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As has been our custom, we publish only one number of the JOURNAL monthly during vacation.

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As a matter of record merely, we note that Sir Oliver Mowat, who has been Attorney-General of Ontario a quarter of a century, has become Minister of Justice of the Dominion of Canada; the position he occupied with so much credit to himself and benefit to the Province of Ontario being now filled by Hon. A. S. Hardy.

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In these days of political excitement, elections and recounts, the judgment of his Honor Judge McDougall in the East York case, which we publish in another place, will be read with interest. His thought is that the intention of the voter should as far as possible be given effect to, and he considers there is sufficient authority to warrant him in disregarding the directions as to marking the cross in the disk provided by the form of ballot given in the recent Act. His Honor Judge Deacon takes the contrary view. Both have those who follow them. The general impression seems to have been against the view now expressed by the learned Judge of the County Court of York; but experience has shown that his judgments are awkward things to butt up against. One thing is certainly very apparent, and that is that this new form of ballot is a failure. We doubt not some better system will soon be developed.

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The recent meeting in Toronto of the Board of County Judges of the Province of Ontario brings to mind the fact that these officials are the only class of public servants whose

salaries have not only never been increased, but, on the contrary, have been decreased. The anomalous position of judicial matters in the Province of Quebec is the reason why the County Judges of Ontario, who are in name of inferior rank, but whose duties are quite as responsible as, and who do much more work than the so-called judges of the Superior Court of Quebec, are so badly paid. As Judges are paid by the Dominion, there is no use, in view of the state of affairs in Quebec, in appealing to the Dominion; but it would be quite competent for the Ontario Government to make a small appropriation out of their surplus, at least to pay the expenses of the attendance of the County Judges when they come to Toronto, not for their own pleasure or profit, but to meet together to discuss matters affecting the due administration of justice. We trust that this matter, being brought to the attention of the Attorney-General, will result in provision being made to do what is really a simple act of justice in the premises.

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## *UNIFORMITY OF LAW IN THE DOMINION.*

Thirty years have nearly elapsed since the confederation of the provinces came into effect, and yet nothing has ever been attempted in the way of carrying out section 94 of the British North America Act. That section empowers the Parliament of Canada to make provision for the uniformity of all or any of the laws relative to property and civil rights in Ontario, Nova Scotia and New Brunswick, and of the procedure of all or any of the courts in those three provinces, but any such law is not to take effect in any province unless and until adopted as a law by the Legislature thereof.

Uniformity of law throughout the Dominion is a thing much to be desired, and it is strange that no effort has been made to attain even that modicum of uniformity which the British North America Act aims at. Since its passage other provinces and territories have come into the Dominion which might well be embraced in any scheme of uniformity. Quebec unfortunately seems to present a somewhat insuperable diffi-

culty in the way of its ever being included in any such scheme, owing to the fact of the present law of that province being so widely different in many respects from that of the other provinces. But even if the attempt at establishing uniformity of law were confined to the English-speaking provinces, it would be of great benefit. It would do a great deal towards establishing a feeling of unity between the various members of the Dominion, which is so much to be desired. If our people found the same laws prevailing and governing their civil rights and property in all parts of the Dominion, other than Quebec, it might be they would realize, what it is hard to do now, that they are in truth citizens of the same country, no matter in what province they live. A removal from one province to another would then involve no change in the system of law to which they would be subject.

But though the benefit to the public would be great, the advantages the profession would reap would be even greater. A lawyer would be able to practice his profession in all the English-speaking parts of the Dominion; his removal from one province to another would not involve the learning a new system of law. If his talents lay in the direction of legal literature, he would have a larger audience to address. At present, although Ontario is the most populous and wealthiest province of the Dominion, yet its legal literature is very meagre, and as for that of the other English-speaking provinces, it amounts to little or nothing. An uniformity of law would soon create a legal literature of which we might have reason to be proud.

It would be unwise to attempt too much at once, but why should not an effort be made to secure uniformity of procedure? That alone would be an immense boon; and if it should prove successful, it might lead to other subjects being dealt with.

In most of the English speaking provinces the principles of the Judicature Act have been adopted; why should not a code be passed on the lines adapted to all of these provinces? The provinces are not unnaturally tenacious of their legislative rights; but the adoption of a well-considered code of

civil procedure, prepared by the Parliament of Canada, ought not to be considered as any sacrifice of any real privilege. It might possibly, however, involve the sacrifice of the right to tinker it annually, which most lawyers would not regard as any real loss. Should such a scheme ever be realized, we might reasonably expect that changes in the procedure would thereafter only be made after careful consideration, and with a tolerably reasonable assurance that they would prove beneficial. They would hardly be made in one session to be repealed in the next.

This is a subject which would well repay the careful attention of some enlightened statesman, and might result in conferring a lasting benefit on a very large portion of the Dominion.

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## *COVENANTS ON MORTGAGES.*

In mortgages made previous to the 1st day of July, 1894, the holder may pursue his remedy on the covenant for payment of the principal money and interest at any time within the space of twenty years after the cause of action arose, but not afterwards. This was under R.S.O., 1887, ch. 60, sec. 1, s-s. 1, the portion of which dealing with the question was, before the amendment of 1893 (of which more hereafter), as follows:—"The actions hereinafter mentioned shall be commenced within and not after the times respectively hereinafter mentioned, that is to say: (*b*) Actions upon a bond or other specialty, within twenty years after the cause of such actions arose."

In 1893, the legislature amended this section by 56 Vict., ch. 17, evidently with the intention of limiting the time within which the person entitled could bring an action on any covenant contained in a mortgage to ten years, and it is the subject of this inquiry to see how far this amendment is effective, where it is defective, and how far the legislature has accomplished its apparent object.

By the amendment, 56 Vict., ch. 17, clause (*b*) above was amended so as to read as follows: "(*b*) Actions upon a

bond, or other specialty, except upon the covenants contained in a mortgage," and the said sub-section 1 was further amended by adding the following clause: "(*h*) Actions upon any covenant contained in any indenture of mortgage, made after the first day of July, 1894, within ten years after the cause of such actions arose."

By sec. 8 of ch. 60 of the Revised Statutes of Ontario, 1887, it is provided that "In case an acknowledgment in writing, signed by the principal party or his agent, is made by a person liable upon an indenture, specialty or recognizance, or in case an acknowledgment is made by such person by part payment, or part satisfaction, on account of any principal or interest due on such indenture, specialty or recognizance, the person entitled may bring an action for the money remaining unpaid and so acknowledged to be due, within twenty years after such acknowledgment by writing, or part payment, or part satisfaction, as aforesaid; . . ."

This sec. 8 was in force at the time of the passing of the amendment, and is still in force, not having been amended at the same time as or since the above amendment to section 1. It will be noticed that section 8 says: "In case an acknowledgment in writing signed by the principal party or his agent, is made by a person liable upon an indenture, specialty or recognizance," which clearly covers the case of a mortgage, and which at the time of its passing it was intended to do.

Sec. 8 provides that the acknowledgment required may be either first, an acknowledgment in writing, signed by the principal party or his agent, or second, an acknowledgment made by such person by part payment or part satisfaction, on account of any principal or interest due on such indenture, specialty or recognizance.

The effect of either of such acknowledgements being made is, to give the words of the section itself, that "the person entitled may bring an action for the money remaining unpaid and so acknowledged to be due, within twenty years after such acknowledgment, by writing, or part payment, or part satisfaction, as aforesaid."

Acknowledgment under sec. 8 would only appear to apply

to and affect such covenants as are for the payment of money and no other, as the effect of an acknowledgment under it is only to give "the person entitled the right to bring an action for the money remaining unpaid and so acknowledged to be due," etc.

Therefore it would seem that the amendment of 1893 (56 Vict., ch. 17) would be effective only to limit or curtail the remedy of the holder of the mortgage to ten years on such covenants therein as are not within section 8 or affected by an acknowledgment under it, that is, covenants other than those for the payment of money. As to covenants, however, for the payment of money, which in a mortgage is the most essential and the one most likely to be acted upon, it would seem in view of sec. 8, that the amendment would only be effective so long as there were neither of such acknowledgments, as are required by sec. 8, made by the person liable, but so soon as the person liable made an acknowledgment in writing signed by himself or his agent, or made a payment on account of the principal or interest due thereunder, the person entitled would immediately have a right to bring an action for the money remaining unpaid at any time within twenty years thereafter.

The intent of the legislature was clearly to limit the time for bringing action on the covenant for payment of the principal money and interest, as well as of the other covenants, and it is hard to say how far the Courts would be likely to go in impliedly excepting this case from sec. 8 since the amendment. However that may be, the question is not likely to be raised until at least ten years from the 1st day of July, 1894, have elapsed, and it would be wise if the legislature were to remove all doubt on the question before then.

F. ROYDEN MORRIS.

# ENGLISH CASES.

## *EDITORIAL REVIEW OF CURRENT ENGLISH DECISIONS.*



BUILDING ESTATE—RESTRICTIVE COVENANTS—SALE SCHEME OF PART OF ESTATE —ACQUIESCENCE—INJUNCTION.

*Knight* v. *Simmonds*, (1896) 1 Ch. 653, was an action to enforce restrictive covenants by the purchasers of part of a building estate, which had been put up for sale by auction in 1852, subject to conditions which prohibited any trade or business on any lot, and required that on certain lots the value of a single house should not be less than £600, and of a pair of semi-detached villas should not be less than £900. A., through whom the plaintiff Knight claimed, purchased one of the lots and covenanted with the vendor in the terms of the conditions, but qualified by the words "without the previous consent in writing of the vendor, his heirs, appointees or assigns." In 1881, Knight acquired part of this lot and built a house in accordance with the conditions. In 1853 some of the lots which remained unsold at the auction were bought by Buckle & Philips, subject to the same conditions. They subdivided their purchase into numerous small lots and sold them subject to conditions which required each purchaser to covenant to keep up the residential character of the estate, and based in the main on the original conditions, but modified to this extent that instead of providing that no trade should be carried on, they provided that no trade should be carried on which should be "noisy, noxious, dangerous or offensive to the neighborhood, or to the owners or occupiers of any of the land, or in anywise injurious to the same land or any part thereof." The plaintiff Williams bought a lot from Buckle & Philips with notice of the original restrictions, and built a house of more than the covenanted value. The defendant subsequently acquired other two lots, with notice of the original restrictions and also subject to the covenant required by Buckle & Philips. On these two lots the defend-

ant planned to erect a pair of semi-detached villas, together worth £900, but each by itself of less value than £600. He built one of them, and at the rear thereof erected a building in which he proceeded to carry on a public laundry. The plaintiffs claimed that he had violated the covenant both as to the building and as to the trade. The defendant contended that the plaintiff Knight was not in a position to enforce the original restrictive covenant, because the covenant he had given was not absolute, but modified as abovementioned, but Romer, J., held that the modification had not the effect of debarring him from enforcing the restrictive covenant, and that he was entitled to restrain the carrying on of the laundry: but as regarded the value of the building, he considered there had been no breach, as the defendant had apparently bona fide erected one of the intended buildings, and that a reasonable time for the erection of the other had not elapsed. But he considered that the plaintiff Williams, having purchased under the modified conditions of Buckle & Philips, was not entitled to object to the laundry, because it could not be said to be either noxious, dangerous or offensive within the meaning of those conditions. The defendant claimed that there had been acquiescence in a breach of the restrictive covenants as to trade, but inasmuch as it appeared that the only cases in which trade had been carried on on the estate, were cases where the trade had been carried on secretly or so as not to attract attention, and without the plaintiffs' knowledge, it was held that they afforded no evidence of acquiescence.

PRACTICE—CLASS SUIT—PLAINTIFF SUING IN REPRESENTATIVE ACTION ON BEHALF OF ALL CREDITORS—TITLE OF ACTION—ORD. III., R. 4—(ONT. RULE 224).

*In Re Tottenham, Tottenham* v. *Tottenham*, (1896) 1 Ch. 628, was an action on behalf of all creditors for the administration of a deceased person's estate. The indorsement on the writ did not show that the plaintiff was suing on behalf of all creditors, nor did the title of the action in the statement of claim, but there was an allegation to that effect in the statement of claim. North, J., held that it ought to appear in the title of the action that the plaintiff was suing on behalf of

all creditors, and he directed the proceedings to be amended accordingly.

RES JUDICATA—ESTOPPEL—PATENT—ACTION FOR INFRINGEMENT—SECOND ACTION FOR INFRINGEMENT.

In *Shoe Machinery Co.* v. *Cutlan*, (1896) 1 Ch. 667, the plaintiff claimed to restrain the defendants from infringing the plaintiff's patent. There had been a previous action between the same parties for infringement, in which the validity of the patent had been contested and in which it was upheld, but no injunction or damages had been awarded on the ground that there was no evidence of infringement, and the judgment did not contain any declaration as to the validity of the patent, but certified that its validity came in question, and awarded costs on that issue in favor of the plaintiff. In the present action the defendants again disputed the validity of the patent, but on different grounds to those alleged in the former action, and which they alleged they had discovered since that action. Romer, J., held that the question of the validity of the patent was res judicata. He says at page 670, "It is not necessary in considering the question of res judicata, that there should be an express finding in terms, if, when you look at the judgment and examine the issues raised before the Court, you see that the point came to be decided as a separate issue for decision, and was decided between the parties. It was not necessary, in my opinion, therefore, that there should be—though I agree that it might have been better if there had been—in the judgment in the case a separate declaration stating the validity of the patent: a declaration which clearly the Court had jurisdiction to put in the judgment if it thought fit," and he held that the defendants were not entitled to have the question of validity retried.

PRACTICE—CONSENT JUDGMENT—MISTAKE IN GIVING CONSENT TO JUDGMENT—SETTING ASIDE CONSENT JUDGMENT—JURISDICTION.

In *Ainsworth* v. *Wilding*, (1896) 1 Ch. 673, the defendant moved to set aside a judgment granted upon consent, on the ground that the consent was given by a mistake, and under a

misapprehension as to the true effect of the judgment. The judgment had been passed and entered, and Romer, J., held that he had no jurisdiction to set the judgment aside, and that the defendant could only obtain that relief by bringing an action for the purpose.

COMPANY—WINDING-UP—OFFICIAL RECEIVERS AND LIQUIDATORS, LIABILITY OF, FOR COSTS—MISFEASANCE SUMMONS—WINDING-UP ACT (53 & 54 VICT., C. 60), S. 10—(R.S.C., C. 129, S. 83).

*In re Powell*, (1896) 1 Ch. 681, an official receiver and liquidator of a company being wound up, had issued a summons against certain directors and auditors of the company to compel them to account for £48,000 in respect of alleged misfeasances, and the present application was made on behalf of some of the persons attacked, to compel the liquidator to give security for the costs of the proceedings. Romer, J., refused the application, but in doing so stated that in case the liquidator should fail in his proceedings, he might be personally ordered to pay costs, and in considering whether or not the liquidator ought to be personally ordered to pay costs, regard should be had to the fact that he had opposed an application for security for costs, and that the Court had refused to order security on the ground that there would be jurisdiction to order him to pay them personally.

## DIARY FOR JULY.

1 Wednesday ....Dominion Day. Long Vacation, Ontario, begins.
3 Friday .....Quebec founded 1604.
5 Sunday..... *Fifth Sunday after Trinity.* Battle of Chippewa, 1814.
6 Monday .....Heirs and Devisee Commissioners sit, Ontario.
7 Tuesday .....Col. Simcoe, Lieut.-Gov., 1792.
9 Thursday.....Importation of slaves into Canada prohibited, 1793.
10 Friday .....Christopher Columbus born, 1447.
11 Saturday .....Battle of Black Rock, 1812.
12 Sunday.....*Sixth Sunday after Trinity.*
15 Wednesday ....Manitoba entered Confederation, 1870.
19 Sunday.....*Seventh Sunday after Trinity.* Quebec capitulated to the British, 1629.
20 Monday .....British Columbia entered Confederation, 1871.
22 Wednesday ....W. H. Draper, 9th C. J. of Q.B., 1863; W. B. Richards, 3rd C.J. of C.P., 1863.
23 Thursday.....Union of Upper and Lower Canada, 1840.
24 Friday .....Battle of Lundy's Lane, 1814.
26 Sunday.....*Eighth Sunday after Trinity*
29 Wednesday ....Wm. Osgoode, 1st C.J. of U.C., 1792. First Atlantic cable laid, 1866.

# REPORTS AND NOTES OF CASES

## Dominion of Canada.

### SUPREME COURT.

Ontario.] [May 18.

COWAN *v.* ALLEN.

*Will—Construction of — Executory devise over—Contingencies — "Dying without issue"—"Revert"—Dower—Annuity—Election by widow—Devolution of Estates Act, 49 Vict. (P.) ch. 22—Conditions in restraint of marriage—Added parties—Orders 46 and 48 Ontario Judicature Act——Practice—R.S.O. (1887) ch. 109, sec. 30.*

A testator divided his real estate among his three sons, the portion of A. C., the eldest son, being charged with the payment of $1,000 to each of his brothers, and its proportion of the widow's dower. The will also provided that "should any of my three sons die without lawful issue, and leave a widow, she shall have the sum of fifty dollars per annum out of his estate so long as she remains unmarried, and the balance of the estate shall revert to his brothers with the said fifty dollars on her marriage." A. C. died after the testator, leaving a widow but no issue.

*Held*, reversing the judgment of the Court of Appeal, that the gift over in the last mentioned clause was intended by the testator to take effect on the death of the devisee without issue at any time, and not in the lifetime of the testator only; that it was no fit ground for departing from this prima facie

meaning of the terms of the gift that very burdensome conditions were imposed upon the devisee ; and that no such conditions would be imposed on the devise to A. C. by this construction, as the two sums of $1,000 each charged in favor of his brothers were charged upon the whole fee, and if paid by him his personal representatives on his death could enforce repayment to his estate.

*Held* also, that the widow of A. C. was entitled to dower out of the lands devised to him, nothwithstanding the defeasible character of his estate ; that she was also entitled to the annuity of $50 per annum given her by the will, it not being inconsistent with her right to dower, and she was therefore not put to her election ; that the limitation of the annuity to widowhood was not invalid as being in undue restraint of marriage ; and that she could not claim a distributive share of the devised lands under the Devolution of Estates Act, which applies only to descent of inheritable lands.

The mortgagee of the reversionary interest of one of his brothers in the lands devised to A. C. was improperly added in the Master's office as a party to an administration action, and could take objection at any time to the proceeding either by way of appeal from the report or on further directions ; she was not limited to the time mentioned in Order 48, Ont. Jud. Act, which refers only to a motion to discharge or vary the decree.

Appeal allowed with costs.

*Moss*, Q.C., and *Hall*, for appellants.

*Shepley*, Q.C., and *Simpson*, for respondent, Allen.

*Riddell*, Q.C., for respondent, Jeanne Cowan.

Quebec.] [May 21.

DUFRESNE *v.* GUEVREMONT.

*Appeal from Court of Review—Appeal to Privy Council—Appealable amount —Addition of interest—C.C.P. arts( 1115, 1178, 1178,a—R.S.Q. art. 2311 —54-55 Vict. (D.) c. 25, sec. 3, s-s. 3—54 Vict. (Q.) c. 48.*

Under 54-55 Vict. (D.) ch. 25, sec. 3, s.s. 3 there is no appeal to the Supreme Court of Canada from a decision of the Court of Review which would not be appealable as of right to the Privy Council.

In determining the right of either party to an appeal to the Privy Council in cases decided in the Court of Review where the judgment of the Superior Court has been affirmed and no appeal lies to the Court of Queen's Bench for Lower Canada, the provisions of art. 2311 R.S.Q. (making the amount in dispute depend on the amount demanded and not on that recovered, where they are different), will not permit the addition of interest pendente lite to the original demand in order to raise the amount in controversy to the appealable amount.

*Stanton* v. *The Home Insurance Co.*, 2 Legal News, 314, followed.

*Allan* v. *Pratte*, 13 App. Cas. 780, and *Monette v. Lefebvre*, 16 S.C.R. 387, referred to.

Appeal quashed without costs.

*Ouimet*, Q.C., and *Emard*, for motion.

*Fleming*, Q.C., and *Germain*, contra.

Nova Scotia.] [May 18.

FRASER *v.* FRASER.

*Will—Devise to two sons—Devise over of one's share—Condition—Context—Codicil.*

A testator devised property equally to his two sons, with a provision that "in the event of the death of my said son, T. G., unmarried or without leaving issue," his interest should go to the other. By a codicil a third son was given an equal interest with his brothers in the property, on a condition which was not complied with, and the devise to him became of no effect.

*Held*, reversing the decision of the Supreme Court of Nova Scotia, that the codicil did not affect the construction to be put on the devise in the will; that the two sons named in the will took the property as tenants in common, the one having an absolute, and the other a conditional estate; and that the condition meant the death of T. G. at any time, and not merely during the life-time of the testator.

Appeal allowed with costs.

*Mellish*, for the appellant.

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

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New Brunswick.] [May 18.

NEW BRUNSWICK RAILWAY CO. *v.* KELLY.

*Registry laws—Registered deed—Priority over earlier unregistered conveyance—Notice—Suit to postpone.*

In 1868 N. conveyed a parcel of land to a railway company who did not register their deed. In 1872 he made a deed in favor of K., of land which the company claimed was comprised in their conveyance, and a suit in equity was brought praying for a decree postponing the later deed, which was registered, to that of the company. To prove notice to K. of the earlier conveyance, two witnesses swore that in conversation with them K. had admitted knowledge that the company owned the land.

*Held*, affirming the decision of the Supreme Court of New Brunswick (33 N.B. Rep. 110), that it was necessary for the company to prove actual notice that would have made the conduct of K. in taking and registering her deed fraudulent; that the witnesses as to the admissions were not connected with the property, and their evidence would not prove even constructive notice; and that giving them entire credit their evidence was not sufficient.

Appeal dismissed with costs.

*Blair*, Att'y-Gen. N.B., for the appellants.

*Pugsley*, for the respondent.

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Prince Edward Island] [May 18.

OWEN *v.* OUTERBRIDGE.

*Ships and shipping—Chartered ship—Perishable goods—Ship disabled by excepted perils—Transhipment—Obligation to tranship—Repairs—Reasonable time—Carrier—Bailee.*

If a chartered ship be disabled by excepted perils from completing the voyage, the owner does not necessarily lose the benefit of his contract, but may forward the goods by other means to the place of destination, and earn the freight.

The option to tranship must be exercised within a reasonable time, and if repairs are decided upon they must be effected with reasonable despatch, or otherwise the owner of the cargo becomes entitled to his goods.

*Quære.* Is the ship owner obliged to tranship?

If the goods are such as would perish before repairs could be made, the ship owner should either tranship or deliver them up or sell if the cargo owner does not object, and his duty is the same if a portion of the cargo, severable from the rest, is perishable. And if in such a case the goods are sold without the consent of their owner, the latter is entitled to recover from the ship owner the amount they would have been worth to him if he had received them either at the port of shipment or at their destination at the time of the breach of duty.

Appeal dismissed with costs.

*Davies*, Q.C., for appellant.

*Peters*, Q.C., Att'y-Gen. P.E.I., for respondent.

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North West Territories.] [May 18.

DINNER *v.* HUMBERSTONE.

*Constitutional law—Municipal corporation—Powers of legislature—Monopoly—License—Highways and ferries—Navigable streams—By-laws and resolutions—Inter-municipal ferry—Tolls—Disturbance of licensee—Damages—North-west Territories Act, R.S.C., ch. 50, secs. 13 and 24—B.N.A. Act (1867), sec. 92, s-s. 8, 10 and 16—Rev. Ord. N.W.T. (1888), ch. 28—N.W. Ter. Ord. No. 7 of 1891-92, sec. 4.*

The Legislative Assembly of the North-west Territories has power to legislate upon the subject of ferries within its territorial jurisdiction, by authority of the "North-west Territories Act," R.S.C., ch. 50, and the Orders-in-Council passed under the provisions of the said Act respecting the jurisdiction of the Legislative Assembly as to municipal institutions and matters of a local and private nature within the North-west Territories, and can properly delegate such power to a municipality incorporated by special ordinance.

*Semble*, that such powers may also result from the authority thereby granted in respect to the issuing of licenses for raising revenues for territorial or municipal purposes.

The Municipality of the Town of Edmonton has under the fourth section of its charter of incorporation (N. W. Ter. Ord. No. 7 of 1891-92), and of The Ferries Ordinance (Rev. Ord. N. W. Ter., ch. 28), which is incorporated with the town charter, power to grant licenses of exclusive rights to ferry across the Saskatchewan river, a navigable stream within the North-west Territories, having a terminal point upon the boundary of the municipality, and may exercise such powers, prescribe the limits of the ferry and establish tolls thereon, subject to the conditions imposed upon the Lieutenant-Governor-in-Council by The Ferries Ordinance, by the issuing of a license to such effect, and without the necessity of passing a by-law in the same manner as might have been done by the Lieutenant-Governor-in-Council under The Ferries Ordinance.

The appellants and other defendants formed a club or partnership calling themselves The Edmonton Ferry Company, for the purpose of building, establishing and operating a ferry within the limits assigned to the plaintiff in the license to him by the municipality granting him exclusive rights to ferry across the river in question, the conditions being that any person could become a member of the club by signing the list of membership and taking at least one share of $5 therein, which share entitled the signer to 100 tickets that were to be received in payment of ferry service according to a prescribed tariff, and when expended could be renewed by another subscription for a second share, getting by it 100 more tickets to be used in the same manner, and so on ad infinitum, the number of shares that might thus be taken being unlimited. The club supplied their ferryman with a list of membership, and established and operated their ferry without any license, within a short distance of one of the plaintiff's licensed ferries, thereby, as he claimed, disturbing him in his exclusive rights.

*Held*, that the establishment of the defendant's ferry and the use thereof by members and others under their club regulations, was an infringement of the plaintiff's rights under his license, and that he was entitled to recover damages sustained by reason of such infringement.

Appeal dismissed with costs.

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

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

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North West Territories.] [May 18.

JELLETT *v.* WILKIE.

*Real Property Act—Registration—Execution—Unregistered transfers—Equitable rights—Sales under executon—R.S.C. ch. 50-51 Vict. (D.) ch. 20.*

Notwithstanding the provisions of sec. 94 of the Territories Real Property Act, as amended by 51 Vict. (D.),.ch. 20, an execution creditor can only affect or sell the real estate of his debtor subject to the charges, liens and equities which affected it in the hands of the execution debtor.

Purchasers holding lands subject to the Territories Real Property Act under unregistered transfers, are entitled to be protected in their title as equitable owners and chargees.

The provisions in the Territories Real Property Act respecting the registration of executions against lands do not give the execution creditor any superiority of title over prior unregistered transferees, but merely protect the lands from intermediate sales and dispositions by the execution debtor, though, if the sheriff sells, the purchaser by priority of registration of the sheriff's deed would under the Act take priority over previous unregistered transfers.

Appeal dismissed with costs.

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

*Foy*, Q.C., and *Chrysler*, Q.C., for the respondents.

Exchequer Court.] [May 18.

MOSS *v.* THE QUEEN.

*Constitutional law—Navigable waters—Title to soil in bed of—Crown—Dedication of public lands by—Presumption of dedication—User—Obstruction to navigation—Public nuisance—Balance of convenience.*

The title to the soil in the beds of navigable rivers is in the Crown in right of the provinces, not in right of the Dominion. *Dixon* v. *Snetsinger*, 23 U.C.C.P. 235, discussed.

The property of the Crown may be dedicated to the public, and a presumption of dedication will arise from facts sufficient to warrant such an inference in the case of a subject.

Under 23 Vict., ch. 2, sec. 35 (P.C.), power was given to the Crown to dispose of and grant water lots in rivers and other navigable waters in Upper Canada, and under it the power to grant the soil carried with it the power to dedicate it to the public use.

The user of a bridge over a navigable river for thirty-five years is sufficient to raise a presumption of dedication.

If a province before Confederation had so dedicated the bed of a navigable river for the purposes of a bridge, that it could not object to it as an obstruction to navigation, the Crown as representing the Dominion on assuming control of the navigation, was bound to permit the maintenance of the bridge.

An obstruction to navigation cannot be justified on the ground that the public benefit to be derived from it outweighs the inconvenience it causes. It is a public nuisance, though of very great public benefit, and the obstruction of the slightest possible degree.

Appeal dismissed with costs.

*Robinson*, Q.C., for appellant.

*Leitch*, Q.C., for respondent.

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# Province of Ontario.

## HIGH COURT OF JUSTICE.

DIVISIONAL COURT.] [April 10.

BAVIN *v.* BAVIN.

*Alimony—Cruelty—Condonation of—Subsequent misconduct.*

The condonation by a wife of acts of cruelty and ill-treatment by the husband, which would justify her leaving her husband and claiming alimony, is conditional on the non-recurrence of such misconduct, and is removed by subsequent ill-treatment and threats after such condonation.

Legal cruelty considered and defined.

Decision of MEREDITH, J., reversed.

*W. H. Douglas*, for the plaintiff.

*Warrene*, for the defendant.

BOYD, C.] [February 7.

CLARKE *v.* REID.

*Landlord and tenant—Assignment for creditors—Landlord—Preferential lien—58 Vict., ch. 26, sec. 3, s-s. 4, 5.*

Under 58 Vict., ch. 26, sec. 3, s-s. 4, 5, the preferential lien for rent extends not only to a year's rent prior to the assignment for creditors, but to three months' rent thereafter whether the assignee retains possession or not; and in case the assignee elects to retain possession, the landlord's lien extends for such further time after the three months as the assignee may so retain possession.

*W. J. Clarke*, for the plaintiff.

*M. D. Fraser*, for the defendant.

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BOYD, C.] [March 18.

YOUNG *v.* ERIE & HURON RAILWAY COMPANY.

*Mandamus—Requisites for—Rule 1112—Damages—Railways—53 Vict., ch. 28, sec. 2 (D.).*

The pre-requisites to be observed to obtain a prerogative writ of mandamus are not essential where there is a right of action for a mandamus, namely, where under Rule 1112 the plaintiff is personally interested in the fulfilment of a duty of a quasi public character, as in this case the omission of a railway company to properly fence their tracks.

The damages under sec. 29 of 53 Vict., ch. 28 (D.), are limited to injuries caused to animals by the company's trains or engines; and, therefore, damages incurred in watching cattle by reason of the bad state of the fences, are not recoverable.

*Fraser*, Q.C. (of London), for the plaintiff.

*A. W. Anglin*, for the defendants.

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ARMOUR, C.J.] [May 20.

SEYFANG *v.* MANN.

*Chose in action—Assignment of—Set off.*

By an agreement for the dissolution of a firm, it was provided that "all claims and demands, notes, bills and book accounts belonging to said firm above mentioned, were to be collected by the plaintiffs, who are the owners thereof".

*Held*, a valid assignment, under the chose in action Act, of a debt due by defendant to the plaintiffs; and in an action by the plaintiffs to recover said debt, the defendants could set off a claim for damages arising by reason of a breach of the agreement under which the debt arose.

The difference between the Imperial and Ontario Chose in Action Acts referred to.

*B. Cronyn* and *E. P. Betts*, for the plaintiff.

*I. Hellmuth* and *E. H. Ivey*, for the defendants.

FERGUSON, J.] [June 9.

MCFADYEN *v.* MCFADYEN.

*Will—Construction—Devise of land not owned by plaintiff—Application to land owned by plaintiff.*

A testator devised "all his real and personal estate in manner following, that is to say: I give and bequeath to my son Hector Allen the south fifty acres of lot 21," etc. "I give and bequeath to my son Laughlin the north fifty acres of lot 21," etc. The will contained no residuary devise and no other gift of land.

The testator resided for many years and at the time of his death upon the east half of Lot 21 (100 acres), which he owned by inheritance under his father's will. But he had no inheritance in the west half of lot 21.

*Held*, that Hector Allen took the south 25 acres of the east half of the lot, and Laughlin the north 25 acres of the east half.

*Semble*, they took as tenants in common.

*Casey Wood*, for the plaintiff.

*C. Bethune*, for the adult defendant.

*A. T. Boyd*, for the infants.

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MEREDITH, J.] [June 11.

RE BEATTY & FINLAYSON.

*Free grant lands—Execution against—When debt incurred.*

An execution against lands on a judgment for a debt incurred before the issue of a patent under the Free Grants and Homesteads Act, R.S.O., ch. 25, is no charge against the lands even after the expiry of the twenty years from the date of the location of the lands.

*H. E. Stone*, for the vendors.

*John D. Spence*, for the purchaser.

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FALCONBRIDGE, J.] [June 15.

THE TRUSTS CORPORATION OF ONTARIO *v.* RIDER.

*Chose in action—Parol assignment of—R.S.O., ch. 122, sec. 7.*

Notwithstanding that in the revision of 1887, the Ontario enactments in respect to the assignability of choses in action provides (R.S.O., ch. 122, sec. 7), that every debt and chose in action "arising out of contract shall be assignable by any form of writing," etc., whereas in the revision of 1877, as in the original statute, 35 Vict., ch. 12, sec. 1, the words were "every debt and chose in action arising out of contract shall be assignable at law by any form of writing," etc., it is not necessary under the former enactment any more than it was under the latter, that an assignment should be in writing; and *held* in this case a parol assignment of book debts was valid and binding.

*F. A. Anglin*, for the plaintiff.

*Urquhart*, for the defendant.

## ELECTION CASES.

### IN RE EAST YORK ELECTION.

*Ballot papers—Mode of marking—58-59 Vict., ch. 13, sec. 4.*

*Held*, that sec. 46 of the Dominion Elections Act, as amended by 58-59 Vict., ch. 13, sec 4, is directory and not mandatory.

2. That all ballots in which the elector has made his cross in the division containing the name of the candidate he votes for are good ballots, although the cross is not in the circular disk.

3. Other irregular modes of marking ballots considered.

[TORONTO, July 3, 1896—MCDOUGALL, Co.J.

This was a recount of ballots cast in the Riding of East York at the General Election for the Dominion on June 23rd, held before the Judge of the County Court of the County of York.

*McCarthy*, Q.C., and *Lobb*, for W. F. Maclean.

*W. F. B. Johnston*, Q.C., and *Parker*, for Frankland.

The facts fully appear in the judgment of

MCDOUGALL, Co.J.—In this election the total number of ballots cast was 7,859. Of this number the validity of nearly 4 per cent., viz., 295, is called in question, and I have reserved that number of ballots for consideration after hearing the argument of counsel. From this total of 7,859 must be deducted ballots about which there is no dispute. These consist of 6 properly rejected by deputy returning officers, 7 marked for both candidates, 21 admittedly spoiled, and 9 blank ballots found in the boxes, with no mark for either candidate, and 3 ballots rejected by me during the recount on 1st July.

This reduces the total number of ballots cast to be considered to 7,813. There were 7,518 of these about which there is no dispute, and of which Mr. Frankland received 3,803 and Mr. Maclean, 3,715. Of the 295 disputed ballots, if allowed at all, 101 are claimed for Mr. Frankland and 194 for Mr. Maclean; 274 ballots are marked for the candidate by placing the cross in the division with the candidates' name, instead of in the circle opposite such candidate's name. All of these ballots were good ballots and would have been counted under the law as it stood before the amendment of 1895, for the old section 46 expressly said that the voter could place the cross opposite to or within the division containing the name of the candidate he desired to vote for. The amendment of 1895 repealed that clause and enacted in lieu thereof a clause that states that the voter shall place the cross in the white circular space opposite the name of the candidate he desires to vote for. The contention before me by Mr. McCarthy for Mr. Maclean is that this section, having regard to the whole statute, should be construed as directory only. Mr. Johnston, on the contrary, urges that it can only properly be construed as mandatory. One construction will validate 274 votes, the other will discard them, and, as a consequence, disfranchise that number of electors whose intention to vote for the several candidates can be clearly gathered from the ballots objected to. It was pointed out by counsel that the instructions to voters contained in schedule M. to the Act continues to inform the voter that his ballot is properly marked if the cross is placed in the division containing

the name of the candidate. These instructions set out in printed placards were placed outside each polling booth for the information of the electors. In amending section 46, the Legislature neglected to amend the instructions at the same time.

Now, upon the question whether sec. 46 should be looked upon as being directory or mandatory, I find two decisions in the Ontario Election Courts bearing directly upon the issue and these cases are in conflict with each other. They are both decisions in cases tried under the Elections Act as it stood in 1874, and were cases arising from the elections held in that year. The section as it then stood read that the elector should place his cross in the division to the right of the name of the candidate he proposed to vote for. The late Chief Justice Wilson (then Mr. Justice Wilson) in the *North Victoria case*, Hodgins' Election Cases, p. 680, held that placing the cross to the left of the name, in his opinion, would not vitiate the ballot. He said : "I am of opinion the Act is not to be read as a declaration that if the cross be not put to the right of the name the ballot should be void." He also refers to sec. 55 (now 56) as not authorizing the deputy returning officer to reject a ballot marked in that way. He held, therefore, that the then clause as to the manner of voting was directory only, and that a substantial compliance with its provisions was sufficient. This *North Victoria case* went to appeal, and the judgment of the Chief Justice was sustained. In the *Monk case*, however, in the same year, the judgment of Vice-Chancellor Blake holds precisely the contrary (Hodgins' Election Cases, p. 730). That learned Judge determined that the moment the cross was placed at any point that was not to the right of the name the ballot was void ; in other words, he was of opinion that the clause was mandatory. Shortly after these decisions the Legislature altered the law and passed a clause allowing the cross to be placed anywhere in the division with the name of the candidate to be voted for. *Woodward* v. *Sarsons*, L.R., 10 C.P., 733, decided that a similar clause in the English Act was directory only and not mandatory. In this case the Judges were influenced by the consideration that the clause in question occurred in the schedule, which schedule was made part of the Act by sec. 28, but was under the heading "Directions to Voters." The Court declined to pass a contruction on the Act which would disfranchise voters unless they were absolutely compelled to do so, or on the ground that such voter had not strictly complied with the letter of the law.

In our own Supreme Court, in the case of *Jenkins* v. *Brecken*, 7 S.C.R. 247, it was held that another clause of the Elections Act enacting that the deputy returning officer shall place his initials on the back of each ballot paper issued by him before giving the same to the elector, was directory only, and that the neglect of the deputy returning officer to place his initials on such ballot paper was not fatal, and that the ballots without the initials should be counted.

Lord Mansfield's rule as to whether a statute is mandatory or not as stated in Potter's Dwarris on Statutes (p. 224), depends upon whether the thing directed to be done is of the essence of the thing required. Now here the essence of the thing required is the marking of the ballot secretly with a cross, so as to indicate with clearness which candidate the elector votes for. The position of the cross as indicating the elector's choice of a candidate is to my

mind not of the essence of the thing required to be done. Under the same clause the mark is directed to be made with a pencil. It has been held in several cases that to make the cross with ink, though the pencil be provided, is a sufficient compliance with the express declaration of the statute that a pencil is to be used.

If the point raised in this recount was foreclosed by authority, I should feel constrained to follow such authority, though my own individual opinion should differ therefrom, but here I find authorities of equal weight determining a similar question under an earlier statute, in direct conflict with each other. The opinion expressed in the *North Victoria case* is, I think, however, supported by the reasoning in the judgment of the Supreme Court in *Jenkins* v. *Brecken* upon another section of the Act (45). The omission of the Legislature to make the various sections and schedules of the Elections Act harmonize with the amendment of 1895, by altering the language of each, seems to me to afford an additional ground for a liberal construction of the Act, which will carry out the spirit rather than the strict letter of the law. I am of opinion, therefore, that reading sec. 56, schedule M, and the other provisions of the Dominion Elections Act, that sec. 46 of that Act, as it how stands, must be construed as being directory only, and that all ballots in which the elector has made his cross in the division containing the name of the candidate he votes for are good ballots and should be counted.

This decision adds 94 votes to Mr. Frankland and 180 votes to Mr. Maclean. Then I add votes with double crosses, one being in the circle and one in the division, 5 to Mr. Frankland and 7 to Mr. Maclean. These additions make the score as follows :—

| | |
|---|---|
| Frankland's vote..... ..... | 3,902 |
| Maclean's vote ..... | 3,902 |

There are left only the votes that are specially challenged, nine in number. Two of these are claimed for Frankland and seven for Maclean. I allow Mr. Frankland both of those claimed by him. In one of these the cross is in form of X made in the blank circle, and objected to because the top and bottom of the cross have lines drawn over and under them. The second ballot has a cross marked in ink instead of pencil. This I also allow. As to those claimed for Mr. Maclean, I disallow two where the cross is made on the back of the ballot opposite to the circle. I allow three ballots objected to because there was not endorsed on them the deputy returning officer's initials. These ballots are admittedly valid under the decision in *Jenkins* v. *Brecken*. I also allow a ballot where, in addition to making the cross in the circle opposite to Mr. Maclean's name, the elector has run his pencil through the addition under Mr. Frankland's name. I also allow another ballot. In this the voter has made a cross in the shape of a figure resembling a 2. The figure 2 was made with a large loop at the bottom, the lines intersecting, and thereby in my opinion approaching closely the form of a cross.

In view of the many decisions allowing ballots where the cross is in varied form made by lines intersecting each other, I do not see how the transverse

lines shown on the figure 2 drawn by the elector is any less a cross than a star, which, in *Woodward* v. *Sarsons*, was held equivalent to a good cross.

These further allowances of two ballots to Mr. Frankland, and five to Mr. Maclean made the total vote in East York as found by me on the recount to be:

| | |
|---|---|
| Frankland | 3,904 |
| Maclean | 3,907 |

# Province of Nova Scotia.

## SUPREME COURT.

EN BANC.] [May 18.

WHITFORD *v.* ZINC.

*Cross examination on affidavits. Notice required—Application of provisions of Or. xxxvi., r. 28—Counter-claim cannot be struck out as false, frivolous and vexatious.*

Plaintiff having moved to strike out defendant's defence and counter claim as false frivolous and vexatious, defendant produced an affidavit in reply. Counsel for plaintiff, in presence of defendant's counsel, asked for leave to cross-examine the defendant upon this affidavit. Leave was granted and a special day fixed on which defendant should appear for cross-examination. No order was taken out, nor was any notice served upon the defendant of the time and place for the cross-examination. Defendant did not appear for cross examination and his affidavit was rejected, and an order made striking out his defence and counter-claim. From this order defendant appealed.

*Held*, that notice in writing of the cross-examination not having been served upon defendant his affidavit was improperly rejected.

2. That the provisions of Or. xxxvi., r. 28, are by Or. xxxv., r. 21, made applicable to all affidavits, viz., those made before or after trial, as well as those made to be used in evidence at the trial.

3. That a counter-claim is in the nature of a cross action and cannot be struck out as false, frivolous and vexatious.

*J. A. McLean*, Q.C., in support.

*Wade*, Q.C., contra.

EN BANC.] [May 18.

IN RE HILL.

*Proceedings against tenants—County Court Act, 1889, sec. 62—Judge's warrant for possession—No appeal.*

H. obtained from the County Court Judge a warrant for possession of premises under ch. 9, sec. 62 of Act of 1889.

Notice of appeal was given and a motion was made to this Court in banc for leave to enter the appeal.

*Held*, 1. That this proceeding was not "an action," and consequently there was no right of appeal.

2. That the word "action" in sec. 64 of the County Court Act must receive the same meaning as that prescribed in the interpretation clause of the Judicature Act, otherwise sec. 26 providing that the pleadings, practice, forms and procedure, etc., of the Judicature Act shall apply to the County Courts, cannot be given effect to.

3. That this is a mere proceeding, was not commenced by writ or in such other manner as may be prescribed by Rules of Court, and is not an action.

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EN BANC.] [May 18.

WEATHERBE *v.* WHITNEY.

*Discontinuance—Appeal after notice of discontinuance served.*

Defendants moved at Chambers to set aside the service of a writ served in the U. S. out of the jurisdiction. An order dated Jan. 15th was made dismissing the motion, costs to be costs in the cause. On Jan. 27th plaintiff filed and served a notice of discontinuance. On Feb. 3rd defendant appealed from the order of Jan. 15th. Plaintiff moved to quash the appeal because the action was at an end when the notice of appeal was given. Defendant contended that the order of Jan. 15th was wrong, and if permitted to prosecute his appeal he would succeed and be awarded the costs of the motion at Chambers, and that plaintiff could not by discontinuing the action defraud him of the right to redress against an erroneous order.

*Held*, that plaintiff was at liberty so to discontinue the action, and that the appeal should be quashed with costs.

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EN BANC.] [May 18.

CITY OF HALIFAX *v.* JONES, ET AL.

*Construction of statute—License fee—Agency—Local habitation of steamship companies.*

Upon a special case the question arose as to the proper construction of N. S. Acts, 1883, ch. 28, ss. 23 and 24, which provide that "every company doing business in the city of Halifax shall be assessed in respect to the real estate owned by said company, in the same way as the other ratepayers are assessed, and shall in addition thereto pay the annual license fee of $100." Defendants are agents of the Mississippi and Dominion Steamship Co., incorporated in Great Britain. Section 24 provides that the agent or manager of any company which has not been incorporated in Nova Scotia shall be personally liable for the license fee.

The essential question was whether the defendants, who carry on a regular business in the city, and pay taxes for their offices, etc., should be further assessed the fee of $100 as agents of this company who had no office other than that of the agents, and whose business was carried on solely by the agents as part of their business.

*Held*, by GRAHAM, TOWNSHEND, MEAGHER and HENRY, JJ., WEATHERBE, J., dissenting, that the steamship company did business in the city of Halifax, and their agents, the defendants, were liable for the license fee. The

company is always present and transacting business through its agents, who receive the freight money and sell passenger tickets, and this cannot be said to be the agents' business. Judgment for $500, amount of five years' license fees, and costs.

*MacCoy*, Q.C., for plaintiff.

*MacDonald* and *Jones*, for defendants.

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EN BANC.] [May 18.

QUEEN *v.* TOWNSEND AND WHITING.

*Trial for assault—Indictment without foreman's initial—Effect of omission of words "true bill"—Indictment not properly preferred.*

Defendants were tried at Kentville for an assault on peace officer and for resisting arrest: were convicted but sentence suspended and three points reserved by trial Judge for consideration of full Court, which were

1. That indictment was returned without the initials of any member of Grand Jury opposite to the names of the witnesses.

2. That indictment was not indorsed with words "true bill," but merely signed by foreman.

3. That Judge of his own motion directed Grand Jury to return a true bill against T. as well as against W., who had a preliminary inquiry, contrary to provisions of Code, sec. 641.

*Held*, by GRAHAM, E.J., WEATHERBE, HENRY, and TOWNSHEND, JJ., MEAGHER, J., dissenting, that failure of the foreman to affix signature opposite name of sworn witness did not vitiate the indictment, as statutory provision was merely directory.

*Held*, by GRAHAM, E.J., WEATHERBE and HENRY, JJ., MEAGHER and TOWNSHEND, JJ., dissenting, that the words "true bill" need not be endorsed, as signature of foreman can mean nothing else.

*Held* by the Court, that as indictment was neither preferred by the direction of Attorney-General nor by the order of the Court, but only under the eye of the Court, the conviction as against T. only must be quashed.

*Mellish*, for the Crown.

*Roscoe*, Q.C., for the accused.

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EN BANC.] [May 18.

LAUTZ *v.* MORSE.

*Bills of Sale Act—Affidavit of bona fides accompanying mortgage.*

Plaintiff was mortgagee of personal property, and defendant was the sheriff who seized property under execution, and the contest was as to the validity of affidavit of bona fides accompanying the mortgage. Instrument was given to secure to mortgagee payment of a debt of $50, and also to secure him against the liability with respect to two accommodation indorsements upon notes of $160 and $100. An attempt to comply with sections 4, 5 and 11 of Bills of Sales Act was made by the use of one instrument and one affidavit. Section 4 requires that with respect to future indebtedness the affidavit shall be in a certain form, while with respect to securing an indorsement it shall be in another form.

On appeal from the County Court Judge, who upheld the instrument, it was held by TOWNSHEND, MEAGHER, HENRY, JJ., and GRAHAM, E.J., WEATHERBE, J., dissenting, that the affidavit did not satisfy the provisions of the sections of the Bills of Sales Act, and that they were two separate transactions requiring two separate affidavits to support them. Appeal allowed with costs.

*J. J. Ritchie*, Q.C., for plaintiff.

*Roscoe*, Q.C., for defendant.

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EN BANC.] [May 18.

ROSS *v.* BLAKE.

*Certiorari—Powers of County Court Judge—Prohibition—Misapprehension of Legislature.*

After trial before a J.P., judgment was given for plaintiff for $15 debt and costs. No appeal was taken and judgment is still outstanding. At instance of defendant a general order of County Court Judge for District No. 5, and writ of certiorari were issued directing the J.P. to return the original papers into County Court. Notice of motion to quash the judgment was given, and motion was made before County Court Judge. The plaintiff challenged the jurisdiction of the Court, but the Judge determined to hear the motion and adjourned to the 24th March. On March 21st a motion for a writ of prohibition was made before the full Court.

*Held*, that the writ of prohibition should be allowed.

Secs. 26 and 38 of the County Court Act (1889) does not give power generally to bring up cases of certiorari. Sec. 64, c. 28, Acts of 1895, N.S., which provides that "in all actions whether originating in the County Court or brought into the County Court by way of appeal or certiorari, an appeal shall lie, etc.," does not thereby confer power on County Court to issue writ of certiorari. A misapprehension of the legislature as to existing law would not have the effect of making that the law which the legislature had erroneously assumed to be.

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EN BANC.] [May 18.

QUEEN *v.* WELLS.

*Writ of certiorari—Conviction must be drawn up.*

Appeal from an order made at Chambers allowing a writ of certiorari.

The motion was made on an affidavit, which stated that a minute of conviction and not the conviction itself had been served upon defendant. No other proof was offered of the conviction having been drawn up or served.

*Held* by MACDONALD, C.J., MEAGHER, HENRY, WEATHERBE and TOWNSHEND, JJ., that under Order 31 of the Crown Rules (English Crown Rules, 1886, Order 36), no order for a writ of certiorari can be granted unless at the time of making the application a copy of the conviction is produced in Court. Certiorari will not lie to remove a mere minute of conviction.

HENRY, J. It should have been shown either that the copy of the conviction proper, assuming such conviction to have been in existence, was

refused by the magistrate, or if the conviction was not drawn up, that the magistrate refused to make it.

Appeal allowed with costs, and motion for writ refused.

*McInnes*, for Crown.

*Cahan*, for defendants.

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# Province of New Brunswick.

## SUPREME COURT.

EN BANC.] [June 10.

EX PARTE EMMERSON.

*The appointment of arbitrators under The Absconding Debtors' Act must not be made ex parte.*

The Carleton County Court judge appointed an arbitrator under chap. 44, Col. Stat. N.B., sec. 13, on an ex parte application of an alleged creditor. The arbitrator having made his award the trustees applied for a certiorari to grant the same on several grounds, one of which was that the appointment of arbitrators under chap. 44, sec. 13, can not be made on an ex parte application.

*Held*, that the certiorari should go on this ground.

*Slipp*, in support of the application.

*Jordan*, Q.C., contra.

EN BANC.] [June 10.

ROBERTSON *v.* SCHOOL TRUSTEES OF DURHAM.

*School law—Dismissal of teacher—Two trustees cannot act without consulting the third—The dismissal must be a corporate act—The Court will increase the verdict where the amount is solely a matter of calculation and leave is reserved to move.*

The plaintiff was employed by the trustees of Durham under the School Law of N. B. (ch. 60, Col. Stat.) in January, 1892. The contract was to continue in force, according to the provisions of clause four, from school year to school year, unless notice in writing was given by either the school corporation or the teacher three months prior to the expiration of the first six months of the contract, or the time to which it was continued by clause four. In November, 1892, the trustees held a meeting at which it was proposed to give the teacher a notice of dismissal, but two of the three trustees refused to sign the notice and the matter dropped. A few days after the teacher was served with a notice of dismissal signed by two of the trustees. The teacher attempted to teach the ensuing term, but was prevented by the trustees who signed the notice. He then sued the district for breach of contract. The school law of N. B. makes the trustees a corporation, and gives them a corporate name. The Interpretation Act (Col. Stat., ch. 118) says "authority to three or more persons jointly empowered to act shall enable a majority of them to act." A verdict was entered for the plaintiff. In Easter term—

*Currey*, Q.C., moved to enter a verdict for defendants pursuant to leave reserved on the ground that two trustees had power to act.

*Morrill* and *Gregory*, Q.C., contra, argued that the three trustees must be consulted and that the board of trustees must make a corporate act of the notice of dismissal.

Motion refused and verdict for the plaintiff sustained.

In the same case pursuant to leave reserved,

*Morrill* moved to increase the verdict.

*Currey*, Q.C., contra.

Verdict increased, the amount being merely a matter of calculation, the evidence as to damages uncontradicted, and the jury finding an amount less than the evidence warranted.

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# Province of Manitoba.

## QUEEN'S BENCH.

TAYLOR, C.J.] [June 3.

MCMILLAN *v.* PORTAGE LA PRAIRIE.

*Municipal law—By-law—Highway—Obligation to repair.*

The plaintiff brought this action against the defendants to recover damages for the loss of a horse, caused, as he claimed, by defendants' neglect to keep a highway in repair. It was tried by a jury, who found that the road and culvert when the accident occurred were not in a proper state of repair; that defendants knew that they were out of repair for such a length of time as should have enabled them to repair; that the accident and the death of the horse resulted from their being out of repair, and that plaintiff was not guilty of contributory negligence. A verdict was entered for plaintiff. Defendants appealed and relied as a defence to the action upon a by-law passed by them, which plaintiff contended was ultra vires. By 58-59 Vict., ch. 32, sec. 14, sec. 593 of the Municipal Act was amended, and the following paragraph added: "For regulating and prohibiting the passage of traction engines, threshing machines or other heavy vehicles or machines over highways and bridges upon highways, and for providing a penalty in case of the violation of the provisions of such by-law." Under this enactment the defendants passed a by-law, the first clause of which relied on as a defence, was as follows: "That no traction engine, steam engine, threshing machine or water tank shall pass or be transported over any of the highways or bridges upon any highways within the municipality, except at the sole risk of the owner of such engine, machine, or water tank.' It was in connection with the transportation of a threshing machine that the accident in question occurred.

His Lordship, in delivering judgment, held that the by-law was not a defence. It was rather a refusal by the municipality to exercise the power conferred by the Act, than a bona fide exercise of it. The by-law neither

regulates nor prohibits the passage of machines, and would appear to be only an attempt to escape the liability to keep highways in repair under sec. 618 of the Municipal Act, and the consequences of neglecting to do so, and he dismissed the appeal with costs.

*Anderson*, for plaintiff.

*James*, for defendants.

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# Province of British Columbia.

## SUPREME COURT.

DRAKE, J.] [June 3.

COCHRANE *v.* JONES.

*Small Debts Act—Power to commit for contempt.*

This was an application for a rule nisi to prohibit the magistrate sitting in the Small Debts Court from committing defendant for refusal to answer certain questions.

*Held*, that prohibition can only be granted for excess of jurisdiction, and that the magistrate was quite within his powers in committing for general unsatisfactory answers given by defendant.

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BOLE, Local Judge.] [June 9.

IN RE APPEAL OF NEW WESTMINSTER AND BURRARD INLET TELEPHONE COMPANY.

*Right of municipal corporation to tax telephone wires.*

*Held*, that telephone wires, whether carried above or underneath the soil of the highway are liable to be taxed by the city of Vancouver.

A switch-board is not a fixture and therefore not liable to be taxed.

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BOLE, Local Judge.] [June 9.

LYON *v.* MARRIOTT.

*Specially endorsed writ—Foreign judgment.*

On a summons for final judgment on a specially indorsed writ and affidavit verifying the indorsement which set out a foreign judgment recovered,

*Held*, that the test as to whether summary judgment should be ordered is the sufficiency of the material before the Court to satisfy the judge that there is no defence, and suing on a foreign judgment the plaintiff should state in his affidavit that the judgment has not been assigned, is still in force, and that the parties before the Court are the same parties described in the foreign judgment.

*Williams*, for plaintiff.

*Senkler*, for defendant.

[June 9.

BOLE, Local Judge.]

IN RE APPEAL OF VANCOUVER GAS CO.

*Right of municipal corporation to tax gas pipes.*

*Held*, that the laying and using of gas pipes by the Gas Co. is a beneficial occupation of land, and the company can be taxed by the corporation of the said city of Vancouver for such property.

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# North-West Territories.

## SUPREME COURT.

[June 2.

EN BANC.]

QUEEN *v.* BREWSTER.

*Criminal law—Practice—N.W.T. Act, sec. 67—Election by accused to be tried by a judge and jury—Jury disagreeing and accused coming up again for trial, right to then change his election—Refusal by judge to dispense with jury—Application to trial judge to state a case made while appeal pending against verdict.*

On January 7th, 1896, B. was charged with having stolen cattle of value of about $800. He elected to be tried by a judge with the intervention of a jury. The jury failed to agree on a verdict and were discharged, the accused being remanded until Feb. 19th, 1896. On that date he was again brought up, when he applied to withdraw his former consent to be tried by a judge and jury, and to substitute therefor his consent to be tried by a judge summarily without a jury, and requested to be so tried. This application the trial Judge refused and tried the accused with the intervention of a jury.

The jury having brought in a verdict of guilty and sentence having been postponed, the accused obtained leave to move the Court of Appeal to set aside the verdict and for a new trial. Subsequently on application of prisoner's counsel, approved of by the Crown Prosecutor, the trial judge reserved the following questions of law for the opinion of the Court of Appeal :—

1. Whether on the facts stated on the trial being resumed on the 19th of February, the trial judge was bound to comply with and grant the accused's application to be tried summarily ; and therefor whether the trial by jury was a mis-trial.

2. Whether under the circumstances stated the trial judge had jurisdiction to reserve this case.

*Held*, (1) That sec. 67 of The North-west Territories Act casts no imperative duty on a judge to assume the undivided responsibility of trying a case alone, but simply authorizes him, on an accused so consenting, to assume the province of a jury if he thinks fit ; and

(2) That under sec. 743, s-s. 2 of the Criminal Code, the trial judge had power on his own motion, or on application of either party, to reserve the case.

*McCaul*, Q.C., for the Crown.

*Lougheed*, Q.C., for the prisoner.

EN BANC.] [June 5.

GOWER *v.* JOYNER.

*Legislative power of N.W.T. Assembly—B.N.A. Act, sec. 9 (7)—Property and civil rights—Order-in-Council, of 26th June, 1883—The administration of justice, including the constitution, organization and maintenance of Territorial courts of civil jurisdiction—Chap. 36 of the Revised Ordinances (Masters and Servants).*

Sec. 4 of the said ordinance (originally passed prior to 1883) enacted that for ill usage, non-payment of wages, or improper dismissal of a servant by his master, a Justice of the Peace might order such master to pay the servant one month's wages in addition to arrears, together with costs, the same to be levied by distress and sale of the master's goods and chattels; and in default of sufficient distress, to be imprisoned for any term not exceeding one month, unless said moneys and costs should be sooner paid.

Under this section a conviction was made by a Justice of the Peace, who imposed a fine and costs. Upon appeal to RICHARDSON, J., to quash the conviction, it was urged that the section was ultra vires of the Legislative Assembly:—(1st), because it imposed a penalty and imprisonment to enforce it, and (2nd), because in giving the jurisdiction therein provided to a Justice of the Peace, judicial officers were appointed. The case was referred by RICHARDSON, J., to the Court in Banc.

*Held*, ROULEAU, J., dissenting, that the section was intra vires of the Legislative Assembly. coming within the authority to legislate in respect to property and civil rights," and within the powers conferred to legislate in respect to "the administration of justice," etc. Per ROULEAU, J., a penal enactment, and consequently ultra vires.

Conviction confirmed with costs.

*Hamilton*, Q.C., for appellant.

*Secord*, Q.C., for respondent.

EN BANC.] [June 5.

WESTBROOK *v.* LIMOGES.

*Priorities of execution creditors—T.R.P. Act, secs. 94, 41 & 3 (L.)—Creditors' Relief Ordinance—Writ of fi. fa. lands expiring after advertisement but before sale.*

Appeal from order of WETMORE, J., made on an interpleader issue.

Executions against the lands of the judgment debtor were placed in the Sheriff's hands on the following dates:—By Westbrook, by Grierson and by The M. & N. W. Loan Co., on 7th July, 1893, by the Agrl. Society of W., on 23rd August, 1893, and by Lamont and by Limoges on 1st November, 1893. Under sec. 94 of the Territories Real Property Act, certified copies of the execution with memo. of the lands to be charged were delivered by the Sheriff to the Registrar in the following order:—Lamont's on 11th November, 1893, Limoges' on 9th March, 1894; Westbrook's and Grierson's on or after 25th June, 1894. Certified copies of the other executions do not appear to have ever been delivered by the Sheriff to the Registrar. The lands were sold on 5th November, 1894.

*Held*, that sec. 94 of the Territories Real Proporty Act only means that in case of any dealing with the land by the execution debtor, the person acquiring interest from him would take such interest subject to those executions only copies of which had been delivered to the Registrar, and not that the lands should be bound in the order of such delivery.

That a copy of a writ of execution is not an "instrument" within the meaning of sec. 41 of said Act, nor is it covered by the definition of that term given by sec. 3 (L.) of said Act.

That Lamont's execution had not expired at the date of sale; that where a Sheriff duly sells under one writ, such sale is for the benefit of all executions he holds at the time the lands are advertised for sale.

That the proceeds of the sale should be distributed among the execution creditors in accordance with the provisions contained in the Creditors' Relief Ordinance.

Appeal allowed.

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

*McLosq*, for the respondent.

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EN BANC.] [June 5.

QUEEN *v.* THOMPSON.

*Criminal Law—Practice—Description of offence in count—Criminal Code, sec. 611 (3) and (4)—Admission of evidence of incriminating answers—Canada Evidence Act, 1893, sec. 5.*

The prisoner was charged before WETMORE, J., on the following and another count:—"That he had committed perjury on the inquest or inquiry before Andrew J. Rutledge, Esquire, one of Her Majesty's coroners in and for the North-west Territories, concerning," etc. The said inquest was held before the coroner and a jury, and on the preliminary investigation of the charge before a Justice of the Peace the prisoner admitted that he had lied when making a certain statement at the coroner's inquest. Upon the trial the evidence of the prisoner's admissions in his testimony before the Justice was admitted and submitted to the jury. The prisoner was convicted and sentenced on both counts.

Upon objection that as the inquest was held before the coroner and a jury, and not before the coroner alone, as charged, the prisoner was not guilty of perjury before the tribunal he actually gave his evidence, the following questions of law were reserved for the decision of the Court en banc:—

1. Should the inquisition offered in evidence have been received?

2. Should the above count have been withdrawn from the jury, or they instructed to acquit the prisoner, on the ground that the inquest was before a coroner and jury, and not before a coroner, as charged.

3. Whether the evidence of the prisoner's admissions in his testimony on the preliminary investigation of the charge ought to have been struck out or withdrawn from the jury's consideration.

*Held*, in answer to question 1, that the circumstances of the alleged offence were sufficiently described under sec. 611 (3) and (4) of "The Criminal Code," and the evidence properly received.

In answer to question 2, that for the same reasons the count should not have been withdrawn from the jury, or they instructed to acquit the prisoner.

In answer to question 3, that under sec. 5 of The Canada Evidence Act, 1893, the evidence should not have been received.

New trial ordered on above count.

*Gwillim*, for the Crown.

No one contra.

# BOOK REVIEWS.

*The Bank Act, Canada, with notes and authorities, and the law relating to Warehouse Receipts, Bills of Lading, Savings Bank, Winding-up Act, etc.*, by J. J. Maclaren, Q.C., D.C.L., author of Bills, Notes and Cheques, etc., with an introduction on Banking in Canada, by B. E. Walker, General Manager of the Canadian Bank of Commerce: Toronto, The Carswell Co., Law Publishers, 1896.

The financial conditions of this country and our systems of banking are so different from those of the mother country or the United States, that there is a necessity for a work on this subject from a Canadian standpoint. The rules and principles laid down in works on banking by English and American writers are largely inapplicable, and would often prove misleading in this country.

The general divisions of the book are: first, The Bank Act, with its various provisions; secondly, cheques of a bank, taking as the text the Bills of Exchange Act, 1890; thirdly, Savings Bank Act; fourthly, The Winding-up Act; and fifthly, Extracts from the Criminal Code, referring to the sections most likely to be of use in connection with banking operations. The work will, doubtless, have a sale amongst banking men quite as large as among the profession, especially as many of the matters treated of do not come within the general scope of the ordinary practitioner.

The typographical aspect of the book is scarcely equal to that of many others which have been produced by Canadian publishers; but economy must be observed in these days of hard times. It would have added to the value of the book had the index been more complete, but a defect in this respect is so common that it is hardly fair to call attention to it.

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*A Treatise on the Railway Law of Canada*, by Harry Abbott, Q.C., of the Montreal Bar, Professor of Commercial Law, McGill University, Montreal; C. Theoret, Law Bookseller and Publisher, 11 and 13 St. James St., 1896.

This work of Mr. Abbott's embraces matters affecting railways and railway law under the following heads: Constitutional Law, the Law of Corporations, Railway Securities, Eminent Domain, Contracts, Common Carriers, Negligence, Damages, and Master and Servant. The text of the Dominion and Provincial Railway Acts are also given, with forms of proceedings in connection with the expropriation of land for railway purposes.

The author does not claim that his work is a complete treatise on railway law generally, but rather a useful hand book of the law, applicable to railway companies in this country, which he trusts may supply, in a practical and useful form, a felt want in that direction. Free use has been made of the English and American text writers on railway law. It would be manifestly impossible, in a work of some 680 pages, to refer to the immense mass of authorities to be found either in England or the States on this wide-spreading subject. The author apologizes to his brethren in the provinces other than Quebec for the omission of much case law to be found in their reports. This would, if strictly correct, be a serious detriment to the book, but the apology is, perhaps, only partially required, as the cases in the Ontario Reports have been freely quoted.

Mr. Abbott has contributed a valuable addition to Canadian legal literature, whilst the publisher has done his part of the work excellently well.

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*Bill of Exchange Act, 1890, and amending Acts, with note and illustrations from Canadian, English and American decisions, etc.*, by J. J. Maclaren, Q.C., D.C.L., L.L.D., Second Edition; Toronto, The Carswell Co., Limited, 1896.

The first edition having been out of print for nearly three years, and a second edition being called for, the author has added several new features to the present edition. He states in his preface that the Imperial Act of 1882 having been adopted by most of the Australasian colonies, a number of decisions in their courts have been inserted, some of them on points of interest that have not yet arisen elsewhere. This book also includes the two Dominion statutes of 1893 and 1894. The list of cases shows an addition of about 250, most of them being subsequent in date to the publication of the first edition. The useful work will doubtless find a ready sale, both amongst the profession and business men.

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For more than a half-century *Littell's Living Age* has been republishing the best and most important papers, biographies, reviews, stories, verses and sketches of travel, to be found in the foreign (especially the British) magazines, quarterlies and literary weeklies. During this long period it has been prized and commended for the judgment and taste exhibited in its selections. Hardly one of the eminent British authors of the past fifty years can be named who has not been represented in these pages.

Its latest issues contain many articles of present interest and permanent value. The following are worthy of special mention: "Czar and Emperor," by Karl Blind; "Slatin Pasha and the Soudan," by Capt. F. D. Lugard; "Matthew Arnold," by Frederic Harrison; "Nature in the Earlier Roman Poets," by Evelyn Martinengo Cesaresco; "Jean Baptiste and his Language," by Howard Angus Kennedy; "Stray Thoughts on South Africa," by Olive Schreiner; "A Heroine of the Renaissance," by Hellen Zimmern; "A Winter's Day in Mid-Forest," by Fred Whishaw, and "The Story of an Amateur Revolution," by a Johannesburg Resident. In fiction, a short story, by Mary E. Mann, is particularly readable with its mixture of pathos, humor and superstition. Published weekly, at $6.00 a year, by Littell & Co., Boston.

## 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*, A. C. Galt, B.A.; W. D. Gwynne, B.A.; M. H. Ludwig, LL.B.; J. H. Moss, B.A.

### ATTENDANCE AT THE LAW SCHOOL.

This School was established on its present basis by the Law Society of Upper Canada in 1889, under the provisions of rules passed by the Society in the exercise of its statutory powers. It is conducted under the immediate supervision of the Legal Education Committee of the Society, subject to the control of the Benchers of the Society in Convocation assembled. Its purpose is to secure as far as possible the possession of a thorough legal education by all those who enter upon the practice of the legal profession in the Province. To this end, with certain exceptions in the cases of students who had begun their studies prior to its establishment, attendance at the School in some cases during two, and in others during three, terms or sessions, is made compulsory upon all who desire to be admitted to the practice of the Law. The course in the School is a three years' course. The term or session commences on the fourth Monday in September, and ends on the last Monday in April, with a vacation commencing on the Saturday before Christmas and ending on the Saturday after New Year's day, and another at Easter, commencing on the Thursday before Good Friday and concluding at the end of the ensuing week. Admission to the Law Society is ordinarily a condition precedent to attendance at the Law School. Every Student-at-Law and Articled Clerk, before being allowed to enter the School, must present to the Principal a certificate of the Secretary of the Law Society, showing that he has been duly admitted upon the books of the Society, and has paid the prescribed fee for the term. Students, however, residing elsewhere, and desirous of attending the lectures of the School, but not of qualifying themselves to practice in Ontario, are allowed, upon payment of the usual fee, to attend the lectures without admission to the Law Society. Attendance at the School for one or more terms is compulsory on all students and clerks not exempt as above.

Those students and clerks, not being graduates, who are required to attend, or who choose to attend, the first year's lectures in the School, may do so at their own option either in the first, second, or third year of their attendance in chambers or service under articles, and may present themselves for the first-year examination at the close of the term in which they attend such lectures, and those who are not required to attend and do not attend the lectures of that year may present themselves for the first-year examination at the close of the school term in the first, second, or third year of their attendance in chambers or service under articles. Students and clerks, not being graduates, and having first duly passed the first-year examination, may attend the second year's lectures either in the second, third, or fourth year of their attendance in chambers or service under articles, and present themselves for the second-year examination at the close of the term in which they shall have attended the lectures. They will also be allowed, by a written election, to divide their attendance upon the second year's lectures between the second and third or between the third and fourth years, and their attendance upon the third year's lectures between the fourth and fifth years of their attendance in chambers or service under articles, making such a division as, in the opinion of the Principal, is reasonably near to an equal one between the two years, and paying only one fee for the full year's course of lectures. The attendance, however, upon one year's course of lectures cannot be commenced until after the examination of the preceding year has been duly passed, and a student or clerk cannot present himself for the examination of any year until he has completed his attendance on the lectures of that year.

The course during each term embraces lectures, recitations, discussions and other oral methods of instruction, and the holding of moot courts under the

supervision of the Principal and Lecturers. On Fridays moot courts are held for the students of the second and third years respectively. They are presided over by the Principal or Lecturer, who states the case to be argued, and appoints two students on each side to argue it, of which notice is given one week before the day for argument. His decision is pronounced at the close of the argument or at the next moot court. At each lecture and moot court the attendance of students is carefully noted, and a record thereof kept. At the close of each term the Principal certifies to the Legal Education Committee the names of those students who appear by the record to have duly attended the lectures of that term. No student is to be certified as having duly attended the lectures unless he has attended at least five-sixths of the aggregate number of lectures, and at least four-fifths of the number of lectures on each subject delivered during the term and pertaining to his year. Two lectures (one hour) daily in each year of the course are delivered on Monday, Tuesday, Wednesday and Thursday. Printed schedules showing the days and hours of all the lecturers are distributed among the students at the commencement of the term. The fee for attendance for each term of the course is $25, payable in advance to the Sub-Treasurer, who is also the Secretary of the Law Society.

EXAMINATIONS.

Every applicant for admission to the Law Society, if not a graduate, must have passed an examination according to the curriculum prescribed by the Society, under the designation of "The Matriculation Curriculum." This examination is not held by the Society. The applicant must have passed some duly authorized examination, and have been enrolled as a matriculant of some University in Ontario, before he can be admitted to the Law Society. The three law examinations which every student and clerk must pass after his admission, viz., first intermediate, second intermediate, and final examinations, must, except in the case to be presently mentioned of those students and clerks who are wholly or partly exempt from attendance at the School, be passed at the Law School Examinations under the Law School Curriculum hereinafter printed, the first intermediate examination being passed at the close of the first, the second intermediate examination at the close of the second, and the final examination at the close of the third year of the School course respectively. The percentage of marks which must be obtained in order to pass an examination of the Law School is fifty-five per cent. of the aggregate number of marks obtainable, and twenty-nine per cent. of the marks obtainable upon each paper. Examinations are also held in the week commencing with the first Monday in September for those who were not entitled to present themselves for the earlier examination, or who, having presented themselves, failed in whole or in part.

Students whose attendance upon lectures has been allowed as sufficient, and who have failed at the May examinations, may present themselves at the September examinations, either in all the subjects or in those subjects only in which they failed to obtain fifty-five per cent. of the marks obtainable in such subjects. Those entitled, and desiring, to present themselves at the September examinations must give notice in writing to the Secretary of the Law Society at least two weeks prior to the time of such examinations, of their intention to present themselves, stating whether they intend to do so in all the subjects, or in those only in which they failed to obtain fifty-five per cent. of the marks obtainable, mentioning the names of such subjects. The time for holding the examinations at the close of the term of the Law School in any year may be varied from time to time by the Legal Education Committee, as occasion may require.

HONORS, SCHOLARSHIPS AND MEDALS.

The Law School examinations at the close of term include examinations for Honors in all the three years of the School course. Scholarships are offered for competition in connection with the first and second intermediate examinations, and medals in connection with the final examinations. An examination for Honors is held, and medals are offered in connection with the

final examination for Call to the Bar, but not in connection with the final examination for admission as Solicitor. In order to be entitled to present themselves for an examination for Honors candidates must obtain at least three-fourths of the whole number of marks obtainable on the papers, and one-third the marks obtainable on the paper on each subject, at the Pass examination. In order to be passed with Honors, candidates must obtain at least three-fourths of the aggregate marks obtainable on the papers in both the Pass and Honor examinations, and at least one-half of the aggregate marks obtainable on the papers in each subject on both examinations.

The scholarships offered at the Law School examinations are the following: Of the candidates passed with Honors at each of the intermediate examinations the first shall be entitled to a scholarship of $100, the second to a scholarship of $60, and the next five to a scholarship of $40 each, and each scholar shall receive a diploma certifying to the fact. The medals offered at the final examinations of the Law School are the following: Of the persons called with Honors the first three shall be entitled to medals on the following conditions: *The First:* If he has passed both intermediate examinations with Honors, to a gold medal, otherwise to a silver medal. *The Second:* If he has passed both intermediate examinations with Honors, to a silver medal, otherwise to a bronze medal. *The Third:* If he has passed both intermediate examinations with Honors, to a bronze medal. The diploma of each medallist shall certify to his being such medallist. The latest edition of the Curriculum contains all the Rules of the Law Society which are of importance to students, together with the necessary forms, as well as the Statutes respecting Barristers and Solicitors, the Matriculation Curriculum, and all other necessary information. Students can obtain copies on application to the Secretary of the Law Society or the Principal of the Law School.

CURRICULUM.

FIRST YEAR.—*Contracts.*—Smith on Contracts. Anson on Contracts. *Real Property.*—Williams on Real Property, Leith's ed., Deane's Conveyancing. *Common Law.*—Broom's Common Law. Kerr's Stud. Blackstone, Bks. 1 & 3. *Equity.*—Snell's Equity. Marsh's History of 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.*—Kerr's Stud. Blackstone, Bk. 4. Harris's Criminal Law. *Real Property.*—Kerr's Stud. Blackstone, Bk. 2. Leith & Smith's Blackstone. *Personal Property.*—Williams on Personal Property. *Contracts.*—Leake on Contracts. *Torts.*—Bigelow on Torts, English ed. *Equity.*—H. A. Smith's Equity. *Evidence.*—Powell on Evidence. *Canadian Constitutional History and Law.*—Bourinot's Manual of Constitutional History of Canada. O'Sullivan's Government in Canada. *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 Criminal Law. Criminal Statutes of Canada. *Equity.* —Underhill on Trusts. Kelleher on Specific Performance. De Colyar on Guarantees. *Torts.*—Pollock on Torts. Smith on Negligence, 2nd ed. *Evidence.*— Best on Evidence *Commercial Law.*—Benjamin on Sales. Smith's Mercantile Law. Maclaren on Bills and Notes. *Private International Law.*—Westlake's Private International Law. *Construction and Operation of Statutes.*—Hardcastle's 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 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.