell, for plaintiff.

Mr. Winchester, Master. [Sept. 17.

GLOBE PRINTING CO. v. HILLTOP GOLD MINING CO.

Action against corporation—Serving writ of summons on broker—"Carrying on business"—Old rule 267—Conditional appearance.

Motion by defendants to set aside service of writ of summons on one Fullerton as agent for the company, on the ground that he is not their agent or a proper person to be served with process on behalf of the company. Fullerton was a broker employed by the defendants to dispose of their stock.

Held, that Fullerton was "a person who within Ontario transacts or carries on any business for any corporation whose chief place of business is without Ontario," within old rule 267, and that plaintiffs are justified in serving him for the defendants. Defendants may under present rule 173 enter a conditional appearance.

J. H. Moss, for defendants.

W. A. Skeans, for plaintiffs.

STREET, J.] [Sept. 22.

GRIFFIN v. FAWKES.

Production—Document—Part of plaintiff's case only—Plea of non est factum.

Motion by plaintiff by way of appeal from the order of the Master in Chambers requiring plaintiff to produce certain documents mentioned in plaintiff's affidavit on production, but which plaintiff objects to produce. The action was brought to enforce an award which was based upon the assumption that

plaintiff was the holder of the documents sought to be protected. Defendants deny that plaintiff holds or has ever held the documents.

Held, that as by the award the payment by defendants of the sum awarded and the delivery up of the documents by the plaintiff are simultaneous acts, plaintiff can only obtain payment by producing and proving the documents at the trial. Under these circumstances the claim that these documents "are documents of title and not relevant to the defendant's case, but are part of (plaintiff's) case only," is well taken.

Held also, that to deny the due execution of a deed or to set up that it is forged or to plead non est factum does not give defendant a right to have it produced on an affidavit on production where the deed is part of plaintiff's case and the onus of proving it lies on him, and if he fails he can go no further. *Frankenstein* v. *Gavin* (1897), 2 Q.B. 62, ante p. 651, followed. Appeal allowed with costs.

W. R. Smyth, for plaintiff.

Bradford, for defendants.

ROSE, J.] [Sept. 23.

REGINA *v.* MCINTOSH.

Criminal law—Appeal from conviction by magistrate to Judge—Costs of —Power of Judge—52 Vict. c. 43, s. 9 (D)—Criminal Code, ss. 879, 880.

Under 52 Vict. c. 43, s. 9 (D) the Judge has the same power to award costs as the Sessions of the Peace under ss. 879 & 880 of the Criminal Code. Under the Criminal Code s. 880 the Judge of the Sessions of the Peace on an appeal may award such costs including solicitor's fees, as he may deem proper —and there is no power in the High Court to review such discretion.

Aylesworth, Q.C., for the appellant.

Shepley, Q.C., contra.

Divisional Court] [Oct. 27.

REGINA *v.* WILLIAMS.

Evidence—Voluntarily given before coroner—Use afterward on a criminal trial—56 Vict., c. 31, s. 5 (D).

The evidence given by a witness at a coroner's inquest without objection that his answers might tend to criminate him, or any privilege being claimed under 56 Vic. c. 31, s. 5 (D) may be subsequently used against him on a trial for a criminal offence.

Regina v. *Hendershott*, 26 O.R. 678, overruled. *Regina* v. *Madden*, 30 C L.J. 765, referred to with approval.

Cartwright, Q.C., Dep. Attorney-General, for the Crown.

Clute, Q.C., for the defendant.

ROSE, J.] [Nov. 8.

HANNUM *v.* MCRAE.

Contempt of Court—Witness—Reference—Subpœna—Rule 484—Local manager of bank—Principal officers resident outside the Province—Production of bank books—Disclosure of bank accounts.

Motion by the plaintiff to commit the local manager of a chartered bank, who was subpœnaed to attend before a Master upon a reference and there to produce the books of the bank and give evidence, for his contempt in not producing the books and in refusing to answer certain questions.

Held, that a subpœna may properly be issued to compel the attendance of a witness before a Master, who has jurisdiction by Rule 484.

2. That it was unreasonable to expect the witness to take from the bank the books that were in use, and attend during banking hours for the purpose of an examination in a matter in which he had no interest except as a witness; and it would therefore be proper for the Master to take the evidence at the banking offices, after banking hours.

3. That where the head office of a bank is outside of the Province, and the president, directors and general manager are outside of it, the local manager is the person in charge and custody of the books, and is the proper person to subpœna to produce them. And he should be ordered to produce them for the purpose of evidence more especially where it does not appear that in so doing he will be contravening any rule or regulation of the bank.

Re Dwight and Macklam, 15 O.R. 148, followed. *Crowther* v. *Appleby*, L.R. 9 C.P. 23, and *Attorney-General* v. *Wilson*, 9 Sim. 926, distinguished.

4. That the witness' objection to produce the books, because the bank was precluded by law from exhibiting to any one or permitting any one to inspect the account of any person dealing with the bank, was untenable, the evidence sought being as to entries made of financial transactions in which a deceased person was engaged, his representatives desiring to know what moneys the bank received and what disposition was made of them, and all parties interested being willing that the evidence should be given.

Latchford, for the plaintiff.

J. Travers Lewis, for the witness.

MEREDITH, C.J.] [Nov. 15.

IN RE BERRYMAN.

Infant—Insurance moneys—Payment into Court—Right of foreign tutrix to payment out—Appointment as trustee—R.S.O. c. 136, ss. 11, 12, 14, 15.

An application by the tutrix of two infants, appointed by the Superior Court of Saint Francis, Quebec, for payment to her of about $1,000 paid into Court by the Sons of England Benefit Society under an order made under R.S.O. c. 136, s. 16, an Act to secure to wives and children the benefit of life insurance. By the law of Quebec the tutrix is entitled to demand and receive all the personal estate of the infants of whom she is tutrix, wherever the same may be, and it is her duty to reduce into her possession all such personal property, and, according to *Hanrahan* v. *Hanrahan*, 19 O.R. 396, these rights must be recognized in this Province.

Held, that the provisions of ss. 11, 12, 14, and 15 of the Act above mentioned provide a special mode for dealing with the shares of infants in insurance moneys, and exclude the application of the ordinary rules of law, so far as they are inconsistent with these provisions.

The motion was refused, but it was intimated that an order might go appointing the applicant trustee of the fund under s. 12, and directing payment to her as such trustee, upon her giving security for the faithful performance of her duty as trustee, and for the proper application of the fund.

W. E. Middleton, for the applicant.

F. W. Harcourt, for the Official Guardian.

MEREDITH, C.J.] [Nov. 19.

GALLAGHER *v.* GALLAGHER.

Costs—Alimony—Disbursements—Prospective counsel fee—Solicitor as counsel—Rule 1144.

Rule 1144 does not warrant the making of an order for payment by defendant to plaintiff's solicitors in an alimony action, of a sum to cover counsel fees, unless it is shown that the fees are to be paid to counsel who is not the solicitor for the plaintiff or the partner of the solicitor.

W. E. Middleton, for the plaintiff.

J. Bicknell, for the defendant.

MEREDITH, C.J., ROSE, J.)
MACMAHON, J.) [Nov. 20.

EASTWOOD *v.* HENDERSON.

Costs—Libel—Apology—Satisfaction—Trial of question of costs—Application at Chambers.

After action for libel brought, the defendants published a retraction and apology, which was accepted as satisfactory by the plaintiff. The defendants delined to pay the plaintiff's costs up to that time, and the plaintiff proceeded to trial.

Held, MEREDITH, C.J., dissenting, that either party could, after the publication of the apology and its acceptance by the plaintiff, have moved in Chambers to have the question of costs disposed of; but neither party having moved, that the plaintiff should have such costs only as he would have been entitled to had he so moved, and that the defendants should have no costs.

Knickerbocker v. Ratz, 16 P.R. 191, followed.

Judgment of ARMOUR, C.J., varied.

Wallace Nesbitt and *R. L. Johnston*, for the plaintiff.

Farewell, Q.C., for the defendants.

Province of New Brunswick.

SUPREME COURT.

Full Bench.] [Nov. 6.

CHASSE *v.* LYNOTT.

Practice—Pleading.

It is not necessary to state the venue in the body of the declaration in a County Court writ.

Fred. La Forest, for appellant.

C. E. Duffy, for respondent, not called.

Full Bench.] [Nov. 6.

PALMER *v.* WALKER.

Expense of building fence under c. 110, C.S.—Insufficient notice.

In an action under c. 110, Con. Stat., of "Fences, Trespasses and Pounds," against the appellant, Palmer, to recover one half the expenses of building a line fence between land of respondent (plaintiff below) and land of Fred. Palmer, father of appellant, of which latter appellant was found by verdict to be in occupation, the respondent relied on the following notice, given by the fence viewer, as a compliance with the Act:

Mr. Harold Palmer, agent for Fred. Palmer.

You are requested by the undersigned fence viewer to meet on Aug. 6th, at 9 o'clock in the forenoon at Malcolm Campbell's late residence, for the purpose to divide line fence between said Fred. Palmer and Mr. John Walker, and to build part of said fence as the law directs.

(Sgd.) Albert Dumas, Fence Viewer.

Held, that this was a notice to Fred. Palmer, and not a notice to the appellant as occupier as required by the Act.

Appeal allowed with costs.

Thos. Lawson, for appellant.

T. J. Carter, for respondent.

Full Bench.] [Nov. 12.

EX PARTE CASSON

Canada Temperance Act—Warrant of imprisonment—No distress awarded.

A warrant for imprisonment issued on a conviction for a violation of the Canada Temperance Act is not invalid because of no distress having been awarded.

Rule for certiorari discharged.

D. Grant, and *H. C. Hannington*, for rule.

D. I. Welch, and *W. B. Chandler*, contra.

Full Bench.] [Nov. 12.

EX PARTE FLANAGAN.

Liquor License Act—Magistrate, a ratepayer—Disqualification—Minute of conviction.

Held, that a magistrate is not disqualified from hearing a complaint under the Liquor License Act of 1896 because of his being a ratepayer of the municipality into whose treasury the fines under the Act are payable, upon the principle that, if one magistrate is disqualified on this ground all are disqualified and, ex necessitate, all being disqualified, all are qualified.

Held also, that the fact that the convicting magistrate was an uncle of the wife of the assistant inspector, whose salary is contingent upon the payment of the fines under the Act, did not disqualify him. The complaint having been laid by the inspector of licenses—not the assistant inspector—the interest was too remote.

Held also that it was not necessary for the magistrate to make a minute of conviction under s. 22 of c. 62, Con. Stat. of N.B., if the conviction itself be drawn up at the time and appears on its face to be otherwise regular.

Rule refused.

J. D. Phinney, Q.C., for applicant.

Full Bench.] [Nov. 12.

EX PARTE GILBERT.

Award—Setting aside.

Held, that the Court should not disturb the award of arbitrators appointed under an Act providing for the expropriation of land for the purposes of the St. John Horticultural Society, there being nothing to show that the arbitrators acted on a wrong principle, or that there was any fraud in connection with the award.

Appeal dismissed with costs.

Gilbert, Q.C., and *Palmer*, Q.C., in support of appeal.

Hazen, Q.C., contra.

Full Bench.] [Nov. 12.

EX PARTE WHITE.

Canada Temperance Act—Prosecution before two Justices—Information.

Held, following *Ex parte Manger*, 23 N.B.R. 315, and *Ex parte Sprague*, 31 N.B.R., 231, that where a prosecution is brought before two Justices under the Canada Temperance Act, the information must be laid before two Justices, notwithstanding sub-sec. 3 of sec. 842 of the Criminal Code.

Rule absolute for certiorari.

J. W. McCready, in support of rule.

W. Wilson, contra.

Full Bench.] [Nov. 12.

EX PARTE HANNAH GALLAGHER.

Canada Temperance Act — Conviction — Gazetting convicting magistrate's appointment.

The convicting magistrate's appointment was gazetted as follows:

"In the County of Westmoreland—James C. Graves, to be a stipendiary and police magistrate in the Parish of Salisbury."

39 Vict., c. 16, authorized the Governor-in-Council to appoint "a fit and proper person, resident in the Parish of Salisbury, to be a district or stipendiary or police magistrate for the said County of Westmoreland, with civil jurisdiction within the Parish of Salisbury aforesaid."

Held, that a conviction made by him for an offence against the C. T. A., committed in the Parish of Dorchester, was not bad for want of jurisdiction, the *Gazette* publication being sufficient to indicate the jurisdiction conferred by the Act.

Rule for certiorari discharged.

D. Grant, in support of the rule.

J. W. McCready, contra.

Full Bench.] [Nov. 12.

GORMAN *v.* URQUHART.

Slander—Publication—Onus of proof—Privilege.

Defendant, being a member and secretary of a board of school trustees and the plaintiff a teacher employed by the board, met the plaintiff in company with one Bird at plaintiff's barn after dark and said to her: "I have often heard you were not a decent woman and now I know it." The words were spoken in a loud voice—sufficiently loud, according to the evidence, to have been heard in the house, in which there were other people, the door being open.

Held, that it was not incumbent on the plaintiff to prove that the words were heard in the house, but that under the above circumstances the onus was on the defendant to show that the persons in the house did not hear them.

Held also, (per VAN WART and MCLEOD, JJ., TUCK, C.J., and HARRINGTON, J., dissenting) that the occasion was not privileged.

New trial refused.

W. Wilson, for plaintiff.

G. F. Gregory, Q.C., for defendant.

Full Bench.] [Nov. 16.

QUEEN *v.* FORBES.

Attachment of debts—Money in hands of solicitor—Trust funds.

W. P. received money under a power of attorney to distribute it amongst certain cestuis que trust, including bondholders of the Consolidated Electric Co., of which company W. P. was solicitor. M. and W. held judgments against the Consolidated Electric Co., for services performed, and took proceedings to obtain and did obtain orders garnishing portions of the money in W. P.'s hands, covering their respective judgments.

Held, on motion to quash the garnishee orders that the moneys were trust funds in W. P.'s hands, and as such were not liable to garnishment.

Rules absolute to quash.

W. W. Allen and *C. J. Coster*, for rules.

Hazen, Q.C., and *Palmer*, Q.C., contra.

Province of Manitoba.

QUEEN'S BENCH.

BAIN, J.] [Oct. 28.

MASSEY HARRIS CO. *v.* WARENER.

Exemptions—R.S.M. c. 80, s. 12—Fraudulent conveyance.

Plaintiffs had taken proceedings under a registered judgment against the defendant, who had after the registration conveyed his homestead to his wife to prevent creditors from realizing upon it. Defendant admitted that the judg-

ment was a charge on the land and that his wife had only held it as trustee for him, but he was living on it and claimed that under s. 12 of the Judgments Act it was exempt from sale proceedings at present.

Held, that the conveyance, being voidable only, was good as between the parties to it, and that as between defendant and his wife the title to the land was in her, and he had no interest in it, and could not avail himself of the provisions of that section, which should be construed as referring only to land belonging to the judgment debtor.

Appeal from the Referee allowed with costs, and order for sale pursuant to the notice of motion.

Culver, Q.C. for plaintiff.

Metcalf, for defendant.

KILLAM, J.] [Nov. 17.

DIXON *v.* HEATLEY.

County Courts Act, R.S.M., c. 33, s. 293—Judgment Summons—Assignment of debt.

This was an appeal from the decision of the County Court Judge, who had held that section 293 of the County Courts Act could not be taken advantage of by an assignee of a claim for necessaries, and that only the original creditor, who had supplied the necessaries could have a judgment summons and an examination of the debtor under that section.

Held, that the language of the section, which provides that "Any party having an unsatisfied judgment or order in any County Court for the payment of any debt incurred for necessaries, may procure from the Clerk of the Court a judgment summons, etc.," is perfectly general, and enables the holder of any such judgment, whether the original creditor or an assignee, to proceed by judgment summons against the debtor, and avail himself of the provisions of section 293 and following sections of the Act.

Appeal allowed without costs.

Mathers, for the plaintiff.

Province of British Columbia.

SUPREME COURT.

DRAKE and MCCOLL, JJ.] [Oct. 28.

RE MARSHALL.

By-law—Ultra vires.

This was an appeal from the decision of the County Court Judge upholding a conviction by the police magistrate of one Marshall, for not paying the license fee required by the Plumbing By-law. Among other provisions in the by-law it was enacted that in case of a conviction by a magistrate of a plumber for any infraction of the regulations of the by-law his license would be forfeited, and also that the granting of a license at all was to be in the absolute discretion of the Plumbing Inspector.

Held, that these provisions vitiated the by-law and appeal allowed.

Book Reviews.

The Law of Chattel Mortgages and Bills of Sale, by JOHN A. BARRON, of Osgoode Hall, one of Her Majesty's counsel, and A. H. O'BRIEN, M.A., Barrister-at-law, Assistant Law Clerk of the House of Commons, author of the New Conveyancer, etc., Toronto: Canada Law Journal Company, 1897.

This work is a complete annotation of the statutes of Ontario, Nova Scotia, New Brunswick, Prince Edward Island, Manitoba, British Columbia and the North-West Territories dealing with mortgages and sales of personal property, and such statutes of Canada as affect the same, with a treatise on the general law of chattel mortgages and bills of sale, and a complete collection of forms.

Instead of giving to the public a third edition of Barron on Bills of Sale, the authors, in view of the fact that the law has been almost completely changed since the second edition of that work, have practically prepared an entirely new work on the subject, containing all that was of value in the former one, but with much additional matter, and a reference to all decisions up to date, even including the cases of *Bacon* v. *Rice Lewis* and *Kerr* v. *Roberts*, which have only just appeared in this journal.

Each province of the Dominion, except Quebec, is separately treated, and the law of each given in its own place. The text for the Ontario Act is taken from advance sheets of the Revised Statutes, which go into force on the 1st January next.

An examination of the work enables us to speak most highly of the careful and able manner in which the annotations have been made, and the manner in which material has been collected and digested. The forms also seem to be prepared with much care and accuracy.

We have no doubt that this book will find a ready sale. No lawyer's office can afford to be without it, and it will doubtless also be much used by the mercantile community.

Roman Law Examination Test for Bar and University. Questions and Answers by W. ADDINGTON WILLIS, LL.B., of the Inner Temple, barrister-at-law. London, Butterworth & Co., 7 Fleet st., E.C., 1897.

This book provides students with copious questions and answers, all of which have been set in Bar Roman Law examinations down to the most recent date. The answers have been made as complete as possible, and have, the editor tells us, been for some years used with great success in preparing students for these examinations.

LAW SOCIETY OF UPPER CANADA.

HALF YEARLY MEETING.

29th June, 1897.

Present: Messrs. Watson, Ritchie, Teetzel, Douglas, Bruce, Strathy, Riddell, Bayly, Wilkes, Idington, Martin, S. H. Blake, and Barwick.

In the absence of the Treasurer, Mr. Martin was appointed chairman.

Mr. Ritchie on behalf of the Legal Education Committee reported on the results of the Third Year examination, Easter, 1897. Ordered that the following gentlemen be called to the Bar: F. R. Morris, D. A. J. McDougal, W. H. Barnum, A. H. Beaton, V. J Hughes, J. E. Kerrigan, H. A. Little, W. A. Hodgson, H. C. Becher, L. J. Kehoe, J. U Vincent. Also that the above named, with the exception of Messrs. Kehoe and Vincent, do receive their certificates of fitness forthwith, and that Messrs. Kehoe and Vincent do receive same upon furnishing proofs of the completion of their terms of service under articles which expire on the 30th June, after Convocation rises Ordered that Mr. W. A. Fraser, who passed the third year examination in Easter, 1893, be called to the Bar. Ordered that Mr. T. J. W. O'Connor, who has passed the Third Year examination, but is unable, owing to the death of Mr. N. G. Bigelow, to whom he was articled, to produce a certificate of service under articles, be called to the Bar and receive his certificate of fitness.

Mr. Ritchie further reported upon the case of Mr. E. H. Cleaver, who was successful at the third year examination, Easter, 1897, whose case was at the last meeting of Convocation referred back to the Committee to make further enquiries respecting the nature of the service under articles alleged to have been performed by him. Ordered that upon Mr. Cleaver serving a further period of service of four months, his examination be allowed, and he be called and receive certificate of fitness.

Mr. Ritchie further reported in the case of Mr. T. R. Atkinson, whose case was at last meeting referred to the committee with a direction to make further enquiries, and obtain specific information with respect to the engagement by Mr. Atkinson in business other than that of student-at-law and articled clerk. The committee called upon him for explanations, and ascertained that his connection with other business was not such as to prevent him from devoting himself to the study of law and performance of the duties of a student-at-law and articled clerk, during his period of service under articles. Ordered that he be called to the Bar and receive his certificate of fitness.

Convocation then in pursuance of the order of the 4th June resumed consideration of the report of the Discipline Committee on the complaint of Mr. R. L. Fraser against Mr. John McGregor. Mr G. Ross appeared for Mr. McGregor, and Mr. T. D. Delamere, Q.C., for Mr. Fraser. On application of Mr. Ross, Mr. Delamere consenting, ordered that the matter do stand until 14th Sept., 1897, at 12 o'clock noon, also that a special call of the Bench be made for that day and hour to deal with the matter.

Mr. Ritchie from the Legal Education Committee reported upon the result of the Second Year examination.

Ordered that the following candidates who have duly passed the School Examination and are certified by the Principal to have attended the required number of lectures, be allowed their second year examination: R. L. McKinnon, L. F. Stephens, J. H. Hunter, jr., J. C. Elliot, W. F. Bald, A. R. Hassard, F. E. Perrin, H. Hartman, H. A Clark, H. J. Sissons, J. A. MacInness, O E. Culbert, H. Arrell, J. R Graham, W. McCue, F. L. Smiley, R. G. R. Mackenzie, J. A. Thompson, A. G. Slaght, A J. Kappelle, W. A. Chisholm, D. R. Dobie, T. A. Hunt, W. D Henry, A. C W Hardy, J. L. Patterson, S. A. Hutchison, Geo. McCrea, W. M. Charlton, J. C. Hamilton, J. H Campbell, G. H. Davy, W. S. Davidson, E. J. Daly, E. G. Osler, G. H.

Levy, W. Thornburn, J. C. McIntosh, J. McD. Mowat, W. I. McLaws, R. R. Griffin, H. G. Kingstone, A. F. Kerby, T. J. Rigney, F. M. Lockhart Gordon, J. C. Makins, E. H. Mackenzie, I. R. Carling, C. A. Macdougall, J. D. McMurrich, Alfred Hall, D. P. Kennedy, J. D. Ferguson, A. McEvoy, T. H. Hilliar, F. L. Pearson, E. T. Bucke, M. J. Kenny, J. B. T. Caron.

Ordered also that the following candidates who passed, but failed to attend the required number of lectures, but whose failure to attend was due to illness or other good cause, be allowed their Second Year examination: J. Montgomery, S. S. Sharp, G. F. Macdonnell, G. G. Moncrieff, H. A. Burbidge, C. E. Hollinrake, A. B. Drake, T. J. Murray, S. H. B. Robinson, N. Hayes, F. M. Devine, A. A Bond, H L. Harding, D. M. Stewart, D. S. Storey, E. Gillis, D. Mills, jr., F H. Hurley, L. W. Brown, D. S. Bowlby.

Ordered also that Mr. C. H. Pettitt, who passed the examination, but did not attend any of the lectures of the last school term (although he should have done so), under the special circumstances of his case, and in view of the fact that he has already attended one session of the school, and has succeeded in passing the examination recently held, be allowed the same.

Ordered also that the following be allowed their Second Year Examination with honors: J. Montgomery, S. S. Sharp, R. L. McKinnon, L. F. Stephens, J. Howard Hunter, jr., A. R. Hassard, F. E. Perrin, and H. Hartman: and that Mr. Montgomery do receive a scholarship of $100, Mr. Sharp a scholarship of $60, and Messrs. McKinnon, Stephens, Hunter, Hassard and Perrin each a scholarship of $40. Ordered also in accordance with the report that the cases of Messrs. C. W. Cross, A. R. Hamilton and A. M. Chisholm be reserved.

Ordered that Mr. G. C. Sellery, who was admitted as a matriculant in Trinity, 1892, and who has now obtained the degree of B.A. at the University of Toronto, be transferred to the Graduate Class on the books of the Secretary. Ordered that Mr. N C. Larmonth, who has not passed any examination as a matriculant of a university in this Province, but upon his standing as a matriculant of McGill University has been admitted ad eundem statum in the Arts course at Queen's University, be entered as a student of the matriculant class. Ordered that Mr. J. F. C. Fitzgerald and N G. Guthrie, whose notices have remained duly posted, be entered as of this term.

The following gentlemen were then called to the Bar: F. R. Morris, D. A. J. McDougal, W. H. Barnum, A. H. Beaton, V. J. Hughes, J. E. Kerrigan, H. A. Little, W. A. Hodgson, H. C. Becher, L. J. Kehoe, J. U. Vincent, W. A. Fraser, F. B. Goodwillie, W. B. Laidlaw, T. R. Atkinson and T. J. W. O'Connor.

Mr. W. H. Cross was appointed Auditor of the Law Society for the year commencing Easter, 1897.

Sept. 14th, 1897.

Present: The Treasurer and Messrs. Wilkes, Strathy, Watson, Teetzel, Bruce, McCarthy, Bayly, Britton, Edwards, Shepley, Hoskin, and Ritchie.

Ordered that Mr. W. M. Sinclair, a solicitor of ten years' standing, be called to the Bar.

It having been reported to Convocation that A. B., a student, is now assuming to practise in the town of Durham, ordered that the secretary do ascertain the facts.

Mr. Shepley, from the Legal Education Committee, reported on the results of the Third Year examination, Easter, 1897. Ordered that the following gentlemen be called to the Bar: Messrs. A. M. Stewart (with honors and gold medal) S. B. Woods, T. P. Rowland, U. McFadden, W. H. Moore, E. C. Cattanach, J. F. Gross, T. P. Morton, E. C. Wragge, E. F. Appelbe, F. B. Osler, A. M. Lewis, T. L. Church, R. E. Gagen, J. F. Hollis, H. G. W. Wilson, A. A. Carpenter. These gentlemen, excepting Mr. Cattanach, were then called to the Bar. Ordered that the same gentlemen, excepting Mr. Lewis,

receive their certificates of fitness, and that Mr. Lewis, whose time will expire on the 26thSeptember, receive his certificate upon producing proof of completion of his service. Ordered also that Mr. M. H. Irish receive his certificate of fitness on proof of completion of his service on the 25th September.

Mr. Shepley reported upon the case of Mr. J. R. L. O'Connor, recommending that he be required to re-article himself, and serve until Michaelmas, 1897. Ordered accordingly.

Mr. Shepley reported upon the applications for admission of Mr. P. W. O'Flynn and Mr. G. W. Goodwin. Ordered that Mr. O'Flynn be admitted as of Easter Term, 1897, and that Mr. Goodwin be admitted as of Trinity Term, 1897 (both of the graduate class). Mr. Shepley further reported upon the case of Mr. D. Mills, jr., that the Committee cannot recommend the granting of the petition which asked that he might be permitted to attend the Law School in the session of 1897-98 and take the third year examination. Ordered accordingly.

In the case of Mr. N. Y. Poucher, asking that he might be exempted from further attendance upon lectures, that the Committee cannot recommend the granting of the petition. Ordered accordingly.

Mr. Shepley reported upon the proposals of the Principal of the Law School with respect to division of examinations and the substitution of other work for some of the moot courts. Ordered in accordance with the report of the Committee. (1) That after the Christmas Vacation special lectures on the following subjects be substituted for some of the moot courts. 1. Legal Ethics. 2 Medical Jurisprudence. 3. Municipal Law. 4. Company (winding up) Law. (2) That at a suitable date before the Christmas Vacation examinations be held on the following subjects :—In the second year, Evidence, Personal Property and Torts. In the third year, Evidence, Real Property, Equity, and that the remainder of the subjects be written on at Easter as heretofore. (3) That one-half, namely $80, of the fees for final examinations be paid before a student attempts the Christmas examinations.

In the matter of the complaint of John O. Connors against Mr. T. C. Robinette, which had been ordered for consideration to-day, it was ordered that the further consideration of his case be deferred until Tuesday the 16th November, 1897, at 12 o'clock noon, and that an urgent call of the Bench be made for that time for the consideration of the said matter. Mr. Robinette undertook to appear then without further notice.

In the matter of the complaint of Mr R. L. Fraser against Mr. John MacGregor, which had on 29th June been adjourned for further consideration this day, it was ordered that Mr. McGregor be reprimanded before Convocation by the Treasurer, and he was then called in and reprimanded by the Treasurer accordingly.

Wednesday, 15th Sept 1897.

Present: The Treasurer and Messrs. Bell, McCarthy, Hoskin, Douglas, Guthrie, Martin, Ritchie, Aylesworth and Riddell.

Mr. Ritchie from the Legal Education Committee reported upon the Third Year Examination, Easter, 1897.

Ordered that the following gentlemen be called to the Bar, and receive their certificates of fitness: A. B. Thompson and G. C. Heward, and that Mr. Thompson be called to the Bar with honors and receive a silver medal.

The following gentlemen were then called to the Bar: A. B. Thompson (with honors and silver medal), C. C. Heward, also Mr. W. M. Sinclair, a solicitor of ten years' standing, and Mr E. C. Cattanach, who was ordered for call yesterday.

The letter of Mr. H. W. Eddis was read. Convocation directed the Secretary to reply that the offices in the gift of the Law Society were held during the pleasure of Convocation.

The letter of Dr. Philp, complaining of the conduct of Mr. C. D., a solicitor, was read and transmitted to the Discipline Committee to ascertain

whether a prima facie case had been made out. The letter of Mr. A. Bodard complaining of the conduct of Mr. E. F., a solicitor, was read, and the Secretary was directed to obtain information relevant thereto.

Friday, Sept. 24th, 1897.

Present: The Treasurer and Sir Thomas Galt, Messrs. Blake (E.), Bayly, Bruce, Hoskin, Riddell, Aylesworth, Martin and Shepley.

Dr. Hoskin, from the Discipline Committee, reported upon the complaint of Dr. Philp against Mr. C. D., that in their opinion, Dr. Philp should be informed that his primary remedy is by proceeding in a Court of Law.

Mr. Riddell from the Legal Education Committee reported in respect to the Third Year examination, Easter, 1897. Ordered that Messrs. M. H. Irish, E. C. Clark and F. W. Griffiths be called to the Bar, and that Messrs. E. C. Clark and F. W. Griffiths do receive their certificates of fitness. In respect to the First Year Supplemental examination, ordered that the following gentlemen be allowed same: O. de Laplante, F. E. McKee, E. C. Jones, J. S. Lundy, J. R. Osborne. In respect to the Second Year Supplemental examination, that Mr. N. Williams be allowed same. In respect to the Admission of Students-at Law, that the following be admitted of the Graduate Class: M. B. Fudhope, A. M. Fulton, T. I. McVeece, W. B. Scott, J. E. Wallbridge, and R. C. H. Cassels, and the following of the Matriculant Class: W. A. McMaster, F. A. Clement, J. F. L. Embury, D. G. White, C. A. R. Dulmage.

Mr. Riddell further reported, in the case of Mr. F. L. Davidson and Mr. N. V. Poucher, the committee cannot recommend the allowance of their petitions. Ordered that Mr. G. W. Robb, a solicitor of ten years' standing, be called to the Bar.

The following gentlemen were then called to the Bar: Messrs. G. W. Robb, F. W. Griffiths E. C. Clark, M. H. Irish. Mr. Riddell then read a memorandum from Mr. Osler, who was unavoidably absent, on the subject of the Consolidated Digest.

The minutes of Convocation on the subject were then read, and after discussion Mr. Aylesworth gave notice that he would move on Tuesday, 16th Nov., next: That in view of the expense and delay necessarily involved in the preparation of a Consolidated Digest for the century, the scheme be abandoned. Ordered that the consideration of all questions relating to the proposed digest be postponed until Tuesday, 16th Nov., and that a special call of the Bench for that day be made for the purpose aforesaid.

Dr. Hoskin, from the Discipline Committee, reported in relation to the complaint of A. Bodard against Mr. E. F., solicitor, recommending that Mr. Bodard be informed that his remedy, if any, is by application to the Courts.

Ordered that Mr. J. G. O'Donoghue be informed that the position which he holds is incompatible with the requirements of the Society as to service under articles.

Mr. Shepley, from the Legal Education Committee, reported as to special applications for admission.

Mr. Shepley reported as to the investigation into the charges of misconduct at the Second Year examination, Easter, 1897, on the part of Messrs. C. W. Cross, A. R. Hamilton and A. M. Chisholm: "There was not any suggestion in the whole of the evidence of any impropriety on the part of Mr. Chisholm. With regard to Mr. Hamilton and Mr. Cross, the Committee was of opinion that the scrutineer, Mr. Bedford-Jones, was entirely justified in reporting the circumstances which had come under his observation, but upon a consideration of the whole evidence the Committee was of opinion that the charges had not been sustained. The Committee therefore recommend these gentlemen be allowed their examination. Adopted.

The letter of the Principal of the Law School containing suggestions respecting the Honour Course and as to the attendance of First Year students was read and the whole subject was referred to the Legal Education Committee for consideration and report.

LAW SOCIETY OF UPPER CANADA.

THE LAW SCHOOL.

Principal, N. W. Hoyles, Q.C. *Lecturers*, E. D. Armour, Q.C.; A. H. Marsh, B.A., LL.B., Q.C.; John King, M.A., Q.C.; McGregor Young, B.A. *Examiners*, R. E. Kingsford, E. Bayly, P. H. Drayton, Herbert L. Dunn.

NEW CURRICULUM.

FIRST YEAR.—*General Jurisprudence.*—Holland's Elements of Jurisprudence. *Contracts.*—Anson on Contracts. *Real Property.*—Williams on Real Property, Leith's edition. Dean's Principles of Conveyancing. *Common Law.*—Broom's Common Law. Kingsford's Ontario Blackstone, Vol. 1 (omitting the parts from pages 123 to 166 inclusive, 180 to 224 inclusive, and 391 to 445 inclusive). *Equity.*—Snell's Principles of Equity. Marsh's History of the Court of Chancery. *Statute Law.*—Such Acts and parts of Acts relating to each of the above subjects as shall be prescribed by the Principal.

SECOND YEAR.—*Criminal Law.*—Harris's Principles of Criminal Law. *Real Property.*—Kerr's Student's Blackstone, Book 2. Leith & Smith's Blackstone. *Personal Property.*—Williams on Personal Property. *Contracts.*—Leake on Contracts. Kelleher on Specific Performance. *Torts.*—Bigelow on Torts, English edition. *Equity.*—H. A. Smith's Principles of Equity. *Evidence.*—Powell on Evidence. *Constitutional History and Law.*—Bourinot's Manual of the Constitutional History of Canada. Todd's Parliamentary Government in the British Colonies (2nd edition, 1894) The following portions, viz: chap. 2, pages 25 to 63 inclusive; chap. 3, pages 73 to 83 inclusive; chap. 4, pages 107 to 128 inclusive; chap. 5, pages 155 to 184 inclusive; chap. 6, pages 200 to 208 inclusive; chap. 7, pages 209 to 246 inclusive; chap. 8, pages 247 to 300 inclusive; chap. 9, pages 301 to 312 inclusive; chap. 18, pages 804 to 826 inclusive. *Practice and Procedure.*—Statutes, Rules and Orders relating to the jurisdiction, pleading, practice and procedure of the Courts. *Statute Law.*—Such Acts and parts of Acts relating to the above subjects as shall be prescribed by the Principal.

THIRD YEAR.—*Contracts.*—Leake on Contracts. *Real Property.*—Clerke & Humphrey on Sales of Land. Hawkins on Wills. Armour on Titles. *Criminal Law.*—Harris's Principles of Criminal Law. Criminal Statutes of Canada. *Equity*—Underhill on Trusts. De Colyar on Guarantees. *Torts.*—Pollock on Torts. Smith on Negligence, 2nd ed. *Evidence.*—Best on Evidence. *Commercial Law.*—Benjamin on Sales. Maclaren on Bills, Notes and Cheques. *Private International Law.*—Westlake's Private International Law. *Construction and Operation of Statutes.*—Hardcastle's Construction and Effect of Statutory Law. *Canadian Constitutional Law.*—Clement's Law of the Canadian Constitution. *Practice and Procedure.*—Statutes, Rules and Orders relating to the jurisdiction, pleading, practice and procedure of the Courts. *Statute Law.*—Such Acts and parts of Acts relating to each of the above subjects as shall be prescribed by the Principal.

NOTE.—In the examinations of the Second and Third Years, students are subject to be examined upon *the matter of the lectures* delivered on each of the subjects of those years respectively, as well as upon the text-books and other work prescribed.

Analytical Index

Of the Contents of this Volume.