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DIARY FOR NOVEMBER.

1. Tues.....All Saints' Day. First Intermediate Examination. Sir Matthew Hale born 1609.
3. Thur.....Second Intermediate Examination.
6. Sun.....*22nd Sunday after Trinity.*
8. Tues.....Sittings of Court of Appeal. Solicitors' examination.
9. Wed .....Barristers' examination.
12. Sat.....W. B. Richards, 10th C. J. of Q. B. 1868. J. H. Hagarty, 12th C. J. of Q. B. 1878.
13. Sun. .....*23rd Sunday after Trinity.*
14. Mon .....J. B. Macaulay, 1st C. J. of C. P. 1849.

TORONTO, NOVEMBER 1, 1887.

We publish elsewhere a recent order of the Supreme Court giving authority to the Registrar to exercise all the powers of a judge of the court sitting in chambers, with some few exceptions. This is a very sensible provision, and, so far as the individual is concerned, could not have been bestowed upon one better qualified than the most courteous and efficient officer who now discharges the duties that appertain to the position. Mr. Cassels has been some twelve years Registrar of the court, and has performed his duties with the greatest credit to himself and satisfaction to the profession. The Rule of court adds dignity to the office and is a deserved mark of confidence on the part of the judges.

HON. LEWIS WALLBRIDGE, CHIEF JUSTICE OF MANITOBA.

HON. LEWIS WALLBRIDGE died at his residence in Manitoba on 20th October last at the age of seventy-one. He was born in Belleville on the 27th of November, 1816, being a grandson of Elijah Wallbridge, a U. E. Loyalist, who settled in Canada shortly after the War of Independence, and son of Wm. H. Wallbridge, a lumber merchant in Belleville. The family came from Dorsetshire, in England, and, taking sides with the Duke of Monmouth in the Rebellion against King James, had to leave England on that account.

Mr. Wallbridge received his education under the late Dr. Benjamin Workman, in Montreal, and at Upper Canada College, Toronto. His legal studies were conducted in the office of the Hon. Robert Baldwin, of Toronto, at the same time with Sir Adam Wilson, Chief Justice of the Queen's Bench.

The late Chief Justice was called to the Bar, in Hilary Term, 1839, and was made a Queen's Counsel in 1856. In 1858 he entered Parliament, representing West Hastings, and some time afterwards became Solicitor General as a member of the Macdonald-Dorion Government. Whilst Solicitor General he was, in 1863, elected Speaker of the House, and was the first Speaker of the House at Ottawa. He held that office for over four years and presided during the debates on the exciting question of Confederation.

After retiring from political life he practised law in Belleville, and on the death, in 1882, of Hon. E. B. Wood, Chief Justice of Manitoba, was appointed his successor. He heard and gave judgment on the first of the recent injunction cases against the Red River Valley Railway, sitting, it is said, for ten consecutive days, aggravating the disease which eventually caused his death. Mr. Wallbridge was a sound lawyer, his strong point being his familiarity with real property law; he had also a large criminal practice. His counsel business was very large; his name appearing at one time in

almost all the important cases in the eastern district.

His remains were taken to Belleville on October 25th last and there buried. The funeral was attended by an immense number of people desirous of paying their respects to one who had been for so many years an honoured citizen of his native place, and respected and loved for his good qualities by all who knew him.

RECENT ENGLISH DECISIONS.

The *Law Reports* for October comprise 19 Q. B. D. pp. 357-509; 12 P. D. pp. 185-195; 36 Chy. D. pp. 1-112.

SHIP—GENERAL AVERAGE—DISCHARGE OF PART OF CARGO BEFORE COMMENCEMENT OF MEASURES FOR GETTING OFF SHIP, EFFECT OF.

The first case in the Queen's Bench Division to which we draw attention is *The Royal Mail Steam Packet Co.* v. *English Bank of Rio de Janeiro*, 19 Q.B.D. 362. In this case a steamer carrying with other freight a large quantity of specie ran aground and lay in a dangerous position. Soon after the vessel struck the master landed the specie, which weighed only about a ton and a half, and placed it in a place of safety, and it was ultimately forwarded to its destination by another vessel, but for the purposes of the case it was to be treated as having been conveyed by the stranded steamer. After the specie had been thus landed the master jettisoned part of the cargo, and had recourse to other extraordinary measures for getting off the vessel. These measures proved effectual, and the vessel continued her voyage with the cargo remaining on board. The question for the court was whether the losses and expenses incurred in getting the steamer off, and the expenses incurred in landing and conveying the specie were or were not general average to which the owners of the specie were liable to contribute. The court (Wills and Grantham, JJ.) held that they were not.

HUSBAND AND WIFE—LIABILITY OF HUSBAND FOR NECESSARIES SUPPLIED TO WIFE—ADULTERY OF WIFE—CONNIVANCE BY HUSBAND—CONDONATION.

Wilson v. *Glossop*, 19 Q.B.D. 379, was an appeal from the Sheffield County Court. The action was brought for necessaries supplied to the defendant's wife. In August, 1885, the defendant charged his wife with adultery and turned her out of doors, whereupon she went to reside with her mother, the plaintiff, who supplied her with board and lodging. The defendant subsequently petitioned in the Probate and Divorce Division for a dissolution of his marriage on the ground of his wife's adultery, and at the trial the jury found that the wife had commited adultery, and that the petitioner had not condoned the offence, but that he had connived at it. The petition was thereupon dismissed. Under these circumstances the Court (Matthew and Cave, JJ.) held that the husband was liable for the necessaries furnished his wife, and the judgment of the County Court was reversed.

PRACTICE—AMENDMENT—CLAIM BARRED BY STATUTE OF LIMITATIONS.

In *Weldon* v. *Neal*, 19 Q.B.D. 394, the Court of Appeal affirmed a decision of a Divisional Court striking out certain amendments to the statement of claim which set up fresh causes of action, which at the time of such amendment were barred by the Statute of Limitations, although not barred at the date of the writ.

PRACTICE—COSTS—ORDER 65 R. 1 (ONT. RULE 428)—CLAIM—COUNTER-CLAIM.

Wight v. *Shaw*, 19 Q.B.D. 396, was an appeal from Denman, J., on a question of costs. The plaintiff's claim was for rent, which was admitted by the defendant, who, however, counter-claimed a larger amount for damages on account of the alleged insanitary condition of the demised premises. The case was tried by a jury who found for the defendant on the counter-claim £17 16s. damages. The Judge at the trial ordered judgment to be entered for the plaintiff for the amount claimed by him, viz., £78 15s., with costs down to the filing of the counter-claim; and that judgment should be entered for the defendant for the £17 16s. with costs of the counter-claim and subsequent thereto, including the costs of the trial. On appeal, the court (Lord Esher, M.R., Lindley and Lopes, L.L.J.) held that there was no "good cause" shown for such an order, and that the Judge at the taial had therefore no jurisdiction to prevent the costs following the event.

Recent English Decisions.

MASTER AND SERVANT—BREACH OF STATUTORY DUTY—VOLENTI NON FIT INJURIA—EMPLOYERS' LIABILITY ACT 1880 (43 AND 44 VICT. C. 42) (49 VICT. C. 28 [O.])

Baddeley v. *Earl Granville*, 19 Q.B.D. 423, is another case in which the principle laid down in *Thomas* v. *Quartermaine*, 18 Q.B.D. 685, is again discussed. The plaintiff's husband had been employed at the defendant's coal mine. One of the statutory rules regulating the working of the mine required a banksman to be constantly present while the men were going up or down the shaft, but it was the regular custom at the mine, as the deceased well knew, not to have a banksman in attendance during the night. The plaintiff's husband was killed in coming out of the mine at night by an accident arising through the absence of a banksman. The action was brought under the Employers' Liability Act 1880 (see 49 Vict. c. 28 [O.]), and it was contended that the case came within the rule laid down in *Thomas* v. *Quartermaine*, and that the maxim *volenti non fit injuria* applied. But the court (Wills and Grantham, JJ.) held that the injury having arisen from the breach of a statutory duty, that maxim was not applicable, and that this distinguished the case from *Thomas* v. *Quartermaine*.

SALVAGE—SALVED AND SALVING VESSELS OWNED BY SAME PERSON—BILL OF LADING—SEAWORTHINESS, EXCEPTIONS QUALIFYING IMPLIED WARRANTY OF.

Proceeding now to the cases in the Probate Division, the first which claims attention is *The Cargo ex Laertes*, 12 P.D. 187. This was an action to recover salvage under the following circumstances: A steamship became disabled at sea owing to the breaking of her fly wheel shaft through a flaw in the welding existing at the commencement of the voyage, but not discoverable by the exercise of any reasonable care. The cargo on board her was shipped under three bills of lading, the first of which contained, amongst other excepted perils, the clause "warranted seaworthy only as far as ordinary care can provide;" the second, "warranted seaworthy only as far as due care in the appointment or selection of agents, superintendents, pilots, masters, officers, engineers and crew can ensure it;" and the third, "owners not to be liable for loss, detention or damage . . . if arising directly or indirectly . . . from latent defects in boilers, machinery, or any part of the vessel in which steam is used, even existing at the time of shipment, provided all reasonable means have been taken to secure efficiency." A vessel belonging to the same owners as the disabled vessel towed the latter into port. The action was brought by the owners, master and crew of the salving vessel against the owners of cargo in the salved vessel; and it was held by Butt, J., that the owners of the salving vessel were entitled to salvage, notwithstanding they were at the same time owners of the vessel salved, and that the owners of cargo in the salved vessel had no remedy for breach of the contract of carriage, because the exceptions in the bills of lading above mentioned constitued a limited warranty of seaworthiness at the commencement of the voyage, of which there had been no breach.

GARNISHEE—PAY OF SURGEON IN R.N.—ATTACHMENT OF DEBTS.

In *Apthorpe* v. *Apthorpe*, 12 P.D. 192, the Court of Appeal (Cotton, Lindley and Bowen, LL.J.,) held that the pay of a surgeon in the Royal Navy in active service not being assignable, could not be attached.

INJUNCTION—IMITATION OF PLAINTIFFS' GOODS—ACCOUNT.

Lever v. *Goodwin*, 36 Chy. D. 1, was an action to restrain the defendants from selling soap in packets so closely resembling those in which the plaintiffs had been in the habit of bringing out their soap, as to be calculated to deceive purchasers. It was held by Chitty, J., that though the retail dealers who bought soap from the defendants would not be deceived, the defendants, by their imitation of the plaintiffs' packet, put into the hands of the retail dealers an instrument of fraud, and ought to be restrained by injunction. An injunction was accordingly granted, and an account directed of the profits made by defendants in selling soap in the packets in which it was held that they were not entitled. The defendants appealed, and it was held by the Court of Appeal (Cotton, Lindley and Bowen, LL.J.) that the injunction had been rightly granted, and that the account was in proper form and ought not to be limited, as the defendants contended, by excluding from it soap which the

retail dealers sold to persons who bought it as the defendants' soap. It may be noted that the plaintiffs' case failed so far as they relied on having a trade mark; but it was held that the case was within the common law doctrine that a man cannot pass off his goods as those of another.

MORTGAGOR AND MORTGAGEE—BANK—LOAN TO CUSTOMER—TRANSFER OF STOCK BY THREE PERSONS TO SECURE LOAN—TRUST—RETRANSFER TO NOMINEE OF BORROWER—LIABILITY OF MORTGAGEE.

Magnus v. *Queensland National Bank*, 36 Chy. D. 25, is a decision of Kay, J., which illustrates the duty of mortgagees to retransfer securities on the repayment of the loan, so that they may revest in the same parties as those from whom they received them. In this case Goldsmid, a stock broker, was one of three trustees, and he proposed to his co-trustees to sell certain B. stock belonging to the trust, and purchase N. E. stock with the proceeds. In order to carry out this proposed change of investment the co-trustees concurred with Goldsmid in executing a deed of transfer of the B. stock to Buchanan and Smith who were respectively manager and accountant of the defendant bank. Goldsmid was a customer of the defendant bank, and borrowed a large sum of money from them, and, unknown to his co-trustees, deposited the transfer of the B. stock with them as security for the loan, Buchanan and Smith being transferees as trustees for the bank, and Goldsmid representing to them that he had the authority of his co-trustees to give the stock as security. The deed of transfer was sent to the B. company, and registered after notice to the co-trustees. In February, 1882, Goldsmid paid off the loan, and then the bank, at his request, and without notice to the co-trustees, authorized Buchanan and Smith to transfer the B. stock to purchasers from Goldsmid. Goldsmid received the purchase money and invested the same in the purchase in his own name of N. E. stock. This stock he subsequently sold, and converted the proceeds to his own use; he however paid dividends on this investment to the *cestui que trust* for some time, but ultimately absconded. The present action was then brought by the *cestui que trust* of the trust estate and the co-trustees to compel the bank to make good the loss of the B. stock to the trust estate, on the ground that they, by transferring the stock to purchasers, improperly placed the proceeds of the B. stock in Goldsmid's sole control, whereas they should have retransferred the stock to the three trustees by whom it had been transferred to them; and Kay, J., held that the bank had acted improperly, and was therefore liable to the plaintiffs as claimed. He thus states the case at p. 35:

> A customer of a bank borrows money of them, and hands to them as security a transfer of railway stock by himself and two other persons—his co-trustees. Subsequently he pays off the loan, and the bank, instead of retransferring to the three mortgagors, transfer to a nominee of their customer. That, for the purpose of this case, is precisely as though they had transferred to himself or any stranger. Thereby the stock was lost to the trust estate In my opinion, the bank are liable for the value of the B. stock at the time when they transferred it.

COMPANY—SHARES—FRAUDULENT MORTGAGE OF SHARE CERTIFICATES—RIGHT OF LEGAL OWNER OF SHARES AS AGAINST MORTGAGEE—ESTOPPEL.

Passing now to the *Colonial Bank* v. *Hepworth*, 36 Chy. D. 36, we have a decision of Chitty, J., upon the conflicting rights of the legal owner and an equitable mortgagee for value without notice. The subject-matter of the contest was certain shares of the New York Central Railway Co. For these shares the company issues to the registered shareholders share certificates on the back of which there is a blank form of transfer, and a blank form of power of attorney to execute a surrender and cancellation of the certificate. The mode of transfer was as follows: The registered shareholder signed the transfer and power of attorney, leaving the name of the transferee blank, and when this blank transfer reaches the hand of some holder who desires to be registered, his name is filled in by himself, or on his behalf, and the certificate, on being left with the company, was cancelled by them, and the transferee registered as owner, and a new certificate issued in his name. In August, 1883, the defendant employed Thomas & Co., a firm of brokers, to buy him 240 shares of this stock, which they accordingly did, and he left the certificates in their hands with directions to get him registered as owner. Thomas & Co. subsequently, unknown to the defendant, fraudulently deposited these share certificates with the plaintiff as security for a loan to themselves. At the time of the deposit the name of the transferee had not been filled in. Fearing that their fraud would be

discovered by the defendant, they applied to the bank for the share certificates, on the ground that they wished to send them in for registration, and the officers of the bank redelivered the certificates, supposing that Thomas & Co. were going to get themselves registered as transferees. Thomas & Co., however, filled in the defendant's name as transferee, and sent the shares in for registration in his name, and received from the company a receipt for the certificates which they handed to the plaintiffs. One of the firm of Thomas & Co, who had been guilty of the fraud, subsequently absconded, and the bank then sent to the railway company's office the receipt for the old certificates and demanded the new ones, which the company assumed they were entitled to as holders of the receipt, and the new certificates were accordingly handed to them.

The suit was brought to have it declared that notwithstanding the shares stood in the defendant's name, the plaintiffs were entitled thereto, and to compel the defendant to execute a transfer thereof. The defendant counterclaimed, praying that the plaintiffs should be ordered to deliver the shares to him. Chitty, J., held that the case did not fall within the principle of estoppel laid down in *Goodwin* v. *Roberts*, 1 App. Cas. 476, and that the defendant was the legal owner of the shares and entitled to have the new certificates delivered to him. The right principle to adopt with reference to shares of this kind with transfers in blank, he considered to be this, that when the transfers are duly signed by the registered holders of the shares, each prior holder confers upon the *bona fide* holder for value of the certificates, for the time being, an authority to fill in the name of the transferee, and is estopped from denying such authority, and to the extent, and in this manner, but not further, is estopped from denying the title of such holder for the time being. But he goes on to observe that by the delivery only an inchoate right passes, and that the title by unregistered transfer is not equivalent to a legal estate in the shares or a complete dominion over them. The plaintiffs, he considered, never had the complete legal title, and their inchoate title was defeated by the defendant acquiring *bona fide* for value by the registration of the shares in his name a complete legal title thereto.

SELECTIONS.

SCHOOL TEACHER—RIGHTS AND LIABILITIES IN RELATION TO HIS PUPIL.

1. Relation of Teacher and Pupil.
2. Power to Inflict Corporal Punishment.
   (*a*) How exercised.
   (*b*) What Teacher should take into consideration
   (*c*) When being illegal as being excessive.
   (*d*) What will constitute excessive punishment.
   (*e*) Not affected because the pupil is of age.
   (*f*) Can punish even if forbidden by the parent.
3. Jurisdiction.
   (*a*) Extent of as to time and place.
   (*b*) Teacher cannot punish child for refusing to study, when excused by the parent.
4. Power of expulsion
5. Liability for failure to instruct.
6. What are reasonable rules?

The number of decisions upon the rights and liabilities of a teacher in relation to his pupil are not as numerous as the great number of persons interested and affected would warrant one in believing. For almost every one in the civilized world has at one time in his life been either a teacher or a pupil.

These controversies, relating as they do to the control, management and correction of pupils are apt to have their origin in wounded parental feeling and are frequently prosecuted with much bitterness. "It is a cause of congratulation" says Judge Lyon, "that so few of these controversies appear in the court."[1]

1. The earlier authorities as well as some of the modern ones seem to place the authority of the teacher over the pupil while it exists upon the same footing as that of a parent over his child.[2] But this seems to be too broad, and even as far back as Blackstone we are taught "that the teacher has such portion of the power of the parent committed to his charge, viz.: that of restraint and correction, as may be necessary to answer the purposes for which he was employed."[3]

[1] State v Burton, S. C. Wis., 1879.
[2] Brac. Abtr. tit. assault and battery, *c*; 1 Bish. Crim. Law, § 771.
[3] 1 Black. Com. 453.

Chitty adds in a note "This power must be temperately exercised and no school master should feel himself at liberty to administer chastisement co-extensively with a parent, howsoever the infant might have appeared to have deserved it."

In *Lander* v. *Seaver*,[4] the court says: "The parent, unquestionably, is answerable only for malice or wicked motives, or an evil heart in punishing his child. This great and, to some extent, irresponsible power of control and correction, is invested in the parent by nature and necessity. It springs from the relation of parent and child. It is felt rather as a duty than as a power. This parental power is little liable to be abused, for it is continually restrained by natural affection, the tenderness which the parent feels for his offspring, an affection ever on the alert, and acting rather by instinct than by reasoning. The school master has no such natural restraint. Hence he may not be trusted with all a parent's authority, for he does not act from the instinct of parental affection. He should be guided and restrained by judgment and wise discretion, and hence is responsible for their reasonable exercise."

In *Morrow* v. *Wood*,[5] it was claimed that the teacher had the right to prescribe the studies which the pupil should pursue, even as against the express directions of the parent. This was however denied by the court in the following language. "We do not think she had such right or authority, and we can see no necessity for clothing the teacher with such rights and arbitrary power. We do not really understand that there is any recognized principle of law, nor do we think there is any rule of morals or social usage which gives to the teacher an absolute right to prescribe and dictate what studies a child shall pursue, regardless of the wishes of the parent, and, as incident to this, gives the right to enforce obedience even as against the orders of the parent. From what source does the teacher derive this authority? From what maxim or rule of law of the land? Ordinarily it will be conceded the law gives the parent the exclusive right to govern and control the conduct of his minor children, and he has the right to enforce obedience to his commands by moderate and reasonable chastisement. And, furthermore, it is one of the earliest and most sacred duties taught a child to honour and obey its parents. . . . Now, we can see no reason whatever for denying to the father the right to direct what studies included in the prescribed course his child shall take."

2. *Power to Inflict Corporal Punishment.*—The authorities all concede the power of the teacher, under proper circumstances, to inflict a reasonable corporal punishment.

(*a*) In the case of *Quinn* v. *Nolan*,[6] Judge Harmon, in his charge to the jury makes use of the following language: "From the time of Solomon to the present parents have had the right, in a proper manner and to a proper degree, of inflicting corporal punishment on their children, and when a parent sends the child to a public school the teacher has the same right while the child is under his or her charge.

"It is not disputed that by the express rules of the school in question, to which rules the father assented when he sent his child there, corporal punishment was permitted in proper cases and in proper manner. The question, therefore, in this case is, not whether the defendant inflicted corporal punishment on the child, for that is admitted; but whether considering the offence of the child, if any, his age, condition and all the circumstances the defendant inflicted extreme and unnecessary punishment; because while the teacher has a right to punish, it is the right to punish only in a proper manner and to a proper degree. If the teacher goes beyond that, the act becomes unlawful and she is responsible for the consequence.

"In determining this question the jury should consider the offense, the size and apparent condition of the child, the character of the instrument of punishment used, and the testimony as to the manner in which, and the extent to which, the punishment was inflicted."

The *State* v. *Pendergrass*,[7] is an early and leading case upon this subject, and is very plain and full as to the extent of this

[4] 32 Vt. 114.
[5] S. C. Iowa, 1874; 13 Am. L. Reg. 692.
[6] 4 Cin. L. Bul. 81.
[7] 2 Dev. and Bat. 365.

power. Here it is said: "The welfare of the child is the main purpose for which pain is permitted to be inflicted. Any punishment, therefore, which may seriously endanger life, limbs, or health, or shall disfigure the child, or cause any permanent injury, may be pronounced in itself immoderate, as not only being unnecessary for, but inconsistent with, the purpose for which it is authorized. But any correction, however severe, which produces temporary pain only, and no permanent ill, cannot be so pronounced, since it may have been necessary for the reformation of the child and does not injuriously affect his future welfare. . . . When the correction administered is not in itself immoderate, and not therefore beyond the authority of the teacher, its legality or illegality must depend entirely on the *quo animo* with which it was administered. Within the sphere of his authority the master is the judge when correction is required, and of the degree of correction necessary; and like all others imparted with a discretion, he cannot be made penally responsible for error of judgment, but only for wickedness of purpose."

In inflicting such punishment the teacher must exercise sound discretion and judgment, and must adopt it not only to the offence, but the offender. Horace Mann, a high authority in the matter of schools, says of corporal punishment: "It should be reserved for the baser faults. It is a coarse remedy, and should be employed upon the coarse sins of our animal nature, and when employed at all it should be administered in strong doses." Of course, the teacher in inflicting such must not exceed the bounds of moderation. No precise rule can be laid down as to what shall be considered excessive or unreasonable punishment. Each case must depend upon its own circumstances.[8]

The teacher must exercise reasonable judgment and discretion and be governed as to the mode and severity of the punishment by the nature of the offence, and the age, size and apparent powers of endurance of the pupil."[9]

(*b*) And he should also take into consideration the mental and moral qualities of the pupil, and, as indicative of these, his general behaviour in school and his attitude toward his teacher become proper subjects of consideration. And in making the chastisement the teacher may take into consideration, not merely the immediate offence which had called for the punishment, but the past offences that aggravated the present one and showed the pupil to have been habitually refractory and disobedient. Nor is it necessary that the teacher should, at the time of inflicting the punishment, remind the pupil of his past and accumulating offences. The pupil knew them well enough, without having them brought freshly to his notice.[10]

(*c*) The chastisement must not exceed the limits of moderate correction, and though courts are bound, with a view to the maintenance of necessary order and decorum in schools, to look with reasonable indulgence upon the exercise of this right, yet, whenever the correction shall appear to have been clearly excessive and cruel, it must be adjudged illegal.[11] And the master is not relieved from liability in damages for the punishment of a scholar which is clearly excessive and unnecessary by the fact that he acted in good faith and without malice, honestly thinking that the punishment was necessary, both for the discipline of the school and the welfare of the scholar.[12]

(*d*) And whether under the facts the punishment was excessive, must be left to the jury to decide.[13] But in the *State* v. *Mizner*, it was said, that "any punishment with a rod which leaves marks or welts on the person of the pupil for two months afterwards, or much less time, is immoderate and excessive, and the court would have been justified in so instructing the jury."[14] The pupil must also understand and know, or have the means of knowing, for what offence he is being punished.[15]

In criminal actions, if there is a reasonable doubt whether the punishment was excessive, the teacher should have the benefit of the doubt.[16]

[8] Reeves on Dom. Rel. 288, 534.
[9] Com. v. Randall, 4 Gray, 36.
[10] Sheehan v. Sturges, 22 Rep. 455; S. C., 16 Cin. L. Bul. 33; S. C. Conn. 1886.
[11] Hathaway v. Rice, 19 Vt. 102.
[12] Lander v. Seaver, 32 Vt. 114.
[13] Com. v. Randall, 4 Gray, 36.
[14] 50 Iowa, 145.
[15] *Id.*
[16] Lander v. Seaver, 32 Vt. 114; Whar. Crim. Law, 1259.

In an English case, where, on the boy's return to school, his master wrote to the boy's parent, proposing to beat him severely, in order to subdue his alleged obstinacy, and on receiving the father's permission, beat the boy for two hours and a half, secretly in the night and with a thick stick until he died, it was held that he was guilty of manslaughter and not murder, no malice being proven.[17]

And in the absence of all proof the law presumes that the teacher punishes his pupil for a reasonable cause and in a reasonable manner.

But this presumption, like all other legal presumptions, may be rebutted by proof.[18] And the teacher has the right to show that the chastisement was reasonable, and for misconduct in school.[19]

(*e*) And the teacher's right to chastise his pupils is not affected by the fact that the pupil, voluntarily in the school, is of lawful age and, therefore, not entitled to attend school.[20]

Upon this question the Supreme Court of Maine makes use of the following language:[21] "But it is insisted that if such is the authority over one who is in the legal contemplation a scholar, the same cannot apply to the case of one who has no right to attend the school as a pupil. It is not necessary to settle the question whether one living in the district and not being between the age of four and twenty-one years can, with propriety, require the instruction of town schools. If such does present himself as a pupil, is received and instructed by the master, he cannot claim the privilege and receive it, and at the same time be subject to none of the duties incident to a scholar. If disobedient, he is not exempt from the liability to punishment, so long as he is treated as having the character which he assumes. He cannot plead his own voluntary act, and insist that it is illegal, as an excuse for creating disturbances, and escape consequences which would attach to him either as a refractory, incorrigible scholar, or as one who persists in interrupting the ordinary business of the school."

(*f*) And the teacher has the right to punish the pupil within the bound of law, even though he has instruction from the father that the child must not be whipped.[22] He is the absolute judge of the kind of punishment to be inflicted, with the limitation that it shall be reasonable and usual, and not destructive of the relation, or subversive of the contract under which the relation exists.[23] It may be by whipping, or he may impose any reasonable restraint upon the person of the pupil which will prevent disorder in his school.[24]

But it was held that where a person took a pupil into his house, agreeing to instruct and protect him and provide for his physical wants, he was not entitled to turn him out into the street, withdraw his care, and deny him shelter and the comfort of his home, under the name or form of punishment. Such mode of punishment is neither reasonable or usual.[25]

3. *Jurisdiction.*—It is conceded that the right to punish extends to school hours, and that there seems to be no reasonable doubt that the supervision and control of the master over the pupil extends from the time he leaves home to attend school till he returns home from school.

In the recent case of *Balding* v. *State*, the Court of Appeals in Texas held that a public school teacher may require the preparation of lessons at the home of the scholar: "Teachers have the same right, the same as parents, to prescribe reasonable rules for the government of children under their charge, and to enforce by moderate restraint and correction, obedience to such rules. This authority of a teacher over his pupils is not, in our opinion, necessarily limited to the time when the pupils are in the school-room, or under the actual control of the teacher. Such authority extends, we think, to the prescribing and enforcement of reasonable rules and requirements, even while the pupils are at their homes."

[17] R. v. Hopley, 2 F. & F. 202.

[18] State v. Mizner, 50 Iowa, 145; S. C., 32 Am. Rep. 128; Hathaway v. Rice, 19 Vt. 102.

[19] State v. Mizner, 43 Iowa, 248; S. C., 24 Am. Rep. 769.

[20] *Id.*

[21] Stewart v. Fassett, 27 Me. 266, 287

[22] 24 Reporter, 314; 8 Cin. Law Bul. 217.

[23] State v. Manx. Straus, 3 Tenn. Law Rep. 19.

[24] Star v. Litchfield, 40 Barb. 511.

[25] Fitzgerald v. Northcote, 4 F. & F. 656; Cooley on Torts, 171.

[26] Stare v. Litchfield, 40 Barb. 541.

(*a*) In the case of *Lander* v. *Seaver*,[26] it was held that, although a school master has in general no right to punish a pupil for misconduct committed after the dismissal of the school for the day and the return of the pupil to his home, yet he may, on the return of the pupil to school, punish him for any misbehaviour, though committed out of school, which has a direct and immediate tendency to injure the school or subvert the master's authority.

In the recent case of *Derkins* v. *Goss*,[27] decided that the teacher has the right to make a rule, and to enforce it by whipping, prohibiting the boys from swearing, quarrelling or fighting on their way home from school and before the parental authority over them has been resumed.

(*b*) But it has been held that the teacher had no right to compel the pupil to study certain branches when the pupil was excused therefrom by his parent, and that if the teacher attempted to force the pupil so to do and the pupil refused and the teacher inflicted corporal punishment upon such pupil for such refusal, that the teacher would be guilty of assault and battery.[28]

And it was said that until compulsory education was established that the court was unwilling to establish the rule that a teacher may punish a pupil for not doing something the parent has requested the pupil to be excused from doing.[29]

The fact that the school was a public one, in which the studies were prescribed by statute, did not vary the general rule as to the right of the parent to direct the omission of a part of the prescribed studies.[30]

4. *Power of Expulsion.*—The teacher has not, it seems, a discretionary power of expulsion, but only for reasonable cause.[31] The power of expulsion is usually placed in the hands of the school directors or other committee in charge of the school. And the teacher generally has power only to suspend the pupil until the matter can be brought to the attention of such superior body. This is regulated by statute in some of the States.[32] For a wrongful expulsion the teacher would be liable in damages, not only to the child, but in *Roe* v. *Deming*, it was held that the father of a child, entitled to the benefits of the public school of the subdistrict of his residence, may maintain an action against the teacher of the school and the local directors of the subdistrict for damages for wrongfully expelling the child from school.[33]

This question was very thoroughly discussed in *State* v. *Burton*,[34] in which it was said that "the teacher is responsible for the discipline of his school, and for the progress, conduct and deportment of his pupils. It is his imperative duty to maintain good order and require of his pupils a faithful performance of their duties. If he fails to do so he is unfit for his position. To enable him to discharge these duties effectually he must necessarily have the power to enforce prompt obedience to his commands. For this reason the law gives him the power, in proper cases, to inflict corporal punishment upon refractory pupils. But there are cases of misconduct for which such punishment is an inadequate remedy. If the offender is incorrigible, suspension or expulsion is the only adequate remedy. In general, no doubt, the teacher should report a case of that kind to the proper board for its action in the first instance, if no delay will necessarily result from that course prejudicial to the best interests of the school. But the conduct of a recusant pupil may be such that his presence for a day or an hour may be disastrous to the discipline of the school and even to the morals of the other pupils. In such a case it seems absolutely essential to the welfare of the school that the teacher should have the power to suspend the offender at once from the privilege of the school; and he must necessarily decide for himself whether the case requires that remedy. If he suspend the pupil, he should promptly report his action to the board. It will be seldom that the teacher in charge of the school will be compelled to exercise this power, because usually he can readily communicate with

[26] 32 Vt. 114.
[27] 30 Cent. L. J., 418; S. C. Mo. 1885.
[28] Morrow v. Wood, 13 Am. Law Reg. (N.S.) 693.
[29] State v. Mizner, 50 Iowa, 145; 32 Am. Rep. 128.
[30] *Id.*
[31] Fitzgerald v. Northcote, 4 F. & F. 685.
[32] Rev. Stat. Ohio, 4014.
[33] Ohio St. 666.
[34] 18 Am. Law Reg. 233; S. C. Wis., 1879.

the district board, and obtain the direction and order of the board in the matter. But where the government of a public school is vested in a board of education with a more numerous membership than district boards, and which hold stated meetings for the transaction of business, the facilities for speedy communication with the board may be greatly decreased, and more time must usually elapse before the board can act upon the complaint of the teacher. In those schools the occasion which requires the action of the teacher in the first instance will occur more frequently than in the district schools. We conclude, therefore, that the teacher has, in a proper case, the inherent power to suspend a pupil from the privileges of the school, unless he has been deprived of the power by the affirmative action of the board."

5. *Liability for Failure to Instruct.*—Whether an action will lie against a teacher for a failure to instruct the pupil that lawfully comes to him for instruction, or whether the remedy is confined to an appeal to the governing board, Judge Cooley says,[35] in his work on Torts, is left in doubt by the authorities though he expresses the opinion that such refusal is actionable. And in *Spear* v. *Cummings*,[36] it was held that the teacher of a town school was not liable to an action by the parent for refusing to instruct his children. If an action can be maintained in such case it should be in the name of the child and for his benefit.[37]

6. *What are Reasonable Rules?*—A rule providing that pupils may be suspended from school in case they shall be absent or tardy, except for sickness or other unavoidable cause, a certain number of times, is a reasonable and proper rule for the government of the school.[38] Also to exclude a child whom it is deemed is of a licentious character and immoral, although such character is not manifested by any acts of licentiousness or immorality within the school.[39] Likewise, for acts of neglect, carelessness of posture in his seat and recitation, tricks of playfulness and inattention to study, and the regulations of the school in minor matters.[40]

A requirement by the teacher of a district that the pupils in grammar schools shall write English compositions, is a reasonable one, and if such pupil, in the absence of a request from his parent, refuse to comply with such rule he may be expelled from the school on that account.[41]

But a rule that required that no pupil should attend a social party is not reasonable, and an expulsion for such violation of such a rule would be illegal.[42]

A regulation that each scholar, when returning to school after recess, shall bring into the school-room a stick of wood for the fire, is not needful for the government of the school, and a scholar cannot be suspended for a refusal to comply with such rule.[43]

The policy of the law seems to be, as it should be, that the teacher is to be as little hampered in his school management as possible by outside persons. And it has always occurred to me that unless there has been a flagrant violation of law and a mean, malicious spirit manifested by the teacher, parents and others ought not to interfere.—*Central Law Journal.*

[34] Page 288.
[35] 23 Pick. 224.
[36] Stephenson v. Hall, 14 Barb. 222.
[37] Burdick v. Babcock, 31 Iowa, 562.
[38] Sherman v. The Inhabitants of Charleston, 8 Cush. 160.
[39] Hodgkins v. Rockport, 105 Mass. 475.
[40] Guernsey v. Pitkin, 32 Vt. 224.
[41] Dritt v. Snodgrass, 66 Mo. 286.
[42] State v. Board of Education, 24 Am. Law Reg. 601; S. C. Wis. 1885.

REPORTS.

ONTARIO.

IN THE FIRST DIVISION COURT OF THE COUNTY OF BRANT.

Reported for the LAW JOURNAL by W. D. Jones, Barrister-at-Law.

BRETHOUR ET AL. V. WESTBROOK.

Action against infant—What are necessaries—Goods necessary to infant—Proof of necessity on plaintiff.

The plaintiff sold to the defendant, an infant, a suit of clothing and other goods. The defendant pleaded infancy. It was shown that the suit of clothing was such as the defendant might reasonably require, but that at the time of the purchase he was well provided with clothing.

Held, that before the plaintiff can recover he must show not only that the goods sold fall under the general head of necessaries, but are necessary to the defendant, and that the onus of proving such necessity is on the plaintiff.

[Jones, Co. J.—Brantford, September 19, 1887.

James Harley, for plaintiff.

L. F. Heyd, for defendant.

JONES, Co. J.—Two questions arise in the present case: 1. Were the goods which were supplied to the defendant by the plaintiff of such a character and quality as a person in the defendant's circumstances would reasonably require? and 2. Were they necessary for or required by the defendant when ordered by him?

In the position which the defendant occupied at that time, having charge of a hotel in the city as one of the proprietors, I think the suit of clothing furnished to him by the plaintiffs was of a character and quality such as he would reasonably require. On the other question I am of the opinion that the weight of evidence goes to show that this suit of clothes was not needed by the defendant, for the reason that he was already very amply supplied with suitable clothing. While the law does not hold an infant liable for his ordinary contracts, yet an exception is made in favour of what is known in law as necessaries, and this exception is made, not for the protection of the tradesman, but for the benefit of the infant, that he may not suffer for the want of necessary clothing or other supplies that he may need. If the defendant here were already supplied with needful clothing it cannot be said that this suit was necessary. The evidence showed that this was the last of several suits that the defendant had ordered that season. And the test as to whether the articles furnished are in law necessaries is this: Were the goods supplied so necessary that the infant must obtain them on credit rather than go without them. The authorities do not fully settle the question whether the person who supplies the goods should make enquiries to ascertain if the infant is already sufficiently supplied (see Smith on Contracts, 7th Ed. 297, and *Ryder* v. *Wombwell*, L. R. 4 Exch. 42).

I think, however, that the better opinion is, that this duty is imposed on the person who supplies the goods, otherwise he supplies them at his own risk.

I give judgment for the plaintiff for $5.55, the value of the other articles of the plaintiff's account which are not disputed, with ordinary costs of suit, except witness fees.

NOTES OF CANADIAN CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE LAW SOCIETY.

COMMON PLEAS DIVISION.

AYERS V. CORPORATION OF WINDSOR.

Municipal corporation—Lowering grade of street—Negligence—Absence of by-law.

In an action to recover damages for injury sustained by the plaintiff by lowering the grade of the street in front of her store, claiming that there was negligence, and also that the work was done without a by-law.

Held, that in the evidence negligence was proved; but that as the work was done without a by-law, therefore the action was maintainable.

Dougall, for the plaintiff.

M. Hugh, for the defendant.

REGINA v. ATKINSON.

Canada Temperance Act, 1878—Police magistrate of county—Evidence of towns therein containing 5,000 population—Defendant summoned to appear before police magistrate on other findings.

Conviction under the Canada Temperance Act. The information was laid before J. K., who described himself as "one of her Majesty's police magistrates in and for the county of Oxford," and the summons and conviction gave the like description. His commission was issued on the 12th January, 1887, and described him as police magistrate for the county of Oxford. Woodstock and Ingersoll are two towns in the county, and it was urged that the population of each is and was at the time of the complaint more than 5,000, so as to have by law each a police magistrate under R. S. O. ch. 72, sec. 1, and that it must therefore be presumed that at said time each had a police magistrate, and therefore, J. K., who was appointed police magistrate for the county, could not be such for the county which included these towns.

Held, that there was no evidence to show that Woodstock and Ingersoll contained such population, and he could not judicially say that such was the fact: that if the fact that J. K.'s describing himself as one of the police magistrates for the county showed that there was more than one police magistrate, there was nothing to show that J. K. was not appointed first, and the subsequent appointments would be the ones that were invalid.

The summons required the defendant to appear before the police magistrate "or such justice of the peace as may then be there to answer to the said information." The police magistrate who issued the summons was himself present to hear and did hear the complaint; and the defendant appeared then also and pleaded not guilty.

Held (following *Regina* v. *Durnan*), that under R. S. O. ch. 106, sec. 117, that defect did not render the conviction invalid and incurable.

Held, also that on the evidence the Canada Temperance Act was in force in the county.

McKenzie, Q.C., for the applicant.

Delamore, for the Crown.

MCDERMOTT v. REDDICK.

Mortgage—Will—Appointment—Interest.

A mortgage was made on 14th December, 1867, by T. K. to his father. The proviso for payment was that the mortgage was to be void on payment of $800 unto the executors or administrators of the mortgagee in eight equal annual instalments of $100 each, the first of such instalments to be made one year after the mortgagee's decease, upon trust to and for such executors and administrators "to pay the same to such person or persons as the said mortgagee shall by deed endorsed hereon or otherwise by deed direct and appoint, and in default of any such appointment, and so far as no such appointment shall extend in trust to pay the same to the children of the said mortgagee other than the said mortgagor in equal shares, and in case of the death of any of the said children without lawful issue, the proportion of such child to be equally divided amongst the survivors, and in case of lawful issue such issue to stand in the place of her or her parent." The mortgagee made no appointment by deed endorsed on the mortgage or otherwise by deed; but on 18th April, 1886, he made his will, wherein he states: "Understanding that the sum of $800 coming to my heirs and assigns from my estate consisting of, etc., has not been specified as to which or whom of my heirs it is payable or when it shall be paid," he directs it shall be thus disposed of, namely: to his daughters A., M. and B., each $200; to his grand-daughters A. and K., $100, and to his wife $100; and that the said sums shall be paid forthwith after his death.

Held, that the will constituted a valid appointment under the proviso in the mortgage, and that the said legatees or appointees under the said will were entitled to the said sums devised to them; but that the time for the payment of the money must be in accordance with the terms of the mortgage.

The mortgage was a printed statutory form. The proviso is for payment of the $800, the printed words *with* interest being struck out; but the mortgagor covenants to pay the mortgage money and interest and observe the above proviso; and these are the provisoes that the mortgagee may distrain for arrears

of interest: that in default of the payment of the interest thereby secured the principal thereby secured shall become payable; and that until in payment the mortgagor shall have quiet possession.

Held, that no interest was payable until after each instalment of principal became due if the payment thereof be then delayed.

F. S. Wallbridge, for the plaintiff.

F. E. Reddick, for defendants.

John Hoskin, Q.C., for the infants.

PRACTICE.

Dalton, Q.C.] [Sept. 16.

WARD v. JACKSON.

Notice of trial—Remanet from assizes—Chancery Division sittings.

When a case has been made a *remanet* at the assizes, a notice of trial for the Chancery Division sittings is irregular and will be set aside.

Aylesworth, for the defendant.

J. M. Clark, for the plaintiff.

Wilson, C.J.] [September 16.

HILLYARD v. SWAN.

Judgment—Setting aside—Execution.

The plaintiffs signed judgment on default of appearance in an action for a money demand, and the defendant was afterwards, upon application to a local judge, let in to defend upon the merits upon certain conditions, one of which was "the judgment and execution (*fi. fa.* goods) now in force to stand as security to the plaintiffs, unless and until the defendant pays into court the amount of the plaintiff's claim, or gives security therefor." The defendant did not pay into court or give security. The action was tried and a verdict given for the plaintiffs, subject to a reference to ascertain the proper amount due to the plaintiffs; and the referee found a less amount due than that for which judgment had originally been entered. After verdict, and before the finding of the referee, the plaintiffs issued and delivered to the sheriff a *fi. fa.* against the lands of the defendant on the original judgment.

Semble, the original judgment could not stand when the case was reopened and the defendant let in to defend. But as the parties had treated the judgment as standing,

Held, that it and the *fi. fa.* goods could be reduced to the sum found by the referee, instead of entering a new judgment; but that the issue of the writ of *fi. fa.* lands was quite unwarranted, and the writ should be set aside.

Walter Read, for the defendant.

Shepley, for the plaintiff.

Boyd, C.] [September 26.

PLATT v. GRAND TRUNK RAILWAY CO.

Costs—Taxation—Appeal—Copies of opinions of judges—Objections.

Upon an appeal to a judge in chambers from the taxation of costs by a local taxing officer where the bill was referred to one of the taxing officers at Toronto, as upon a revision,

Held, that there should be no costs of the appeal and revision unless success is substantially with one party or the other.

Charges for procuring copies of opinions of judges in another action for the instruction of counsel, should not be taxed as between party and party.

An appeal should not be allowed as to any item not included in the objections put in to the taxation.

T. Langton, for the plaintiff.

H. Cassels, for the defendants.

Boyd, C.] [September 28.

WARNOCK v. PRIEUR.

Foreclosure—Opening—Irregularities—Lunatic defendant—Appointment of guardian ad litem—Chambers judgment—Rule 69—G. O. O. Chy. 434, 645.

In a mortgage action for foreclosure a local Master appointed the official guardian to represent a lunatic defendant as guardian *ad litem*, without notice being served as directed by Rule 69. The guardian made full enquiries, communicated with the relatives of the lunatic, and put in the usual formal defence on behalf of the lunatic; and a judgment of fore-

closure was obtained in chambers against all the defendants, including infants and the lunatic defendant.

Held, that the order appointing the guardian was an erroneous one, for which there was no proper foundation; not a mere irregularity which could be held to be waived by the subsequent steps taken to protect the lunatic's rights.

Held, also, that the term "adult" in G. O. Chy. 645, does not include a lunatic or person of unsound mind; and therefore that a judgment against a lunatic could not be obtained in chambers under G. O. Chy. 434.

The judgment of foreclosure was set aside.

Foy, Q.C., and *E. Taylour English*, for the defendant.

J. Maclennan, Q.C., for the plaintiff.

Boyd, C.] [September 28.

PIERCE v. PALMER.

Statement of claim, delivery of—Irregularity—Waiver.

Upon the defendant's application to dismiss the action for want of prosecution, an order was made on the 6th May that upon payment by the plaintiff of $20 costs within eighteen days, and upon his delivering his statement of claim within the same time, the defendant's application was dismissed. On the 26th May after the expiry of the eighteen days, the plaintiff filed his statement of claim, delivered a copy to the defendant's solicitors, and tendered them $20, which they refused to accept. They also declined to admit service of the statement of claim but retained it in their possession. On the 3rd June an order was made extending for one week the time for filing and delivering the statement of claim and paying the $20. This order did not provide that the statement of claim already delivered should stand. Within the week the plaintiff paid the $20, and nine days afterwards signed judgment against the defendant for default of defence, upon the statement of claim delivered on the 26th May.

Held, affirming the decision of the Master in Chambers, that the plaintiff was wrong in filing and serving his statement of claim before paying the costs; but this irregularity was waived and the service became effective when the costs were afterwards received, they being paid under the order of the 3rd June.

Hoyles, for the plaintiff.

C. J. Holman, for the defendant.

Proudfoot, J.] [October 3.

REID v. MURPHY.

Interpleader—Sale of goods—Sheriff's charges.

By an order made upon an interpleader application a sheriff was directed to sell the goods in question and pay the proceeds into court, less his possession money and expenses of seizure and sale. The sheriff did so; the interpleader issue was tried and resulted in favour of the claimant. An order was then made in chambers directing that the sheriff should pay into court the amount retained by him under the previous order, and that the execution creditor should pay the sheriff his proper charges for possession money, etc.

Held, that this was the proper order to make.

Bicknell, for the sheriff.

Hoyles, for the claimant.

Proudfoot, J.] [October 4.

SNOWDEN v. HUNTINGTON.

Costs—Taxation—Local taxing officer—Rule 447.

Rule 447 applies to a taxation of costs conducted by a local taxing officer under the powers given him by 48 Vict. c. 13, s. 22, and an appeal from such taxation does not lie, unless objections are carried in before the officer as required by that rule.

Quay v. *Quay*, 11 P. R. 258, followed.

Hoyles, for the plaintiff.

W. M. Douglas, for the defendant Morris.

Ferguson, J.] [October 17.

FOGG v. FOGG.

Venue—Alimony action—Preponderance of convenience.

The venue was changed from Whitby to Toronto in an action of alimony upon the application of the defendant where there was not sufficient difference in expense to warrant the change in an ordinary case, because of the rule in alimony cases which imposes on the defendant the burden of advancing and paying all the disbursements on both sides in any event. The circumstance that two of the defendant's witnesses, who reside in Toronto, were public officers, and that their absence would be a public inconvenience was also considered in determining the preponderance of convenience.

Chapple, for the plaintiff.

H. Cassels, for the defendant.

Ferguson, J.] [October 19.

IN RE GABOURIE, CASEY v. GABOURIE.

Leave to appeal—Extension of time—Excuse for delay—Requirement of justice.

Two of the defendants (legatees) in an administration suit, appealed from the report of a master, and thereby succeeded in charging the plaintiff, an executor, with their shares of a sum of $4,000 which the executor had lost to the estate. The other defendants did not appeal, and as to them the report became absolute on the 24th March, 1887. Three of these defendants in September, 1887, after the success of their co-defendants' appeal was established, moved for leave to appeal and to extend the time, their excuse for the delay being that they had supposed the appeal of their co-defendants would enure to their benefit.

Held, that justice required that the time for appeal should be extended and these defendants let in to appeal, upon their placing the executor in as good a position as he would have occupied if they had appealed within the time allowed, notwithstanding that the $4,000 was lost to the estate by an innocent mistake of the executor, that he had acted as he did by reason of the instructions given him by the testator, and his acting and taking advice according to the instructions had led directly to the mistake.

Langdon v. *Robertson*, 12 P. R. 139, followed.

Birls v. *Beatty*, 6 Madd. 90, distinguished.

J. Maclennan, Q.C., for the plaintiff.

Hoyles, for the defendants.

Ferguson, J.] [October 19.

MCKAY v. KEEFER.

Partition—Reference—Fees to experts—Chy. G. O. 240.

In the cause of a reference to make a partition of lands, a master appointed two skilled persons to examine the property and prepare a scheme of partition, and on their evidence he adopted the scheme prepared.

Held, that the course adopted by the master was a reasonable one, that he had the power under Chy. G. O. 240 to take such course, and that the fees paid to the skilled persons by the defendant should be taxed to him.

W. H. Blake, for the defendant.

Middleton, contra.

Galt, J.] [October 19.

MCMASTER v. MASON.

Discovery—Examination of witness—Production of documents—Fraud—Rules 109, 285.

In an action of ejectment, where the plaintiff claimed title under a conveyance from the father of the defendant in 1885, and the defendant claimed by virtue of possession since 1874, under a verbal agreement to purchase made with his father, and the defendant said on his examination that he had paid his father money on account of the purchase which he had entered in his father's books, an order was made for examination of the father and production of his books for the purpose of discovery before the trial.

Held, that the father might have been made a party under rule 109, on the ground of his having been a party to a fraud in conveying land to the plaintiffs after he had made an agreement with his son, and such being the case there was no doubt of his liability to be examined under rule 285.

Walter Macdonald, for the plaintiffs.

F. E. Hodgins, for the defendant.

LAW STUDENTS' DEPARTMENT.

LAW SOCIETY EXAMINATION DATES.

Owing to changes which have been made since our sheet almanac for 1887 was published it is desirable to give our student friends definite and accurate information as to various matters in which they are interested. The following has been kindly prepared for us by Mr. Esten, Secretary of the Law Society:

HILARY TERM, 1888.

COMMENCES 6TH FEBRUARY.

Last day for Call Notices for H. T., 10th December, 1887.
Last day for Primary Notices, 7th January, 1888.
Primary Examination, 17th January.
Graduates and Matriculants, 19th January.
Last day for filing papers and fees (Final Examinations), 21st January.
First Intermediate Examination, 24th January.
Second Intermediate Examination, 26th January.
Solicitor Examination, 31st January.
Barrister Examination, 1st February.

EASTER TERM.

COMMENCES 21ST MAY.

Last day for Call Notices for E. T., 18th February.
Last day for Primary Notices, 21st April.
Primary Examination, 1st May.
Graduates and Matriculants, 3rd May.
Last day for filing papers and fees (Final Examination), 5th May.
First Intermediate Examination, 8th May.
Second Intermediate Examination, 10th May.
Solicitor Examination, 15th May.
Barrister Examination, 16th May.

TRINITY TERM.

COMMENCES 3RD SEPTEMBER.

Last day for Call Notices for T. T., 9th June.
Last day for Primary Notices, 4th August.
Primary Examination, 14th August.
Graduates and Matriculants, 16th August.
Last day for filing papers and fees (Final Examination), 18th August.
First Intermediate Examination, 21st August.
Second Intermediate Examination, 23rd August.
Solicitor Examination, 28th August.
Barrister Examination, 29th August.

MICHAELMAS TERM.

COMMENCES 19TH NOVEMBER.

Last day for Call Notices for M. T., 15th September.
Last day for Primary Notices, 20th October.
Primary Examination, 30th October.
Graduates and Matriculants, 1st November.
Last day for filing papers and fees (for Final Examination), 3rd November.
First Intermediate Examination, 6th November.
Second Intermediate Examination, 8th Novembe r
Solicitor Examination, 13th November.
Barrister Examination, 14th November.

SUPREME COURT OF CANADA.

GENERAL ORDER No. 83.

Whereas, by "The Supreme and Exchequer Courts Act," sec. 109, as amended by chap. 16 of he Act passed in the 51st year of Her Majesty's reign intituled "An Act to amend 'The Supreme and Exchequer Courts Act,' and to make better provision for the trial of claims against the Crown," it is provided that the judges of the Supreme Court, or any five of them, may, from time to time, make general rules and orders for certain purposes therein mentioned, and among others for empowering the registrar to do any such thing, and to transact any such business, and to exercise any such authority and jurisdiction in respect of the same, as by virtue of any statute or custom, or by the practice of the court, was at the time of the last mentioned act, or might be thereafter, done, transacted, or exercised by a judge of the court sitting in chambers, and as might be specified in such rule or order. It is therefore ordered:—

1. That the registrar of the Supreme Court of Canada be and is hereby empowered and required to do any such thing, and to transact any such business, and to exercise any such authority and jurisdiction in respect of the same, as by virtue of any statute or custom, or by the practice of the court, was at the time of the passing of the said last mentioned Act, and is now, or may be hereafter, done, transacted, or exercised by a judge of the said court sitting in chambers, except in matters relating to:—

(*a*) Granting writs of *habeas corpus* and adjudicating upon the return thereof.

(*b*) Granting writs of *certiorari*.

SUPREME COURT OF CANADA.

2. In case any matter shall appear to the said registrar to be proper for the decision of a judge, the registrar may refer the same to a judge, and the judge may either dispose of the matter, or refer the same back to the registrar with such directions as he may think fit.

3. Every order or decision made or given by the said registrar sitting in chambers shall be valid and binding on all parties concerned, as if the same had been made or given by a judge sitting in chambers.

4. All orders made by the registrar sitting in chambers are to be signed by the registrar.

5. Any person affected by any order or decision of the registrar may appeal therefrom to a judge of the Supreme Court in chambers.

(*a*) Such appeal shall be by motion on notice setting forth the grounds of objection and served within four days after the decision complained of, and two clear days before the day fixed for hearing the same, or served within such other time as may be allowed by a judge of the said court or the registrar.

(*b*) The motion shall be made on the Monday appointed by the notice of motion, which shall be the first Monday after the expiry of the delays provided for by the foregoing sub-section, or so soon thereafter as the same can be heard by a judge, and shall be set down not later than the preceding Saturday in a book kept for that purpose in the registrar's office.

6. For the transaction of business under these rules, the registrar, unless absent from the city, or prevented by illness or other necessary cause, shall shall sit every juridical day, except during the vacations of the Court, at 11 a.m., or such other hour as he may specify from time to time by notice posted in his office.

W. J. RITCHIE, C.J.
S. H. STRONG, J.
T. FOURNIER, J.
W. A. HENRY, J.
H. E. TASCHEREAU, S.C.

October 17th, 1887.

LITTELL'S LIVING AGE. The numbers of *The Living Age* for the weeks ending October 15th and 22nd, contain "A Great Lesson," by the Duke of Argyll, *Nineteenth Century;* "Masaniello," *Temple Bar;* "Donatello, and the Unveiling of the Façade of the Duomo at Florence," *National Review;* "Realism and Idealism," *Fortnightly;* "The Last Day of Windsor Forest," *National Review;* "Some Clerical Reminiscences," *Temple Bar;* "A Carthusian Monastery near Meran," *Spectator;* "The Ubiquity of the Jewish Race," *Jewish World;* "The Country Parson as he was and as he is," *Blackwood;* "The Present State of the Novel," *Fortnightly;* "Mr. Twining's Letters," *Temple Bar;* "The Story of Zebehr, as told by Himself," *Contemporary;* "Morphinomania," by Dr. Seymour J. Sharkey, *Nineteenth Century:* "Linnæus," *All the Year Round;* "Contemporary Despatches, by a Foreign Minister during the Early Years of Charles I.," *St. James's Gazette:* "Wordsworth's Grave," *National Review;* with instalments of "Major and Minor," by W. E. Norris; "A Secret Inheritance," by B. L. Farjeon; "Major Lawrence, F.L.S.," and "Richard Cable, the Lightshipman," poetry and miscellany.

For fifty-two numbers of sixty-four large pages each (or more than 3,300 pages a year) the subscription price ($8) is low; while for $10 50 the publishers offer to send any one of the American $4.00 monthlies or weeklies with *The Living Age* for a year, both postpaid. Littell & Co., Boston, are the publishers.

Law Society of Upper Canada.

OSGOODE HALL.

CURRICULUM.

1. A graduate in the Faculty of Arts, in any university in Her Majesty's dominions empowered to grant such degrees, shall be entitled to admission on the books of the society as a Student-at-Law, upon conforming with clause four of this curriculum, and presenting (in person) to Convocation his diploma or proper certificate of his having received his degree, without further examination by the Society.

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

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

4. Every candidate for admission as a Student-at-Law, or Articled Clerk, shall file with the secretary, four weeks before the term in which he intends to come up, a notice (on prescribed form), signed by a Bencher, and pay $1 fee; and, on or before the day of presentation or examination, file with the secretary a petition and a presentation signed by a Barrister (forms prescribed) and pay prescribed fee.

5. The Law Society Terms are as follows:

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

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

Trinity Term, first Monday in September, lasting two weeks.

Michaelmas Term, third Monday in November, lasting three weeks.

6. The primary examinations for Students-at-Law and Articled Clerks will begin on the third Tuesday before Hilary, Easter, Trinity and Michaelmas Terms.

7. Graduates and matriculants of universities will present their diplomas and certificates on the third Thursday before each term at 11 a.m.

8. The First Intermediate examination will begin on the second Tuesday before each term at 9 a.m. Oral on the Wednesday at 2 p.m.

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

10. The Solicitors' examination will begin on the Tuesday next before each term at 9 a.m. Oral on the Thursday at 2.30 p.m.

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

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

13. Full term of five years, or, in the case of graduates of three years, under articles must be served before certificates of fitness can be granted

14. Service under articles is effectual only after the Primary examination has been passed.

15 A Student-at-Law is required to pass the First Intermediate examination in his third year, and the Second Intermediate in his fourth year, unless a graduate, in which case the First shall be in his second year and his Second in the first six months of his third year. One year must elapse between First and Second Intermediates. See further, R S.O., ch. 140, sec. 6, sub-secs 2 and 3

16. In computation of time entitling Students or Articled Clerks to pass examinations to be called to the Bar or receive certificates of fitness examinations passed before or during Term shall be construed as passed at the actual date of the examination, or as of the first day of Term, whichever shall be most favourable to the Student or Clerk, and all students entered on the books of the Society during any Term shall be deemed to have been so entered on the first day of the Term.

17. Candidates for call to the Bar must give notice, signed by a Bencher, during the preceding Term.

18. Candidates for call or certificate of fitness are required to file with the secretary their papers and pay their fees on or before the third Saturday before Term. Any candidate failing to do so will be required to put in a special petition, and pay an additional fee of $2.

19. No information can be given as to marks obtained at examinations.

20. An Intermediate Certificate is not taken in lieu of Primary Examination.

FEES

Notice Fees	$1 00
Students' Admission Fee	50 00
Articled Clerk's Fees	40 00
Solicitor's Examination Fee	60 00
Barrister's " "	100 00
Intermediate Fee	1 00
Fee in special cases additional to the above.	200 00
Fee for Petitions	2 00
Fee for Diplomas	2 00
Fee for Certificate of Admission	1 00
Fee for other Certificates	1 00

BOOKS AND SUBJECTS FOR EXAMINATIONS.

PRIMARY EXAMINATION CURRICULUM FOR 1887 1888, 1889 AND 1890.

Students-at-law.

CLASSICS.

1887.
- Xenophon, Anabasis, B. I.
- Homer, Iliad, B. VI.
- Cicero, In Catilinam, I.
- Virgil, Æneid, B. I.
- Cæsar, Bellum Britannicum.

1888
- Xenophon, Anabasis, B. I.
- Homer, Iliad, B. IV.
- Cæsar, B. G. I. (1-33)
- Cicero, In Catilinam, I.
- Virgil, Æneid, B. I.

1889.
- Xenophon, Anabasis, B. II.
- Homer, Iliad, B. IV.
- Cicero, In Catilinam, I.
- Virgil, Æneid, B. V.
- Cæsar, B. G. I. (1-33)

1890
- Xenophon, Anabasis, B. II.
- Homer, Iliad, B. VI.
- Cicero, In Catilinam, II.
- Virgil, Æneid, B. V.
- Cæsar, Bellum Britannicum.

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

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

MATHEMATICS.

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

ENGLISH.

A Paper on English Grammar.

Composition.

Critical reading of a Selected Poem:—

1887—Thomson, The Seasons, Autumn and Winter.

1888—Cowper, the Task, Bb. III. and IV.

1889—Scott, Lay of the Last Minstrel.

1890—Byron, the Prisoner of Chillon; Childe Harold's Pilgrimage, from stanza 73 of Canto 2 to stanza 31 of Canto 3, inclusive.

HISTORY AND GEOGRAPHY.

English History, from William III. to George III. inclusive. Roman History, from the commencement of the Second Punic War to the death of Augustus. Greek History, from the Persian to the Peloponnesian Wars, both inclusive. Ancient Geography — Greece, Italy and Asia Minor. Modern Geography—North America and Europe.

Optional Subjects instead of Greek:—

FRENCH.

A paper on Grammar.

Translation from English into French Prose.

1886)
1888 } Souvestre, Un Philosophe sous le toits.
1890)

1887)
1889) Lamartine, Christophe Colomb.

or, NATURAL PHILOSOPHY.

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

ARTICLED CLERKS.

In the years 1887, 1888, 1889, 1890, the same portions of Cicero, *or* Virgil, at the option of the candidates, as noted above for Students-at-Law.

Arithmetic.

Euclid, Bb. I., II., and III.

English Grammar and Composition.

English History—Queen Anne to George III.

Modern Geography—North America and Europe.

Elements of Book-Keeping.

RULE RE SERVICE OF ARTICLED CLERKS.

From and after the 7th day of September, 1885, no person then or thereafter bound by articles of clerkship to any solicitor, shall, during the term of service mentioned in such articles, hold any office

or engage in any employment whatsoever, other than the employment of clerk to such solicitor, and his partner or partners (if any) and his Toronto agent, with the consent of such solicitors in the business, practice, or employment of a solicitor.

First Intermediate.

Williams on Real Property, Leith's Edition; Smith's Manual of Common Law; Smith's Manual of Equity; Anson on Contracts; the Act respecting the Court of Chancery; the Canadian Statutes relating to Bills of Exchange and Promissory Notes; and cap. 117, Revised Statutes of Ontario and amending Acts.

Three scholarships can be competed for in connection with this intermediate by candidates who obtain 75 per cent. of the maximum number of marks.

Second Intermediate.

Leith's Blackstone, 2nd edition; Greenwood on Conveyancing, chaps. on Agreements, Sales, Purchases, Leases, Mortgages and Wills; Snell's Equity; Broom's Common Law; Williams on Personal Property; O'Sullivan's Manual of Government in Canada; the Ontario Judicature Act, Revised Statutes of Ontario, chaps. 95, 107, 136.

Three scholarships can be competed for in connection with this intermediate by candidates who obtain 75 per cent. of the maximum number of marks.

For Certificate of Fitness.

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

For Call.

Blackstone, vol. 1, containing the introduction and rights of Persons; Pollock on Contracts; Story's Equity Jurisprudence; Theobald on Wills; Harris' Principles of Criminal Law; Broom's Common Law, Books III. and IV.; Dart on Vendors and Purchasers; Best on Evidence; Byles on Bills, the Statute Law and Pleadings and Practice of the Courts.

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

Copies of Rules, price 25 cents, can be obtained from Messrs. Rowsell & Hutchison, King Street East, Toronto.